



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-NINTH LEGISLATURE

Bill 76

(2010, chapter 1)

An Act to amend various legislative provisions principally with regard to the awarding process for contracts made by municipal bodies

Introduced 18 November 2009

Passed in principle 25 November 2009

Passed 18 February 2010

Assented to 1 March 2010

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EXPLANATORY NOTES

This Act amends various legislative provisions applicable to municipalities and various other municipal bodies with regard particularly to the rules governing the awarding of contracts.

The Act grants the Government the power to determine by regulation any authorization, condition or rule to which a contract awarded by a municipal body is subject, in addition to the authorizations, conditions or rules for awarding contracts already set out or provided for in the Act applicable to the municipal body concerned. It requires municipal bodies to adopt a contract management policy and make it accessible.

The Act introduces a prohibition for members of the council and officers or employees of the municipal body against revealing, before the opening of tenders, any information that may be used to determine the number of persons or the identity of the persons who have submitted a tender or requested a copy of the call for tenders or of a document to which it refers.

It provides that the municipal body must establish an estimate of the price of a contract involving an expenditure of \$100,000 or more before any tenders are opened or the contract is entered into.

The Act requires every municipal body to publish and keep up to date, on the Internet, a list of the contracts it enters into that involve an expenditure of \$25,000 or more. It identifies the information on the list and states that it must remain posted for at least three years. It also sets out the rules governing payment of a contract.

The Act also extends to various municipal bodies the powers the Minister has to give advice, make recommendations and carry out investigations or verifications with regard to municipalities. It specifies the powers of the persons who will carry out the verifications and grants the Minister the power to give instructions to the council of a municipal body following an investigation or a verification. Lastly, the Act provides that the advice, recommendations and instructions of the Minister will be posted on the department's website.

LEGISLATION AMENDED BY THIS ACT:

- Charter of Ville de Longueuil (R.S.Q., chapter C-11.3);
- Charter of Ville de Montréal (R.S.Q., chapter C-11.4);
- Charter of Ville de Québec (R.S.Q., chapter C-11.5);
- Cities and Towns Act (R.S.Q., chapter C-19);
- Municipal Code of Québec (R.S.Q., chapter C-27.1);
- Act respecting the Communauté métropolitaine de Montréal (R.S.Q., chapter C-37.01);
- Act respecting the Communauté métropolitaine de Québec (R.S.Q., chapter C-37.02);
- Municipal Powers Act (R.S.Q., chapter C-47.1);
- Act respecting the Ministère des Affaires municipales, des Régions et de l'Occupation du territoire (R.S.Q., chapter M-22.1);
- Act respecting public transit authorities (R.S.Q., chapter S-30.01).

Bill 76

AN ACT TO AMEND VARIOUS LEGISLATIVE PROVISIONS PRINCIPALLY WITH REGARD TO THE AWARDING PROCESS FOR CONTRACTS MADE BY MUNICIPAL BODIES

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHARTER OF VILLE DE LONGUEUIL

1. Section 60.1 of the Charter of Ville de Longueuil (R.S.Q., chapter C-11.3) is amended

- (1) by inserting “477.4 to 477.7 and” after “Sections” in the third paragraph;
- (2) by replacing “the regulation made under section 573.3.0.1” in the third paragraph by “a regulation made under section 573.3.0.1 or 573.3.1.1”;
- (3) by inserting the following paragraph after the third paragraph:

“The following modifications are among those applicable for the purposes of the third paragraph: if the legal person does not have a website, the list described in the first paragraph of section 477.5 of the Cities and Towns Act must be published on another website the legal person determines; the legal person shall give public notice of the address of that website at least once a year; the notice must be published in a newspaper in the territory of the city.”

CHARTER OF VILLE DE MONTRÉAL

2. Section 2 of Schedule C to the Charter of Ville de Montréal (R.S.Q., chapter C-11.4) is amended by replacing “section 217” in the fifth paragraph by “sections 216.1 and 217”.

3. Schedule C to the Charter is amended by inserting the following section after section 216:

“216.1. Sections 477.4 to 477.7 of the Cities and Towns Act (chapter C-19) apply to the commission, with the necessary modifications.

The following modifications are among those applicable for the purposes of the first paragraph: if the legal commission does not have a website, the list described in the first paragraph of section 477.5 of the Cities and Towns

Act must be published on another website the commission determines; the commission shall give public notice of the address of that website at least once a year; the notice must be published in a newspaper in the territory of the city.”

4. Section 217 of Schedule C to the Charter is amended by inserting “and the commission is deemed to be a local municipality for the purposes of a regulation made under section 573.3.0.1 or 573.3.1.1” after “commission” in the first paragraph.

5. Section 231.1 of Schedule C to the Charter is amended

(1) by inserting “477.4 to 477.7 and” after “Sections”;

(2) by replacing “the regulation made under section 573.3.0.1” by “a regulation made under section 573.3.0.1 or 573.3.1.1”;

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

“The following modifications are among those applicable for the purposes of the first paragraph: if the body does not have a website, the list described in the first paragraph of section 477.5 of the Cities and Towns Act must be published on another website the body determines; the body shall give public notice of the address of that website at least once a year; the notice must be published in a newspaper in the territory of the city.”

6. Section 231.15 of Schedule C to the Charter is amended

(1) by inserting “477.4 to 477.7 and” after “Sections”;

(2) by replacing “the regulation made under section 573.3.0.1” by “a regulation made under section 573.3.0.1 or 573.3.1.1”;

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

“The following modifications are among those applicable for the purposes of the first paragraph: if the arts council does not have a website, the list described in the first paragraph of section 477.5 of the Cities and Towns Act must be published on another website the arts council determines; the arts council shall give public notice of the address of that website at least once a year; the notice must be published in a newspaper in the territory of the city.”

CHARTER OF VILLE DE QUÉBEC

7. Section 61 of the Schedule to the Charter of Ville de Québec (R.S.Q., chapter C-11.5) is amended

- (1) by inserting “477.4 to 477.7 and” after “Sections” in the sixth paragraph;
- (2) by replacing “the regulation made under section 573.3.0.1” in the sixth paragraph by “a regulation made under section 573.3.0.1 or 573.3.1.1”;
- (3) by adding the following paragraph at the end:

“The following modifications are among those applicable for the purposes of the sixth paragraph: if the body does not have a website, the list described in the first paragraph of section 477.5 of the Cities and Towns Act must be published on another website the body determines; the body shall give public notice of the address of that website at least once a year; the notice must be published in a newspaper in the territory of the city.”

CITIES AND TOWNS ACT

8. Section 465.10.1 of the Cities and Towns Act (R.S.Q., chapter C-19) is amended

- (1) by inserting “477.4 to 477.7 and” after “Sections”;
- (2) by replacing “the regulation made under section 573.3.0.1” by “a regulation made under section 573.3.0.1 or 573.3.1.1”;
- (3) by adding the following paragraph at the end:

“The following modifications are among those applicable for the purposes of the first paragraph: if the legal person does not have a website, the list described in the first paragraph of section 477.5 must be published on another website the legal person determines; the legal person shall give public notice of the address of that website at least once a year; the notice must be published in a newspaper in the territory of each municipality that is a member of the legal person.”

9. Section 468.51 of the Act is amended

- (1) by inserting “477.4 to 477.7,” after “477.2,” in the first paragraph;
- (2) by adding the following paragraph at the end:

“For the purposes of section 477.6, if the board does not have a website, the list described in the first paragraph of section 477.5 must be published on another website the board determines; the board shall give public notice of the address of that website at least once a year; the notice must be published in a newspaper in the territory of each municipality in whose territory the board has jurisdiction.”

10. The Act is amended by inserting the following sections after section 477.3:

“477.4. If a contract involves an expenditure of \$100,000 or more, the municipality must establish an estimate of the price before any tenders are opened or the contract is entered into.

“477.5. Every municipality must publish and keep up to date, on the internet, a list of the contracts it enters into that involve an expenditure of \$25,000 or more. The list must be intelligible and easily accessible.

The Minister of Municipal Affairs, Regions and Land Occupancy may make rules concerning the form in which the list must be presented.

The list must be updated at least once a month. It must contain, in respect of each contract, the following information:

(1) if the contract involves an expenditure of \$100,000 or more, the price of the contract as estimated by the municipality in accordance with section 477.4;

(2) the price of the contract, the name of the person with whom it was entered into and, if the contract contains a renewal option, the total expenditure that would be incurred if all the options were exercised; and

(3) the object of the contract.

If the contract is subject to a rule governing the awarding of contracts set out in section 573 or 573.1 or in the regulation made under section 573.3.0.1 or 573.3.1.1, the list must also contain

(1) the name of each tenderer;

(2) the amount of each tender; and

(3) the identification of the tenders that are considered to conform to requirements.

If the contract is entered into by mutual agreement, the list must mention, if applicable, the legislative provision or the provision of the regulation made under section 573.3.0.1 under which the contract could be awarded without a call for tenders.

In all cases, the list must also state, as soon as possible after the execution of the contract, the total expenditure actually incurred.

The information regarding a contract required under the third, fourth, fifth and sixth paragraphs must remain posted on the internet for at least three years after the date on which the information required under the sixth paragraph is posted.

“477.6. The list required under section 477.5 must be published on the municipality’s website or, if the municipality has none, on the website of the regional county municipality whose territory comprises that of the municipality.

If the regional county municipality has no website, the list must be published on another website, and the municipality shall give public notice of the address of that website at least once a year.

“477.7. No payment of more than 10% of a contract involving an expenditure of \$25,000 or more may be made before the information regarding the contract required under the third, fourth and fifth paragraphs of section 477.5 has been published.

Furthermore, no final payment may be made until the information required under the sixth paragraph of that section is also published.”

11. Section 573 of the Act is amended by inserting the following subsection after subsection 3:

“(3.1) Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1) and until the opening of tenders, no member of a council or officer or employee of the municipality may disclose information that may be used to determine the number of persons or the identity of the persons who have submitted a tender or requested a copy of the call for tenders or of a document to which it refers.”

12. Section 573.1.0.4 of the Act is amended by replacing “section 573.3.0.1” by “sections 573.3.0.1 and 573.3.1.1”.

13. Section 573.3.1 of the Act is amended by replacing “the regulation under section 573.3.0.1” in the first paragraph by “a regulation made under section 573.3.0.1 or 573.3.1.1”.

14. The Act is amended by inserting the following sections after section 573.3.1:

“573.3.1.1. In compliance with any intergovernmental agreement on the opening of public procurement applicable to the municipality, the Government may, by regulation, determine any authorization, condition or rule relating to the awarding of contracts, in addition to the authorizations, conditions or rules set out or provided for in this Act, to which a contract is subject, including a contract that is not described in any of the subparagraphs of the first paragraph of subsection 1 of section 573 or in section 573.3.0.2.

The regulation may prescribe categories of contracts, combine categories and determine different authorizations, conditions or rules relating to the awarding of contracts, according to the categories or combinations.

“573.3.1.2. Every municipality must adopt a contract management policy.

Such a policy is applicable to all contracts, including contracts that are not described in any of the subparagraphs of the first paragraph of subsection 1 of section 573 or in section 573.3.0.2.

The contract management policy must include

(1) measures to ensure that no tenderer or representative of a tenderer has communicated or attempted to communicate with a member of the selection committee in order to influence the member concerning the call for tenders for which the tenderer or representative submitted a tender;

(2) measures to ensure compliance with any applicable anti-bid-rigging legislation;

(3) measures to ensure compliance with the Lobbying Transparency and Ethics Act (chapter T-11.011) and the code of conduct for lobbyists adopted under that Act;

(4) measures to prevent intimidation, influence peddling and corruption;

(5) measures to prevent conflict of interest situations; and

(6) measures to prevent any other situation likely to compromise the impartiality or objectivity of the call for tenders or the management of the resulting contract.

Every municipality must make its policy available at all times by publishing it on the website on which it publishes the list required under section 477.5.

As regards non-compliance with a measure included in the contract management policy, section 573.3.4 applies only in the case of a contract for which the awarding process began after the date as of which the measure was included in the policy.”

15. Section 573.3.2 of the Act is amended by inserting “and the regulation under section 573.3.1.1” after “573.3.0.2” in the second paragraph.

16. Section 573.3.3.1 of the Act is amended by replacing “the regulation under section 573.3.0.1” by “a regulation under section 573.3.0.1 or 573.3.1.1”.

17. Section 573.3.4 of the Act is amended

(1) by inserting “who knowingly fails to comply with the prohibition set out in subsection 3.1 of section 573 or” after “A member of the board of directors” in the first paragraph;

(2) by replacing “set out” in the first paragraph by “or measures set out or provided for”;

(3) by replacing “or in the regulation made under section 573.3.0.1” in the first paragraph by “, in a regulation made under section 573.3.0.1 or 573.3.1.1 or in the policy adopted under section 573.3.1.2”.

MUNICIPAL CODE OF QUÉBEC

18. Article 620 of the Municipal Code of Québec (R.S.Q., chapter C-27.1) is amended

(1) by inserting “477.4 to 477.7,” after “477.2,” in the first paragraph;

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

“For the purposes of section 477.6 of the Cities and Towns Act, if the board does not have a website, the list described in the first paragraph of section 477.5 of that Act must be published on another website the board determines; the board shall give public notice of the address of that website at least once a year; the notice must be published in a newspaper in the territory of each municipality in whose territory the board has jurisdiction.”

19. Article 711.11.1 of the Code is amended

(1) by inserting “and 961.2 to 961.5” after “938.4”;

(2) by replacing “the regulation made under article 938.0.1” by “a regulation made under article 938.0.1 or 938.1.1”;

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

“The following modifications are among those applicable for the purposes of the first paragraph: if the legal person does not have a website, the list described in the first paragraph of article 961.3 must be published on another website the legal person determines; the legal person shall give public notice of the address of that website at least once a year; the notice must be published in a newspaper in the territory of each municipality that is a member of the legal person.”

20. Article 935 of the Code is amended by inserting the following subarticle after subarticle 3:

“(3.1) Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1) and until the opening of tenders, no member of the council or officer or employee of the municipality may disclose information that may be used to determine the number of persons or the identity of the persons who have submitted a tender or requested a copy of the call for tenders or of a document to which it refers.”

21. Article 936.0.4 of the Code is amended by replacing “article 938.0.1” by “articles 938.0.1 and 938.1.1”.

22. Article 938.1 of the Code is amended by replacing “the regulation under article 938.0.1” in the first paragraph by “a regulation under article 938.0.1 or 938.1.1”.

23. The Code is amended by inserting the following articles after article 938.1:

“938.1.1. In compliance with any intergovernmental agreement on the opening of public procurement applicable to the municipality, the Government may, by regulation, determine any authorization, condition or rule relating to the awarding of contracts, in addition to the authorizations, conditions or rules set out or provided for in this Act, to which a contract is subject, including a contract that is not described in any of the subparagraphs of the first paragraph of subarticle 1 of article 935 or in article 938.0.2.

The regulation may prescribe categories of contracts, combine categories and determine different authorizations, conditions or rules relating to the awarding of contracts, according to the categories or combinations.

“938.1.2. Every municipality must adopt a contract management policy.

Such a policy is applicable to all contracts, including contracts that are not described in any of the subparagraphs of the first paragraph of subarticle 1 of article 935 or in article 938.0.2.

The contract management policy must include

(1) measures to ensure that no tenderer or representative of a tenderer has communicated or attempted to communicate with a member of the selection committee in order to influence the member concerning the call for tenders for which the tenderer or representative submitted a tender;

(2) measures to promote compliance with any applicable anti-bid-rigging legislation;

(3) measures to ensure compliance with the Lobbying Transparency and Ethics Act (chapter T-11.011) and the code of conduct for lobbyists adopted under that Act;

(4) measures to prevent intimidation, influence peddling and corruption;

(5) measures to prevent conflict of interest situations; and

(6) measures to prevent any other situation likely to compromise the impartiality or objectivity of the call for tenders or the management of the resulting contract.

Every municipality must make its policy available at all times by publishing it on the website on which it publishes the list required under article 961.3.

As regards non-compliance with a measure included in the contract management policy, article 938.4 applies only in the case of a contract for which the awarding process began after the date as of which the measure was included in the policy.”

24. Article 938.2 of the Code is amended by inserting “and the regulation under article 938.1.1” after “938.0.2” in the second paragraph.

25. Article 938.3.1 of the Code is amended by replacing “the regulation under article 938.0.1” by “a regulation under article 938.0.1 or 938.1.1”.

26. Article 938.4 of the Code is amended

(1) by inserting “who knowingly fails to comply with the prohibition set out in subarticle 3.1 of article 935 or” after “A member of the board of directors” in the first paragraph;

(2) by replacing “set out” in the first paragraph by “or measures set out or provided for”;

(3) by replacing “or in the regulation made under article 938.0.1” in the first paragraph by “, in a regulation made under article 938.0.1 or 938.1.1 or in the policy adopted under article 938.1.2”.

27. The Code is amended by inserting the following articles after article 961.1:

“961.2. If a contract involves an expenditure of \$100,000 or more, the municipality must establish an estimate of the price before any tenders are opened or the contract is made.

“961.3. Every municipality must publish and keep up to date, on the internet, a list of the contracts it makes that involve an expenditure of \$25,000 or more. The list must be intelligible and easily accessible.

The Minister of Municipal Affairs, Regions and Land Occupancy may make rules concerning the form in which the list must be presented.

The list must be updated at least once a month. It must contain, in respect of each contract, the following information:

(1) if the contract involves an expenditure of \$100,000 or more, the price of the contract as estimated by the municipality in accordance with article 961.2;

(2) the price of the contract, the name of the person with whom it was made and, if the contract contains a renewal option, the total expenditure that would be incurred if all the options were exercised; and

(3) the object of the contract.

If the contract is subject to a rule governing the awarding of contracts set out in article 935 or 936 or in a regulation made under article 938.0.1 or 938.1.1, the list must also contain

(1) the name of each tenderer;

(2) the amount of each tender; and

(3) the identification of the tenders that are considered to conform to requirements.

If the contract is made by mutual agreement, the list must mention, if applicable, the legislative provision or the provision of the regulation made under article 938.0.1 under which the contract could be awarded without a call for tenders.

In all cases, the list must also state, as soon as possible after the execution of the contract, the total expenditure actually incurred.

The information regarding a contract required under the third, fourth, fifth and sixth paragraphs must remain posted on the internet for at least three years after the date on which the information required under the sixth paragraph is posted.

“961.4. The list required under article 961.3 must be published on the municipality’s website or, in the case of a local municipality that does not have a website, on the website of the regional county municipality whose territory comprises that of the local municipality.

If the regional county municipality has no website, the list must be published on another website, and the municipality shall give public notice of the address of that website at least once a year.

“961.5. No payment of more than 10% of a contract involving an expenditure of \$25,000 or more may be made before the information regarding the contract required under the third, fourth and fifth paragraphs of article 961.3 has been published.

Furthermore, no final payment may be made until the information required under the sixth paragraph of that article is also published.”

ACT RESPECTING THE COMMUNAUTÉ MÉTROPOLITAINE DE MONTRÉAL

28. The Act respecting the Communauté métropolitaine de Montréal (R.S.Q., chapter C-37.01) is amended by inserting the following sections after section 105:

“105.1. If a contract involves an expenditure of \$100,000 or more, the Community must establish an estimate of the price before any tenders are opened or the contract is entered into.

“105.2. The Community must publish and keep up to date, on the internet, a list of the contracts it enters into that involve an expenditure of \$25,000 or more. The list must be intelligible and easily accessible.

The Minister may make rules concerning the form in which the list must be presented.

The list must be updated at least once a month. It must contain, in respect of each contract, the following information:

(1) if the contract involves an expenditure of \$100,000 or more, the price of the contract as estimated by the Community in accordance with section 105.1;

(2) the price of the contract, the name of the person with whom it was entered into and, if the contract contains a renewal option, the total expenditure that would be incurred if all the options were exercised; and

(3) the object of the contract.

If the contract is subject to a rule governing the awarding of contracts set out in section 106 or in a regulation made under section 112.1 or 113.1, the list must also contain

(1) the name of each tenderer;

(2) the amount of each tender; and

(3) the identification of the tenders that are considered to conform to requirements.

If the contract is entered into by mutual agreement, the list must mention, if applicable, the legislative provision or the provision of the regulation made under section 112.1 under which the contract could be awarded without a call for tenders.

In all cases, the list must also state, as soon as possible after the execution of the contract, the total expenditure actually incurred.

The information regarding a contract required under the third, fourth, fifth and sixth paragraphs must remain posted on the internet for at least three years after the date on which the information required under the sixth paragraph is posted.

“105.3. The list required under section 105.2 must be published on the Community’s website.

“105.4. No payment of more than 10% of a contract involving an expenditure of \$25,000 or more may be made before the information regarding the contract required under the third, fourth and fifth paragraphs of section 105.2 has been published.

Furthermore, no final payment may be made until the information required under the sixth paragraph of that section is also published.”

29. Section 108 of the Act is amended by inserting the following sentence at the beginning of the sixth paragraph: “Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1) and until the opening of tenders, no member of the council or employee of the Community may disclose information that may be used to determine the number of persons or the identity of the persons who have submitted a tender or requested a copy of the call for tenders or of a document to which it refers.”

30. Section 112 of the Act is amended by replacing “section 112.1” by “sections 112.1 and 113.1”.

31. Section 113 of the Act is amended by replacing “the regulation under section 112.1” in the first paragraph by “a regulation under section 112.1 or 113.1”.

32. The Act is amended by inserting the following sections after section 113:

“113.1. In compliance with any intergovernmental agreement on the opening of public procurement applicable to the Community, the Government may, by regulation, determine any authorization, condition or rule relating to

the awarding of contracts, in addition to the authorizations, conditions or rules set out or provided for in this Act, to which a contract is subject, including a contract that is not described in any of the subparagraphs of the first paragraph of section 106 or in section 112.2.

The regulation may prescribe categories of contracts, combine categories, determine different authorizations, conditions or rules relating to the awarding of contracts, according to the categories or combinations.

“113.2. The Community must adopt a contract management policy.

Such a policy is applicable to all contracts, including contracts that are not described in any of the subparagraphs of the first paragraph of section 106 or in section 112.2.

The contract management policy must include

(1) measures to ensure that no tenderer or representative of a tenderer has communicated or attempted to communicate with a member of the selection committee in order to influence the member concerning the call for tenders for which the tenderer or representative submitted a tender;

(2) measures to promote compliance with any applicable anti-bid-rigging legislation;

(3) measures to ensure compliance with the Lobbying Transparency and Ethics Act (chapter T-11.011) and the code of conduct for lobbyists adopted under that Act;

(4) measures to prevent intimidation, influence peddling and corruption;

(5) measures to prevent conflict of interest situations; and

(6) measures to prevent any other situation likely to compromise the impartiality or objectivity of the call for tenders or the management of the resulting contract.

The Community must make its policy available at all times by publishing it on its website.

As regards non-compliance with a measure included in the contract management policy, section 118.2 applies only in the case of a contract for which the awarding process began after the date as of which the measure was included in the policy.”

33. Section 114 of the Act is amended by inserting “and the regulation under section 113.1” after “112.2” in the second paragraph.

34. Section 118.2 of the Act is amended

(1) by inserting “who knowingly fails to comply with the prohibition set out in the sixth paragraph of section 108 or” after “A member of the board of directors” in the first paragraph;

(2) by replacing “set out” in the first paragraph by “or measures set out or provided for”;

(3) by replacing “or in the regulation made under section 112.1” in the first paragraph by “, in a regulation made under section 112.1 or 113.1 or in the policy adopted under section 113.2”.

ACT RESPECTING THE COMMUNAUTÉ MÉTROPOLITAINE DE QUÉBEC

35. The Act respecting the Communauté métropolitaine de Québec (R.S.Q., chapter C-37.02) is amended by inserting the following sections after section 98:

“98.1. If a contract involves an expenditure of \$100,000 or more, the Community must establish an estimate of the price before any tenders are opened or the contract is entered into.

“98.2. The Community must publish and keep up to date, on the internet, a list of the contracts it enters into that involve an expenditure of \$25,000 or more. The list must be intelligible and easily accessible.

The Minister may make rules concerning the form in which the list must be presented.

The list must be updated at least once a month. It must contain, in respect of each contract, the following information:

(1) if the contract involves an expenditure of \$100,000 or more, the price of the contract as estimated by the Community in accordance with section 98.1;

(2) the price of the contract, the name of the person with whom it was entered into and, if the contract contains a renewal option, the total expenditure that would be incurred if all the options were exercised; and

(3) the object of the contract.

If the contract is subject to a rule governing the awarding of contracts set out in section 99 or in the regulation made under section 105.1 or 106.1, the list must also contain

(1) the name of each tenderer;

(2) the amount of each tender; and

(3) the identification of the tenders that are considered to conform to requirements.

If the contract is entered into by mutual agreement, the list must mention, if applicable, the legislative provision or the provision of the regulation made under section 105.1 under which the contract could be awarded without a call for tenders.

In all cases, the list must also state, as soon as possible after the execution of the contract, the total expenditure actually incurred.

The information regarding a contract required under the third, fourth, fifth and sixth paragraphs must remain posted on the internet for at least three years after the date on which the information required under the sixth paragraph is posted.

“98.3. The list required under section 98.2 must be published on the Community’s website.

“98.4. No payment of more than 10% of a contract involving an expenditure of \$25,000 or more may be made before the information regarding the contract required under the third, fourth and fifth paragraphs of section 98.2 has been published.

Furthermore, no final payment may be made until the information required under the sixth paragraph of that section is also published.”

36. Section 101 of the Act is amended by inserting the following sentence at the beginning of the sixth paragraph: “Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1) and until the opening of tenders, no member of the council or employee of the Community may disclose information that may be used to determine the number of persons or the identity of the persons who have submitted a tender or requested a copy of the call for tenders or of a document to which it refers.”

37. Section 105 of the Act is amended by replacing “section 105.1” by “sections 105.1 and 106.1”.

38. Section 106 of the Act is amended by replacing “the regulation under section 105.1” in the first paragraph by “a regulation under section 105.1 or 106.1”.

39. The Act is amended by inserting the following sections after section 106:

“106.1. In compliance with any intergovernmental agreement on the opening of public procurement applicable to the Community, the Government may, by regulation, determine any authorization, condition or rule relating to the awarding of contracts, in addition to the authorizations, conditions or rules set out or provided for in this Act, to which a contract is subject, including a contract that is not described in any of the subparagraphs of the first paragraph of section 99 or in section 105.2.

The regulation may prescribe categories of contracts, combine categories and determine different authorizations, conditions or rules relating to the awarding of contracts, according to the categories or combinations.

“106.2. The Community must adopt a contract management policy.

Such a policy is applicable to all contracts, including contracts that are not described in any of the subparagraphs of the first paragraph of section 99 or in section 105.2.

The contract management policy must include

(1) measures to ensure that no tenderer or representative of a tenderer has communicated or attempted to communicate with a member of the selection committee in order to influence the member concerning the call for tenders for which the tenderer or representative submitted a tender;

(2) measures to promote compliance with any applicable anti-bid-rigging legislation;

(3) measures to ensure compliance with the Lobbying Transparency and Ethics Act (chapter T-11.011) and the code of conduct for lobbyists adopted under that Act;

(4) measures to prevent intimidation, influence peddling and corruption;

(5) measures to prevent conflict of interest situations; and

(6) measures to prevent any other situation likely to compromise the impartiality or objectivity of the call for tenders or the management of the resulting contract.

The Community must make its policy available at all times by publishing it on its website.

As regards non-compliance with a measure included in the policy, section 111.2 applies only in the case of a contract for which the awarding process began after the date as of which the measure was included in the policy.”

40. Section 107 of the Act is amended by inserting “and the regulation made under section 106.1” after “105.2” in the second paragraph.

41. Section 111.2 of the Act is amended

(1) by inserting “who knowingly fails to comply with the prohibition set out in the sixth paragraph of section 101 or” after “A member of the board of directors” in the first paragraph;

(2) by replacing “set out” in the first paragraph by “or measures set out or provided for”;

(3) by replacing “or in the regulation made under section 105.1” in the first paragraph by “, in a regulation made under section 105.1 or 106.1 or in the policy adopted under section 106.2”.

MUNICIPAL POWERS ACT**42.** Section 17.3 of the Municipal Powers Act (R.S.Q., chapter C-47.1) is amended

(1) by inserting “477.4 to 477.7 and” before “573”;

(2) by inserting “and 961.2 to 961.5” after “938.4”;

(3) by adding the following sentence at the end: “The operator is deemed to be a municipality for the purposes of a regulation made under section 573.3.0.1 or 573.3.1.1 of the Cities and Towns Act or article 938.0.1 or 938.1.1 of the Municipal Code of Québec, as the case may be.”;

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

“The following modifications are among those applicable for the purposes of the first paragraph: if the operator does not have a website, the list described in the first paragraph of section 477.5 of the Cities and Towns Act or article 961.3 of the Municipal Code of Québec must be published on another website the operator determines; the operator shall give public notice of the address of that website at least once a year; the notice must be published in a newspaper in the territory of each local municipality or regional county municipality referred to in the first paragraph.”

43. Section 111.0.2 of the Act is amended

(1) by inserting “477.4 to 477.7 and” before “573”;

(2) by inserting “and 961.2 to 961.5” after “938.4”;

(3) by adding the following sentence at the end: “The operator is deemed to be a municipality for the purposes of a regulation made under section 573.3.0.1 or 573.3.1.1 of the Cities and Towns Act or article 938.0.1 or 938.1.1 of the Municipal Code of Québec, as the case may be.”;

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

“The following modifications are among those applicable for the purposes of the first paragraph: if the operator does not have a website, the list described in the first paragraph of section 477.5 of the Cities and Towns Act or article 961.3 of the Municipal Code of Québec must be published on another website the operator determines; the operator shall give public notice of the address of that website at least once a year; the notice must be published in a newspaper in the territory of each local municipality or regional county municipality referred to in the first paragraph.”

44. Section 119 of the Act is amended

(1) by inserting “and articles 961.2 to 961.5 of that Code” after “contracts,” in the first paragraph;

(2) by replacing “the regulation made under article 938.0.1” in the second paragraph by “a regulation made under article 938.0.1 or 938.1.1”;

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

“The following modifications are among those applicable for the purposes of the first paragraph: if the person referred to in section 117 does not have a website, the list described in the first paragraph of article 961.3 of the Municipal Code of Québec must be published on another website the person determines; the person shall give public notice of the address of that website at least once a year; the notice must be published in a newspaper in the territory of the regional county municipality.”

**ACT RESPECTING THE MINISTÈRE DES AFFAIRES MUNICIPALES,
DES RÉGIONS ET DE L'OCCUPATION DU TERRITOIRE**

45. Section 12 of the Act respecting the Ministère des Affaires municipales, des Régions et de l'Occupation du territoire (R.S.Q., chapter M-22.1) is amended

(1) by replacing “to a municipal council” by “to the council of a municipal body”;

(2) by replacing “the municipality” by “the body”.

46. Section 13 of the Act is replaced by the following section:

“13. Any advice or recommendation referred to in section 12 shall be sent to the most senior officer and to the secretary of the municipal body by registered or certified mail. The most senior officer and the secretary shall refer any advice or recommendation received to the council at its next

regular sitting. If the advice or recommendation is sent to a municipal body other than a local municipality, the Minister shall send a copy to any local municipality with ties to the municipal body.

If the Minister so orders in the letter sent by registered or certified mail, the secretary shall publish the letter or, as applicable, a summary provided by the Minister, in the manner prescribed for the publication of the public notices of the municipal body or, if no publication rules exist, in the manner prescribed by the Minister.

For the purposes of this section,

“most senior officer” means, in the case of a local municipality, a regional county municipality or a metropolitan community and any other municipal body, the mayor, warden, or chair, respectively;

“secretary” means

(1) in the case of a local municipality or a regional county municipality, the secretary-treasurer or the clerk; or

(2) in the case of a metropolitan community or any other municipal body, the secretary.”

47. Section 14 of the Act is amended by replacing the first sentence of the first paragraph by the following sentence: “The Minister may, following a verification under section 15 or an investigation under section 16 or under subsection 1 of section 22 of the Act respecting the Commission municipale (chapter C-35), give instructions to the council of the municipal body that was the object of the verification or investigation.”

48. The Act is amended by inserting the following section after section 14:

“**14.1.** The Minister shall post any advice, recommendation or instruction given under section 12 or 14 on the department’s website.”

49. Section 15 of the Act is amended

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

“**15.** A person designated in writing by the Minister to conduct a verification may, in order to ascertain that the Acts under the responsibility of the Minister are being properly enforced,

(1) enter the office of a municipal body at any reasonable time;

(2) examine and make a copy of any document relating to the affairs of the municipal body; and

(3) require from any public servant, employee or member of the council of the municipal body, any information or document relating to the application of the Acts under the responsibility of the Minister.”;

(2) by inserting the following paragraph after the first paragraph:

“A person having custody, possession or control of such documents must, on request, make them available to the person designated by the Minister.”;

(3) by replacing “all municipalities or envisage only one or a certain group of them” in the second paragraph by “all municipal bodies or envisage only one or a certain group of them”;

(4) by replacing the third paragraph by the following paragraph:

“A designated person who conducts a verification shall make a report to the Minister.”

50. Section 16 of the Act is amended

(1) by replacing “a public servant of the department to inquire into” by “a person to investigate”;

(2) by replacing “of a municipality” by “of a municipal body”.

51. The Act is amended by inserting the following section after section 16:

“**16.1.** Despite any general law or special Act, persons designated under section 15 or 16 may not be compelled to give testimony relating to information obtained in the performance of their duties or to produce a document containing such information.

Such persons may not be prosecuted by reason of an act they have done or failed to do in good faith in the performance of their duties.

Except on a question of jurisdiction, no recourse under article 33 of the Code of Civil Procedure (chapter C-25) or extraordinary recourse within the meaning of that Code may be exercised nor an injunction granted against persons designated under section 15 or 16, if acting in their official capacity.

A judge of the Court of Appeal may, on a motion, summarily annul any proceeding instituted or decision rendered contrary to the first paragraph.”

52. Section 17 of the Act is amended

(1) by replacing “A public servant designated” by “A person designated”;

(2) by replacing “the visited municipality” by “the visited municipal body”.

53. The Act is amended by inserting the following section after section 17:

“17.0.1. For the purposes of sections 12 to 17, “municipal body” means a legal person described in section 107.7 of the Cities and Towns Act (chapter C-19) or a municipal body within the meaning of section 5 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1) or section 307 of the Act respecting elections and referendums in municipalities (chapter E-2.2).”

ACT RESPECTING PUBLIC TRANSIT AUTHORITIES

54. The Act respecting public transit authorities (R.S.Q., chapter S-30.01) is amended by inserting the following sections before section 93:

“92.1. If a contract involves an expenditure of \$100,000 or more, the transit authority must establish an estimate of the price before any tenders are opened or the contract is entered into.

“92.2. The transit authority must publish and keep up to date on the internet, a list of the contracts it enters into that involve an expenditure of \$25,000 or more. The list must be intelligible and easily accessible.

The Minister of Municipal Affairs, Regions and Land Occupancy may make rules concerning the form in which the list must be presented.

The list must be updated at least once a month. It must contain, in respect of each contract, the following information:

(1) if the contract involves an expenditure of \$100,000 or more, the price of the contract as estimated by the transit authority in accordance with section 92.1;

(2) the price of the contract, the name of the person with whom it was entered into, and, if the contract contains a renewal option, the total expenditure that would be incurred if all the options were exercised; and

(3) the object of the contract.

If the contract is subject to a rule governing the awarding of contracts set out in section 93 or in the regulation under section 100 or 103.1, the list must also contain

(1) the name of each tenderer;

(2) the amount of each tender; and

(3) the identification of the tenders that are considered to conform to requirements.

If the contract is entered into by mutual agreement, the list must mention, if applicable, the legislative provision or the provision of the regulation under section 100 under which the contract could be awarded without a call for tenders.

In all cases, the list must also state, as soon as possible after the execution of the contract, the total expenditure actually incurred.

The information regarding a contract required under the third, fourth, fifth and sixth paragraphs must remain posted on the internet for at least three years after the date on which the information required under the sixth paragraph is posted.

“92.3. The list required under section 92.2 must be published on the transit authority’s website.

“92.4. No payment of more than 10% of a contract involving an expenditure of \$25,000 or more may be made before the information regarding the contract required under the third, fourth and fifth paragraphs of section 92.2 has been published.

Furthermore, no final payment may be made until the information required under the sixth paragraph of that section is also published.”

55. Section 95 of the Act is amended by inserting the following sentence at the beginning of the sixth paragraph: “Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1) and until the opening of tenders, no member of the board of directors or employee of the transit authority may disclose information that may be used to determine the number of persons or the identity of the persons who have submitted a tender or requested a copy of the call for tenders or of a document to which it refers.”

56. Section 99 of the Act is amended by replacing “section 100” by “sections 100 and 103.1”.

57. Section 103 of the Act is amended by replacing “with the regulation provided for in section 100” in the first paragraph by “with a regulation made under section 100 or 103.1”.

58. The Act is amended by inserting the following sections after section 103:

“103.1. In compliance with any intergovernmental agreement on the opening of public procurement applicable to the transit authority, the Government may, by regulation, determine any authorization, condition or rule relating to the awarding of contracts, in addition to the authorizations, conditions or rules set out or provided for in this Act, to which a contract is subject, including a contract that is not described in any of the subparagraphs of the first paragraph of section 93 or in section 101.

The regulation may prescribe categories of contracts, combine categories, determine different authorizations, conditions or rules relating to the awarding of contracts, according to the categories or combinations.

“103.2. A transit authority must adopt a contract management policy.

Such a policy is applicable to all contracts, including contracts that are not described in any of the subparagraphs of the first paragraph of section 93 or in section 101.

The contract management policy must include

(1) measures to ensure that no tenderer or representative of a tenderer has communicated or attempted to communicate with a member of the selection committee in order to influence the member concerning the call for tenders for which the tenderer or representative submitted a tender;

(2) measures to promote compliance with applicable anti-bid-rigging legislation;

(3) measures to ensure compliance with the Lobbying Transparency and Ethics Act (chapter T-11.011) and the code of conduct for lobbyists adopted under that Act;

(4) measures to prevent intimidation, influence peddling and corruption;

(5) measures to prevent conflict of interest situations; and

(6) measures to prevent any other situation likely to compromise the impartiality or objectivity of the call for tenders or the management of the resulting contract.

The transit authority must make its policy available at all times by publishing it on its website.

As regards non-compliance with a measure included in the contract management policy, section 108.2 applies only in the case of a contract for which the awarding process began after the date as of which the measure was included in the policy.”

59. Section 104 of the Act is amended by inserting “and the regulation made under section 103.1” after “101” in the second paragraph.

60. Section 108.2 of the Act is amended

(1) by inserting “who knowingly fails to comply with the prohibition set out in the sixth paragraph of section 95 or” after “A member of the board of directors” in the first paragraph;

(2) by replacing “set out” in the first paragraph by “or measures set out or provided for”;

(3) by replacing “or in the regulation made under section 100” in the first paragraph by “, in a regulation made under section 100 or 103.1 or in the policy adopted under section 103.2”.

61. Section 262 of the Act is amended by replacing “93” by “92.1”.

TRANSITIONAL AND FINAL PROVISIONS

62. Section 477.4 of the Cities and Towns Act (R.S.Q., chapter C-19), article 961.2 of the Municipal Code of Québec (R.S.Q., chapter C-27.1), section 105.1 of the Act respecting the Communauté métropolitaine de Montréal (R.S.Q., chapter C-37.01), section 98.1 of the Act respecting the Communauté métropolitaine de Québec (R.S.Q., chapter C-37.02) and section 92.1 of the Act respecting public transit authorities (R.S.Q., chapter S-30.01), enacted by sections 10, 27, 28, 35 and 54, apply to any case where the process for awarding the contract began after 1 September 2010.

63. Sections 477.5 and 477.7 of the Cities and Towns Act, articles 961.3 and 961.5 of the Municipal Code of Québec, sections 105.2 and 105.4 of the Act respecting the Communauté métropolitaine de Montréal, sections 98.2 and 98.4 of the Act respecting the Communauté métropolitaine de Québec and sections 92.2 and 92.4 of the Act respecting public transit authorities, enacted by sections 10, 27, 28, 35 and 54, apply to any contract entered into on or after 1 September 2010.

64. The contract management policy required under section 573.3.1.2 of the Cities and Towns Act, article 938.1.2 of the Municipal Code of Québec, section 113.2 of the Act respecting the Communauté métropolitaine de Montréal, section 106.2 of the Act respecting the Communauté métropolitaine de Québec or section 103.2 of the Act respecting public transit authorities, enacted by sections 14, 23, 32, 39 and 58, must be adopted not later than 1 September 2010.

65. Not later than 1 September 2010, every municipality must publish the list described in section 474.1 of the Cities and Towns Act or article 955 of the Municipal Code of Québec and tabled in 2008 and 2009 on the same website as the one on which the list provided for in section 477.5 of the Cities and Towns Act or article 961.3 of the Municipal Code of Québec, enacted by sections 10 and 27, must be published.

66. If a municipality, a metropolitan community, a public transit authority or another person to whom section 477.5 of the Cities and Towns Act or article 961.3 of the Municipal Code of Québec, enacted respectively by sections 10 and 27, applies makes an application to the Minister of Municipal Affairs, Regions and Land Occupancy before 1 September 2010, the Minister may replace the date of 1 September 2010 specified in section 63 or 65 by a later date for that applicant.

67. This Act comes into force on 1 March 2010, except section 11, paragraph 1 of section 17, section 20, paragraph 1 of section 26, section 29, paragraph 1 of section 34, section 36, paragraph 1 of section 41, section 55 and paragraph 1 of section 60, which come into force on 1 September 2010.