



[This is an English version of the notice originally submitted in French to Ville-Marie Borough Council on November 10, 2015]

**Notice of the
Office of Inspector General
Restoration of the Arches and
Pagoda in the Chinese Quarter
(Call for Tenders VMP-15-015)**

(art. 57.1.23 of the *Montréal's City Charter*)

November 10, 2015

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SUMMARY

On October 8, 2015, a formal notice was sent to the Ville-Marie borough's Direction of public works concerning the call for tenders VMP-15-015. Despite the absence of any official complaint, the Office of Inspector General, which was placed in copy of the formal notice, decided to open an investigative file.

The author of the formal notice, a contractor who did not submit a tender, maintains that there were irregularities in the call for tenders process concerning a specific product that was required and for which only one (1) supplier was allegedly authorized. This supplier allegedly refused, according to these claims, to give the contractor's company an estimate for the value of the product, indicating that it did business with only one (1) firm.

Moreover, on October 13, 2015, a Montréal daily newspaper referred to the [TRANSLATION] "appearance of collusion in the awarding, by Montréal, of the contract to renovate the arches in the Chinese quarter, for which the City was preparing to pay 1500% too much for tiles."

As will be shown in this report, the investigation demonstrated that the borough's requirement for a specific product was completely legal, that there was no collusion and that the call for tenders was not directed. Above all, the investigation demonstrated that the complainant is, to a certain extent, the author of his own misfortune, partly as a result of poor planning on his part as well as a manoeuvre on the part of his potential subcontractor, who wanted to secure the tender of a competitive contractor.

The investigation conducted by the Office of Inspector General also demonstrated that the cost of purchasing the tiles was in fact Can\$50,000, according to the two (2) sole bidders. Moreover, a reading of the special requirements of the call for tenders, a document available to anyone who requests it, would have revealed that the cost for purchasing the tiles is only a small part of the cost of the work to be done under Chapter 7 of the call for tenders.

Finally, the reasons for the significant differences between the borough's estimate and the lowest bidder, as indicated in the decision-making summary for the elected representatives, is consistent with the information obtained during the investigation.



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1. The Facts

1.1 Receipt of a Formal Notice

On October 8, 2015, the president of the Société Générale de Construction BPF Inc., hereinafter the “complainant”, served a formal notice to the Direction of Public Works of the Ville-Marie borough concerning the call for tenders VMP-15-015. The complainant alleged that there were irregularities in the call for tenders process regarding a specific product that was required and for which only one (1) supplier was allegedly authorized. According to the complainant, this supplier apparently refused to provide an estimate of the value of the product, indicating that it did business with only (1) one firm.

As a result, the complainant asked to have the call for tenders cancelled and requested a new process, one that would authorize the possibility of using another supplier in order to ensure healthy competition.

Despite the absence of an official complaint, the Office of Inspector General, placed in copy of the formal notice, decided to open an investigative file.

Moreover, on October 13, 2015, a Montréal newspaper published an article in which it referred to the [TRANSLATION] “appearance of collusion in the awarding, by Montréal, of the contract to renovate the arches in the Chinese quarter, for which the City was preparing to pay 1500% too much for tiles.”

1.2 The Call for Tenders

The public call for tenders regarding the restoration of the four (4) arches and the pagoda in the Chinese quarter was issued on September 1, 2015. The deadline for receiving the tenders was September 23, 2015, at 11:00 a.m., giving the bidders twenty-two (22) days to prepare their offers. The call for tenders process was supervised by the downtown Project Office.

At the end of the call for tenders process, two (2) service offers were received.

On October 13, the administration of the Ville-Marie borough was preparing to offer the contract for the restoration of the arches and the pagoda in the Chinese quarter to St-Denis Thompson inc. for an amount of \$1,516,577.74.

1.3 Scope of the Investigation

It should be noted that the mandate of the Inspector General is *to oversee contracting processes and the carrying out of contracts by the city or by a legal person that has a contractual relationship with the city¹ and may, at any time, submit any notice or*

¹ Section 57.1.8 of the *Montréal's City Charter* (C.Q.L.R. c. C-11.4).



recommendation he or she considers necessary to any decision-making authority of the city².

In the case at hand, the purpose of the investigation conducted by the Office of Inspector General was to determine whether the process for awarding the contract complied with the provisions of the law.

During its investigation, the OIG met with eight (8) witnesses.

2. The Project: Restoration of the Arches and the Pagoda

The arches and the pagoda located in the Chinese quarter were built in 1997 by Chinese craftspeople, the labour and materials having been imported from China as part of an exchange with the City of Shanghai.

It quickly became apparent that the construction materials used were deteriorating as a result of the climate: the clay tiles were not resistant to the cold, and water penetration was causing cracks.

Out of concern that pieces would come loose from the structure and strike citizens and tourists, the arch and pagoda renovation project became an issue of public safety. Moreover, once the premature deterioration was observed, the tiles were covered with a kind of wire netting as a protective measure.

In the summer of 2014, the engineering consulting firm Breault & Gosselin was given a mandate to provide an opinion with respect to the extent of the deterioration of the structure. In its report³, the firm concluded that the deterioration:

[TRANSLATION] can be qualified as 'premature,' given the degree of deterioration and the young age of the structures under examination, particularly with respect to the gates on St-Laurent Blvd. Indeed, these gates, the most impressive, were built only 16 years ago. The pagoda in Place Sun Yat-Sen is approximately the same age. The visible deterioration of the ornamental clay tiles dates back several years and has progressed to the extent that safety nets were installed on the roofs of the structures under examination after it was noted that roofing materials had become loose and fallen.

Considering this context and since restoration of the structures under examination was a necessity, the borough mandated the firm to prepare an expert report and a study concerning five (5) structures (the pagoda in Place Sun Yat-Sen, the two (2) gates on St-Laurent Blvd. and the two (2) gates on De La Gauchetière).

² Section 57.1.23 of the *Montréal's City Charter* (C.Q.L.R. c. C-11.4).

³ Expertise et Inspection – Détérioration prématurée des tuiles de recouvrement en terre cuite des structures architecturales du Quartier Chinois – August 12, 2014, Breault and Gosselin, p. 7.

2.1 Solutions Considered

Following the report prepared by Breault & Gosselin, the person in charge at the borough indicated three possible scenarios:

1. Replacing the current tiles with similar Chinese models, but modifying the manner in which they are installed and attached in order to prevent water infiltration;
2. Obtaining new tiles from an American supplier;
3. Replacing the tiles with a metal roofing.

After discussion with the members of an internal multidisciplinary project follow-up committee, the Administration decided to retain the first option.

In order to pursue the project, a restoration contract was to be prepared and a call for tenders issued. The follow-up committee decided to give the mandate for preparing the plans and specifications for the call for tenders to an external firm of professionals (architects).

2.2 Mandate to Prepare Plans and Specifications and Supervise the Work

On October 14, 2014, the contract for preparing the plans and specifications for the call for tenders regarding the restoration of the arches and the pagoda in the Chinese quarter was awarded to architectural firm Cardin, Ramirez, Julien Inc. which would be assigned to the project. The firm was to prepare the plans and specifications and supervise the work.

The architect assigned to the project confirmed that Breault & Gosselin recommended using the original tiles from China despite the fact that they were of average quality. Indeed, using the services of an American supplier could cost up to 5 times more than re-using the Chinese tiles. As well, using tiles that are not authentic would not respect the heritage of the Chinese quarter.

As a result, the architect adopted the first scenario proposed by Breault & Gosselin.

He explained that he had conducted research on the Internet in order to find other suppliers of tiles and other models of tiles that might be of better quality. His research led him to the tile supplier originally identified by Breault & Gosselin, namely the Chinese firm Luoyang Danuo Gardens and Building Material Co. Ltd. (hereinafter “Danuo”). For this reason, he decided to suggest this tile supplier in the plans and specifications for the call for tenders.



2.3 A Prototype

In order to ensure the quality and sustainability of the structure once the restoration had been completed, the project designer had to find a way to prevent water infiltration while the work was being completed.

With this in mind, he suggested creating a prototype of the structure to ensure the quality of the cement-free installation and of the tiles during the installation.

In order to complete this prototype, the Ville-Marie borough purchased tiles from the designated supplier. In the winter of 2015, laboratory tests were conducted to evaluate permeability. These tests demonstrated that silane had to be added to the tiles in order to make them more impermeable. The prototype allowed an agreement to be reached regarding the correct way to install the tiles and have an adequate base on which the tiles would be laid.

To create the prototype, the architect used the services of the owner of Gestion KGL Inc. He informed the architect that he had taken part in the study and the expert report prepared by Breault & Gosselin and that he was very interested in the project.

The architect stated that he thought it was logical to retain the services of this contractor, particularly since he had taken part in the work involved in the study by Breault & Gosselin. A contract by mutual agreement was signed by Gestion KGL Inc. and the Ville-Marie borough to build the prototype.

Building the prototype also served to validate the risks and the shipping conditions for the tiles to be imported and provided an opportunity to become accustomed to the installation techniques to be used for the future restoration work.

2.4 Call for Tenders VMP-15-015

On September 1, 2015, the call for tenders was issued and the deadline for submitting tenders was originally set for September 16. During the period of time set out for the call for tenders, a total of 4 addenda were issued. They can be summarized as follows:

The first addendum, issued September 11, postponed the date for submitting tenders to September 23, 2015. As well, the email address for Ms. Nicole Zhang, the resource person at Luoyang Danuo Gardens & Buildings Materials Co. Ltd., was modified. The new address appears in the addendum.

The second addendum, issued September 15, identifies and provides the coordinates for the supplier of the prefabricated rib cornices.

The third addendum, issued on September 18, answered five questions in relation to the work.

The fourth addendum, issued on September 21, answered a question concerning the winter conditions and the related costs.

The specifications contain all of the aspects of a call for tenders as well as the plans and drawings so as to facilitate the understanding of the work and its completion. The list of the tiles and other items needed were appended at the end of the plans and drawings. However, the quantities for any of the listed parts were not specified. The architect mandated by the borough is of the opinion that it is the responsibility of the contractor to estimate their work and to evaluate the quantities necessary in order to complete their work.

The work was scheduled to start in November 2015 and end in June 2016.

3. Meeting with the Complainant

On October 13, 2015, the Office of Inspector General made several attempts to contact the complainant in order to obtain clarifications regarding the formal notice sent to the Ville-Marie borough. After another attempt to communicate with the complainant was made the next day, the complainant called the OIG and made an appointment for the end of the day.

The complainant is the president of BPF, a firm which was created in 2007, and which has approximately 10 employees. The firm has a general contracting licence and specializes in repairs.

3.1 The Allegations

Stating that he was unable to obtain a price for the tiles from the Chinese supplier specified by the City in the call for tenders VMP-15-015, the complainant asked to have the date for submitting the tenders deferred. For the complainant, there was collusion and a directed call for tenders. He said that he placed the Office of Inspector General in copy of the formal notice because, in his words, [TRANSLATION] “it appears more serious.”

He explained that the process is biased because the City imposed a supplier in the specifications. He also explained the difficulties he encountered in his communications with the supplier. Faced with these difficulties, he requested postponement of the date set for submitting the tenders.

When the Office of Inspector General questioned the complainant about his firm’s contacts with the Chinese firm (some emails were appended to the formal notice), he was unable to specify the number of communications. He was also unable to specify whether telephone communications or emails had been exchanged with the Chinese firm other than those appended to the formal notice. Moreover, he was unable to determine when the communications had started.

On October 22, 2015, he confirmed to the Office of Inspector General by email that there had been no communications other than those included with the formal notice, namely, two (2) email exchanges: the request from his firm and Danuo’s response.



For him, the Chinese firm's response was unequivocal: the firm gave its price to a single person, the "current customer". The complainant believed this individual to be the only person to whom the Chinese firm gave a price. He does not know from which supplier the two (2) bidders obtained a price for the tiles. However, he mentions that the president of Robert Hardy inc. contacted him around September 16 to offer, as a subcontractor, to provide the tiles, install them and ensure the supervision in China for \$800,000. The complainant states that this potential subcontractor faxed his tender to him at about 10 a.m. on September 23, one (1) hour before the tenders were to be opened. He wonders whether this was intentionally done at the last minute.

Regarding the price proposed by the potential subcontractor, the complainant is of the opinion that it represents double or triple the value per square foot. He confirms that the amount (\$800,000) that was published in the Montréal daily newspaper is the price that the potential subcontractor, Robert Hardy inc., sent him.

As will be presented in this report, the investigation conducted by the Office of Inspector General demonstrated that the Ville-Marie borough's requirement for a specific product was completely legal, that there was no collusion and that the call for tenders was not directed. The investigation revealed that the complainant was, to a certain extent, the author of his own misfortune, as a result partly of poor planning on his part as well as a manoeuvre on the part of his potential subcontractor, who wanted to *secure* the tender of a competitive contractor.

4. Legality of Requiring an Identified Product

The courts specifically acknowledge the power of a municipality to limit a call for tenders to specific brands and models⁴. As the Québec Court stated in a recent decision⁵:

[TRANSLATION] *Although more than 33 years have passed since the Superior Court decision was rendered by the Honourable Camille Bergeron, in the case of **Les équipements Diésels Abitibi inc.**, it still seems to be an authority in the matter, as it has since been followed by jurisprudence.*

In that case⁶, the City of Val-D'Or had admitted that the specifications in its calls for tenders concerning the purchase of a scoop type loader and a grader were intended to limit

⁴ Les Équipements Diésels Abitibi Inc. c. Ville de Val D'Or, [1981] C.S. 434, AZ-81021313. See also: Centre Routier inc. c. St-Luc de Matane (Municipalité) EYB 1992-75253, in Cam-Spec international c. Terrebonne (Ville de) AZ-00026574 (C.S. 2000-09-12), Meclox inc. c. Société de transport de l'Outaouais, 2011 QCCS 2789 (CanLII), Camion Freightliner Mont-Laurier inc. c. St-Aimé-du-Lac-des-Îles (Municipalité de), 2014 QCCQ 12090 (CanLII), par. 38.

⁵ Camion Freightliner Mont-Laurier inc. c. St-Aimé-du-Lac-des-Îles (Municipalité de), 2014 QCCQ 12090 (CanLII), par. 38

⁶ Les Équipements Diésels Abitibi Inc. c. Ville de Val D'Or, [1981] C.S. 434, AZ-81021313.

tenders to bidders who could offer Caterpillar equipment rather than any other brands. This was a **directed call for tenders for a specific brand of equipment**.

The Superior Court⁷ clearly summarized the power of the municipalities in this respect:

*[TRANSLATION] In other words, the Council is free to exercise its administrative means and, as part of its powers, it is authorized to exercise its preference for a piece of equipment and a specific brand, depending on its needs, as long it issues a public notice for all those who could possibly offer it: **it is not limited by the nature of the object but by the means** for acquiring it.*

As will be seen in the following section, the investigation conducted by the Office of Inspector General quickly demonstrated the ease with which any moderately informed person could obtain the tiles required in the call for tenders.

4.1 The Supplier Luoyang Danuo Gardens & Buildings Materials Co. Ltd.: Supplier of a Single Client in Quebec?

According to the complainant, the supplier, Danuo, refused to provide an estimate of the value of the product because it did business with only one (1) firm.

The complainant explained that one (1) of his employees sent an email to the supplier designated in the specifications. For the complainant, the message in the email was clear and unambiguous to the effect that Danuo had to give him the bid submitted to the City, including the prices and quantities required for the project.

The emails appended to the formal notice concerning the supply of the tiles are revealing. First, the individual to whom the email was addressed was not the person indicated in the specifications and in Addendum 1. Second, according to the complainant, the request from the company's representative was transmitted around September 21, 2015, and the supplier's response was sent on September 23. The Office of Inspector General notes, therefore, that the company's initiative was not only late with respect to the deadline for submitting tenders, but also relatively succinct, when compared with the exchanges Danuo had with the other contractors.

In fact, the investigation conducted by the Office of Inspector General counted more than 17 email exchanges between the lowest compliant bidder and the supplier over almost three (3) weeks. The second lowest bidder and the supplier exchanged more than 70 emails between September 4 and September 23, 2015.

Finally, the complainant's request must be taken into account. It was worded as follows:

I would like to know if you did a tender for the project Ville de Montréal (Montreal City) [TRANSLATION] restoration work of the arches and pagoda Chinese quarter? If yes, can you send it to me?

⁷ Les Équipements Diésels Abitibi Inc. c. Ville de Val D'Or, [1981] C.S. 434, AZ-81021313.



The supplier's response should come as no surprise:

Dear (...)

How are you?

We really have an inquiry from Montreal City, but sorry we can't send it to you we must be responsible for our current customer. We really don't know what's the relationships between you, so please kindly understand this.

If have any other thing we can do for you, please freely contact with me

Yours sincerely,

(...)

The Office of Inspector General is of the opinion that the complainant had in his possession all of the available information in order to do business with the supplier and complete his tender. It is important to recall that the list of tiles and other items required for the work are clearly specified in the specifications⁸.

4.2 No Procurement Difficulties Encountered by the Bidders

The investigation conducted by the Office of Inspector General quickly demonstrated that the complainant got everything wrong: the two (2) firms that submitted tenders as well as KGL Inc., which took part in developing the prototype, all determined the quantity of tiles they needed directly with the Chinese supplier without any difficulty.

Moreover, one (1) of the parties that picked up the specifications and did not submit a tender, confirmed to the Office of Inspector General that he did not have any problem obtaining the cooperation of the Chinese supplier.

The documents received and studied by the Office of Inspector General reveal that the two (2) companies that submitted tenders were well advised by the Chinese supplier: they each received a table from Danuo listing all of the items needed for the work. This table closely resembles the one (1) obtained during the study by the architect assigned by the borough.

This table contains photos of the parts, the name of each part, their size, their weight and their price in American dollars. The total price in American dollars and the total weight in kilos is indicated at the end of the table. Costs inherent to the work must be added to this total. This table represents the bid made by the Chinese firm to the two (2) contractors.

Finally, an email sent by the Chinese supplier to the lowest bidder confirms that it gave the same price to the businesses that contacted it.

⁸ See the description of the 17 tiles to be purchased in Appendix 1, p. 6 to 8.

4.3 A Directed Call for Tenders?

First, the formal notice does not mention the allegation that the call for tenders was directed. This allegation suddenly appeared when the article was published in a Montréal daily newspaper reporting on the complainant's claims.

For a call for tenders to be considered “directed,” it must be demonstrated that there was an intention to favour one (1) bidder to the detriment of the others⁹ or that the client manipulated the bidding process.¹⁰ A court must be satisfied with facts that are sufficiently serious, precise and concurring to infer that they constitute a directed call for tenders.¹¹

Other than the complainant's general allegation, the investigation conducted by the Office of Inspector General was not able to uncover any facts that in any way resembled manipulation on the part of the borough to give one (1) bidder preference over another. When questioned by the Office of Inspector General, moreover, the complainant did not report any specific fact that could lead to the conclusion that the lowest bidder was given preference. His recriminations focus on the difficulties he encountered in obtaining a price for the tiles, a topic which was discussed above.

4.4 Collusion?

The complainant also stated that the [TRANSLATION] “*sole supplier only transmitted its bid to one bidder, which in our opinion creates a situation akin to collusion.*”¹² As demonstrated above, several contractors, by making the necessary efforts, encountered no difficulty in obtaining the cooperation of the Chinese supplier.

As a result, for all of the reasons provided above, the Office of Inspector General can only conclude that the complainant's allegations are unfounded.

⁹ Service sanitaire Morin inc. c. Terrebonne (Ville de), 2010 QCCS 2822, (par. 108).

¹⁰ Roxboro Excavation inc. c. Longueuil (Ville de), 2013 QCCS 5231, (par. 34).

¹¹ Case law indicates that, as a general rule, the courts must not interfere in the decisions made by municipal councils, except in cases of jurisdictional error, bad faith, discrimination or a failure to observe laws. As reported by the Superior Court in Therrien c. Ville de Blainville (JE 97-1970 (C.S.)) (page 13), the requirements formulated by a municipality in its specifications must be reasonable and stated in good faith, in the best interests of the municipality. They cannot be drawn up so as to give one person preference over another.

¹² Email dated September 23, 2015, sent to the borough.



4.5 Tiles for \$800,000?

Some people have attached great importance to the extravagant cost of the tiles, suggesting an amount of \$800,000 when they could be acquired for \$50,000.

The investigation conducted by the Office of Inspector General demonstrates that the cost for purchasing the tiles is in fact around \$50,000 (Canadian dollars), as confirmed by two (2) bidders with whom the OIG met, with supporting documents.

A reading of the special requirements of the call for tenders, a document which is available to anyone who requests it, reveals that the cost for purchasing the tiles is only a small part of the costs of the work to be done under Chapter 7 of the call for tenders. Section 07-321 provides a summary of the work to be done as well as all of the products required for the project. Item 2 of Section 07-321 lists the following products: membrane, Chinese clay tiles ordered from China,¹³ silane treatment (sealing treatment), made-to-measure prefabricated ridge cornices (from Quebec), fasteners and spare parts.

A bidder was supposed to indicate, in Chapter 7 of the tender form, the total cost for the requirements established in Section 07-321 (labour and products), as well as the cost of supervising the production of the tiles in China, as provided in Article 1.10 of the section.

For these two (2) items, the lowest compliant bidder entered the amounts of \$611,000 (products and labour) and \$20,000 (supervision) for a total of \$631,000.

As already stated in this report, the amount of \$800,000 suggested by the media, came from Robert Hardy inc., when it offered its services as a subcontractor. This subcontracting offer did not result in a contract since the complainant did not submit a tender.

(Figure 1: Extract of the subcontracting bid sent by Robert Hardy inc. to the complainant¹⁴.)

Chapitre 07	
07-321 Tuiles de toit en argile.....	745.900 \$
Surveillance en Chine de la production des tuiles.....	54.100 \$
Total du chapitre 07 (montant à reporter au sommaire, page 3).....	800.000 \$
ROBERT HARDY INC.	

¹³ See the description of the 17 tiles to be purchased in Appendix 1, p. 6 to 8.

¹⁴ This extract from the tender was reproduced in the Journal de Montréal on October 13, 2015.

Moreover, the Office of Inspector General met with a representative of the second lowest bidder, MGB associés, who confirmed that he had also signed an agreement with Robert Hardy inc. The latter had agreed to the price indicated in the following document:

(Figure 2: Subcontracting bid submitted by Robert Hardy inc. to MGB associés.)

Chapitre 07	
07-321 Tuiles de toit en argile.....	607,050 \$
Surveillance en Chine de la production des tuiles.....	42,950 \$
Total du chapitre 07 (montant à reporter au sommaire, page 3).....	650,000 \$
Chapitre 09	ROBERT HARDY INC.

The second lowest bidder admitted that, further to this agreement, its subcontractor was required to “protect” his tender with respect to other bidders so that they would achieve their common goal to win the contract. In other words, this subcontractor had to offer higher prices to other bidders which he would contact in order to propose his bid. The investigation conducted by the Office of Inspector General revealed that the subcontractor kept his promise, by attaching a copy of the offer he made to the complainant for the sum of \$800,000 when he sent his price to the second lowest bidder.

It is therefore not surprising that the complainant stated to the Office of Inspector General that \$800,000 is a lot to pay for purchasing and installing tiles, since the second lowest bidder had agreed to \$650,000 with his subcontractor on the morning of September 23.

5. Estimating a Single Project: A Difficult Task

An important element that was underlined in the decision-making summary is the difference between the price of the lowest bidder and the estimate submitted by the architect hired by the borough, a difference of around 59%. This difference, which is significant, was obviously of interest to the Office of Inspector General.

5.1 The Architect’s Point of View

The architect explained his estimate as follows. From the outset, he admitted that he under-assessed the value of the work. He explained that this under-assessment was a result of the complexity of the work to be done. It was a matter, as explained earlier, of a structure that is unique in Quebec and he had never worked on a similar structure before. The architect found nothing comparable when preparing his estimate.



He explained that he could not use the usual standard prices for preparing his assessment. The larger monetary values in his estimate were related to the creativity involved in the work method, which he now believes he underestimated, when he compares them with the prices of the tenders submitted.

He cited, as an example, the item “site organization”. He evaluated this item as approximately 20% of the total value of the work whereas the standard is about 10–15%. However, he noted that one (1) of the bidders indicated 40%. For the painting, the specifications indicated that the services of a craftsman painter had to be used. He obtained a much better price than the bidders for this item but he was unable to explain why this was the case. However, he agreed that it must have been difficult for the bidders to estimate the price for a Chinese painter. With respect to the installation of the tiles, for which the bidders entered a much higher price (more than double his estimate), he believes that he clearly underestimated the painstaking nature and the complexity of the work. Among other things, he referred to the complexity of the scaffolding system to be used for installing the tiles and the related resulting creativity required.

The architect stated to the Office of Inspector General, however, that he had informed his interlocutors at the borough that his estimate could be inadequate, given the uniqueness of the structure and the complexity of the work to be done.

5.2 The Contractors' Point of View

When asked about the price tendered (\$1,516,577.74), the representative of the lowest bidder stated that he considered his price fair, but that additional profit margins of 15–20% had been added throughout the tender in order to take the necessary precautions to assume the potential risks resulting from the complexity of the project.

The representative of the second lowest bidder stated that he submitted a fair price (\$1,790,936.83) but confirmed that he also *protected* himself. He wanted the project, but not if it meant taking uncalculated risks. He explained that the project was complex and that, as a result, there are risks involved that increase the price of the tenders. The representative of this bidder is of the opinion that the architect under-estimated the value of the project in his assessment.

It is nevertheless difficult to determine the actual cost of the work to restore the Chinese arches. Although he was surprised to see such high prices on the part of the bidders, the architect employed by the borough attributes this fact to the uncertainty concerning the purchase of the tiles from China and the complexity of the work. The evaluation of the costs for installing the tiles and the scaffolding is a direct result of the creativity required to develop the work method. For the architect, it was difficult to evaluate the financial value of the creative aspect of the restoration project. He believes that the bidders protected themselves by adding profit margins that were higher than usual.

In conclusion, even though the architect acknowledges that his estimate was not accurate and that he underestimated the actual costs, he is of the opinion that the two (2) prices tendered are a little too high. Considering the fact that only two (2) bidders submitted



offers, price comparisons reveal little. He believes that it would be difficult to rely on these two (2) prices to establish the actual market price.

According to him, the fair price should be between his estimate of \$952,204.55 and the price submitted by the lowest bidder, \$1,516.577.

The Office of Inspector General noted that all of the explanations, including those provided by both the bidders and the architect, are consistent with those indicated in the decision-making summary¹⁵ prepared for the borough council. Thus, the Council had all of the information needed to make a timely decision.

Opinion of the Office of Inspector General

The Office of Inspector General concludes that the steps taken for the restoration of the arches and the pagoda were carefully conducted and well documented.

The requirement of a specific product by the borough complies with clearly established legal principles. There was no [TRANSLATION] “*situation akin to collusion*,”¹⁶ to use the complainant’s words. Moreover, the call for tenders was not in the least directed.

In the opinion of the Office of Inspector General, the complainant’s allegations are unfounded.

The investigation conducted by the Office of Inspector General demonstrated that the cost of purchasing the tiles was in fact Can\$50,000.

A reading of the special requirements of the call for tenders would have enabled anyone to realize that the cost of purchasing the tiles is only a small part of the cost of the work to be done under Chapter 7 of the call for tenders.

Denis Gallant, Ad. E.
Inspector General

¹⁵ See Appendix 1, project decision summary (1150890006).

¹⁶ Email dated September 23, 2015, from the complainant to the borough.