



ARE YOU AFFECTED BY THE NEW ACT ON PUBLIC CONTRACTS?

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In the wake of the legislative amendments that were made following the corruption scandal in the construction sector which gave rise to the Charbonneau commission, the Quebec government adopted the *Integrity in Public Contracts Act* which amended the *Act Respecting Contracting by Public Bodies*.

The amendments to the *Act Respecting Contracting by Public Bodies* (ARCPB) include, among others, a broadening of the definition of the concept of a public body. In light of this, it is a good idea to review the principal criteria that could apply to organizations that could now be qualified as public bodies due to the broadened definition in the ARCPB.

An organization that qualifies as a public body in the scope of ARCPB must respect the provisions of that Act. At this stage, the implications are limited. For the moment, except for contracts with the City of Montreal, only contracts involving an expenditure equal to or greater than ten million dollars are subject to the auditing procedure by the *Autorité des marchés financiers* (AMF). However, government decrees will specify from time to time other types of contracts to which the ARCPB will apply. Looking at the trend in the construction sector, everything points to a reduction in the value of contracts subject to the law in the near future, which would result in more transactions being subject to the ARCPB.

Criteria for Being Qualified as a Public Body

The ARCPB cover public markets and public bodies. Thus, for an organization to be subject to the ARCPB, it must satisfy the criteria outlined in the Act.

The ARCPB lists the following types of contracts which are subject to the Act: procurement, construction, services and others. This same Act classifies legal entities that are public bodies into the following seven categories:

Section	Legal Entities
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4. (1)	Government departments
4. (2)	Bodies all or part of whose expenditures are provided for in the budgetary estimates tabled in the National Assembly otherwise than under a transferred appropriation
4. (3)	Bodies whose personnel is appointed in accordance with the <i>Public Service Act</i>
4. (4)	Bodies a majority of whose members or directors are appointed by the Government or by a minister and at least half of whose expenditures are borne directly or indirectly by the Consolidated Revenue Fund
4. (5)	School boards, etc.
4. (6)	Health and social services agencies, etc.
4. AI.2	A person appointed or designated by the Government or a minister, together with the personnel directed by the person, in the exercise of the functions assigned to the person by law, the Government or minister

If an organization falls into one of the seven categories mentioned above, it is possible that the ARCPB will apply to it.

As an example, an organization that receives funding from the Quebec government, otherwise than under a transferred appropriation in the budget tabled at the National Assembly, could qualify as a public body according to the ARCPB. To determine if an organization qualifies as a public body, the source of the financial aid must be analyzed. If the organization qualifies as a public body according to the aforementioned criteria, the ARCPB and the AMF's guides will apply to it.

The Application of the ARCPB

Contracts between public bodies and any other organization must respect the protection measures put in place by the ARCPB. This Act provides for, among others, the necessity of prior authorization of third party organizations to receive a public contract. The AMF is responsible for issuing permits to organizations that wish to contract with a public body.

The AMF currently requires permits for organizations in three particular circumstances. For the moment, the three following circumstances are related to contracts with the City of Montreal or a public body:

- Organizations that are competing in a call for tenders or award process for construction and service contracts and subcontracts and public-private partnership contracts involving an expenditure equal to or greater than \$10 million and for which the award process begins on December 6, 2013.
- Organizations that are competing in a call for tenders or an award process for contracts for the construction, reconstruction, demolition, repair or

renovation of roads, waterworks and sewer services of City of Montreal involving an expenditure equal to or greater than \$100,000 and for which the award process begins on October 23, 2013, as well as for subcontracts of the same nature directly or indirectly related to such contracts and involving an expenditure equal to or greater than \$25,000.

- Organizations that are bidding on a contract listed in the Orders in Council - Certain contracts of the City of Montreal <<http://www.lautorite.qc.ca/en/act-public-contracts-en-autre.html>>.

The government appoints by decree the value and types of contracts that may require a permit from the AMF.

The Application of the AMF Guide

The AMF created a guide for helping organizations which wish to obtain or renew a permit for contracting/sub-contracting with a public body (AMF Guide). The AMF Guide is a helpful resource for organizations that contract with public bodies and must disclose information to the AMF under the provisions of the ARCPB. In fact, the AMF Guide applies to every person who wishes to contract with a public body for a contract that requires prior authorization.

An electronic copy of the AMF Guide can be found at <<http://www.lautorite.qc.ca/files/pdf/professionnels/ESM/guide-accompagnement-esm.pdf>>.

Conclusion

It is important to keep up with developments regarding decrees that may be issued in connection with the value and type of contracts involving public bodies that require permits from the AMF. When the contracts are governed by the ARCPB or its application guide, the organization that wishes to contract with a public body must obtain prior authorization from the AMF. Once this condition is met by the contracting organization, the public body will have to comply with various obligations pertaining to information and auditing in accordance with the ARCPB.



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