



NATIONAL ASSEMBLY OF QUÉBEC

SECOND SESSION

FORTY-SECOND LEGISLATURE

Bill 12
(2022, chapter 18)

**An Act mainly to promote
Québec-sourced and responsible
procurement by public bodies, to
reinforce the integrity regime of
enterprises and to increase the
powers of the Autorité des marchés
publics**

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EXPLANATORY NOTES

The first purpose of this Act is to promote, in keeping with public procurement liberalization agreements, Québec-sourced and responsible procurement by public bodies subject to the Act respecting contracting by public bodies.

To that end, the Act provides that public bodies must, when tendering or awarding a contract not subject to an agreement, favour procurement of Québec goods, services or construction work from enterprises in the region concerned by such procurement.

Public bodies may, when tendering a contract subject to an agreement and involving an expenditure below the lowest threshold applicable under the Comprehensive Economic and Trade Agreement between Canada and the European Union and its Member States, reserve a public call for tenders for small enterprises located in Québec and elsewhere in Canada under a program established to that effect by the Conseil du trésor. Public bodies may also, when tendering such a contract, grant preference based on Québec or otherwise Canadian value added or require Québec or otherwise Canadian goods, services or construction work.

Before the tendering or awarding process for a contract, public bodies must conduct an evaluation of their procurement requirements that furthers the pursuit of sustainable development. The Act provides expressly that public bodies must, when evaluating their requirements, take into account the objectives they have set under the Sustainable Development Act as well as the objectives determined by the Government in the sustainable development strategy adopted under that Act.

The Act provides that public bodies must give priority to including in tender documents or contracts at least one condition relating to the responsible nature of the procurement, from an environmental, social or economic perspective. The Act also allows the Conseil du trésor to determine the cases in which public bodies must include such conditions in those documents or in contracts.

The Act provides for a public procurement innovation space intended to foster the development of contract rules. In that respect, the Act allows the Chair of the Conseil du trésor to determine the procurement through which public bodies must apply various

measures, such as granting a premium in the form of a preferential margin to enterprises that comply with environmental standards more stringent than those set by the applicable legislation or the tender documents.

A further purpose of the Act is to reinforce the integrity regime of enterprises governed by the Act respecting contracting by public bodies.

To that end, the Act provides that any enterprise that is party to a public contract or subcontract must meet the high standards of integrity that the public is entitled to expect from a party to such a contract or subcontract. In addition, such an enterprise is subject to the oversight of the Autorité des marchés publics.

The Act provides that, following a decision concluding that an enterprise does not meet the required standards of integrity, the Authority must impose on the enterprise any corrective measure enabling it to meet those standards. Such an enterprise must, with some exceptions, continue to perform the public contract or subcontract to which it is party but is required to submit to any oversight or monitoring measure the Authority may impose.

The Authority is granted the powers necessary for auditing the integrity of any enterprise subject to its oversight, such as the power to require such an enterprise and the persons or entities who control the enterprise to send to the Authority any relevant documents or information.

Amendments are made to the rules governing authorizations to contract, such as conferring on the Authority the responsibility to conduct most of the audits relating to the integrity of the enterprises applying for authorization and increasing from three to five years the validity period of an authorization to contract.

In addition, the integrity requirements imposed on enterprises are enhanced, monetary administrative penalties are introduced in the Act respecting contracting by public bodies, and new penal sanctions are added to that Act and other Acts.

Municipal laws are also amended to make bodies and public contracts and subcontracts in the municipal domain subject to the new terms of the integrity regime.

An additional purpose of the Act is to broaden the scope of the Authority's mission, functions and powers provided for in the Act respecting the Autorité des marchés publics, in particular by allowing the Authority to investigate any matter relating to its oversight mission with respect to public contracts.

The Act provides that the Public Protector may receive and process a disclosure of a contravention of an Act or regulation regarding a contracting process of the Authority or the performance of any of its contracts.

With regard to construction work carried out on behalf of public bodies subject to the Act respecting contracting by public bodies, the Act prescribes requirements relating to requests for payment of sums of money that enterprises that take part in such work consider to be owed to them as well as requirements relating to payment of and refusal to pay such sums. The Act also allows such enterprises and such bodies to require that a dispute that arises between enterprises or between an enterprise and a public body be decided by a third-person decider, in the cases and on the conditions determined by the Government. The Act confers on the Minister of Justice the power to designate the persons, bodies and associations responsible for certifying the persons who may act as third-person decider.

Lastly, the Act contains miscellaneous, transitional and consequential provisions.

LEGISLATION AMENDED BY THIS ACT:

- Act respecting the acceleration of certain infrastructure projects (chapter A-2.001);
- Tax Administration Act (chapter A-6.002);
- Act respecting the Autorité des marchés publics (chapter A-33.2.1);
- Building Act (chapter B-1.1);
- Cannabis Regulation Act (chapter C-5.3);
- Act respecting the Centre d'acquisitions gouvernementales (chapter C-7.01);
- Charter of Ville de Montréal, metropolis of Québec (chapter C-11.4);

- Cities and Towns Act (chapter C-19);
- Municipal Code of Québec (chapter C-27.1);
- Act respecting the Communauté métropolitaine de Montréal (chapter C-37.01);
- Act respecting the Communauté métropolitaine de Québec (chapter C-37.02);
- Act respecting contracting by public bodies (chapter C-65.1);
- Act to facilitate the disclosure of wrongdoings relating to public bodies (chapter D-11.1);
- Act respecting elections and referendums in municipalities (chapter E-2.2);
- Act respecting school elections to elect certain members of the boards of directors of English-language school service centres (chapter E-2.3);
- Election Act (chapter E-3.3);
- Municipal Ethics and Good Conduct Act (chapter E-15.1.0.1);
- Act respecting administrative justice (chapter J-3);
- Anti-Corruption Act (chapter L-6.1);
- Act respecting labour relations, vocational training and workforce management in the construction industry (chapter R-20);
- Act respecting mixed enterprise companies in the municipal sector (chapter S-25.01);
- Act respecting public transit authorities (chapter S-30.01).

REGULATIONS AMENDED BY THIS ACT:

- Regulation of the Autorité des marchés publics under an Act respecting contracting by public bodies (chapter C-65.1, r. 0.1);
- Regulation respecting certain supply contracts of public bodies (chapter C-65.1, r. 2);

- Regulation respecting certain service contracts of public bodies (chapter C-65.1, r. 4);
- Regulation respecting construction contracts of public bodies (chapter C-65.1, r. 5);
- Regulation respecting contracting by public bodies in the field of information technologies (chapter C-65.1, r. 5.1).

Bill 12

AN ACT MAINLY TO PROMOTE QUÉBEC-SOURCED AND RESPONSIBLE PROCUREMENT BY PUBLIC BODIES, TO REINFORCE THE INTEGRITY REGIME OF ENTERPRISES AND TO INCREASE THE POWERS OF THE AUTORITÉ DES MARCHÉS PUBLICS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

PROVISIONS RELATING TO QUÉBEC-SOURCED AND RESPONSIBLE PROCUREMENT

ACT RESPECTING CONTRACTING BY PUBLIC BODIES

1. Section 2 of the Act respecting contracting by public bodies (chapter C-65.1) is amended, in the first paragraph,

(1) by inserting the following subparagraph after subparagraph 3:

“(3.1) the use of public contracts as a lever for the economic development of Québec and its regions;”;

(2) by replacing “reflects the Government’s sustainable development and environmental policies” in subparagraph 4 by “furthers the pursuit of sustainable development within the meaning of the Sustainable Development Act (chapter D-8.1.1)”;

(3) by inserting the following subparagraph after subparagraph 4:

“(4.1) the search for the best value in the public interest;”.

2. Section 10 of the Act is amended by replacing the third paragraph by the following paragraph:

“A public body must tender a contract not subject to an intergovernmental agreement in accordance with section 14.2.”

3. Section 14 of the Act is replaced by the following section:

“14. In accordance with the principles set out in section 2, contracts involving an expenditure below the public tender threshold may, in accordance with section 14.3, either be awarded by a public body following a public call for tenders or an invitation to tender or be awarded by mutual agreement.

The public body must also put in place control measures relating to the amount of such contracts and of any related additional expenditure, especially in the case of contracts entered into by mutual agreement.

Lastly, the public body must set up a monitoring mechanism to ensure that the contracting procedures established for the purposes of the tendering or awarding of a contract referred to in this section are effective and efficient.”

4. The Act is amended by inserting the following divisions after Division III of Chapter II:

“DIVISION IV

“ECONOMIC DEVELOPMENT OF QUÉBEC AND ITS REGIONS

“14.1. If a contract referred to in subparagraph 1 of the first paragraph of section 10 involves an expenditure, including, if applicable, the value of the options, below the lowest threshold applicable under the Comprehensive Economic and Trade Agreement between Canada and the European Union and its Member States, a public body may

(1) reserve a public call for tenders for small enterprises in Québec and elsewhere in Canada if the body is covered by a directive made in accordance with the first paragraph of section 14.4;

(2) grant preference based on the Québec or otherwise Canadian value added; or

(3) require Québec or otherwise Canadian goods, services or construction work.

The Conseil du trésor determines, by regulation, the form and maximum percentage of the preference a public body may grant under the first paragraph.

“14.2. A public body must favour making a regionalized public call for tenders in the case of any contract referred to in section 10 that is not subject to an intergovernmental agreement. If the contract is a supply, service or construction work contract, the public body must also favour procurement of Québec goods, services or construction work.

If the public body does not make a regionalized public call for tenders or, in the case of a supply, service or construction work contract, does not favour procurement of Québec goods, services or construction work, it must record the circumstances or reasons considered.

“14.3. If a contract is referred to in the first paragraph of section 14, a public body must,

(1) in the case of a call for tenders, favour regionalizing the call for tenders or inviting enterprises in the region concerned, as applicable, and favour procurement of Québec goods, services or construction work; or

(2) in the case of a contract by mutual agreement, favour procurement of Québec goods, services or construction work from enterprises in the region concerned and use a rotation system among them.

“14.4. The Conseil du trésor may, by directive, set up a program allowing public bodies to reserve public calls for tenders for small enterprises in Québec and elsewhere in Canada, including social economy enterprises within the meaning of the Social Economy Act (chapter E-1.1.1), or requiring them to do so, for contracts referred to in the first paragraph of section 14.1.

The Conseil du trésor may, by directive, require public bodies to tender contracts referred to in the first paragraph of section 14.1 in accordance with subparagraph 2 or 3 of that paragraph.

A directive may apply to all public bodies or to a group of public bodies in particular, and it may apply to only one category of contracts or to only one group of contracts, whether or not of the same category. Furthermore, it is binding on the public bodies concerned.

“14.5. The Conseil du trésor defines, by regulation, the expressions “small enterprises in Québec and elsewhere in Canada”, “Québec or otherwise Canadian value added” and “Québec or otherwise Canadian goods, services or construction work” for the purposes of sections 14.1 and 14.4, and the expression “Québec goods, services or construction work” for the purposes of sections 14.2 and 14.3.

“DIVISION V

“SUSTAINABLE DEVELOPMENT

“14.6. Before the tendering or awarding process for a contract, a public body must conduct an evaluation of procurement requirements that furthers the pursuit of sustainable development.

A public body subject to the Sustainable Development Act (chapter D-8.1.1) must, more specifically, take into account the Government's sustainable development policies in addition to the specific objectives it has set under that Act and those determined by the Government in the sustainable development strategy adopted under that Act.

“14.7. With a view to continual improvement, a public body must give priority to including in the tender documents or the contract, as applicable, at least one condition relating to the responsible nature of the procurement, from an environmental, social or economic perspective.

Such a condition may, among other things, take the form of an eligibility requirement, technical requirement, criterion for quality assessment or preferential margin.

A public body must record the circumstances or reasons considered if it does not include such a condition in the tender documents or the contract, as applicable.

“14.8. The conditions relating to the responsible nature of a procurement, from an environmental, social or economic perspective, must be related to the object of the contract unless otherwise authorized by law.

For the purposes of the first paragraph, conditions that relate to goods, services or construction work in any way and at any stage in their life cycle, including the research, development, production, commercialization, delivery, distribution, use, maintenance and end-of-life stages, are deemed to be related to the object of the contract, even where such conditions do not pertain to one of their inherent characteristics.

The second paragraph applies, with the necessary modifications, to any category of contracts.

“14.9. The Conseil du trésor may, by directive and in the cases it determines, require public bodies to include in the tender documents or the contract, as applicable, one or more conditions relating to the responsible nature of a procurement, from an environmental, social or economic perspective.

The Conseil du trésor may, by directive, authorize public bodies to not record the circumstances or reasons considered if the bodies do not include a condition relating to the responsible nature of a procurement, from an environmental, social or economic perspective, in the tender documents or the contract, as applicable.

A directive may concern all public bodies or a particular group of public bodies and it may apply only with regard to a category of contracts or to a group of contracts, whether or not the latter are of the same category. Furthermore, such a directive is binding on the public bodies concerned.”

5. The Act is amended by inserting the following chapter after Chapter II:

“CHAPTER II.1

“PUBLIC PROCUREMENT INNOVATION SPACE

“14.10. The purpose of this chapter is to improve contract rules to enable public bodies to better contribute to the achievement of the following government objectives:

- (1) increase procurement by public bodies that is responsible in nature;
- (2) reduce the actual and potential negative environmental impacts of the goods, services and construction work procured by public bodies, in particular as concerns their carbon footprint and greenhouse gas emissions, and increase their sustainability;
- (3) use public procurement as a vector of influence in the fight against climate change;
- (4) improve representation of Indigenous enterprises and of social economy enterprises within the meaning of the Social Economy Act (chapter E-1.1.1) in public procurement;
- (5) encourage participation, in the performance of public contracts, of persons facing labour market barriers; and
- (6) support the development of innovative goods, services and construction work.

The Government may, by order and on the recommendation of the Conseil du trésor, define any other objective, provided the objective is compatible with the principles set out in section 2.

“14.11. In order to enable a public body to contribute to the achievement of a government objective referred to in section 14.10, the Chair of the Conseil du trésor may determine the procurement through which the body must

- (1) grant a premium in the form of a preferential margin to enterprises that comply with environmental or climate change-related standards more stringent than those set by the applicable legislation or the tender documents;
- (2) before the tendering or awarding process for a contract, use tools or analysis grids that relate to sustainable development or are based on a life cycle approach or a circular economy approach, in particular with respect to climate change mitigation and adaptation;

(3) grant a premium in the form of a preferential margin to Indigenous enterprises or to enterprises that would involve Indigenous persons in the performance of the contract;

(4) grant a premium in the form of a preferential margin to social economy enterprises within the meaning of the Social Economy Act (chapter E-1.1.1);

(5) require that persons facing labour market barriers and belonging to a group identified by the Chair of the Conseil du trésor be assigned to the performance of the contract, even if that requirement is not related to the object of the contract;

(6) issue an invitation to tender in order to acquire a prototype, despite section 10;

(7) make a public call for tenders involving a competitive dialogue, on the conditions prescribed by a regulation made under this Act, where there is a need to procure innovative goods, services or construction work;

(8) use a tendering mode prescribed by a regulation made under this Act, even if that mode is not allowed in respect of all or part of the procurement concerned;

(9) impose an eligibility requirement, technical requirement, criterion for quality assessment or any other optional condition prescribed by this Act or a regulation made under this Act;

(10) apply a measure prescribed by the Government in accordance with section 14.12; or

(11) apply a measure prescribed by the Conseil du trésor in accordance with section 14.13.

To determine procurement for the purposes of the first paragraph, the Chair of the Conseil du trésor may target a contract or a group of contracts, whether or not of the same category.

Every time the Chair of the Conseil du trésor imposes a measure under the first paragraph, the Chair determines the conditions for applying the measure, including, where advisable, the conditions relating to the public subcontracts related to the procurement concerned.

When making an order relating to subparagraph 3 of the first paragraph, the Chair of the Conseil du trésor defines in the order, if applicable, the expression “Indigenous enterprises”. When making an order relating to subparagraph 4 of the first paragraph, the procurement the Chair determines must not include any contract subject to an intergovernmental agreement. When making an order relating to subparagraph 5 of the first paragraph, the persons belonging to the group the Chair identifies must be persons that may be given a premium under intergovernmental agreements.

Goods, services and construction work, whether new or significantly improved, in particular because of new production, service delivery or construction processes or because of a new commercialization or organizational method, are innovative within the meaning of subparagraph 7 of the first paragraph.

Any order made by the Chair of the Conseil du trésor under this section is published in the *Gazette officielle du Québec*.

“14.12. The Government may, by regulation and on the recommendation of the Conseil du trésor, prescribe any other measure that differs from the standards established by this Act, provided the measure is compatible with the principles set out in section 2 and consistent with the pursuit of any of the government objectives listed in section 14.10.

“14.13. The Conseil du trésor may, by regulation, prescribe any other measure that differs from the standards prescribed by a regulation made under this Act, provided the measure is compatible with the principles set out in section 2 and consistent with the pursuit of any of the government objectives listed in section 14.10.

“14.14. For the purposes of this chapter, when so requested by the Chair of the Conseil du trésor, ministers must provide assistance to the Chair in the areas under their jurisdiction.

The same applies to public bodies, in particular to allow the Chair of the Conseil du trésor to determine procurement for the purposes of section 14.11.

Furthermore, ministers and public bodies must provide, on request, the information necessary for the production of any monitoring report required under section 22.4.”

6. Section 16 of the Act is amended by inserting “and recording” after “account” in the first paragraph.

7. Section 18 of the Act is amended by replacing “of this Act” by “and the requirements of Division V of Chapter II”.

8. The Act is amended by inserting the following sections after section 22.1:

“22.2. Every year, the Chair of the Conseil du trésor publishes on the website of the secretariat of the Conseil du trésor a report presenting statistics on the regionalized public calls for tenders and the procurement of Québec goods, services and construction work that were favoured by public bodies under section 14.2. The report must also state the circumstances and reasons considered in the cases where such calls for tenders and such procurement were not favoured.

“22.3. Every year, the Chair of the Conseil du trésor publishes on the website of the secretariat of the Conseil du trésor a report presenting statistics on the inclusion of conditions relating to the responsible nature of a procurement, from an environmental, social or economic perspective, in the tender documents or the contracts of public bodies under Division V of Chapter II. The report must also set out the circumstances and reasons considered that were recorded by public bodies under the third paragraph of section 14.7.

The report must, however, pertain only to procurement involving an expenditure equal to or greater than the amount set out in the first paragraph of section 22.

“22.4. Not later than 2 December 2023 and subsequently every year, the Chair of the Conseil du trésor publishes, on the website of the secretariat of the Conseil du trésor, a monitoring report on the carrying out of Chapter II.1.

Every monitoring report must contain the following information:

- (1) the procurement determined for the purposes of section 14.11;
- (2) the progress made as concerns achievement of the government objectives listed in section 14.10 and its anticipated beneficial effects on the environment, society and the economy;
- (3) the recommendations of the Chair of the Conseil du trésor as to the advisability of amending the contract rules concerned; and
- (4) any other element considered relevant by the Chair of the Conseil du trésor.”

CHAPTER II

PROVISIONS RELATING TO THE INTEGRITY REGIME OF ENTERPRISES

ACT RESPECTING CONTRACTING BY PUBLIC BODIES

9. The heading of Chapter V.1 of the Act respecting contracting by public bodies (chapter C-65.1) is replaced by the following heading:

“INTEGRITY OF ENTERPRISES”.

10. Division I of Chapter V.1 of the Act, comprising sections 21.1 to 21.4.1, is replaced by the following:

“DIVISION I

“STANDARDS AND DECLARATION OF INTEGRITY

“21.1. Any enterprise that is party to a public contract or subcontract must meet the high standards of integrity that the public is entitled to expect from a party to such a contract or subcontract, hereinafter called “standards of integrity”. In the cases referred to in Division III, the enterprise must demonstrate before the contract or subcontract is entered into that it meets those standards by obtaining the authorization to contract provided for in that division.

An enterprise that is ineligible for public contracts under Division II is presumed not to meet the standards of integrity.

“21.2. Any enterprise interested in entering into a public contract must, by means of a written declaration, recognize that it is aware of the standards of integrity and undertake to take all measures necessary to meet those standards throughout the duration of the contract.

The declaration of integrity is made in the form determined by government regulation and at the time a tender is submitted or, in the case of a contract entered into by mutual agreement, at the time the contract is entered into.

“DIVISION II

“INELIGIBILITY FOR PUBLIC CONTRACTS

“§1. — *Cases of ineligibility*

“21.3. An enterprise’s ineligibility for public contracts may result either from a decision of the Autorité des marchés publics, where so provided by this chapter, or from the fact that the enterprise is in any of the situations provided for in section 21.4.

“21.4. An enterprise is ineligible for public contracts if it does not hold an authorization to contract under Division III and is in any of the following situations:

- (1) it is found guilty, by a final judgment, of an offence listed in Schedule I;
- (2) it is an associate of a person found guilty, by a final judgment, of an offence listed in Schedule I; or
- (3) it is a legal person controlled by an enterprise that becomes ineligible for public contracts under subparagraph 1 or following a decision by the Authority under Division III or IV, unless such ineligibility results from a temporary registration in the register of enterprises ineligible for public contracts under the third paragraph of section 21.48.4.

For the purposes of subparagraph 2 of the first paragraph, if an enterprise is a legal person, it is an associate of the natural person who is its majority shareholder. An enterprise is also an associate of any person acting within the

enterprise as a director, a partner or otherwise as an officer, but, in those cases, only if the offence under that subparagraph was committed in the exercise of the functions of the person within the enterprise. A person referred to in this paragraph, other than the enterprise itself, is hereinafter designated as an “associate”.

For the purposes of subparagraph 3 of the first paragraph, an enterprise is controlled by the enterprise that is its majority shareholder.

For the purposes of this chapter, the majority shareholder is the shareholder that holds shares of a legal person’s capital stock that confer 50% or more of the voting rights that may be exercised under any circumstances.

“21.5. Despite section 21.4, a final judgment referred to in subparagraph 1 or 2 of the first paragraph of that section does not cause an enterprise to become ineligible for public contracts if the offence that led to the finding of guilty was previously considered by the Authority in the course of an examination of the enterprise’s integrity carried out under Division IV and following which the Authority rendered a decision.

The same applies in the case of a final judgment rendered in respect of an enterprise whose integrity is being examined by the Authority under Division III or IV. However, if the examination of integrity is not concluded because the application for authorization to contract that gave rise to the examination is withdrawn or cancelled, only the effect of the judgement, in respect of the ineligibility of the enterprise for public contracts, is suspended.

“21.5.1. Before an enterprise is registered in the register of enterprises ineligible for public contracts under section 21.6, an enterprise referred to in section 21.4 may, if it is party to a public contract or subcontract, file an application with the Authority for the examination of its integrity in accordance with Division IV. In such a case, the provisions of that division apply, except the third paragraph of section 21.48.4 and subject to section 21.48.5 applying on the filing of the application with the Authority.

If the enterprise fails to implement, within the time granted, a corrective measure imposed under Division IV, the Authority renders a decision and registers the enterprise in the register of enterprises ineligible for public contracts.

To be considered, an application under this section must be submitted in the form prescribed by the Authority and be filed with the fees determined in accordance with section 84 of the Act respecting the Autorité des marchés publics (chapter A-33.2.1) and the information and documents prescribed by regulation of the Authority.

“21.5.2. For the purposes of this division, an enterprise or an associate is deemed to have been found guilty, by a final judgment, of an offence listed in Schedule I if a penalty has been imposed on the enterprise or associate under any of sections 1079.13.1, 1079.13.2, 1082.0.2 and 1082.0.3 of the Taxation Act (chapter I-3), in connection with an assessment regarding which any time limit for objecting has expired or, if the enterprise or associate has either validly objected to the assessment or filed a contestation with or brought an appeal before a court of competent jurisdiction regarding the assessment, the objection, contestation or appeal, as applicable, has been finally settled.

In such cases, this Act applies, with the necessary modifications.

“§2. — Beginning and duration of the period of ineligibility

“21.5.3. An enterprise becomes ineligible for public contracts as of the date on which the enterprise is registered in the register of enterprises ineligible for public contracts under section 21.6. The period of ineligibility lasts five years, except

(1) where the ineligibility results from the situation described in subparagraph 3 of the first paragraph of section 21.4; in that case, the enterprise’s ineligibility ends as soon as the period of ineligibility of the enterprise that caused it to be registered in the register ends; or

(2) where the ineligibility is imposed temporarily; in that case, the period of ineligibility is the one that results from the application of the third paragraph of section 21.48.4.

Despite the first paragraph, the enterprise’s ineligibility for public contracts ends as soon as an authorization to contract referred to in Division III is granted to it.

“§3. — Effects of ineligibility

“21.5.4. An enterprise that becomes ineligible for public contracts while in the process of performing a public contract is, subject to permission given by the Conseil du trésor under section 25.0.2, deemed to have defaulted on the performance of the contract on the expiry of 60 days after the date on which it becomes ineligible. However, the enterprise is not deemed to have defaulted as regards honouring the contract guarantees.

This section does not apply to an enterprise temporarily registered in the register of enterprises ineligible for public contracts under section 21.48.4.

“21.5.5. An enterprise that is ineligible for public contracts may not, as long as it is ineligible, submit a bid to obtain a public contract, enter into such a contract or enter into a public subcontract.”

11. Division II of Chapter V.1 of the Act is amended by replacing the portion before section 21.6 by the following:

“§4. — *Register of enterprises ineligible for public contracts*”.

12. Section 21.6 of the Act is amended by replacing the second and third paragraphs by the following paragraphs:

“The Authority must enter in the register the information relating to any enterprise referred to in subparagraph 1 or 2 of the first paragraph of section 21.4, not later than 20 days after the date on which the Authority is informed of the final judgment. However, if the effect of the judgment has been suspended under the second paragraph of section 21.5, the information must be entered in the register as soon as possible after the date the application for authorization to contract is withdrawn or cancelled.

The Authority must also enter in the register the information relating to any enterprise that is in a control situation referred to in subparagraph 3 of the first paragraph of section 21.4 or that is the subject of a decision rendered under this chapter, as soon as possible after the date on which, as applicable, it is informed of the control situation or it renders its decision.”

13. Section 21.7 of the Act is amended

(1) in the first paragraph,

(a) by replacing “, resulting in the enterprise being named” in subparagraph *b* of subparagraph 3 by “and that caused the enterprise to be registered”;

(b) by replacing subparagraphs *c* and *d* of paragraph 3 by the following subparagraphs:

“(c) the content of the Authority’s decision causing the enterprise to be registered in the register and, if applicable, a reference to the temporary nature of that registration;

“(d) a reference to the fact that the enterprise is in a control situation referred to in subparagraph 3 of the first paragraph of section 21.4 as well as the name of the majority shareholder causing the enterprise to be registered in the register and of the municipality in whose territory the shareholder resides;”;

(c) by replacing subparagraph 4 by the following subparagraph:

“(4) if the enterprise’s ineligibility for public contracts is not temporary, its projected end date; and”;

(2) by striking out the second paragraph.

14. Section 21.8 of the Act is amended by striking out the second paragraph.

15. Section 21.11 of the Act is amended

(1) by replacing “contract described in section 3” in the first paragraph by “public contract”;

(2) by replacing “contract described in section 3 with a public body” in the second paragraph by “public contract”.

16. Division III of Chapter V.1 of the Act is amended by striking out the portion before section 21.12.

17. Section 21.12 of the Act is amended

(1) by replacing the first paragraph by the following paragraph:

“The Authority informs the enterprise, in writing and without delay, of its registration in the register, of the nature of and grounds for the registration, of the enterprise’s period of ineligibility for public contracts and, if the enterprise holds an authorization to contract, of the revocation or suspension of the authorization, as applicable, that results from its registration in the register.”;

(2) in the second paragraph,

(a) by replacing “contract described in section 3” by “public contract”;

(b) by replacing “holds shares carrying 50% or more of the voting rights attached to the shares of the capital stock of the legal person that may be exercised under any circumstances” by “is the majority shareholder”;

(c) by adding the following sentence at the end: “This paragraph does not apply to an enterprise whose registration in the register is temporary.”

18. Chapter V.2 of the Act is amended by replacing the portion before section 21.17 by the following:

“DIVISION III

“AUTHORIZATION TO CONTRACT

“§1.—*Conditions and obligations*”.

19. Section 21.17 of the Act is amended by adding the following paragraph at the end:

“For the purposes of this Act, the obligation for an enterprise to obtain or hold the authorization referred to in the first paragraph applies, in the case of

a consortium, to every enterprise in the consortium, in addition to applying to the consortium itself if it takes the juridical form of a general or limited partnership.”

20. Section 21.17.3 of the Act is amended

- (1) by replacing “21.1 or 21.2” in the first paragraph by “21.4”;
- (2) by replacing “21.2” in the second paragraph by “21.4”.

21. Section 21.18 of the Act is amended by replacing the first and second paragraphs by the following paragraph:

“An enterprise that responds to a call for tenders for a public contract or subcontract must hold an authorization on the date it submits its bid. An enterprise that enters into a public contract or subcontract by mutual agreement must hold an authorization on the date the contract or subcontract is entered into.”

22. Section 21.23 of the Act is amended by replacing “this chapter” in the first paragraph by “this division”.

23. Section 21.24 of the Act is amended, in subparagraph 2 of the first paragraph,

- (1) by striking out “under any of sections 21.26 to 21.28”;
- (2) by replacing “des correctifs” in the French text by “les mesures correctrices”.

24. Section 21.26 of the Act is replaced by the following section:

“21.26. The Authority refuses to grant or renew any enterprise’s authorization if, in the preceding five years, a director or officer of the enterprise, or the natural person who is its majority shareholder, was found guilty of an offence listed in Schedule I, unless a pardon was obtained.”

25. Section 21.26.1 of the Act is amended, in the first paragraph,

- (1) by replacing “this chapter” by “this division”;
- (2) by replacing “has validly objected to the assessment or appealed from it to a court of competent jurisdiction, the objection or the appeal” by “has either validly objected to the assessment or filed a contestation with or brought an appeal before a court of competent jurisdiction regarding the assessment, the objection, contestation or appeal”.

26. Section 21.27 of the Act is replaced by the following section:

“21.27. The Authority refuses to grant or to renew an enterprise’s authorization if of the opinion that the enterprise fails to meet the standards of integrity.

In order to verify whether an enterprise meets the standards of integrity, the Authority has the powers set out in Division V.”

27. Section 21.28 of the Act is amended

(1) in the second paragraph,

(a) by replacing “not referred to in subparagraph 2 of the first paragraph of section 21.26, one of its associates” in subparagraph 0.1 by “other than the natural person who is the majority shareholder, one of its partners”;

(b) by inserting the following subparagraph after subparagraph 0.2:

“(0.2.1) whether the enterprise has, in the preceding five years, been the subject of an order of the Minister of Sustainable Development, Environment and Parks under an Act under that minister’s administration;”;

(c) by inserting “or has maintained, in the preceding five years,” after “maintains” in subparagraph 1;

(2) by adding the following paragraph at the end:

“For the purposes of this section, legal or de facto control over an enterprise may be established, among other ways, on the basis of participation in the concerted exercise of rights within the enterprise or of powers over the enterprise; each of the participants in the exercise is then presumed to be the holder of control even though none of them would alone be the holder of control. It is presumed that the exercise is concerted if family ties exist between the participants. Furthermore, participation in a concerted exercise is presumed between spouses; each spouse is then presumed to be the holder of control even though only one of them exercises it.”

28. Section 21.30 of the Act is replaced by the following section:

“21.30. When an enterprise submits an application for authorization, the Authority sends the information obtained to the Associate Commissioners for Audits appointed in accordance with section 8 of the Anti-Corruption Act (chapter L-6.1), who exercise the function provided for in paragraph 1.1 of section 10 of that Act, so that one of them conducts, in respect of the enterprise, the audits relating to the elements set out in subparagraphs 1 and 9 of the second paragraph of section 21.28.

As soon as possible after the information is sent, an Associate Commissioner provides to the Authority a report detailing the result of the audits conducted.

The audits required under this section may be conducted, in accordance with the Anti-Corruption Act, by the audit teams referred to in paragraph 1 of section 10 of that Act and by any person authorized for that purpose by an Associate Commissioner referred to in the first paragraph.”

29. Section 21.31 of the Act is replaced by the following section:

“21.31. An enterprise that withdraws its application for authorization or for renewal may not file a new application within 12 months after the withdrawal unless the Authority allows it. The same applies to an enterprise whose application for authorization is cancelled under section 21.40.1.”

30. Sections 21.32 to 21.35 of the Act are repealed.

31. Section 21.36 of the Act is replaced by the following section:

“21.36. Before the granting or renewal of an authorization is refused under section 21.26 or 21.27, the Authority may give the enterprise an opportunity to take the corrective measures that would enable it to meet the standards of integrity. Such measures are determined in accordance with section 21.48.6. The Authority informs the enterprise of the terms and conditions, including the time limit, for implementing any corrective measure, and those for reporting to the Authority on that implementation.”

32. Section 21.37 of the Act is amended

(1) by striking out “or before revoking” in the first paragraph;

(2) by adding the following paragraphs at the end:

“On the expiry of the time limit specified in the first paragraph and after examining the observations, if any, submitted by the enterprise, the Authority informs the enterprise of its decision.

The enterprise concerned by a decision of the Authority refusing the granting or renewal of an authorization becomes ineligible for public contracts in accordance with Division II.”

33. Section 21.38 of the Act is replaced by the following section:

“21.38. The authorization to contract held by an enterprise that, following an examination of its integrity initiated under Division IV, becomes ineligible for public contracts is revoked as of the date on which the enterprise becomes ineligible. However, the authorization is merely suspended if the ineligibility is imposed temporarily under section 21.48.4.”

34. Section 21.39 of the Act is amended

(1) by striking out “the Associate Commissioners referred to in section 21.30,” in the first paragraph;

(2) by replacing “second paragraph of section 21.38” in the second paragraph by “first paragraph of section 21.41.1”.

35. Section 21.40 of the Act is replaced by the following sections:

“21.40. An enterprise holding an authorization must annually update the documents and information determined by regulation of the Authority. It must, in addition, notify the Authority of any modification of the information previously provided not later than 30 days after the change in its situation that makes the modification necessary.

Any other terms or conditions relating to such communication of documents and information are determined by regulation of the Authority.

“21.40.1. The Authority may cancel an application for authorization or suspend the authorization of any enterprise that fails to communicate to it, within the time granted, a document or information the Authority requires for the purposes of this division or Division IV.”

36. Section 21.41 of the Act is replaced by the following section:

“21.41. An authorization is valid for a period of five years.

To maintain its authorization, an enterprise must submit to the Authority an application for renewal at least 90 days before the authorization is to expire. If applicable, the authorization remains valid even if it has expired, until the Authority rules on the application, unless the authorization is revoked in the meantime.

The application for renewal must be submitted in the form prescribed by the Authority. It must be filed together with the documents and information prescribed by regulation of the Authority and the fee determined in accordance with section 84 of the Act respecting the Autorité des marchés publics (chapter A-33.2.1). The requirements so prescribed may vary according to the nature and significance of the changes that have occurred within the enterprise since the granting or latest renewal of the authorization to contract. Those requirements may also vary according to the type of enterprise or the place where the enterprise mainly carries on its activities.

An application for renewal submitted after the time limit specified in the second paragraph is a new application for authorization.”

37. Section 21.41.1 of the Act is replaced by the following section:

“21.41.1. An enterprise whose authorization has expired or is suspended must, within 10 days after the expiry or suspension, send to the Authority, in writing, the name of every public body with which the enterprise has a contract in process.

Such an enterprise must continue to perform any public contract or subcontract for which such an authorization is required. However, it is required to submit to any oversight or monitoring measure the Authority may impose on it, in accordance with Division IV, until the performance of the contract or subcontract ends.

Despite the second paragraph, an enterprise referred to in that paragraph must cease performing the public contract to which it is party, at the request of the public body concerned, if a decision is rendered under section 25.0.4.

The fact that an enterprise’s authorization expires while the enterprise is in the process of performing a public contract or subcontract for which such an authorization is required constitutes a failure of the enterprise to comply with this Act for which a monetary administrative penalty may be imposed under Division II of Chapter VIII.2.”

38. Section 21.42 of the Act is repealed.

39. Section 21.43 of the Act is renumbered 21.48.17.

40. Section 21.44 of the Act is renumbered 21.48.18 and is amended by replacing “second paragraph of section 21.8 or the first paragraph of section 21.17 or under section 21.42” in the first paragraph by “first paragraph of section 21.17 or section 21.48.16”.

41. Division II of Chapter V.2 of the Act is amended by replacing the portion before section 21.45 by the following:

“§2.—Register of enterprises authorized to contract”.

42. Section 21.45 of the Act is amended

(1) by replacing “this chapter” in the first paragraph by “this division”;

(2) by replacing the second paragraph by the following paragraph:

“In addition to the information determined by regulation of the Authority, the following information is entered in the register:

(1) the fact that an enterprise’s authorization has expired or is suspended, if the expiry or suspension occurs while the enterprise is performing a public contract or subcontract for which such an authorization is required; and

(2) the fact that an oversight or monitoring measure has been imposed under section 21.41.1 on an enterprise referred to in subparagraph 1.”

43. The Act is amended by inserting the following after section 21.48:

“DIVISION IV

“OVERSIGHT OF ENTERPRISES

“21.48.1. Any enterprise that is party to a public contract or subcontract and any enterprise that holds an authorization to contract, whether or not the latter is party to such a contract or subcontract, is subject to the oversight of the Autorité des marchés publics.

To ensure such oversight, the Authority may, at any time, conduct audits to ensure that an enterprise meets the standards of integrity; for that purpose, it has the powers set out in Division V. If need be, the Authority undertakes to examine the enterprise’s integrity and, if it concludes that the latter does not meet the standards of integrity, it imposes the applicable measures and penalties.

“21.48.2. The examination of an enterprise’s integrity covers all the elements that the Authority may consider in rendering a decision relating to an application for authorization to contract made under Division III.

Such an examination is initiated through a notice sent by the Authority to the enterprise concerned. The notice mentions the information that the enterprise must provide to the Authority and the time limit for doing so.

The notice also mentions, if applicable, any information the Authority already holds that could demonstrate that the enterprise does not meet the standards of integrity and the time granted to the enterprise to submit, as concerns that information, written observations and provide any document or information relevant to the examination.

“21.48.3. If, once the examination of an enterprise’s integrity is completed, the Authority is of the opinion that the enterprise does not meet the standards of integrity, it must, before rendering a decision, notify the enterprise in writing as prescribed by section 5 of the Act respecting administrative justice (chapter J-3) and allow the enterprise at least 10 days to submit written observations and provide additional documents to complete the file.

On the expiry of the time limit specified in the first paragraph and after examining the observations, if any, submitted by the enterprise, the Authority informs the enterprise of its decision.

Despite the first paragraph, the Authority may make a decision without complying with the prior obligations set out in that paragraph if urgent action is required or to prevent irreparable harm. In such a case, the enterprise concerned may, within the time specified in the decision, submit written observations and provide additional documents to complete the file for the purposes of a review of the decision by the Authority.

“21.48.4. If the Authority renders a decision concluding that an enterprise does not meet the standards of integrity, it must, at the same time, impose on the enterprise any corrective measure it considers conducive to enabling the enterprise to meet those standards. If no such measure is imposed, the decision rendered by the Authority mentions it and the enterprise, following that decision, is registered in the register of enterprises ineligible for public contracts referred to in section 21.6.

The Authority informs the enterprise of the terms and conditions, including the time limit, for implementing any corrective measure, and those for reporting to the Authority on that implementation.

If the enterprise fails to implement a corrective measure within the time granted, the Authority temporarily registers the enterprise in the register of enterprises ineligible for public contracts. If the enterprise remedies the failure to the Authority’s satisfaction, within three months after its temporary registration, the Authority withdraws the registration from the register. If the enterprise does not remedy the failure within that time, the Authority definitively registers the enterprise in the register, for a period of five years starting on the date it was temporarily registered. Before registering an enterprise in the register of enterprises ineligible for public contracts under this paragraph, the Authority must render a decision establishing the enterprise’s failure.

“21.48.5. An enterprise concerned by a decision of the Authority concluding that the enterprise does not meet the standards of integrity must continue to perform any public contract or subcontract to which it is party. However, it is required to submit to any oversight or monitoring measure the Authority may impose on it, until the performance of the contracts or subcontracts ends.

The Authority informs the enterprise of the terms and conditions, including the time limit, for implementing any oversight or monitoring measure, and those for reporting to the Authority on that implementation.

Despite the first paragraph, an enterprise referred to in that paragraph must cease performing the public contract to which it is party, at the request of the public body concerned, if a decision is rendered under section 25.0.4. The same applies if such an enterprise is registered, otherwise than temporarily, in the register of enterprises ineligible for public contracts; in such a case, the enterprise must cease performing the contract as of the effective date of the presumption of default provided for in section 21.5.4, if applicable.

“21.48.6. Any corrective measure or any oversight or monitoring measure imposed by the Authority under this chapter is determined taking into account the enterprise’s specific situation and after giving the enterprise the opportunity to submit observations. To determine an oversight or monitoring measure relating specifically to an enterprise’s performance of a public contract or subcontract, the Authority may require the enterprise to provide, within the time specified, a copy of the contract or subcontract or, if the subcontract is not evidenced in writing, the information relating to the subcontract that the Authority considers necessary.

The Authority develops a general framework for applying the corrective measures and the oversight or monitoring measures, which specifies, in addition to the types of measures the Authority may impose and the objective pursued by imposing each of those types, the elements it takes into account and the criteria that guide it in determining a measure to be imposed on an enterprise. The framework is published on the Authority’s website.

Despite the preceding paragraphs, only measures that have the effect of eliminating any control exercised by a director, officer or shareholder on the enterprise or, in the case of a shareholder who exercises such control, of restricting the latter to the extent the Authority considers necessary may constitute corrective measures in respect of an enterprise that is in the situation described in section 21.26.

“21.48.7. Any corrective measure or any oversight or monitoring measure imposed under this chapter is applied at the expense of the enterprise subject to it.

“DIVISION V

“POWERS OF THE AUTORITÉ DES MARCHÉS PUBLICS

“21.48.8. For the purposes of section 21.48.1, the Authority may, in order to verify whether an enterprise that does not hold an authorization to contract is party to a public contract or subcontract, require the enterprise to send to the Authority, within the time specified, a copy of any public contract or subcontract to which it is party, if applicable, or, if the enterprise is not party to such a contract or subcontract, to confirm that fact to the Authority in writing. That power may be exercised only if the Authority has reasonable grounds to suspect that the enterprise is party to a public contract or subcontract and does not meet the standards of integrity.

If a public subcontract is not evidenced in writing, the enterprise concerned by a request made under the first paragraph must send, in writing, the information determined by the Authority that is necessary for the purpose mentioned in that paragraph.

“21.48.9. The Authority may require any enterprise subject to its oversight to send it, within the time specified, any document or information enabling the Authority to verify whether it meets the standards of integrity. The Authority may do the same in respect of any director, partner, officer or shareholder of the enterprise or any other person or entity that has, directly or indirectly, legal or de facto control over the enterprise.

If the Authority has reasonable grounds to suspect that an enterprise subject to its oversight is the extension of, or is lending its name to, another enterprise, it may exercise its power under the first paragraph in respect of the other enterprise and of any person or entity that acts, in respect of the other enterprise, in any manner described in that paragraph.

Every person or entity that is subject to a request made under this section must, if the Authority so requires, confirm, in an affidavit, the authenticity of the documents or the veracity of the information communicated.

“21.48.10. For the purposes of an audit relating to the integrity of an enterprise subject to the oversight of the Authority, any person authorized by the latter may

(1) enter, at any reasonable hour, the establishment of the enterprise being audited or any other premises in which may be kept documents or information enabling the authorized person to verify whether the enterprise meets the standards of integrity;

(2) use any computer, equipment or other thing that is on the premises to access data contained in an electronic device, computer system or other medium or to audit, examine, process, copy or print out such data; and

(3) require from the persons present any information enabling the authorized person to verify whether the enterprise meets the standards of integrity, as well as the making available, for examination and reproduction, of any book, register, account, contract, record or other relevant document.

Any person who has custody, possession or control of documents referred to in this section must provide them to the person conducting the audit and facilitate their examination by that person.

The person conducting the audit must, on request, produce identification and, if applicable, show the document attesting his or her authorization.

“21.48.11. The Authority may, in writing, entrust the mandate of conducting any audit provided for in any of sections 21.48.8 to 21.48.10 to a person who is not a member of its staff and who meets the conditions set out in paragraphs 1 and 2 of section 6 of the Act respecting the Autorité des marchés publics (chapter A-33.2.1). For that purpose, the Authority may delegate the exercise of its powers to that person.

Sections 74 to 76 of the Act respecting the Autorité des marchés publics apply to any person entrusted with a mandate under this section.

“21.48.12. The Authority may require the Associate Commissioners for Audits appointed in accordance with section 8 of the Anti-Corruption Act (chapter L-6.1), who exercise the function provided for in paragraph 1.1 of section 10 of that Act, to conduct, in respect of an enterprise subject to its oversight, any audit relating to the elements set out in sections 21.26 and 21.28 of this Act. To that end, the Authority sends them the relevant information it holds, including the information obtained from the enterprise or a public body or otherwise.

As soon as possible after such a request is sent, an Associate Commissioner provides to the Authority a report detailing the result of the audits conducted.

The audits required under this section may be conducted, in accordance with the Anti-Corruption Act, by the audit teams referred to in paragraph 1 of section 10 of that Act and by any person authorized for that purpose by an Associate Commissioner referred to in the first paragraph.

“21.48.13. The Authority may require any public body subject to the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1) to communicate to the Authority any information necessary for the audit of an enterprise’s integrity.

The Authority may, in addition, for the purposes of this chapter, require any public body to communicate to the Authority any information relating to its public contracts in progress and any information relating to the public subcontracts related to those contracts, if the body holds such information.

“DIVISION VI

“OTHER PROVISIONS

“21.48.14. For the purposes of this chapter, an agreement must be entered into under section 121 of the Act respecting the legal publicity of enterprises (chapter P-44.1) for the Authority to receive communication of the information contained in the enterprise register and any subsequent updates.

“21.48.15. The Authority may, on an application, review any decision it renders under this chapter if it is informed of a new fact which, had it been known in sufficient time, could have warranted a different decision.

An application for review made under this section must, to be considered by the Authority, be submitted within a reasonable time after the date of the decision or after the date the new fact is discovered.

“21.48.16. The Government may amend Schedules I and II.”

44. Section 25.0.4 of the Act is replaced by the following section:

“25.0.4. The Conseil du trésor may, at any time, on the recommendation of the Authority, require a public body that is party to a contract with an enterprise referred to in any of sections 21.5.1, 21.41.1 and 21.48.5 to have the enterprise cease performing the contract, immediately or after a period of time. Except as regards honouring the contract guarantees, the enterprise is deemed to have defaulted on performing the contract either as of the date of the decision of the Conseil du trésor or of the end of the time granted to have the enterprise cease performing the contract, as applicable.

If such a period of time is granted, the decision of the Conseil du trésor may be subject to conditions, such as the enterprise being subject, at its own expense, to oversight and monitoring measures.”

45. Section 25.0.5 of the Act is amended by replacing “permission is given by the Conseil du trésor” and “a website” by “the decision of the Conseil du trésor rendered” and “the website of the secretariat of the Conseil du trésor”, respectively.

46. Chapter VIII.2 of the Act is amended by replacing the portion before section 27.5 by the following:

“CHAPTER VIII.2

“SANCTIONS

“DIVISION I

“PENAL PROVISIONS”.

47. Section 27.5 of the Act is amended by replacing “authorizations” by “enterprises authorized to contract”.

48. Section 27.6 of the Act is amended by replacing “when submitting a bid under this Act” by “in the course of a tendering or awarding process for a public contract or of the performance of such a contract”.

49. Section 27.9 of the Act is amended by replacing “second paragraph of section 21.38” by “first paragraph of section 21.41.1”.

50. Section 27.10 of the Act is amended by replacing “notify the Authority, as required under section 21.40” by “carry out the annual update of documents and information referred to in section 21.40 or that fails to notify the Authority, in accordance with that section”.

51. The Act is amended by inserting the following section after section 27.10:

“27.10.0.1. Every person who hinders or attempts to hinder a person exercising audit functions, in particular by communicating any false or misleading document or information, by refusing to provide or make available a document or information the person must send or make available or by concealing or destroying a document or information relevant to an audit, is guilty of an offence and is liable to a fine of \$5,000 to \$30,000 in the case of a natural person and \$15,000 to \$100,000 in any other case.”

52. The Act is amended by inserting the following section after section 27.13:

“27.13.1. In any penal proceedings relating to an offence under this division, proof that the offence was committed by an agent, mandatary or employee of any person is sufficient to establish that it was committed by that person, unless the person establishes that it exercised due diligence and took all necessary precautions to prevent the offence.”

53. Section 27.14 of the Act is amended by replacing “this chapter” by “this division”.

54. The Act is amended by inserting the following division after section 27.14.1:

“DIVISION II

“MONETARY ADMINISTRATIVE PENALTIES

“§1.—*Failures to comply*

“27.15. A monetary administrative penalty in an amount set under section 27.16 may be imposed by the Autorité des marchés publics on an enterprise

(1) that submits a bid for a public contract or subcontract or enters into such a contract or subcontract although it is ineligible for public contracts or does not hold the authorization to contract required to enter into such a contract or subcontract, unless the enterprise was given permission to enter into a contract or subcontract under section 25.0.3;

(2) that, in the course of the performance of a public contract with a public body or with a body referred to in section 7, enters into a public subcontract with an enterprise that is ineligible or does not hold the authorization to contract required to enter into such a subcontract, unless the enterprise was given permission to enter into that subcontract under section 25.0.3;

(3) whose authorization to contract expires while it is in the process of performing a public contract or subcontract for which such an authorization is required;

(4) that, while it is party to a public contract or subcontract or holds an authorization to contract, fails or refuses to send to the Authority, within the time and on the terms and conditions prescribed, any document or information required for the purposes of Chapter V.1;

(5) that fails or refuses to confirm, in an affidavit, the authenticity of documents or the veracity of information communicated to the Authority; or

(6) that fails to submit to an oversight or monitoring measure imposed on it by the Authority under Chapter V.1 or, if the measure was applied by the Authority, fails to pay to it the costs of such a measure.

A regulation of the Authority may provide that a failure to comply with a regulation made under Chapter V.1 may give rise to a monetary administrative penalty.

“27.16. A regulation of the Authority determines the amount of the monetary administrative penalty relating to each specific failure to comply provided for in or under section 27.15.

The amounts of the penalties are set based on the relative seriousness of the failures to comply compared to each other and may vary according to the types of enterprises referred to in section 21.23. Furthermore, different amounts may be set in respect of the failure to comply under paragraph 4 of section 27.15 in order to take into account the nature of the information or document the enterprise failed or refused to send.

The amount of a monetary administrative penalty may not exceed \$10,000.

“27.17. Any regulation made by the Authority under this subdivision is submitted for approval to the Government, which may approve it with or without amendment.

“27.18. If a failure to comply for which a monetary administrative penalty could be imposed continues for more than one day, it constitutes a new failure for each day it continues.

“27.19. Persons designated by the president and chief executive officer of the Authority may impose the monetary administrative penalties prescribed in section 27.15 or a regulation made under that section.

For the purposes of the first paragraph, the Authority develops and makes public a general framework for applying such administrative penalties, which specifies, in particular, the following elements:

(1) the purpose of the penalties, such as urging an enterprise to take rapid measures to remedy a failure or deter its repetition;

(2) the categories of functions held by the persons designated to impose penalties;

(3) the criteria that must guide designated persons when a failure to comply has occurred, such as the type of failure, its repetitive nature and the measures taken by the enterprise to remedy it;

(4) the circumstances in which priority will be given to any penal proceedings; and

(5) the other procedures connected with such a penalty, such as the fact that it must be preceded by notification of a notice of non-compliance.

In addition, the general framework must set out the categories of administrative or penal sanctions as defined by the Act or the regulations.

“§2. — *Notice of non-compliance and imposition*

“**27.20.** In the event of a failure to comply referred to in subdivision 1, a notice of non-compliance may be notified to the enterprise urging it to immediately take the necessary measures to remedy the failure. Such a notice must mention that the failure may, in particular, give rise to a monetary administrative penalty and, if applicable, penal proceedings.

“**27.21.** The imposition of a monetary administrative penalty is prescribed by two years from the date of the failure to comply.

“**27.22.** The monetary administrative penalty for a failure to comply referred to in subdivision 1 may not be imposed on an enterprise if a statement of offence has already been served on the enterprise for a failure to comply with the same provision on the same day, based on the same facts.

No accumulation of monetary administrative penalties may be imposed on the same enterprise for failure to comply with the same provision if the failure occurs on the same day and is based on the same facts. In cases where more than one penalty would be applicable, the person imposing the penalty determines which one is most appropriate in light of the circumstances and the purpose of the penalties.

“**27.23.** A monetary administrative penalty is imposed on an enterprise by the notification of a notice of claim.

The notice must state

- (1) the amount of the claim;
- (2) the reasons for it;
- (3) the time from which it bears interest;
- (4) the right, under section 27.24, to obtain a review of the decision to impose the penalty and the time limit for exercising that right; and
- (5) the right to contest the review decision before the Administrative Tribunal of Québec and the time limit for bringing such a proceeding.

The notice must also include information on the procedure for recovery of the amount claimed. The enterprise must also be informed that the facts on which the claim is founded may result in penal proceedings.

Unless otherwise provided, the amount owing bears interest at the rate determined under the first paragraph of section 28 of the Tax Administration Act (chapter A-6.002), from the 31st day after notification of the notice.

“§3. — Review and contestation before the Administrative Tribunal of Québec

“27.24. Within 30 days after notification of the notice of claim, the enterprise may apply in writing to the Authority for a review of the decision to impose a monetary administrative penalty.

The persons responsible for the review are designated by the president and chief executive officer of the Authority; they must not come under the same administrative authority as the persons responsible for imposing such penalties.

“27.25. The application for review must be dealt with promptly. After giving the applicant an opportunity to submit observations and produce any documents to complete the record, the person responsible for the review renders a decision on the basis of the record, unless the person deems it necessary to proceed in some other manner.

“27.26. The review decision must be written in clear and concise terms, with reasons given, must be notified to the applicant and must state the applicant’s right to contest the decision before the Administrative Tribunal of Québec and the time limit for bringing such a proceeding.

If the review decision is not rendered within 30 days after receipt of the application or, if applicable, within the time granted to the applicant to submit observations or produce documents, the interest provided for in the fourth paragraph of section 27.23 on the amount owing ceases to accrue until the decision is rendered.

“27.27. A review decision that confirms the imposition of a monetary administrative penalty may be contested before the Administrative Tribunal of Québec by the enterprise concerned by the decision, within 60 days after notification of the review decision.

The Tribunal may only confirm or quash a contested decision. When rendering its decision, the Tribunal may make a ruling with respect to interest accrued on the penalty while the matter was pending before it.

“§4. — *Recovery*

“27.28. If an enterprise has defaulted on payment of a monetary administrative penalty, its directors and officers are solidarily liable with it for the payment of the penalty, unless they establish that they exercised due care and diligence to prevent the failure.

“27.29. The payment of a monetary administrative penalty is secured by a legal hypothec on the debtor’s movable and immovable property.

For the purposes of this division, “debtor” means the enterprise that is required to pay a monetary administrative penalty and, if applicable, each of its directors and officers who are solidarily liable with it for the payment of the penalty.

“27.30. The debtor and the Authority may enter into a payment agreement with regard to a monetary administrative penalty owing. Such an agreement, or the payment of such a penalty, does not constitute, for the purposes of any other administrative penalty under this Act, an acknowledgement of the facts giving rise to it.

“27.31. If the monetary administrative penalty owing is not paid in its entirety or the payment agreement is not adhered to, the Authority may issue a recovery certificate on the expiry of the time for applying for a review of the decision to impose the penalty, on the expiry of the time for contesting the review decision before the Administrative Tribunal of Québec or on the expiry of 30 days after the Tribunal’s final decision confirming the decision to impose the penalty or the review decision, as applicable.

However, a recovery certificate may be issued before the expiry of the time limit specified in the first paragraph if the Authority is of the opinion that the debtor is attempting to evade payment.

A recovery certificate must state the debtor’s name and address and the amount of the debt.

“27.32. Where the Minister of Revenue applies, once a recovery certificate has been issued and in accordance with section 31 of the Tax Administration Act (chapter A-6.002), a refund owed to a person under a fiscal law to the payment of the amount due referred to in the certificate, that application interrupts the prescription provided for in the Civil Code with regard to the recovery of that amount.

“27.33. On the filing of the recovery certificate at the office of the competent court, together with a copy of the final decision stating the amount of the debt, the decision becomes enforceable as if it were a final judgment of that court not subject to appeal, and has all the effects of such a judgment.

“27.34. The debtor is required to pay a recovery charge in the cases, on the conditions and in the amount determined by regulation of the Authority.

“27.35. The Authority may, by agreement, delegate to a department or other body all or some of the powers relating to the recovery of an amount owing under this Act or the regulations.

“§5.—*Register*

“27.36. The Authority keeps a register relating to monetary administrative penalties.

The register must contain at least the following information:

- (1) the date the penalty was imposed;
- (2) the date and nature of the failure for which, and the legislative or regulatory provisions under which, the penalty was imposed;
- (3) if the penalty is imposed on a natural person who operates a sole proprietorship, his or her name, the name of the proprietorship, the address of its principal establishment in Québec and, if it is registered, its Québec business number;
- (4) if the penalty is imposed on a legal person or a general, limited or undeclared partnership, its name, the address of its principal establishment in Québec and, if it is registered, its Québec business number;
- (5) the amount of the penalty imposed;
- (6) the date of receipt of an application for review and the date and conclusions of the decision;
- (7) the date a proceeding is brought before the Administrative Tribunal of Québec and the date and conclusions of the decision rendered by the Tribunal, as soon as the Authority is made aware of the information;

(8) the date a proceeding is brought against the decision rendered by the Administrative Tribunal of Québec, the nature of the proceeding and the date and conclusions of the decision rendered by the court concerned, as soon as the Authority is made aware of the information; and

(9) any other information the Authority considers of public interest.

The information contained in the register is public information as of the time the decision imposing the penalty becomes final. The information is withdrawn three years after being entered in the register.”

55. Schedule I to the Act is amended

(1) by replacing “(Sections 21.26, 21.28 and 21.42)” after “SCHEDULE I” by “(Sections 21.4, 21.5.2, 21.26, 21.26.1, 21.28 and 21.48.16)”;

(2) by inserting the following in alphabetical order:

“

Act respecting the Autorité des marchés publics (chapter A-33.2.1)	67.2	Knowingly communicating false or misleading information under section 56 or contravening section 63, or helping or inducing a person to commit either of those offences
Anti-Corruption Act (chapter L-6.1)	34	Taking or threatening to take reprisals against a person
	35	Helping or inducing a person to commit an offence under section 34
Act respecting the legal publicity of enterprises (chapter P-44.1)	154	Knowingly filing a false, incomplete or misleading declaration referred to in section 32, 38, 40 or 41, the first paragraph of section 42, or section 43, 45 or 46
	155 (2)	Knowingly filing, under section 55, a false, incomplete or misleading cancellation declaration

”;

(3) in the portion relating to offences under the Act respecting contracting by public bodies (chapter C-65.1):

(a) by replacing the summary description relating to section 27.5 by the following description:

“Making a false or misleading statement to the Autorité des marchés publics to obtain, renew or keep an authorization to contract or to have the name of an enterprise removed from the register of enterprises authorized to contract”;

(b) by replacing the summary description relating to section 27.6 by the following description:

“Making a false or misleading statement in the course of a tendering or awarding process for a public contract or of the performance of such a contract”;

(c) by inserting the following, by numerical order of the offences:

“27.10.0.1 Hindering or attempting to hinder a person exercising audit functions”;

(d) by replacing the summary description relating to section 27.13 by the following description:

“Helping or inducing a person to commit an offence under section 27.5, 27.6, 27.10.0.1, 27.10.1, 27.10.2 or 27.11”;

(4) by replacing the summary description relating to paragraph 4 of section 122 in the portion relating to offences under the Act respecting labour relations, vocational training and workforce management in the construction industry (chapter R-20) by the following description:

“Having destroyed, altered or falsified any register, pay-list, registration system or document relating to the application of the Act, a collective agreement or a regulation or having forwarded any false or inaccurate information or report, or given a false designation to the position of an employee so as to pay a lower wage”;

(5) by replacing all occurrences of “Helping” in the summary descriptions of the offences referred to in the last six portions by “Helping or inducing”.

56. Schedule II to the Act is amended by replacing “(Section 21.8)” after “SCHEDULE II” by “(Sections 21.8 and 21.48.16)”.

ANTI-CORRUPTION ACT

57. Section 2 of the Anti-Corruption Act (chapter L-6.1) is amended

(1) by striking out paragraph 1.1;

(2) by striking out “, 1.1” in paragraph 3.

58. Section 10 of the Act is amended by replacing “the necessary audits so that the Associate Commissioner may provide to the Autorité des marchés publics the advisory opinions required under sections 21.31 and 21.32” in paragraph 1.1 by “the audits required under sections 21.30 and 21.48.12”.

59. Section 13.1 of the Act is amended by replacing “21.32” in the introductory clause by “21.48.12”.

60. Section 15 of the Act is amended by replacing “21.32” in paragraph 1 by “21.48.12”.

CHAPTER III

PROVISIONS RELATED TO THE MISSION, FUNCTIONS AND POWERS OF THE AUTORITÉ DES MARCHÉS PUBLICS

ACT RESPECTING THE AUTORITÉ DES MARCHÉS PUBLICS

61. Section 19 of the Act respecting the Autorité des marchés publics (chapter A-33.2.1) is amended, in the first paragraph,

(1) by replacing “concerning ineligibility for public contracts” in subparagraph 2 by “concerning the integrity of enterprises”;

(2) by striking out subparagraph 3;

(3) by inserting the following subparagraph before subparagraph 5:

“(4.1) to apply Division II of Chapter VIII.2 of that Act concerning monetary administrative penalties;”.

62. Section 20 of the Act is amended by inserting the following subparagraph after subparagraph 1 of the first paragraph:

“(1.1) “public subcontract” means a subcontract directly or indirectly related to a public contract;”.

63. Section 21 of the Act is amended, in the first paragraph,

(1) by inserting the following subparagraph after subparagraph 1:

“(1.1) to receive and process applications filed under Division V of Chapter IV;”;

(2) by inserting “and subcontracts” after “public contracts” in subparagraph 5;

(3) in subparagraph 6,

(a) by replacing “to V.3” by “, V.3 and VIII.2”;

(b) by replacing “enter into a public contract or subcontract” by “contract”.

64. Section 23 of the Act is amended

(1) by adding the following sentence at the end of the first paragraph: “The same applies to any bidder, contractor or subcontractor and any other person or partnership that holds such a document or such information.”;

(2) by adding the following paragraph at the end:

“Anyone who is subject to a request made by the Authority under the first paragraph must, if the Authority so requests, confirm, in an affidavit, the authenticity of the documents or the veracity of the information communicated.”

65. Section 26 of the Act is amended

(1) by replacing the first paragraph by the following paragraph:

“The Authority may conduct an investigation into any matter relating to its oversight mission with respect to public contracts.”;

(2) by replacing “under section 28 or 66” in the second paragraph by “under Chapter VII.1 of this Act or Division I of Chapter VIII.2 of the Act respecting contracting by public bodies (chapter C-65.1)”;

(3) by replacing “For the purposes of the first paragraph” in the third paragraph by “For those purposes”.

66. Section 27 of the Act is replaced by the following section:

“**27.** The Authority may, in writing, entrust to a person who is not a member of its personnel and who meets the conditions set out in paragraphs 1 and 2 of section 6 the mandate of conducting an audit or an investigation. For that purpose, it may delegate the exercise of its powers to that person.”

67. Section 28 of the Act is repealed.

68. Section 29 of the Act is amended, in the first paragraph,

(1) by inserting the following subparagraph after subparagraph 5:

“(5.1) order the public body to take corrective measures, perform appropriate follow-up or implement any other measures, such as oversight and support measures, to ensure that a public contract is performed in compliance with the requirements specified in the tender documents or other contractual documents, and require that it be informed in writing, within the time specified, of the measures taken by the public body to comply with such a decision; and”;

(2) by replacing subparagraph 6 by the following subparagraph:

“(6) suspend the performance of any public contract for the time it specifies or cancel such a contract if it is of the opinion that the seriousness of the breaches observed justifies suspending or cancelling the contract or if the public body has not complied with an order issued under subparagraph 5.1 to its satisfaction.”

69. Section 31 of the Act is amended, in subparagraph 7 of the first paragraph,

(1) by inserting “and subcontracts” after “public contracts”;

(2) by inserting “and subcontracts” after “on such contracts”.

70. Section 34 of the Act is amended

(1) by adding the following sentence at the end of the first paragraph: “The same applies to any bidder, contractor or subcontractor and any other person or partnership that holds a document or information the Authority considers necessary for the exercise of its monitoring functions.”;

(2) by adding the following paragraph at the end:

“Anyone who is subject to a request made by the Authority under the first paragraph must, if the Authority so requests, confirm, in an affidavit, the authenticity of the documents or the veracity of the information communicated.”

71. Section 36 of the Act is amended by replacing the second paragraph by the following paragraph:

“The Authority may, likewise, enter into an agreement with a public body with a view to facilitating the application of this Act. It may also, for the same purpose, enter into an agreement with any person or partnership provided that the person or partnership, as well as the person’s or partnership’s officers, directors, partners and employees who take part in achieving the object of the agreement, meet the conditions set out in paragraphs 1 and 2 of section 6.”

72. Section 49 of the Act is amended

(1) by replacing “10” in the first paragraph by “14”;

(2) by replacing “five” in the third paragraph by “seven”.

73. The Act is amended by inserting the following division after section 52:

“DIVISION V

“PROVISIONS SPECIFIC TO THE AUTHORITY’S CONTRACTING PROCESSES

“52.1. In any case where it is permitted, under the provisions of Divisions I to III, to file a complaint with the Authority in relation to a public body’s contracting process, a person or partnership, or a group of persons or partnerships, covered by those provisions, as well as the person’s, partnership’s or group’s representative, may, on the same conditions and for the same reasons, apply to the Authority for it to re-evaluate the compliance of any of its own contracting processes with the normative framework or to reconsider its intention to enter into a contract by mutual agreement despite the interest that the person, partnership or group of persons or partnerships has shown in carrying out the contract.

Section 45 and section 46, except subparagraph 4 of the first paragraph and the third paragraph of that section, apply to an application made under the first paragraph, and sections 51 and 52 apply, with the necessary modifications, to a person, partnership or group that submits such an application.

“52.2. Each time an application referred to in section 52.1 is filed, the president and chief executive officer of the Authority designates a person or persons to be responsible for processing it. A person so designated must be from an administrative unit that is separate from any administrative unit the persons who exercise the Authority’s contractual activities, the persons responsible for processing complaints filed in respect of those persons, and the persons responsible for processing complaints filed under Divisions I and II are from. Moreover, the president and chief executive officer must ensure that all measures necessary to ensure that the application is processed with integrity and independence are put in place within the Authority.

“52.3. On receiving an application referred to in section 52.1 and if need be, the Authority defers the deadline for the submission of bids if the application concerns a tendering process, or the projected contract date if the application concerns an awarding process. In such a case, the Authority informs the applicant of the deferral and makes an entry to that effect on the electronic tendering system without delay.

“52.4. The Authority has 14 days from the time it receives the application to make its decision.

When the analysis of the application is concluded, the Authority sends its decision with reasons in writing to the applicant.

When the application concerns a tendering process and the Authority decides it will continue the process while amending the tender documents, the Authority must ensure that a period of at least seven days is granted for tendering a bid. The period must be of at least two days if no amendment is made to the tender documents. Where applicable, the Authority enters on the electronic tendering system a new tender closing date that allows for those time periods.”

74. Section 53 of the Act is amended

(1) by adding the following sentence at the end of the first paragraph: “A single examination may concern more than one tendering or awarding process or the performance of more than one contract.”;

(2) by replacing “an ongoing tendering or awarding process” in the second paragraph by “one or more ongoing tendering or awarding processes”.

75. Section 55 of the Act is replaced by the following section:

“55. When the examination is concluded, the Authority sends its decision with reasons in writing to the public body concerned and the minister responsible for the body. Furthermore, if the intervention was requested by the Chair of the Conseil du trésor or the minister responsible for municipal affairs, the Authority must report to the Chair or that minister on its intervention, in addition to sending him or her its decision with reasons in writing.”

76. Section 58 of the Act is amended by inserting “or an investigation” after “audit”.

77. Section 59 of the Act is amended by adding the following paragraph at the end:

“A single examination may concern more than one tendering or awarding process or the performance of more than one contract.”

78. Section 62 of the Act is amended by inserting “or an investigation” after “audit”.

79. Section 63 of the Act is amended by inserting “or an investigation” after both occurrences of “audit”.

80. Section 66 of the Act is repealed.

81. The Act is amended by inserting the following chapter after section 67:

“CHAPTER VII.1

“PENAL PROVISIONS

“67.1. Anyone who

(1) hinders or attempts to hinder a person exercising audit or investigation functions, in particular by communicating any false or misleading document or information, by refusing to provide or make available any document or information they must send or make available, or by concealing or destroying any document or information relevant to an audit or an investigation,

(2) by an act or omission, helps a person to commit an offence under paragraph 1, or

(3) by encouragement, advice, consent, authorization or command, induces a person to commit an offence under paragraph 1

commits an offence and is liable to a fine of \$5,000 to \$30,000 in the case of a natural person and \$15,000 to \$100,000 in any other case.

“67.2. Anyone who

(1) communicates information under section 56 that the person knows to be false or misleading,

(2) contravenes section 63,

(3) by an act or omission, helps another person to commit an offence under paragraph 1 or 2, or

(4) by encouragement, advice, consent, authorization or command, induces another person to commit an offence under paragraph 1 or 2

commits an offence and is liable to a fine of \$5,000 to \$30,000 in the case of a natural person and \$15,000 to \$250,000 in any other case.

“67.3. For a subsequent offence, the minimum and maximum fines prescribed in this chapter are doubled.

“67.4. Penal proceedings must be instituted within three years after the time the prosecutor becomes aware of the commission of the offence. However, no proceedings may be instituted if more than seven years have elapsed since the date of the offence.”

82. The Act is amended by inserting the following section before section 68:

“67.5. The Authority may, on an application, review any decision it has made under this Act if it is informed of a new fact which, had it been known in sufficient time, could have warranted a different decision.

An application for review made under this section must, to be considered by the Authority, be submitted within a reasonable time after the date of the decision or after the date the new fact is discovered.”

83. Section 69 of the Act is amended by inserting “, as well as the provisions of Division V of Chapter IV insofar as they relate to a tendering process,” after “section 21”.

CHAPTER IV

MISCELLANEOUS AMENDING PROVISIONS

ACT RESPECTING THE ACCELERATION OF CERTAIN INFRASTRUCTURE PROJECTS

84. Section 10 of the Act respecting the acceleration of certain infrastructure projects (chapter A-2.001) is amended

(1) by replacing “\$4,000 to \$20,000” at the end of the first paragraph by “\$5,000 to \$30,000 in the case of a natural person and \$15,000 to \$100,000 in any other case”;

(2) by replacing “The fines are doubled” in the second paragraph by “The minimum and maximum fines prescribed in this section are doubled”.

TAX ADMINISTRATION ACT

85. Section 69.1 of the Tax Administration Act (chapter A-6.002) is amended by replacing “Chapters V.1 and V.2” in subparagraph z.3 of the second paragraph by “Chapter V.1”.

86. Section 69.4.1 of the Act is amended by replacing “V.2” by “V.1”.

87. Section 69.5.3 of the Act is amended by adding the following paragraph at the end:

“The Autorité des marchés publics may also, without the consent of the person concerned, communicate to an Associate Commissioner for Audits appointed under section 8 of the Anti-Corruption Act (chapter L-6.1), who exercises the function provided for in paragraph 1.1 of section 10 of that Act, information obtained under subparagraph z.3 of the second paragraph of section 69.1 where the information is necessary for the purposes of the first paragraph of section 21.48.12 of the Act respecting contracting by public bodies.”

BUILDING ACT

88. Section 65.1 of the Building Act (chapter B-1.1) is amended by inserting “except in the case of a temporary registration” at the end of subparagraph 5 of the second paragraph.

89. Section 65.1.0.1 of the Act is amended, in the first paragraph,

(1) by replacing subparagraph 1 by the following subparagraph:

“(1) the offence or indictable offence that led to the conviction was previously considered by the Autorité des marchés publics in the course of an examination of the holder’s integrity conducted under Division III or Division IV of Chapter V.1 of the Act respecting contracting by public bodies (chapter C-65.1) and, once the examination was completed, the holder was not registered, other than temporarily, in the register of enterprises ineligible for public contracts referred to in section 21.6 of that Act;”;

(2) by replacing subparagraph 2 by the following subparagraph:

“(2) the conviction concerns a holder whose integrity is under examination by the Authority under either of the divisions referred to in subparagraph 1, unless the examination is not completed.”

90. Section 65.1.0.2 of the Act is amended by replacing “in Chapter V.2” in the first paragraph by “in Division III of Chapter V.1”.

91. Section 65.2.1 of the Act is amended, in the fourth paragraph,

(1) by inserting, “, otherwise than temporarily,” after “public contracts”;

(2) by replacing “sections 21.3.1 and” by “the first paragraph of section 21.5.4 and section”.

CANNABIS REGULATION ACT

92. Section 26 of the Cannabis Regulation Act (chapter C-5.3) is amended

(1) by replacing “Chapter V.2 of that Act, except sections 21.17 to 21.17.2” in the first paragraph by “The provisions of Chapter V.1 of that Act to which an enterprise that submits an application for authorization to contract or that holds such an authorization is subject, except the first and second paragraphs of section 21.17 and sections 21.17.1 and 21.17.2”;

(2) by striking out “high” in the second paragraph.

ACT RESPECTING THE CENTRE D'ACQUISITIONS
GOUVERNEMENTALES

93. Section 4 of the Act respecting the Centre d'acquisitions gouvernementales (chapter C-7.01) is amended by inserting “, including the principles set out in section 2 of the Act respecting contracting by public bodies (chapter C-65.1)” at the end of the first paragraph.

CHARTER OF VILLE DE MONTRÉAL, METROPOLIS OF QUÉBEC

94. Section 57.1.15 of the Charter of Ville de Montréal, metropolis of Québec (chapter C-11.4) is amended

(1) in the third paragraph,

(a) by replacing “\$2,000 to \$20,000” in subparagraph 1 by “\$5,000 to \$30,000”;

(b) by replacing “\$10,000” in subparagraph 2 by “\$15,000”;

(2) by replacing “the amounts are doubled” in the fourth paragraph by “the minimum and maximum fines prescribed in the third paragraph are doubled”.

95. Section 57.1.16 of the Charter is amended

(1) by replacing “\$4,000 to \$20,000” in the first paragraph by “\$5,000 to \$30,000 in the case of a natural person and \$15,000 to \$100,000 in any other case”;

(2) by replacing “the amounts are doubled” in the second paragraph by “the minimum and maximum fines prescribed in the first paragraph are doubled”.

96. Section 57.1.18 of the Charter is amended by replacing “V.2” in the second paragraph by “V.1”.

CITIES AND TOWNS ACT

97. Section 573.3.3.2 of the Cities and Towns Act (chapter C-19) is amended

(1) in the first paragraph,

(a) by replacing “Division I of Chapter V.1 of the Act respecting contracting by public bodies (chapter C-65.1) applies” by “The provisions of Divisions I, II and IV to VI of Chapter V.1 and Division II of Chapter VIII.2 of the Act respecting contracting by public bodies (chapter C-65.1) apply”;

(b) by inserting “as well as any subcontract that is directly or indirectly related to any of those contracts” after “services”;

(2) in the second paragraph,

(a) by replacing “For the purposes of the provisions of Chapter V.1 of that Act, except section 21.8, the contracts referred to in the first paragraph are deemed to be public contracts” by “For the purposes of those provisions, except section 21.8, the contracts referred to in the first paragraph are deemed to be public contracts, the subcontracts related to such contracts are deemed to be public subcontracts”;

(b) by replacing “contracts, the responsibility conferred on the Conseil du trésor by sections 25.0.2 and 25.0.3” by “public contracts and subcontracts, the responsibility conferred on the Conseil du trésor by sections 25.0.2 to 25.0.4”.

98. Section 573.3.3.3 of the Act is amended

(1) by replacing “21.3.1, 21.17 to 21.17.2, 21.18, 21.25, 21.34, 21.35, 21.38, 21.39, 21.41, 21.41.1, 25.0.2 to 25.0.5, 27.6 to 27.9, 27.11, 27.13, 27.14 and 27.14.1” in the first paragraph by “21.17 to 21.17.2, 21.18, 21.39 to 21.41.1, 25.0.2 to 25.0.5, 27.6 to 27.9, 27.10.0.1, 27.11 and 27.13 to 27.14.1 and Division II of Chapter VIII.2”;

(2) by replacing “V.2” in the third paragraph by “V.1”.

MUNICIPAL CODE OF QUÉBEC

99. Article 938.3.2 of the Municipal Code of Québec (chapter C-27.1) is amended

(1) in the first paragraph,

(a) by replacing “Division I of Chapter V.1 of the Act respecting contracting by public bodies (chapter C-65.1) applies” by “The provisions of Divisions I, II and IV to VI of Chapter V.1 and Division II of Chapter VIII.2 of the Act respecting contracting by public bodies (chapter C-65.1) apply”;

(b) by inserting “as well as any subcontract that is directly or indirectly related to such a contract” after “services”;

(2) in the second paragraph,

(a) by replacing “For the purposes of the provisions of Chapter V.1 of that Act, except section 21.8, the contracts referred to in the first paragraph are deemed to be public contracts” by “For the purposes of those provisions, except section 21.8, the contracts referred to in the first paragraph are deemed to be public contracts, the subcontracts related to such contracts are deemed to be public subcontracts”;

(b) by replacing “contracts, the responsibility conferred on the Conseil du trésor by sections 25.0.2 and 25.0.3” by “public contracts and subcontracts, the responsibility conferred on the Conseil du trésor by sections 25.0.2 to 25.0.4”.

100. Article 938.3.3 of the Code is amended

(1) by replacing “21.3.1, 21.17 to 21.17.2, 21.18, 21.25, 21.34, 21.35, 21.38, 21.39, 21.41, 21.41.1, 25.0.2 to 25.0.5, 27.6 to 27.9, 27.11, 27.13, 27.14 and 27.14.1” in the first paragraph by “21.17 to 21.17.2, 21.18, 21.39 to 21.41.1, 25.0.2 to 25.0.5, 27.6 to 27.9, 27.10.0.1, 27.11 and 27.13 to 27.14.1 and Division II of Chapter VIII.2”;

(2) by replacing “V.2” in the third paragraph by “V.1”.

ACT RESPECTING THE COMMUNAUTÉ MÉTROPOLITAINE DE MONTRÉAL

101. Section 118.1.1 of the Act respecting the Communauté métropolitaine de Montréal (chapter C-37.01) is amended

(1) in the first paragraph,

(a) by replacing “Division I of Chapter V.1 of the Act respecting contracting by public bodies (chapter C-65.1) applies” by “The provisions of Divisions I, II and IV to VI of Chapter V.1 and Division II of Chapter VIII.2 of the Act respecting contracting by public bodies (chapter C-65.1) apply”;

(b) by inserting “as well as any subcontract that is directly or indirectly related to such a contract” after “services”;

(2) in the second paragraph,

(a) by replacing “For the purposes of the provisions of Chapter V.1 of that Act, except section 21.8, the contracts referred to in the first paragraph are deemed to be public contracts” by “For the purposes of those provisions, except section 21.8, the contracts referred to in the first paragraph are deemed to be public contracts, the subcontracts related to such contracts are deemed to be public subcontracts”;

(b) by replacing “contracts, the responsibility conferred on the Conseil du trésor by sections 25.0.2 and 25.0.3” by “public contracts and subcontracts, the responsibility conferred on the Conseil du trésor by sections 25.0.2 to 25.0.4”.

102. Section 118.1.2 of the Act is amended

(1) by replacing “21.3.1, 21.17 to 21.17.2, 21.18, 21.25, 21.34, 21.35, 21.38, 21.39, 21.41, 21.41.1, 25.0.2 to 25.0.5, 27.6 to 27.9, 27.11, 27.13, 27.14 and 27.14.1” in the first paragraph by “21.17 to 21.17.2, 21.18, 21.39 to 21.41.1, 25.0.2 to 25.0.5, 27.6 to 27.9, 27.10.0.1, 27.11 and 27.13 to 27.14.1 and Division II of Chapter VIII.2”;

(2) by replacing “V.2” in the third paragraph by “V.1”.

ACT RESPECTING THE COMMUNAUTÉ MÉTROPOLITAINE
DE QUÉBEC

103. Section 111.1.1 of the Act respecting the Communauté métropolitaine de Québec (chapter C-37.02) is amended

(1) in the first paragraph,

(a) by replacing “Division I of Chapter V.1 of the Act respecting contracting by public bodies (chapter C-65.1) applies” by “The provisions of Divisions I, II and IV to VI of Chapter V.1 and Division II of Chapter VIII.2 of the Act respecting contracting by public bodies (chapter C-65.1) apply”;

(b) by inserting “as well as any subcontract that is directly or indirectly related to such a contract” after “services”;

(2) in the second paragraph,

(a) by replacing “For the purposes of the provisions of Chapter V.1 of that Act, except section 21.8, the contracts referred to in the first paragraph are deemed to be public contracts” by “For the purposes of those provisions, except section 21.8, the contracts referred to in the first paragraph are deemed to be public contracts, the subcontracts related to such contracts are deemed to be public subcontracts”;

(b) by replacing “contracts, the responsibility conferred on the Conseil du trésor by sections 25.0.2 and 25.0.3” by “public contracts and subcontracts, the responsibility conferred on the Conseil du trésor by sections 25.0.2 to 25.0.4”.

104. Section 111.1.2 of the Act is amended

(1) by replacing “21.3.1, 21.17 to 21.17.2, 21.18, 21.25, 21.34, 21.35, 21.38, 21.39, 21.41, 21.41.1, 25.0.2 to 25.0.5, 27.6 to 27.9, 27.11, 27.13, 27.14 and 27.14.1” in the first paragraph by “21.17 to 21.17.2, 21.18, 21.39 to 21.41.1, 25.0.2 to 25.0.5, 27.6 to 27.9, 27.10.0.1, 27.11 and 27.13 to 27.14.1 and Division II of Chapter VIII.2”;

(2) by replacing “V.2” in the third paragraph by “V.1”.

ACT RESPECTING CONTRACTING BY PUBLIC BODIES

105. Section 4 of the Act respecting contracting by public bodies (chapter C-65.1) is amended

(1) by replacing subparagraph 4 of the first paragraph by the following subparagraph:

“(4) bodies other than budget-funded bodies listed in Schedule 2 to the Financial Administration Act, except Héma-Québec, as well as the Commission de la construction du Québec, the Cree-Québec Forestry Board and the Office franco-québécois pour la jeunesse;”;

(2) by adding the following paragraph at the end:

“The public bodies referred to in this section are subject to this Act even when exercising the fiduciary functions assigned to them by law.”

106. Section 7 of the Act is amended

(1) by inserting the following sentence after the first sentence of the first paragraph: “The same applies to Héma-Québec.”;

(2) by inserting “and the requirements of Division V of Chapter II” at the end of the second paragraph;

(3) by replacing “, V.1 and V.2” in the last paragraph by “and V.1”.

107. The Act is amended by replacing the heading of Chapter II by the following heading:

“TENDERING AND AWARDING OF CONTRACTS”.

108. Section 13.2 of the Act is amended by replacing “file a complaint under section 38 of the Act respecting the Autorité des marchés publics (chapter A-33.2.1)” in the second paragraph by “, as applicable, file a complaint under section 38 of the Act respecting the Autorité des marchés publics (chapter A-33.2.1) or make an application under section 52.1 of that Act”.

109. Section 21.0.3 of the Act is amended by replacing “awarding” in the first paragraph by “tendering or awarding”.

110. Section 21.0.4 of the Act is amended by replacing “awarding process” in the first paragraph by “tendering process”.

III. The Act is amended by inserting the following chapter after section 21.48.18:

“CHAPTER V.2

**“PAYMENTS AND DISPUTE SETTLEMENT WITH REGARD TO
CONSTRUCTION WORK**

“DIVISION I

“PRELIMINARY PROVISIONS

“21.48.19. The purpose of this chapter is to ensure prompt payment of sums of money claimed by enterprises that take part in carrying out construction work on behalf of public bodies.

A further purpose of this chapter is to allow prompt settlement of disputes that may arise between such enterprises, or between such enterprises and such bodies.

“21.48.20. Any clause that has the effect of excluding the application of one or more of the provisions of this chapter is absolutely null.

The same applies to a clause that has the effect of excluding the application of one or more of the provisions of a regulation made under this chapter, unless otherwise provided by that regulation.

“DIVISION II

“PAYMENTS

“21.48.21. Any request for payment of a sum of money an enterprise considers is owed to it in connection with a public construction work contract referred to in subparagraph 2 of the first paragraph of section 3 or a related subcontract must be made in compliance with the terms and conditions determined by government regulation, such as the requirement to include in the request the contractor’s name and address, a description of the work, the period during which the work was carried out and the sum of money to be paid.

A request for payment so made is hereinafter called a “valid request for payment”.

“21.48.22. A debtor is deemed not to have defaulted on payment of a sum of money claimed from the debtor if no valid request for payment of the sum has been made.

That presumption lapses once such a request for payment is received.

“21.48.23. If a debtor considers that the debtor is not required to pay all or part of a sum of money claimed by means of a valid request for payment, the debtor must express refusal to pay within the time determined by government regulation and in compliance with any other terms and conditions determined by such a regulation, such as a requirement to include a description of the work covered by the refusal as well as the grounds justifying and the sum of money corresponding to the refusal.

“21.48.24. A debtor is required to pay, within the time determined by government regulation, any sum of money payment of which has been claimed by means of a valid request for payment and which the debtor has not refused to pay in accordance with section 21.48.23. Such a payment obligation is binding on the debtor even if the debtor has not claimed payment of the sum from the debtor’s own debtor.

Despite the first paragraph, a debtor may, in the cases and on the terms and conditions determined by government regulation, make a withholding or deduction from a sum of money payable.

The mere lapse of the time determined under the first paragraph has the effect of causing the debtor concerned to be in default of payment.

“21.48.25. A sum of money for which a debtor is in default of payment under section 21.48.24 bears interest at the rate determined by government regulation.

“DIVISION III

“DISPUTE SETTLEMENT

“21.48.26. Any party to a dispute determined by government regulation, such as a dispute that could affect the payment of a sum of money that a party owes to another party, may, on the conditions prescribed by that regulation, require that the dispute be decided by a third-person decider.

In such a case, the other party to the dispute is required to participate in the selection of a third-person decider and in the dispute settlement process before that third person; failing such participation, that selection or process may, in accordance with the rules determined by government regulation, be made or take place without the participation of that other party.

The disputes that may be submitted to a third-person decider under this section may, among other things, be determined according to their subject matter, or to the category of contracts or subcontracts from which they arise or any characteristic of those contracts or subcontracts, such as the manner in which the contract or subcontract is to be carried out.

“21.48.27. The decision rendered by a third-person decider is binding on the parties until, as applicable, a judgment by a court of general jurisdiction is made or an arbitration award is rendered on the same subject matter.

The parties to the dispute must comply with the decision so rendered on the terms and conditions indicated in the decision. Furthermore, the party that is required, under such a decision, to pay a sum of money must do so within the time determined by government regulation.

A sum that is unpaid at the expiry of the time limit bears interest at the rate determined by government regulation.

Any payment of a sum of money made in order to comply with a decision rendered by a third-person decider does not constitute an acknowledgement of debt, either as to its existence or as to its amount, nor does it constitute a waiver of the right to claim its total or partial reimbursement in legal proceedings or arbitration.

“21.48.28. In a case of failure by the debtor to comply with a decision rendered by a third-person decider within the time determined under the second paragraph of section 21.48.27, the creditor may file a copy of the decision with the office of the competent court, to obtain its forced execution.

Such forced execution is effected in accordance with the rules set out in the Code of Civil Procedure (chapter C-25.01), subject, as applicable, to the rules determined by government regulation.

“21.48.29. The Minister of Justice designates the persons, bodies or associations responsible for certifying the persons who may act as third-person deciders.

Only persons certified to act as third-person deciders may act as such.

“21.48.30. No legal proceedings may be brought against a third-person decider for acts performed in the exercise of his or her functions, unless he or she acted in bad faith or committed an intentional or gross fault.

Nor may such a third person be compelled, in a judicial proceeding or a proceeding before a person or body exercising adjudicative functions, to make a deposition on information obtained in the exercise of the third person’s functions or to produce a document containing such information.

“DIVISION IV

“MISCELLANEOUS PROVISIONS

“21.48.31. In addition to the other regulatory powers provided for in this chapter, the Government may, by regulation,

(1) exclude from the application of all or part of the provisions of Division II requests for payment based on certain grounds for claims and any contract or subcontract, including those with certain characteristics, such as a specific manner in which they are to be carried out;

(2) make public bodies and enterprises that are parties to contracts the Government determines subject to the application of all or part of the provisions of Division II, provided those contracts are related to contracts or subcontracts referred to in that division;

(3) determine, for the purposes of the provisions of Division III, the rules relating to the dispute settlement process before a third-person decider, including the selection of the third person and the latter's duties, obligations, functions and powers within the scope of such a process, and the rules relating to the decision rendered at the end of such a process and to the payment, by the parties to a dispute submitted to such a third person, of the latter's fees and expenses and those of the witnesses, experts or any other person involved in the process; and

(4) determine any other rule necessary for the application or the purposes of the provisions of this chapter, including, where applicable, rules relating to the effects and the end of the suretyship and to the existence, preservation and extinction of legal hypothecs in favour of persons having participated in the construction or renovation of an immovable.

“21.48.32. The provisions of a regulation made under this chapter may vary according to the categories and characteristics of the contracts or subcontracts concerned, the public bodies concerned and the characteristics of the enterprises that take part in carrying out construction work.”

II2. Section 23 of the Act is amended by striking out paragraph 16.

II3. Sections 24.3 to 24.7 of the Act are replaced by the following section:

“24.3. The Government may, by regulation,

(1) determine the standards with which the persons, bodies, and associations designated by the Minister of Justice under section 21.48.29 must comply;

(2) define the conditions a person must satisfy to be certified to act as a third-person decider for the purposes of Division III of Chapter V.2 and determine the standards with which such a third person must comply in the exercise of his or her functions, as well as the sanctions applicable for non-compliance; and

(3) define the rules relating to fees and other expenses that the parties to a dispute may be required to comply with where the dispute is referred to a third-person decider under Section III of Chapter V.2.”

114. Section 27.1 of the Act is amended by replacing “awarding” in the first paragraph by “tendering and awarding”.

115. Section 59 of the Act is amended by inserting “, except the first paragraph of section 21.48.29 and section 24.3, which are under the administration of the Minister of Justice” at the end.

ACT TO FACILITATE THE DISCLOSURE OF WRONGDOINGS RELATING TO PUBLIC BODIES

116. Section 5 of the Act to facilitate the disclosure of wrongdoings relating to public bodies (chapter D-11.1) is amended by inserting “, except in the case of an alleged wrongdoing in relation to the Autorité des marchés publics” at the end of subparagraph 1 of the second paragraph.

117. Section 12 of the Act is amended by inserting “, except in the case of an alleged wrongdoing in relation to the Autorité des marchés publics” at the end of subparagraph 4.1 of the second paragraph.

118. Section 33 of the Act is replaced by the following section:

“33. Anyone who

(1) discloses information under section 6 that they know to be false or misleading, or

(2) contravenes section 30

is guilty of an offence and is liable to a fine of \$5,000 to \$30,000 in the case of a natural person and to a fine of \$15,000 to \$250,000 in other cases.

For a subsequent offence, the minimum and maximum fines prescribed in this section are doubled.”

119. Section 34 of the Act is amended

(1) by replacing “\$4,000 to \$20,000” in the first paragraph by “\$5,000 to \$30,000 in the case of a natural person and to a fine of \$15,000 to \$100,000 in other cases”;

(2) by replacing “The amounts are doubled for a subsequent offence” in the second paragraph by “For a subsequent offence, the minimum and maximum fines prescribed in this section are doubled”.

ACT RESPECTING ELECTIONS AND REFERENDUMS IN MUNICIPALITIES

120. Section 648.1 of the Act respecting elections and referendums in municipalities (chapter E-2.2) is replaced by the following section:

“648.1. The Chief Electoral Officer shall transmit to the Autorité des marchés publics the information that relates to any penal proceeding brought under this Title and applies to any offence listed in Schedule I to the Act respecting contracting by public bodies (chapter C-65.1). The Chief Electoral Officer shall also transmit to the Autorité des marchés publics the information required under subparagraphs 1 to 3 and 5 of the first paragraph of section 21.7 of that Act concerning findings of guilty for the offences under this Title that are listed in Schedule I to that Act.

The information shall be transmitted in the manner determined in an agreement.”

ACT RESPECTING SCHOOL ELECTIONS TO ELECT CERTAIN MEMBERS OF THE BOARDS OF DIRECTORS OF ENGLISH-LANGUAGE SCHOOL SERVICE CENTRES

121. Section 223.5 of the Act respecting school elections to elect certain members of the boards of directors of English-language school service centres (chapter E-2.3) is replaced by the following section:

“223.5. The Chief Electoral Officer shall transmit to the Autorité des marchés publics the information that relates to any penal proceeding brought under this Title and applies to any offence listed in Schedule I to the Act respecting contracting by public bodies (chapter C-65.1). The Chief Electoral Officer shall also transmit to the Autorité des marchés publics the information required under subparagraphs 1 to 3 and 5 of the first paragraph of section 21.7 of that Act concerning findings of guilty for the offences under this chapter that are listed in Schedule I to that Act.

The information shall be transmitted in the manner determined in an agreement.”

ELECTION ACT

122. Section 569.1 of the Election Act (chapter E-3.3) is replaced by the following section:

“569.1. The Chief Electoral Officer shall transmit to the Autorité des marchés publics the information that relates to any penal proceeding brought under this Title and applies to any offence listed in Schedule I to the Act respecting contracting by public bodies (chapter C-65.1). The Chief Electoral Officer shall also transmit to the Autorité des marchés publics the information

required under subparagraphs 1 to 3 and 5 of the first paragraph of section 21.7 of that Act concerning findings of guilty for the offences under this Title that are listed in Schedule I to that Act.

The information shall be transmitted in the manner determined in an agreement.”

MUNICIPAL ETHICS AND GOOD CONDUCT ACT

123. Section 36.6 of the Municipal Ethics and Good Conduct Act (chapter E-15.1.0.1) is amended

(1) in the portion after subparagraph 4 of the first paragraph,

(a) by replacing “\$2,000 to \$20,000” by “\$5,000 to \$30,000”;

(b) by replacing “\$10,000” by “\$15,000”;

(2) by replacing “the amounts are doubled” in the second paragraph by “the minimum and maximum fines prescribed in the first paragraph are doubled”.

124. Section 36.7 of the Act is amended

(1) by replacing “\$4,000 to \$20,000” at the end of the first paragraph by “\$5,000 to \$30,000 in the case of a natural person and to a fine of \$15,000 to \$100,000 in other cases”;

(2) by replacing “the amounts are doubled” in the second paragraph by “the minimum and maximum fines prescribed in the first paragraph are doubled”.

ACT RESPECTING ADMINISTRATIVE JUSTICE

125. Schedule IV to the Act respecting administrative justice (chapter J-3) is amended by inserting the following paragraph after paragraph 6:

“(6.1) section 27.27 of the Act respecting contracting by public bodies (chapter C-65.1);”.

ANTI-CORRUPTION ACT

126. Section 14.1 of the Anti-Corruption Act (chapter L-6.1) is amended

(1) by replacing “\$4,000 to \$20,000” in the first paragraph by “\$5,000 to \$30,000 in the case of a natural person and to a fine of \$15,000 to \$100,000 in other cases”;

(2) by replacing “the amounts” in the second paragraph by “the minimum and maximum fines prescribed in this section”.

127. Section 34 of the Act is amended

(1) in the first paragraph,

(a) by replacing “\$2,000 \$ to \$20,000” in subparagraph 1 by “\$5,000 to \$30,000”;

(b) by replacing “\$10,000” in subparagraph 2 by “\$15,000”;

(2) by replacing “the amounts” in the second paragraph by “the minimum and maximum fines prescribed in this section”.

128. Section 35.7 of the Act is amended

(1) by replacing “\$4,000 to \$20,000” at the end of the first paragraph by “\$5,000 to \$30,000 in the case of a natural person and to a fine of \$15,000 to \$100,000 in other cases”;

(2) by replacing “the amounts” in the second paragraph by “the minimum and maximum fines prescribed in this section”.

ACT RESPECTING LABOUR RELATIONS, VOCATIONAL TRAINING
AND WORKFORCE MANAGEMENT IN THE CONSTRUCTION
INDUSTRY

129. Section 7.3 of the Act respecting labour relations, vocational training and workforce management in the construction industry (chapter R-20) is amended by replacing “Chapter V.2” in the second paragraph by “Division III of Chapter V.1”.

130. Section 7.5 of the Act is amended, in subparagraph 3,

(1) by replacing “Chapter V.2” by “Division III of Chapter V.1”;

(2) by striking out “or 25.0.4”.

131. Section 123.4.4 of the Act is amended

(1) by replacing “the Associate Commissioners for Audits appointed under section 8 of the Anti-Corruption Act (chapter L-6.1), who exercise the function provided for in paragraph 1.1 of section 10 of that Act” by “the Autorité des marchés publics”;

(2) by replacing “V.2” by “V.1”.

ACT RESPECTING MIXED ENTERPRISE COMPANIES IN THE MUNICIPAL SECTOR

132. Section 41.1 of the Act respecting mixed enterprise companies in the municipal sector (chapter S-25.01) is amended

(1) by replacing “sections 21.3.1, 21.17 to 21.17.2, 21.18, 21.25, 21.34, 21.35, 21.38, 21.39, 21.41, 21.41.1, 25.0.2 to 25.0.5, 27.6 to 27.9, 27.11, 27.13, 27.14 and 27.14.1” in the first paragraph by “the provisions of Divisions I and II of Chapter V.1, sections 21.17 to 21.17.2, 21.18, 21.39 to 21.41.1, Divisions IV to VI of Chapter V.1, sections 25.0.2 to 25.0.5, 27.6 to 27.9, 27.10.0.1, 27.11 and 27.13 to 27.14.1 and Division II of Chapter VIII.2”;

(2) by replacing “V.2” in the third paragraph by “V.1”.

ACT RESPECTING PUBLIC TRANSIT AUTHORITIES

133. Section 108.1.1 of the Act respecting public transit authorities (chapter S-30.01) is amended

(1) in the first paragraph,

(a) by replacing “Division I of Chapter V.1 of the Act respecting contracting by public bodies (chapter C-65.1) applies” by “The provisions of Divisions I, II and IV to VI of Chapter V.1 and Division II of Chapter VIII.2 of the Act respecting contracting by public bodies (chapter C-65.1) apply”;

(b) by inserting “as well as any subcontract that is directly or indirectly related to such a contract” after “services”;

(2) in the second paragraph,

(a) by replacing “For the purposes of the provisions of Chapter V.1 of that Act, except section 21.8, the contracts referred to in the first paragraph are deemed to be public contracts” by “For the purposes of these provisions, except section 21.8, the contracts referred to in the first paragraph are deemed to be public contracts, the subcontracts related to such contracts are deemed to be public subcontracts”;

(b) by replacing “contracts, the responsibility conferred on the Conseil du trésor by sections 25.0.2 and 25.0.3” by “public contracts and subcontracts, the responsibility conferred on the Conseil du trésor by sections 25.0.2 to 25.0.4”.

134. Section 108.1.2 of the Act is amended

(1) by replacing “21.3.1, 21.17 to 21.17.2, 21.18, 21.25, 21.34, 21.35, 21.38, 21.39, 21.41, 21.41.1, 25.0.2 to 25.0.5, 27.6 to 27.9, 27.11, 27.13, 27.14 and 27.14.1” in the first paragraph by “21.17 to 21.17.2, 21.18, 21.39 to 21.41.1, 25.0.2 to 25.0.5, 27.6 to 27.9, 27.10.0.1, 27.11 and 27.13 to 27.14.1 and Division II of Chapter VIII.2”;

(2) by replacing “V.2” in the third paragraph by “V.1”.

REGULATION OF THE AUTORITÉ DES MARCHÉS PUBLICS UNDER
AN ACT RESPECTING CONTRACTING BY PUBLIC BODIES

135. Section 1 of the Regulation of the Autorité des marchés publics under an Act respecting contracting by public bodies (chapter C-65.1, r. 0.1) is amended by replacing “the authorization referred to under sections 21.17 to 21.17.3” by “or that hold the authorization to contract referred to in Division III of Chapter V.1”.

136. Section 3 of the Regulation is amended by striking out “or, whichever is latest, the date set out in the call for tender concerning the required authorization, as the case may be” in paragraph 2.

137. Section 7 of the Regulation is amended by replacing “Chapter V.2” in the second paragraph by “Division III of Chapter V.1”.

REGULATION RESPECTING CERTAIN SUPPLY CONTRACTS OF
PUBLIC BODIES

138. Section 9 of the Regulation respecting certain supply contracts of public bodies (chapter C-65.1, r. 2) is amended by replacing the second sentence of the first paragraph by the following sentences: “An addendum must contain the information relating to the deadline for filing complaints under section 21.0.4 of the Act or, as the case may be, for filing complaints under section 40 of the Act respecting the Autorité des marchés publics (chapter A-33.2.1) or for making an application under section 52.1 of that Act. If the amendments to the tender documents result from a decision of the Autorité des marchés publics, the previously mentioned information is replaced by an indication to that effect.”

139. Section 9.5 of the Regulation is amended by replacing “file a complaint under section 37 of the Act respecting the Autorité des marchés publics (chapter A-33.2.1)” in the second paragraph by “, as applicable, file a complaint under section 37 of the Act respecting the Autorité des marchés publics (chapter A-33.2.1) or make an application under section 52.1 of that Act”.

REGULATION RESPECTING CERTAIN SERVICE CONTRACTS OF PUBLIC BODIES

140. Section 9 of the Regulation respecting certain service contracts of public bodies (chapter C-65.1, r. 4) is amended by replacing the second sentence of the first paragraph by the following sentences: “An addendum must contain the information relating to the deadline for filing complaints under section 21.0.4 of the Act or, as the case may be, for filing complaints under section 40 of the Act respecting the Autorité des marchés publics (chapter A-33.2.1) or for making an application under section 52.1 of that Act. If the amendments to the tender documents result from a decision of the Autorité des marchés publics, the previously mentioned information is replaced by an indication to that effect.”

141. Section 9.5 of the Regulation is amended by replacing “file a complaint under section 37 of the Act respecting the Autorité des marchés publics (chapter A-33.2.1)” in the second paragraph by “, as applicable, file a complaint under section 37 of the Act respecting the Autorité des marchés publics (chapter A-33.2.1) or make an application under section 52.1 of that Act”.

REGULATION RESPECTING CONSTRUCTION CONTRACTS OF PUBLIC BODIES

142. Section 9 of the Regulation respecting construction contracts of public bodies (chapter C-65.1, r. 5) is amended by replacing the second sentence of the first paragraph by the following sentences: “An addendum must contain the information relating to the deadline for filing complaints under section 21.0.4 of the Act or, as the case may be, for filing complaints under section 40 of the Act respecting the Autorité des marchés publics (chapter A-33.2.1) or for making an application under section 52.1 of that Act. If the amendments to the tender documents result from a decision of the Autorité des marchés publics, the previously mentioned information is replaced by an indication to that effect.”

143. Section 12.3 of the Regulation is amended by replacing “file a complaint under section 37 of the Act respecting the Autorité des marchés publics (chapter A-33.2.1)” in the second paragraph by “, as applicable, file a complaint under section 37 of the Act respecting the Autorité des marchés publics (chapter A-33.2.1) or make an application under section 52.1 of that Act”.

REGULATION RESPECTING CONTRACTING BY PUBLIC BODIES IN THE FIELD OF INFORMATION TECHNOLOGIES

144. Section 11 of the Regulation respecting contracting by public bodies in the field of information technologies (chapter C-65.1, r. 5.1) is amended by replacing the second sentence of the first paragraph by the following sentences: “An addendum must contain the information relating to the deadline for filing complaints under section 21.0.4 of the Act or, as the case may be, for filing complaints under section 40 of the Act respecting the Autorité des marchés publics (chapter A-33.2.1) or for making an application under section 52.1 of

that Act. If the amendments to the tender documents result from a decision of the Autorité des marchés publics, the previously mentioned information is replaced by an indication to that effect.”

145. Section 13.3 of the Regulation is amended by replacing “file a complaint under section 37 of the Act respecting the Autorité des marchés publics (chapter A-33.2.1)” in the second paragraph by “, as applicable, file a complaint under section 37 of the Act respecting the Autorité des marchés publics (chapter A-33.2.1) or make an application under section 52.1 of that Act”.

CHAPTER V

MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

146. Any enterprise that holds an authorization to contract issued under the Act respecting contracting by public bodies (chapter C-65.1) on the date of coming into force of section 21.40 of that Act, enacted by section 35, must, in accordance with that section 21.40, update its information for the first time not later than 30 days after that date.

147. The validity period of an authorization to contract issued under the Act respecting contracting by public bodies and that is ongoing on the date of coming into force of section 21.41 of that Act, enacted by section 36, is extended by two years, subject to the authorization being revoked during that time.

148. Despite section 21.48.1 of the Act respecting contracting by public bodies, enacted by section 43, the contracts and subcontracts in progress on the date of coming into force of that section 21.48.1, as well as those resulting from a contract tendering process under way on that date, do not have the effect of making the enterprises that are or become parties to those contracts and subcontracts subject to the oversight of the Autorité des marchés publics or, consequently, to the measures and sanctions that may result from that oversight under Division IV of Chapter V.1 of that Act, enacted by section 43.

149. An Associate Commissioner for Audits appointed in accordance with section 8 of the Anti-Corruption Act (chapter L-6.1) must, not later than 60 days after the date of coming into force of section 28 of this Act, transfer to the Autorité des marchés publics any audit file the Associate Commissioner for Audits has established concerning an enterprise under section 21.30 or 21.32 of the Act respecting contracting by public bodies, as they read on 1 June 2022, if, on the date of coming into force of section 28 of this Act, the advisory opinion resulting from the audits conducted has not been provided to the Authority in accordance with sections 21.31 and 21.32 of that Act, as they read on 1 June 2022.

The information contained in audit files whose communication could interfere with a penal or criminal investigation or a resulting judicial proceeding or that could compromise legally recognized privileges, in particular those relating to the confidentiality of investigation methods and the identity of police informants, is excluded from the application of the first paragraph.

150. Any public contract of Héma-Québec whose tendering or awarding process, or performance, is in progress on the date of coming into force of paragraph 1 of section 106 of this Act is tendered or awarded, or continues to be performed, in accordance with the provisions of the Act respecting contracting by public bodies and the regulations made under that Act that were applicable to it before that date. Héma-Québec remains, with regard to those contracts, subject to the provisions of that Act and those regulations that were applicable to it before that date.

151. Any regulation made under Chapter V.2 of the Act respecting contracting by public bodies, enacted by section 111, may, despite section 71 of the Act respecting the acceleration of certain infrastructure projects (chapter A-2.001), provide that all or part of its provisions apply to public bodies and enterprises that are parties to the contracts and subcontracts referred to in that section 71.

152. This Act comes into force on 2 June 2022, except

(1) sections 1 to 3, section 4 insofar as it enacts sections 14.1 to 14.6, the first and second paragraphs of section 14.7, section 14.8 and the first and third paragraphs of section 14.9 of the Act respecting contracting by public bodies, sections 6 and 7, section 8 insofar as it enacts section 22.2 and the first sentence of the first paragraph and the second paragraph of section 22.3 of that Act, and paragraph 2 of section 106, which come into force on the date or dates to be set by the Government or not later than 2 December 2022;

(2) section 4 insofar as it enacts the third paragraph of section 14.7 and the second paragraph of section 14.9 of the Act respecting contracting by public bodies, section 8 as regards the second sentence of the first paragraph of section 22.3 of that Act, and sections 111 to 113 and 115, which come into force on the date or dates to be set by the Government;

(3) section 10 insofar as it enacts section 21.2 of the Act respecting contracting by public bodies, which comes into force on the date of coming into force of the first regulation made by the Government for the purposes of that section 21.2;

(4) section 21.5.1 of the Act respecting contracting by public bodies, except the words “except the third paragraph of section 21.48.4 and” in the first paragraph of that section, enacted by section 10, which comes into force on the date of coming into force of the first regulation made by the Autorité des marchés publics for the purposes of that section 21.5.1;

(5) section 10 insofar as it enacts the words “, unless such ineligibility results from a temporary registration in the register of enterprises ineligible for public contracts under the third paragraph of section 21.48.4” in subparagraph 3 of the first paragraph of section 21.4, the words “except the third paragraph of section 21.48.4 and” in the first paragraph of section 21.5.1, subparagraph 2 of the first paragraph of section 21.5.3 and the second paragraph of section 21.5.4 of the Act respecting contracting by public bodies, subparagraph *b* of paragraph 1 of section 13 insofar as it enacts the words “and, if applicable, a reference to the temporary nature of that registration” in subparagraph *c* of subparagraph 3 of the first paragraph of section 21.7 of the Act respecting contracting by public bodies, subparagraph *c* of paragraph 1 of section 13, subparagraph *c* of paragraph 2 of section 17, section 33 insofar as it enacts the second sentence of section 21.38 of the Act respecting contracting by public bodies, section 43 insofar as it enacts the third paragraph of section 21.48.4 and the words “, otherwise than temporarily,” in the third paragraph of section 21.48.5 of the Act respecting contracting by public bodies, section 88, section 89 insofar as it enacts the words “, otherwise than temporarily,” in subparagraph 1 of the first paragraph of section 65.1.0.1 of the Building Act (chapter B-1.1), and paragraph 1 of section 91, which come into force on 2 December 2022;

(6) sections 21.40 and 21.41 of the Act respecting contracting by public bodies, enacted respectively by sections 35 and 36, and paragraph 2 of section 42, which come into force on 2 June 2023;

(7) Division II of Chapter VIII.2 of the Act respecting contracting by public bodies, enacted by section 54, which comes into force on the date of coming into force of the first regulation made by the Autorité des marchés publics under section 27.16 of that Act, enacted by section 54.

