



[This is an English version of the Summary Statement transmitted in French to the City Council and the Agglomeration Council]

Recommendation report regarding the expansion and renovation of the Pierrefonds Library (call for tenders #5887)

(Art. 57.1.23 de la *Charter of Ville de Montréal, metropolis of Québec*)

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Office of Inspector General
1550 Metcalfe Street, Suite 1200
Montréal (Québec) H3A 1X6
Phone: 514 280-2800
Fax : 514 280-2877

BIG@bigmtl.ca

www.bigmtl.ca

Montréal 

SUMMARY STATEMENT

The Office of Inspector General conducted an investigation after receiving a declaration to the effect that the company "Les Constructions Lavacon Inc." demanded a discount from its subcontractors during the execution of change orders for the work of expansion and renovation of the Pierrefonds Library. This work was part of a program set up several years ago to increase and improve the library service offering in Montréal.

Following the call for tenders launched on January 11, 2017, "Les Constructions Lavacon Inc." was declared the lowest bidder with an amount of 20 350 614.02 \$. Construction began in spring 2017 and ended in fall 2018, during which thirty (30) subcontractors worked on the project under the responsibility of "Les Constructions Lavacon Inc."

As part of its investigation, the Office of Inspector General met with ten (10) subcontractors who performed work at the Pierrefonds Library. The investigation revealed that "Les Constructions Lavacon Inc." concluded an agreement with each of them, by which these subcontractors undertook to give the company a discount (a "incentive") of 5 to 15% of the value of their work for each change order.

The investigation showed that discounts' payments were made in the same way for all subcontractors. When a change order was issued, subcontractors would send their estimate to "Les Constructions Inc. Lavacon", who then presented it to Ville de Montréal's representatives on this project. Once it was accepted, the company would send subcontractors a purchase order cut by an amount equal to the discount included in the agreement. After work was completed, subcontractors would send their invoice for the same amount as listed in the purchase order.

At no time were the City project managers aware of such an agreement, and it would have been impossible for them to know of its existence since subcontractors were under the responsibility of the general contractor. Indeed, for change orders, "Les Constructions Lavacon Inc." had to register on the form provided for this purpose in the contract the amount submitted by the subcontractor for their execution. The contract thus provided a mechanism for Ville de Montréal to see the amount that would be paid to the subcontractor. The discounts' method of payment allowed "Les Constructions Lavacon Inc." to avoid paying out the true value of the work performed by its subcontractors while demanding full payment from the City.

The investigation also showed that for each of the subcontractors interviewed, these agreements were concluded shortly after the contract was awarded to "Les Constructions Lavacon Inc." by Ville de Montréal and were in effect for the duration of the work on the library.

Subcontractors' testimonies collected during the investigation showed that "Les Constructions Lavacon Inc." had integrated the agreement in its subcontractors' contract. Among them, four (4) subcontractors confirmed that the agreement was imposed on them,



even though two (2) of them didn't signed the agreement in their contract. For example, a subcontractor explained that an employee of "Les Constructions Lavacon Inc." told him that the discount would be applied to the purchase orders even if he refused to sign the agreement.

Four (4) subcontractors confirmed they raised prices of their estimate for change orders to compensate for the discount to be granted to "Les Constructions Lavacon Inc.". They specified that the increase was in the same amount as that of the discount.

From a contractual standpoint, the Inspector General concluded that Ville de Montréal did not pay the fair price it should have for subcontractors' work during change orders due to these agreements. The general contractor's actions caused an increase in costs for the City during change orders.

As explained by one subcontractor, the imposition of the discount meant that almost all their profit was lost because of the amount to be given to the general contractor. These losses were impossible to absorb for the subcontractor, forcing them to raise the price of their estimates.

Two (2) of the four (4) subcontractors mentioned above indicated that it was an employee of "Les Constructions Lavacon Inc." who told them to raise the amount of the estimates to offset the discount. To this end, a subcontractor confirmed that they produced two estimates for change orders, namely one with an increased amount including the discount and one with the regular amount kept for their files.

Finally, by these agreements with its subcontractors, "Les Constructions Lavacon Inc." did not fulfill its duty to act in its client's best interests. These agreements placed the company in a situation of conflict between its own interests and those of Ville de Montréal, since it stood to gain financially from the change orders being made at the highest possible price due to the proportional discount.

In conclusion, the Inspector General is of the view that such a situation can not be tolerated at Ville de Montréal and that the acts of "Les Constructions Lavacon Inc." constitute a fraudulent practice under the Contract Management Regulations during contract administration. The Inspector General recommends that the company be added to the Register of Persons Excluded Pursuant to the Contract Management Regulations for a period of five (5) years.