

AMF Authorization Required to Enter Into Certain Public Contracts

BY OUR BUSINESS LAW GROUP

The *Integrity in Public Contracts Act* (the "Act"), that came into force on December 7, 2012, requires that enterprises henceforth obtain the prior authorization of the *Autorité des marchés financiers* (Financial Markets Authority) (the "Authority") in order to be eligible to enter into certain public contracts or subcontracts.¹

This authorization will be granted following an investigation in respect of the information provided by the enterprise to the Authority. The investigation is carried out in cooperation with the *Unité permanente anticorruption* [Permanent Anti Corruption Unit].

Do not hesitate to contact a member of our team for further information or for assistance in submitting your application for authorization.

ENTERPRISES SUBJECT TO NEW REQUIREMENTS

In light of the number of enterprises likely to apply for this authorization, the Government of Québec has provided for a phasing in of the Act and will determine by Order in Council the types of contracts and subcontracts subject to the prior authorization requirement from the Authority.

For the time being, the only enterprises required to obtain an authorization are those participating or wishing to participate in the award process for certain types of public contracts or subcontracts, which process must be underway on January 15, 2013 or begin after that date. The subject contracts are the following:

- i. Construction or service contracts that involve an expenditure equal to or greater than \$40 million;
- ii. Subcontracts directly or indirectly related to the construction or service contracts mentioned above and that involve an expenditure equal to or greater than \$40 million;

- iii. Certain contracts of the City of Montreal involving an expenditure of less than \$40 million.²

In addition to the contracts referred to above, the Government will determine other categories of public contracts or subcontracts for which enterprises will also be required to obtain the authorization of the Authority even if the value of said contracts or subcontracts involves an expenditure of less than \$40 million.

APPLICABLE PUBLIC BODIES

Public bodies subject to the obligation to require that enterprises obtain the authorization of the Authority include, among others, crown corporations, departments of the Government of Québec, municipalities, school boards, CEGEPs, universities, as well as health and social services agencies.

AUTHORIZATION PROCEDURE

The Authority will refuse to grant or renew an enterprise's authorization where any of the enterprise's shareholders holding 50% or more of voting rights, or any of the enterprise's directors or officers has, in the preceding five years, been found guilty of an offence listed in Schedule I of the Act. Schedule I includes, among others, offences under the *Criminal Code*, the *Competition Act*, the *Income Tax Act*, the *Excise Tax Act* and the *Act respecting labour relations, vocational training and workforce management in the construction industry*.

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The Authority may also refuse to grant or to renew an enterprise's authorization, or may revoke it, if it considers that public confidence may be affected by the lack of integrity of the enterprise, of any of its partners, directors or officers or of any other enterprise that has direct or indirect legal or *de facto* control over the enterprise.

Where an enterprise's application for authorization is refused, the enterprise will have the opportunity to submit written observations and provide additional documents to complete its file.

The authorization will be valid for a period of three years, unless it is revoked. A register of authorized enterprises or persons will be created which will replace the register of ineligible enterprises.

Generally speaking, an enterprise that responds to a call for tenders for a public contract or subcontract must have obtained an authorization on the date it submits its bid, unless the call for tenders specifies a different date which precedes the date on which the contract is to be entered into. In the case of a consortium, every enterprise in the consortium must hold an authorization on that date.

Clearly, the new Act may have serious consequences for any enterprise deriving income from public contracts or subcontracts.

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¹ The text of this article is drawn in part from the text of the Integrity in Public Contracts Act, S.Q. 2012, c. 25, and from *Présenter une demande d'autorisation en vue de la conclusion d'un contrat/sous-contrat public — Guide à l'intention des entreprises* (Applying for an Authorization to Enter Into a Public Contract or Subcontract — A Handbook for Enterprises), available on the Authority's website: <www.lautorite.qc.ca/files/pdf/contrats-public/Guide-accompagnement_LCOP.pdf>.

² These contracts are described in the Order in Council 1226-2012, G.O.Q. 2013.II.56, a copy of which is available at: <www.lautorite.qc.ca/files/pdf/reglementation/contrats-publics/D-1226-2012-mtl-en.pdf>. For these contracts, a preliminary application for authorization must be submitted by each tenderer to the Authority no later than the deadline for submitting bids.

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