



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

**Recommendation report regarding the awarding process for the new indoor pool complex at the Centre Rosemont (calls for tenders 16-15580 and No. 5846)**

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

February 25, 2019

Bureau de l'inspecteur général  
1550, rue Metcalfe, bureau 1200  
Montréal (Québec) H3A 1X6  
Téléphone : 514 280-2800  
Télécopieur : 514 280-2877

[BIG@bigmtl.ca](mailto:BIG@bigmtl.ca)

[www.bigmtl.ca](http://www.bigmtl.ca)

Montréal 



## SUMMARY STATEMENT

*This report concerns the awarding process relating to the construction of the new indoor pool complex at the Centre Rosemont, tender No. 5846.*

*Following the adoption of Montreal Aquatic Intervention Plan in 2013, Ville de Montréal has implemented one of its components in recent years, namely Montreal Aquatic Program – section regarding the construction of indoor aquatic equipment. The program aims in particular to select, organize, and support the boroughs financially for the construction of new indoor aquatic equipment projects.*

*Ville de Montréal expects to initiate the construction of five (5) of new aquatic centers in the coming years, including the Centre Rosemont project which is the subject of this report, representing budgeted investments of more than \$ 150 million.*

*The investigation by the Office of Inspector General focused on the issue of the choice of swimming pool basins to be used during the construction of the Centre Rosemont. The objective was to shed light on the drafting process of tender No. 5846 followed by Ville de Montréal, the two professional firms whose services were retained following tender 16-15580, as well as allegations of rigged bidding in favor of a swimming pool manufacturer.*

*The investigation revealed several failures on the part of some professionals working for these firms, as well as City stakeholders, including the project manager. In the opinion of the Inspector General, these deserve an intervention on her part to be brought to the attention of the City Council.*

*In this case, Ville de Montréal's project team called on architectural and engineering firms to advise them on the design of Centre Rosemont, the preparation of plans and specifications, and the documents of the call for tenders for its construction and work supervision. This is tender 16-15580 awarded to Poirier Fontaine architectes inc. (Hereinafter "PFA") and GBI Expert-Conseils inc. (Hereinafter "GBI") by the City Council on January 23, 2017.*

*The investigation demonstrated that the City project team was initially in favor of the construction of swimming pool basins according to one available process, namely a concrete basin covered with ceramic. However, according to the services and on the recommendation of GBI aquatic specialist Réjean Savard and architect Daniel Fontaine of PFA, the project team changed their choice in favor of another method, namely modular basins, and more specifically, those manufactured by a particular company, Myrtha Pools (hereinafter "Myrtha").*

*Thus, as of December 2017, the City project team had specified Myrtha products in the documents of tender No. 5846, while allowing any potential tenderer wishing to offer a swimming pool basin of another brand to present requests for equivalence. It is important to clarify that this practice was permitted according to the legal framework in force until 19 April 2018.*

*However, the Office of Inspector General obtained evidence that in past projects involving Réjean Savard and/or Daniel Fontaine, the equivalence criteria developed by them were unattainable for bidders wishing to present a product of a brand other than Myrtha.*

*Indeed, exchange of emails and Réjean Savard's testimony revealed that upon receiving such equivalence applications in 2011-2012, he did not know the products of the other brand*

available, namely the modular basins manufactured by the company Natare Pool Corporation (hereinafter "Natare"). Therefore, he contacted the Canadian supplier of Myrtha products, who listed a series of technical elements specific to Myrtha and unique Myrtha products, which could hardly be met by Natare. Réjean Savard admitted that he then based his own evaluation criteria for equivalence on these elements. In each of the four former tenders analyzed, the equivalence requests were denied.

As mentioned, the Centre Rosemont project and tender No. 5846 were on track to follow the same path, that is to say that the tender documents were to specify Myrtha products and the equivalence requests were to be evaluated by Réjean Savard and Daniel Fontaine. Moreover, when interviewed by the Office of Inspector General's investigating officers, Réjean Savard made very revealing comments, in particular maintaining that when a call for tenders for construction was launched with his firm, a Myrtha pool would be installed, and that the market is closed.

The Office of Inspector General met with City stakeholders to relate the findings of the investigation conducted so far and allow them to make the necessary adjustments to avoid a tender in favor of a particular manufacturer. Subsequently, the Office of Comptroller General was asked to intervene in its advisory role to the administrative units to accompany the Centre Rosemont project team and ensure that actions were taken to remedy the situation before the publication of tender No. 5846.

It is important to note that between its start in 2017 and its end initially scheduled for the end of summer 2018, two legal frameworks governed the drafting process of tender No 5846, which have a major impact. In addition to the existing regime in force before April 19, 2018 and discussed previously, which allowed for the specification of a particular brand's product in a tender, the second legal framework for tender No. 5846 is the one now imposed since April 19, 2018 under section 573.1.0.14 of the Cities and Towns Act.

This framework provides that if a municipality requires technical specifications in respect of a good, service or work, it must describe them in terms of performance or functional requirements rather than in terms of descriptive characteristics. Only failing the possibility to do so may it use the descriptive characteristics of the good, service or work sought, and in such a case, it must enable requests for equivalence and it may prescribe how these will be evaluated. This is a significant change in terms of the drafting of tenders.

Thus, at the time of its intervention in August 2018, the Office of Comptroller General advised the City project team on the ins and outs of the new legal framework. It was then agreed that the tender documents, which had been prepared under the former legal regime so far, and specified several Myrtha products, had to be rewritten to remove references to the brand and to replace them by neutral performance criteria. The investigation showed, however, that these instructions were not followed.

Indeed, the evidence shows that, despite the interventions of the Office of Inspector General and the Office of Comptroller General, both the City project manager and Daniel Fontaine developed performance criteria incorporating several features of Myrtha products and included documents which, when read together, still only allowed for Myrtha products to qualify for tender No. 5846.

In essence, the documents contained in tender No. 5846 indicate that, in its current form, it is favorable to a particular manufacturer on the issue of modular swimming pool basins and that it

*does not comply with section 573.1.0.14. Similarly, if it had been published under the former legal regime, the facts revealed by the investigation show that it would also have been favorable a particular manufacturer because of the unfair assessment of equivalence requests.*

*Consequently, the Inspector General recommends in particular to amend the documents of tender No. 5846 relating to modular swimming pool basins so that they comply with the legal framework now in effect and allow free competition. Furthermore, a strict and impartial process for equivalence is central to ensuring a balance between the client's needs and the objective of fair competition underlying public tenders. The facts revealed by this case support the need for more supervision of such processes.*

*In addition, the Inspector General wishes to note that this report is not intended as a technical analysis to determine the type of swimming pool basin to be favored by Ville de Montréal. Her role is rather to ensure, as in this case, the integrity of the awarding process.*