



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

Rescinding of Two Contracts for Road and Sidewalk Snow Clearing Services (call for tenders 16-15049)

(Section 57.1.10 of the Charter of Ville de Montréal, metropolis of Québec)

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SUMMARY STATEMENT

The Office of Inspector General conducted an investigation after receiving a denunciation stating that Transport Rosemont inc. was using a scheme to significantly increase its remuneration for the execution of snow removal contracts awarded by the Villeray—Saint-Michel—Parc-Extension borough (hereinafter "VSMPE").

Contrary to its obligations, and whereas the company is paid according to the full volume of its trucks, Transport Rosemont would not load at full capacity the trucks used for loading and transporting snow. According to the denunciation, more than three hundred (300) of the five hundred (500) truck loads carried out during the fifth (5th) snow removal operation in 2019 were not full.

Call for tenders 16-15049 was published by the Borough Consultation Department (Service de concertation des arrondissement, hereinafter "SCA") in 2016 to retain snow removal services for pavements and sidewalks by sector. Two of these contracts involved services required in sectors 103 and 107 of the VSMPE borough. These four (4)-year contracts were awarded to Transport Rosemont, for the amounts of \$ 5,002,038.32 and \$ 4,279,362.52 respectively, all taxes included.

As part of the execution of snow removal contracts, including call for tenders 16-15049, municipal employees in charge measure at the beginning of each winter season the full volume of each of the trucks to be used by the contractor. Having taken the care to measure the capacity of these trucks' trailers and given that Transport Rosemont is paid according to the volume of snow transported, billing is based on the premise that each truck going to the snow disposal site (Lieu d'élimination de la neige, hereinafter "LEN") is full. According to the price per unit submitted by Transport Rosemont and the trailer's capacity measured for the truck used, each full load can represent \$ 172.12 to \$ 332.61 for the company.

Investigators of the Office of Inspector General met with the foremen and snowblower operators working in VSMPE sectors 103 and 107, who were all employees of Transport Rosemont. They indicated that, during a snow removal operation, it was up to the snowblower operator to visually determine if a truck was full. To that end, they stated that, except for certain special circumstances, one should be able to see two (2) or three (3) mounds of snow in the truck's trailer, depending on the truck's length.

However, when the Office of Inspector General analyzed the photos of all five hundred and fourteen (514) truck loads carried out by Transport Rosemont during the 5th snow removal operation, these revealed quite a different picture. In fact, three hundred (300) of these truck loads were filled to 50 % capacity or less, representing a proportion of 50 % of truck loads in sector 103 and 66.5 % in sector 107.

For comparison purposes, the Office of Inspector General analyzed the truck loads conducted by another contractor in a sector adjacent to those held by Transport Rosemont, i.e. sector 102. Only three (3) of the two hundred and two (202) truck loads originating from sector 102 were filled to 50 % capacity, that is an overall proportion of 1.5 % irregular truck loads. There is a dramatic difference, especially since the SCA estimates that the acceptable standard for partial loads is about 2 % of overall truck loads.



Although Transport Rosemont's general manager was warned by VSMPE borough representatives after the 5th snow removal operation, out of the two hundred and ninety-seven (297) and three hundred and twenty-six (326) loads of snow carried out by Transport Rosemont in sectors 103 and 107 during the 6th snow removal operation, twenty-two (22) and sixty-nine (69) loads were filled to 50% capacity or less, i.e. proportions of 7, 4 % and 21.2 % respectively. In comparison, only three (3) of the two hundred and eighty (280) truck loads made by the contractor in adjacent sector 102 were filled at 50 % capacity, a rate of 1.1 %.

The Office of Inspector General also analyzed the transaction reports for the truck loads carried out by Transport Rosemont in sectors 103 and 107 during the first four (4) snow removal operations of the 2018-2019 winter season. They show that the proportions of truck loads filled to 50 % capacity or less range from 11.2 % to 28.5 % of all truck loads in sector 103 and from 13.4 % to 45.5 % in sector 107.

Section 57.1.10 of the Charter of Ville de Montréal, metropolis of Québec states two (2) cumulative conditions for the Inspector General to intervene. She must find non-compliance with one of the requirements specified in the tender documents or contract, and she must be of the opinion that the seriousness of the breaches observed justifies rescinding of the contract.

The first criterion is met considering both the failure to fill the trucks to their full capacity as obligated and the breach of section 14 of the City by-law on contract management (Règlement sur la gestion contractuelle, hereinafter "RGC") prohibiting the commission of fraudulent tactics in the execution of City contracts.

Indeed, the evidence shows that the snowblower operators, all employees of Transport Rosemont, were the ones who decided on the quantity of snow to load in the trucks and, despite their knowledge of the standards expected in this regard, systematically failed to fill the trucks to their full capacity. Similarly, the justifications put forward by Transport Rosemont to explain this behavior are not credible and cannot be accepted as such.

Regarding the breach's severity, it is due in particular to the fact that irregular truck loads were recurrent during the multiple snow removal operations and as such, clearly indicate bad faith on the part of Transport Rosemont in the execution one of the central obligations of its snow removal contracts, namely the loading of snow. In this sense, by acting as it did, Transport Rosemont irreparably undermined the trust in its contractual bond to the City. Especially since contracts such as those resulting from call for tenders 16-15049 involve several hundred truck loads over the course of a winter season and therefore require a high degree of confidence in the good faith of the other party.

In short, the Inspector General is of the opinion that the conditions set out in Section 57.1.10 of the Charter of Ville de Montréal, metropolis of Québec are established, and she therefore rescinds the contracts awarded to Transport Rosemont by the City council on June 21, 2016 following call for tenders 16-15049. In accordance with the provisions of the RGC, the Inspector General recommends that Transport Rosemont be excluded from any call for tenders, as well as the possibility of concluding contracts by mutual agreement with the City for a period of five (5) years.

In addition, the Office of Inspector General learned during the course of its investigation that the laser instrument used by the City to measure the trucks' volume is not certified by the



appropriate federal authority, Measurement Canada. As a result, Measurement Canada informed the SCA that a non-certified instrument cannot be used. In the opinion of the Inspector General, it is important that, apart from the legal implications, the municipal administration complies with the relevant standards in order to maintain the trust of its contractors and potential bidders.

It should also be noted that Measurement Canada's decision with respect to the instrument in question does not affect the results of the investigation and the conclusions of this report; the questions of measurement and determination of a truck's volume are independent of those relating to their loading during the execution of a contract.