Bill 37: What changes can be expected for Public Contracts?

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On September 18, 2019, the Minister Responsible for Government Administration and Chair of the Conseil du trésor introduced Bill 37, *An Act mainly to establish the Centre d'acquisitions gouvernementales et Infrastructures technologiques Québec*[1]

As its name suggests, this bill is intended to implement the restructuring of government procurement announced in the 2019–2020 budget[2]. If the bill is passed, the Centre de services partagés du Québec (CSPQ), as well as some other procurement organizations, will be replaced by two bodies: the Centre d'acquisitions gouvernementales will be the organization responsible for meeting the government's general procurement needs, and Infrastructures technologiques Québec will handle its digital procurement.

In 2017–2018, information technology contracts accounted for 17% of public body contracts[3]. Some administrative functions of the CSPQ would also be transferred to the Agence du revenu du Québec and the Conseil du trésor.

Bill 37 also makes a number of amendments to the *Act respecting contracting by public bodies*, CQLR c. C-65.1, and its regulations, two of which are noteworthy.

It is planned that, as of April 1, 2020, information relating to contracts involving an expenditure of more than $10,000, whether reached by mutual agreement or following a call for tenders, will have to be published in the electronic tendering system. The current limit is $25,000[4].

The bill also provides that, as of the date its assent (currently scheduled for the end of 2019), the imposition of a penalty for a final reassessment under the general anti-avoidance rule regarding an abusive tax avoidance transaction[5] on the part of a company or related person will be recorded in the Register of Enterprises Ineligible for Public Contracts for five years.

Such penalties will also be considered by the Autorité des marchés publics in its decision to authorize a contract with a public body.

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A 60-day transitional period is provided for in Bill 37, during which a taxpayer may make a late preventive disclosure to the Minister of Revenue[6] by filing the form *Mandatory or preventive disclosure of tax planning* (TP-1079.DI-V). However, this type of disclosure will not be accepted if an audit by the Agence du revenu du Québec or the Canada Revenue Agency is already ongoing with respect to such a transaction. This measure is part of the current fight against aggressive tax planning[7].

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1. Quebec (National Assembly), Bill 37, *An Act mainly to establish the Centre d'acquisitionsgouvernementales and Infrastructures technologiques Québec*, 42nd Legislature, 1st Session.
2. Quebec (Conseil du trésor), *2019–2020 Budget Plan* (Quebec, Off. Publ., March 2019), p. H.61.
3. Québec (Conseil du trésor), Statistiques sur les contrats des organismes publics 2017–2018 (Québec, Direction de la reddition de comptes et du soutien à l'encadrement des contrats publics, March 2019), p. 1.
4. Sections 22 and 23 of the *Act respecting contracting by public bodies*, CQLR c. C-65.1; sections 39 and 39.2 of the *Regulation respecting supply contracts of public bodies*, CQLR c. C-65.1, r. 2; sections 52 and 52.2 of the *Regulation respecting service contracts of public bodies*, CQLR c. C-65.1, r. 4; sections 42 and 42.2 of the *Regulation respecting construction contracts of public bodies*, CQLR c. C-65.1, r. 5; sections 73 and 75 of the *Regulation respecting contracting by public bodies in the field of information technologies*, CQLR c. C-65.1, r. 5.1.
5. Sections 1079.13.1 and 1079.13.2 of the *Taxation Act*, CQLR c. I-3.
6. Section 1079.8.7.1 of the *Taxation Act*, CQLR c. I-3.
7. See, in particular, Quebec (Conseil du trésor), 2019–2020 Budget Plan (Quebec, Off. Publ., March 2019), p. D.81.

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