



***Horizon 2017 Rehabilitation and
Development Project***
Société du parc Jean-Drapeau
**Report and recommendations
of the inspector general of Ville de Montréal**

March 2015

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SUMMARY

Contrary to what initially appeared to be a simple investigation following allegations of favouritism with respect to a call for tenders, the findings of the present investigation unfortunately uncovered a paramunicipal organization that awarded a large-scale mandate to a project manager and, in so doing, either ignored or poorly applied the rules for awarding contracts in the municipal world.

This report will reveal that this project manager imposed requirements that are unusual in the municipal environment, hampering free competition, equal opportunity and the ability to obtain the best product for the best price.

This report will also reveal that, in addition to the deplorable effects they have had, these requirements also constituted major irregularities that tainted the validity of several contracts already completed or in progress.

This report will highlight the fact that certain recommendations made by the auditor general of Ville de Montréal concerning the processes for awarding contracts, specifically recommendations concerning the importance of preparing an estimate before awarding contracts, were at best ignored, which prevented an evaluation of their profitability, in addition to casting doubt on the validity of the contracts awarded.

Over the past two (2) years, four (4) professional services contracts were awarded by the paramunicipal organization to the project manager by mutual agreement. These contracts were all awarded in violation of the rules of law.

This report will also show that there were major irregularities in the contract awarding process for eight (8) other contracts examined. Moreover, the facts concerning at least one call for tenders could objectively lead to the conclusion that it was directed.

There may be a temptation to claim that the rules established by the legislator had an impact on the quality of the professional services provided. This point of view cannot in any manner justify the requirement of criteria that satisfy this vision and bypass the legislator's objectives, namely obtaining the best quality-price ratio for taxpayers.



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Appendix A

- Process for Awarding Contracts for the *Horizon 2017 Rehabilitation and Development Project*.

Appendix B

- Agreement Between Ville de Montréal and the SPJD.



Abbreviations used

CTA or Act.....	<i>Cities and Towns Act</i>
PAMV.....	Plan d'aménagement et de mise en valeur ([TRANSLATION] Rehabilitation and Development Plan – RDP)
QIM.....	Quartier international de Montréal
SPJD.....	Société du parc Jean-Drapeau



1. Mandate of the Inspector General

The inspector general's mandate is to oversee contracting processes and the way contracts are carried out by the city or a related legal person. The Société du parc Jean-Drapeau, "SPJD," comes under the inspector general's scope of oversight since, among other things, all the members of its board of directors are appointed by the Ville de Montréal executive committee.

2. Scope of the Investigation

The Bureau de l'inspecteur général received two denunciations claiming that two (2) calls for tenders issued by a non-profit organization (NPO), namely the Quartier international de Montréal (QIM), were directed and contained irregularities. The QIM was given a mandate by the Société du parc Jean-Drapeau (SPJD) to issue these calls for tenders for professional architecture and engineering services.

Further to these denunciations and after a preliminary analysis, the Bureau de l'inspecteur général conducted an in-depth investigation to determine whether these service agreements, calls for tenders and contracts awarded by mutual agreement, resulting from the *Horizon 2017* strategic plan, contained irregularities.

2.1 Scope of the Work

The Bureau de l'inspecteur général conducted a contextual, technical and legal investigation in order to analyze the matter in depth. The Bureau de l'inspecteur général held approximately 60 meetings with witnesses and issued six (6) requests for documents or information. In keeping with the powers conferred upon it by law, the Bureau de l'inspecteur général conducted four (4) inspections at Daoust-Lestage inc., two (2) for the QIM and one (1) for the SPJD.

Towards the end of the investigation, even though they had been interviewed by Bureau de l'inspecteur général investigators, the Director General of the SPJD and the Director General of the QIM were interviewed and questioned personally by the inspector general and his assistants.¹

As a result of these meetings, the Director General of the SPJD made nine (9) commitments to forward information to the inspector general and the Director General of the QIM made eight (8) commitments to forward information.

2.1.1 *Applicable Laws and Standards*

During the investigation, the analytical perimeter addressed the following laws and standards:

- *Cities and Towns Act (C.Q.L.R., c. C-19)*;
- *Charter of Ville de Montréal, C.Q.L.R., c. 11.4*;
- *Tarif d'honoraires pour services professionnels fournis au gouvernement par des architectes* (chapter C-65.1, r. 9) ([TRANSLATION] *Tariff of fees for professional services provided to the government by architects*);
- *Tarif d'honoraires pour services professionnels fournis au gouvernement par des ingénieurs* (chapter C-65.1, r. 12) ([TRANSLATION] *Tariff of fees for professional services provided to the government by engineers*), hereinafter “*Engineers’ fee schedule*”;
- *Politique de gestion contractuelle de la Société du parc Jean-Drapeau* ([TRANSLATION]: *Société du parc Jean-Drapeau contract management policy*);
- *Normes et procédures en approvisionnement du parc Jean-Drapeau* ([TRANSLATION]: *Parc Jean-Drapeau procurement procedures and standards*).

2.1.2 *Applicable Standard of Proof*

The Bureau de l'inspecteur général has a responsibility to deliver quality reports that are timely, objective, exact and presented in such a way as to ensure that the individuals and organizations under its jurisdiction are able to act on the information sent.

Therefore, in keeping with its opinions, reports and recommendations, the inspector general assumes the burden of the civil standard of the preponderance of evidence².

2.1.3 *Warning*

In this report, the masculine includes the feminine in order to protect the identity of certain witnesses.

3. Description of the Organizations

3.1 Société du parc Jean-Drapeau (SPJD)

The SPJD is a paramunicipal body constituted pursuant to section 223 of Schedule C of the *Charter of Ville de Montréal*. Created in 1983, its mission is to “administrate, operate, develop, maintain and animate Parc Jean-Drapeau, which includes Sainte-Hélène and Notre-Dame islands in Montréal. In carrying out its mission, the Société oversees the staging of regional and international recreation-tourist activities.”³

The budget of the SPJD is approved by the Ville de Montréal urban agglomeration council. Moreover, as part of the 2015 operating budget, the city provided a contribution of \$8.8 million to finance the paramunicipal body’s operating budget as well as a contribution of \$1.1 million for the Formula 1 Canadian Grand Prix.⁴ Ville de Montréal also contributes to the financing of various projects and programs in its 2015–2017 three-year capital expenditures program, for a total budget of \$114.75 million.⁵ Of that amount, \$53.2 million is allocated for the legacy project undertaken as part of the 375th anniversary of Ville de Montréal and the 50th anniversary of Expo 67 (Horizon 2017).⁶ The remaining sum is allocated for the fixed assets protection program and the improvement of infrastructures for the Canadian Grand Prix.

Ville de Montréal makes buildings, facilities, public works of art, etc. available to the SPJD. These assets are recorded in the city’s books. The members of the SPJD’s board of directors are appointed by the Ville de Montréal executive committee. Moreover, as a paramunicipal body of Ville de Montréal, the SPJD must respect the contracting rules that apply to municipalities, set out in sections 477.4 to 477.6 and 573 to 573.3.4 of the *Cities and Towns Act* (C.Q.L.R., c. C-19), the “act,” and section 231.1 of Schedule C of the *Charter of Ville de Montréal*:

Sections 477.4 to 477.6 and 573 to 573.3.4 of the Cities and Towns Act (chapter C-19) apply to the bodies referred to in this chapter, with the necessary modifications, and those bodies are deemed to be local



municipalities for the purposes of a regulation made under section 573.3.0.1 or 573.3.1.1 of that Act.

3.2 Quartier international de Montréal (QIM)

The Quartier international de Montréal is a non-profit organization. It is completely independent of Ville de Montréal. The QIM is responsible for designing, promoting and completing urban development projects and architecture projects of a public nature. Acting as a project manager, the QIM has been involved with the following projects: Quartier des spectacles, Quartier international de Montréal, the redevelopment of McGill St. (phase 3) and the development of Square des Frères-Charon. Most of the members of the board of directors come from the private sector.

4. Context: Horizon 2017

As part of the *Horizon 2017* rehabilitation and development project strategic plan, the SPJD developed a rehabilitation and development plan for Parc Jean-Drapeau. It will coincide with the 50th anniversary of the 1967 World's Fair (Man and His World) and the 375th anniversary of Montréal. Towards the end of fall 2012, the SPJD wanted to develop four (4) sectors of the park: the central concourse, the panoramic riverside walkway, the Île Sainte-Hélène amphitheatre and Place des Nations.⁷

History

The Director General of the QIM informed the Bureau de l'inspecteur général that, in fall 2011, he was approached by a member of then senior management of Ville de Montréal. According to the Director General, he was solicited in an effort to find out whether he knew a high-level project manager to manage a large-scale development project for the SPJD. According to what this member of senior management said, this request was rather urgent since it pertained to large-scale projects for 2017. The Director General of the QIM then took steps to find a project manager.

In February 2012, he informed the same member of the city's senior management that his efforts had been fruitless and that, given the impossibility of finding a project manager for the SPJD, the QIM could offer its services.

In April 2012, the chairman of the SPJD's then board of directors and the Director General of the QIM discussed the possibility of the QIM submitting an offer to the SPJD.

On May 14, 2012, the QIM submitted a service offer to the SPJD. The offer, which was addressed to the chair of the SPJD's board of directors, covered all of the steps involved

in the *Horizon 2017* rehabilitation and development project. The QIM offered to complete a rehabilitation and development plan (RDP), namely to prepare a detailed draft and complete the projects retained by the organization. These discussions were suspended pending the appointment of a new Director General at the SPJD.

On September 3, 2012, the new Director General of the SPJD was appointed. He informed the Bureau de l'inspecteur général that, when he took up his position, the *Horizon 2017* rehabilitation and development project had already been announced publicly.

According to the SPJD Director General, there were two project management options:

1. establish a team of professionals internally by hiring ten (10) to fifteen (15) people to handle project management;
2. hire an external firm to serve as project manager.

On December 13, 2012, the SPJD Director General recommended to his board of directors that they award a contract to the QIM [TRANSLATION] “for professional services, for a percentage, for the work for all of the services required to develop, follow-up on and complete four (4) projects targeted by the Société du parc Jean-Drapeau, to be spread over the years 2013 to 2016.” In support of his recommendation, the SPJD Director General informed the board of directors that the QIM had submitted a service offer for ten million one hundred and seventy-five thousand dollars (\$10,175,000.00), **which represents 18.5% of the total construction costs for the projects**, which were estimated at \$55 million. Of that amount, the fees to be paid to the QIM as the project manager totalled two million two hundred and fifty-seven thousand dollars (\$2,257,000.00), namely 4.72% of the total construction cost.

Resolution CA2012-46 was adopted by the SPJD's board of directors authorizing the SPJD to award the contract in question to the QIM for the four (4) stages of the *Horizon 2017* project. Despite the adoption of this resolution by the SPJD's board of directors, the parties signed no agreement.

When asked about this major about-face, the SPJD Director General informed the Bureau de l'inspecteur général that he [TRANSLATION] “did not agree with awarding the entire mandate, with the entire fees, to the QIM since he did not know whether, in the first place, they would even get to the design stage.” He also said, [TRANSLATION] “that we had to obtain authorization from Ville de Montréal before proceeding with the project.”⁸

The agreement as it was adopted shortly afterwards by the SPJD's board of directors, no longer requiring prior authorization from the Ville de Montréal executive committee, covered only the first phase, contrary to the initial service offer, which covered all phases



(1 to 4). The Bureau de l'inspecteur général still has questions today about the reasons for this change of heart since it was the SPJD Director General himself who proposed the overall approach to his board of directors a few months earlier.

Thus, on February 14, 2013, the SPJD's board of directors adopted resolution CA 2013 - 08 rescinding resolution CA 2012 - 46. In the new resolution, the board of directors also approved a professional services agreement with the QIM solely for Phase 1, namely the preparation of the RDP, estimated at one million two thousand five hundred and four dollars (\$1,002,504.00), including taxes, broken down as follows:

- QIM fees: \$201,206.00
- Professional services: \$801,298.00

In Article 3.1.1, this agreement, which was signed on February 28, 2013, states that [TRANSLATION] "the QIM may hire, as needed, professionals ('sub-contractors') such as architects, urban planners, landscape architects, engineers (civil, structural, mechanical and electrical) and other consultants required [...] to provide the services." This contract, as written, is not in keeping with the rules provided in the law for awarding contracts, as will be explained later.

Contracts for the *Horizon 2017* Rehabilitation and Development Project

In addition to the contract indicated above, the SPJD and the QIM signed three (3) additional agreements.

Moreover, ten (10) other contracts were signed with various suppliers, architects and engineers. Some of these contracts resulted from calls for tenders, either public or by invitation, and others were awarded by mutual agreement.

The Bureau de l'inspecteur général identified major irregularities affecting a total of twelve (12) of these contracts on which a court, in keeping with the teachings of doctrine and case law, could rule, declaring them invalid.

The table provided in Appendix A presents the process for awarding contracts for the *Horizon 2017* rehabilitation and development project. It will give the reader of this report an overview of the contracts and calls for tenders. In the "Irregularities" column, it also indicates the legal violations identified by the Bureau de l'inspecteur général.

Before presenting an analysis of each of the contracts, it is worth identifying the pertinent principal rules for awarding contracts in the municipal sector, their underlying principles and the impact on the validity of these contracts when these principles are not upheld.

5. General Principles, Sanctions and Rules for Awarding Contracts

5.1 General Principles

Respect for the rules provided by law for awarding contracts lies at the heart of the inspector general's monitoring role. The city's paramunicipal organizations, such as the SPJD, are subject to these rules.⁹

The principles underlying these rules can be summarized as follows:

1. To ensure that the **best product is obtained for the best price**, for the benefit of the municipality;
2. To guarantee **free competition**;
3. To give all those who wish to contract with the municipal administration **an equal opportunity** to do so;

These objectives have been anchored in our judicial system for a long time¹⁰ and frequently reaffirmed by the courts.¹¹

In 2009, in an important decision concerning the legality of the process leading to a decision by a selection committee established to evaluate offers using a weighting and evaluation system, the Québec Court of Appeal reiterated these objectives as follows:

*[TRANSLATION] The procedure imposed by the legislator has two objectives: to bring competition into play when cities award contracts for professional services and to obtain the **best possible quality/price ratio**.¹² (our emphasis)*

5.2 Sanctions for Violating the Rules Provided in the Act for Awarding Contracts

It has been clearly established that the imperative provisions concerning the awarding of municipal contracts are of a **public nature and that a failure to respect them results in the invalidation of the contracts**. It remains to be determined **whether all** of the provisions of the Act must be considered imperative.

The doctrine summarizes this postulate as follows:

[TRANSLATION] Some case law questions the real impact of the failure to respect the provisions of the Act on the protection of free competition, equal opportunities for bidders and obtaining the best price or the best offer. This seems pertinent for the present examination of the decision rendered by the Court of Appeal in the L'Immobilière affair.

*In his work on municipal contracts issued through public tenders (reference omitted), André Langlois pointed out that certain decisions highlight the “quality and efficiency of effective competition and not blindly observing the provisions of the law in the event of a lack of harm to the community.” We believe that these decisions are essentially justified and are intended to prevent “throwing out the baby with the bath water.” **If the court determines that the failure to respect the provisions does not hamper free competition, equal opportunity and obtaining the best price for the best offer, it will refuse to act.** That is essentially what these decisions state.¹³ (our emphasis)*

This means that in the event of a violation of these objectives, a court would not hesitate to act, punishing any illegality by declaring a contract invalid.

As will be demonstrated throughout this report, the Bureau de l'inspecteur général noted several problems concerning several contracts that run counter to the objectives established by the legislator.

5.3 Certain Fundamental Rules of Law

5.3.1 The Project Manager's Obligation to Prepare Estimates

In the case of contracts for \$100,000 and more, the legislator requires municipalities and paramunicipal bodies to determine the value of a contract to be signed:

Section 477.4. Cities and Towns Act:

*If a **contract** involves an **expenditure of \$100,000** or more, the municipality **must** establish an estimate of the price before any tenders are opened or the contract is entered into.*

As will be demonstrated in the following sections, the investigation conducted by the Bureau de l'inspecteur général demonstrated that the SPJD did not prepare estimates **for any of the professional services contracts it signed by mutual agreement with the QIM.**

Although this problem is an unequivocal violation of the law, could it have affected the validity of these agreements? The doctrine¹⁴ responds in the affirmative. This is not a simple irregularity, but an essential condition.

*[TRANSLATION] There is no provision in the Act to the effect that a contract is invalid if no prior estimate is prepared, as is the case, for example, if no notice of motion is presented before a regulation is adopted or if the regulation is not read before it is adopted. **But case law does not require the Act to mention such invalidity in order to conclude that the omission concerns an essential condition of the validity of an act; the essential character of the formality will vary according to its importance in terms of decision making.***

*In our opinion, the failure to prepare a prior estimate prevents the creation of a contract; the text of section 477.4 of the Cities and Towns Act deprives the council of its power to sign contracts. A resolution awarding a contract when no estimate has been prepared would therefore be *ultra vires* as a result of a major vice concerning an essential element of the contracting procedure. (our emphasis)*

The Bureau de l'inspecteur général agrees with this statement. In *Immeubles Port Louis Itée vs. Lafontaine (Village)*,¹⁵ the Supreme Court of Canada addressed the criteria that should guide a court in the presence of irregularities that are not mere informalities:

(c) Serious Illegalities Which Are Not Mere Irregularities or Formal Defects

Other forms of illegality relied on in the courts deal with an organization's failure to observe the necessary formalities in exercising its powers. The infringement cited by the appellant appears to be of this nature.

[...] The notions of “essential formality” and “essential element” are still not well defined in the cases, however. In fact it can be said that, generally speaking, the courts quash an act for a procedural irregularity **when the purpose of the procedure has not been achieved.**¹⁶ (our emphasis)

The legislator’s objective when enacting the obligation for a municipality or a paramunicipal organization to prepare **an estimate before contracting is to ensure that it obtains the best price when soliciting contracts.** Obtaining the best price remains one of the means a municipality can use **to protect the interests of its taxpayers.** It is, then, a matter of public interest. If they do not prepare estimates before contracting, these public organizations cannot know whether the service offers received truly reflect the market. This is an **essential formality** and failure to respect it results in **nullity.**

5.3.2 The Obligation to Issue a Call for Tenders when a Contract is Awarded by Mutual Agreement.

The legislator has determined that public contracts must be subject to the public call for tenders procedure for contracts worth \$100,000 and more in order to generate as much competition as possible by attempting to reach all qualified interested parties.¹⁷

Moreover, the call for tenders by invitation procedure, which applies to contracts worth between twenty-five thousand dollars (\$25,000.00) and ninety-nine thousand nine hundred and ninety-nine dollars and ninety-nine cents (\$99,999.99), gives the municipality the possibility of choosing the parties from which it wishes to receive bids, which limits competition.¹⁸

The doctrine and case law unanimously acknowledge that:

*[...] [TRANSLATION] the provisions requiring the adjudication of certain contracts following requests for bids are **imperative provisions**, having a public character, which ensure that the request for bids becomes an*

essential formality for the very existence of the contract.¹⁹ (our emphasis)

We understand the objective behind this procedure: to give those who wish to enter into a contract with a municipality or paramunicipal body an equal opportunity to do so.

Contracts worth twenty-five thousand dollars (\$25,000) and less are not governed by these rules. The municipalities can, even if they are not required to do so, sign mutual agreements with the party of their choice.

Exceptions

The legislator established exceptions to these principles, thereby allowing municipalities and paramunicipal organizations to reach mutual agreements based, for example, on the status of the individual, regardless of the amount involved. Thus, as a result of their status as a public organization, government departments and school boards can sign mutual agreements with the municipalities.²⁰

This exception also applies for contracts signed with non-profit organizations.²¹

Section 573.3. Cities and Towns Act:

Sections 573, 573.1 and 573.3.0.2 do not apply to a contract

(1) [...]

(2) [...]

*(2.1) whose object is the supply of insurance, equipment, materials or services other than the collection, transport, transfer, recycling or recovery of residual materials **and that is entered into with a non-profit agency;***

[...]

Since this is an exception to the principal of equal opportunities for any person qualified to contract with a municipality, the service to be provided as stated in the contract must, however, be provided by the organization in question. That organization cannot

subcontract the majority of the product which it has made a commitment to provide, essentially serving only as a transmission belt for private companies, which would be one way for the project manager to bypass the obligation to proceed with a call for tenders. As will be presented later, **two (2) contracts awarded by the SPJD to the QIM were of this nature.**

5.3.3 *Respect for the Procedure for Bid Weighting and Evaluation*

All of the contracts examined as part of this investigation are professional services contracts and, with the exception of those awarded by mutual agreement, are subject to the system for bid weighting and evaluation provided in section 573.1.0.1.1 of the Act. In fact:

[TRANSLATION] This mandatory system applies to all professional services contracts, and not only to those covered by the government's regulatory power, and this applies every time competition is required on their part by the applicable law or regulation, as the case may be. This concerns requests for tenders issued both by means of a written invitation to at least two suppliers and by means of a public call for tenders.²²

Generally referred to as the two-envelope system, the evaluation must be performed in two steps. The first step evaluates the quality of the bids and the bidders, without taking the proposed price into consideration at that time. The second, reserved for bidders who obtain at least 70 interim points, allows the selection committee to establish the final points for each bid by multiplying the interim score plus 50 by 10,000 and dividing the result by the proposed price. This amounts to a procedure that serves to [TRANSLATION] “weight the prices of the offers by exercising controlled discretion.”²³ As indicated above, this mandatory system, introduced by the legislator in 2002, serves to [TRANSLATION] “bring **competition into play** when cities award contracts for professional services so as to obtain the **best possible quality/price ratio.**”²⁴

Section 573.1.0.1.1 of the Act reads as follows:

Where a contract for professional services is to be awarded, the **council must use** a system of bid weighting and evaluating **whose establishment and operation are consistent with the following rules:**

- (1) the system must have a minimum of four evaluation criteria in addition to price;
- (2) the system must provide for the maximum number of points that may be assigned to a tender for each of the criteria other than price; that number may not be greater than 30 out of a total of 100 points that may be assigned to a tender for all the criteria;
- (3) the council shall establish **a selection committee** consisting of at least three members, other than council members, which must
 - (a) evaluate each tender without knowing the price;
 - (b) assign a number of points to the tender for each criterion;
 - (c) **establish an interim score for each tender by adding the points obtained for all the criteria;**
 - (d) as regards the envelopes containing the proposed price, open only those envelopes from persons whose tender has obtained an interim score of at least 70, and return the other envelopes unopened to the senders, notwithstanding subsections 4 and 6 of section 573;
 - (e) establish the final score for each tender that has obtained an interim score of at least 70, by dividing the product obtained by multiplying the interim score increased by 50 by 10,000, by the proposed price.

The call for tenders or a document to which it refers must mention all the requirements and all the criteria that will be used to evaluate the bids, in particular the minimum interim score of 70, and the bid weighting and evaluating methods based on those criteria. The call for tenders or the document, as the case may be, must specify that the tender is to be submitted in an envelope containing all the documents and an envelope containing the proposed price.

The council shall not award the contract to a person other than

- (1) the person whose bid was received within the time fixed and obtained the highest final score, subject to subparagraphs 2 and 3;
- (2) where subparagraph 1 applies to more than one person, the person tendering the lowest price, subject to subparagraph 3;

(3) where subparagraph 2 applies to more than one person, the person favoured by a drawing of lots.

For the purposes of subsection 8 of section 573, the tender of the person determined under the third paragraph shall be considered to be the lowest tender.

The council may adopt a by-law delegating the power to establish a selection committee to an officer or employee of the municipality and setting the conditions and procedures for the exercise of the delegated power.

Where a contract not covered by the first paragraph is to be awarded, the council may choose to use a system whose establishment and operation are consistent with the rules set out in that paragraph. In such a case, the second, third, fourth and fifth paragraphs apply.

As will be presented later, during the analysis of the compliance of certain calls for tenders, the Bureau de l'inspecteur général noted several irregularities concerning the procedure required by the weighting and evaluation system for several calls for tenders, **including two (2) major violations** that confront head-on the objectives of the legislator, which have been abundantly explained.

The following sections will discuss those contracts awarded as part of the *Horizon 2017* rehabilitation and development project that the inspector general considers problematic.

6. The Design of the Rehabilitation and Development Program for Parc Jean-Drapeau (Step 1)



Step 1 concerned the design of the RDP, namely the production of preliminary specifications and the production of final specifications explaining the concept of the RDP.

6.1 Agreement Between the QIM and SPJD for the Preparation of a Rehabilitation and Development Program

As part of this step, an initial contract was signed by the SPJD and the QIM by mutual agreement on February 28, 2013, for the sum of one million two thousand five hundred and four dollars (\$1,002,504.00) for the preparation of a rehabilitation and development program.

6.1.1 Performance of Work by a Third Party

Considering the content of this contract, the Bureau de l'inspecteur général is of the opinion that the SPJD should have used the public call for tenders procedure and not have awarded a contract to the QIM by mutual agreement.

First, the principal object of this contract (Article 3.4 of the agreement) was to provide “deliverables,” designated as follows in the service offer (3.2.6):

[TRANSLATION] To prepare the rehabilitation and development concept, provide rehabilitation and development proposals, prepare planning sketches for public spaces and buildings [...].

Second, Article 3.1.1 of the agreement reads as follows:

[TRANSLATION] The QIM may hire, as needed, professionals (“Sub-contractors”) such as architects, urban planners, landscape architects, engineers (civil, structural, mechanical and electrical) and other consultants required [...] to provide the services.

The QIM is, in fact, a **project manager**. It does not design rehabilitation concepts. It leaves this task to specialists, which it planned to hire.

The principal object of this contract, which was signed by mutual agreement, was to develop a rehabilitation and development program, which the QIM was unable to do on its own. In fact, close to 75% of the funds allocated for this agreement were for subcontractors, namely eight hundred and one thousand two hundred and ninety-eight dollars (\$801,298.00) through a “**mandate for development plans and specifications.**” As will be seen in the following section, an architectural firm actually handled the principal mandate, **not the QIM**. The QIM kept the sum of two hundred and one thousand two hundred and six dollars (201,206.00) for “managing” this mandate.

Thus, it was not the QIM, **but a commercial undertaking**, that actually provided the service covered by the contract. The QIM served as a contract coordinator or manager.

For the reasons provided earlier, the Bureau de l'inspecteur général is of the opinion that this agreement **is invalid**. Since the majority of the services were provided by a third party which was not a non-profit organization, the SPJD should have issued a public call for tenders in keeping with the general principle provided in section 573 of the Act. Thus,

the SPJD could not benefit from the exception provided in paragraph 2.1 of section 573.3 of the Act to sign such a mutual agreement with the QIM, even if it enjoys the status of a non-profit organization.

6.1.2 Cost Estimate

The investigation conducted by the Bureau de l'inspecteur général demonstrated the fact that no budget estimate was prepared before the contract was awarded to the QIM. The SPJD confirmed this fact to the Bureau de l'inspecteur général.²⁵

For the reasons presented earlier, the Bureau de l'inspecteur général is of the opinion that the fact that an estimate was not prepared before the contract was awarded makes the agreement illegal. The failure to respect section 477.4 of the Act is serious enough, based on the instruction of doctrine and case law, that in the hypothetical event that the case were to be brought before the court, the court could penalize these irregularities by declaring the contract invalid.

Moreover, the Bureau de l'inspecteur général is of the opinion that the management of the SPJD did not protect the taxpayers' interest when it failed to verify whether the QIM's service offer reflected the reality of the market.

Warning of the Auditor General of Ville de Montréal

This breach is all the more cause for concern since the SPJD was clearly aware of this serious shortcoming concerning the contract awarding and management process after the Ville de Montréal auditor general tabled his report.

In the report he submitted to the city council and the urban agglomeration council for the year ended December 31, 2012, the city's auditor general audited the SPJD's contract awarding and management process. Following his examination of the contracts awarded, the auditor general made the following observation:

At the time of our audit, finding these cost estimates proved to be quite difficult since none of them were recorded in the file created by the SPJD for the contracts reviewed (100% of cases).²⁶

The auditor general's recommendation resulting from (3.1.2.B.) reads as follows:

*reiterate to the personnel in charge the importance of documenting the detailed cost estimates and keeping these in the file containing all of the documents assembled for the launch of a call for tenders;*²⁷

Here is the response the SPJD submitted to the auditor general with respect to this recommendation:

*Determine the essential documents required, in particular the estimates, for every step of a project, ensure they are produced in a compliant manner and followed-up on, and lastly, centralize where they are kept (archives).
(Completed March 2013)*²⁸

It is clear from the facts related above that the SPJD did not implement the auditor general's recommendation.

6.2 Public Call for Tenders SPJD-QIM-ET1-PROFAMEN for the Preparation of Concepts and Plans for the RDP

Context

Following the signing of the professional services agreement by the SPJD and the QIM for the preparation of an RDP, the QIM issued public call for tenders SPJD-QIM-ET1-PROFAMEN for the preparation of the RDP concepts and plans. This call for tenders covered professional services in **architecture**, landscape architecture, urban traffic and design, for the performance of a mandate that the QIM could not itself perform.

The call for tenders was published by the QIM from May 21, 2013, to June 10, 2013. As indicated in the documents, the budget for preparing the design represented a maximum amount of two hundred and fifty thousand dollars (\$250,000.00), including taxes and other accessory fees. Six (6) bidders submitted service offers. The contract was awarded to Daoust-Lestage inc.²⁹ in the amount of one hundred and seventy-two thousand four hundred and twenty-two dollars and fifty cents (\$172,422.50), including taxes and accessory charges.

6.2.1 Evaluation and Weighting System

As explained earlier, since this was a call for tenders for a professional services contract, it is subject to the bid weighting and evaluation system provided for in section 573.1.0.1.1 of the Act.

The QIM introduced an unusual rule at the time of this call for tenders: **the requirement to attain a minimum score for a call for tenders without all of the evaluation criteria being rated in order to qualify for the opening of the price envelope.**

According to the above-mentioned procedure, the Act requires a selection committee to evaluate the bids according to the evaluation criteria provided in the call for tenders. At the end of the exercise, the selection committee adds the points for each criterion evaluated and establishes an interim score.

This call for tenders provided for a total of six (6) criteria and set the passing score at 70%. This call for tenders is particular in that it stated that, following the evaluation of the first five (5) criteria, **only bids that had obtained a score of 60 out of 75 would be evaluated for a final criterion.** Only after the evaluation of this final criterion would the envelope containing the price be opened and the mathematical formula provided by the law applied. In the opinion of the Bureau de l'inspecteur général, these particular terms clash with the requirement of sub-clause c) of the third clause of the first paragraph of section 573.1.0.1.1 of the Act:

*Where a contract for professional services is to be awarded, the **council must use a system of bid weighting and evaluating whose establishment and operation are consistent with the following rules:***

(1) [...]

(2) [...]

(3) *the council shall establish a **selection committee** consisting of at least three members, other than council members, which must*

(a) evaluate each tender without knowing the price;

(b) assign a number of points to the tender for each criterion;

*(c) **establish an interim score** for each tender by adding the points obtained for **all the criteria.***

This provision clearly indicates that the interim score would only be established following the addition of the points for all the criteria, whereas the investigation revealed that two interim scores were used. As will be seen later, had it not been for these two interim scores, after the addition of the points for the first five criteria, almost all of the bidders still had a chance to qualify for the opening of the price envelopes. The requirement of an eliminatory score prior to the interim score provided for by the Act adversely affected all of these bidders, giving them a certain legal interest in asking to have this call for tenders declared invalid.

As mentioned previously, this requirement runs counter to one of the objectives sought by the legislator: **to promote free competition to achieve the best quality/price ratio.**

This is all the more dramatic for one of the bidders since, without this eliminatory score, he would have needed only a score of 13.27 out of 25 (namely 53%) for the sixth criteria in order to qualify for the price envelope opening stage, as will be discussed in greater detail further on.

When the violation of this legislative provision and the prejudice likely to result from it are taken into consideration, it is possible to believe that a court could have ruled to penalize the failure to observe these legislative provisions by declaring the contract invalid.

The SPJD apparently finally understood the illegality of its actions since the investigation demonstrated that these requirements came from a proposal from the QIM. The SPJD abandoned this requirement for subsequent calls for tenders as of February 2014, with great difficulty, as will be demonstrated later.³⁰

In the case of the current call for tenders, the six (6) criteria presented in Table 1 were established in order to evaluate the quality of the bidders' proposals.

Table I – Criteria for the Qualitative Evaluation

Criterion for the qualitative evaluation	%
1. Understanding of the mandate	10%
2. Experience of the firm or consortium	20%
3. Presentation of the offer	5%
4. Experience and expertise of the team	20%
5. Production capacity	20%
Criteria 1 to 5	75%
6. Proposed approach	25%
Interim score	100%

A selection committee met to evaluate the bidders' scores with respect to criteria 1 through 5. Only the bidders that obtained a score of at least **60 out of 75** were invited to an interview for the purpose of presenting their approach (criteria 6). The selection committee granted the passing score for being evaluated for criteria 6 to a single firm, namely Daoust-Lestage inc. Therefore, only one bidder was awarded points for all of the

evaluation criteria. The interim score for opening envelope no. 2, containing the price, was 70 out of 100.

The table below indicates the points awarded by the selection committee.

Table II – Interim Score Awarded by the Selection Committee for each Bid

Evaluation step	Score by firm (results)					
	Firm A	Firm B	Firm C	Firm D	Firm E	Daoust-Lestage inc.
Criteria 1 to 5	41.75	47.18	49.93	53.38	56.73	68.23
Criteria 6 (proposed approach)	NOT APPLICABLE The bidders that did not obtain the passing score of 60/75 for criteria 1 through 5 were not evaluated for criteria 6 (proposed approach).					22.38
Interim score	41.75	47.18	49.93	53.38	56.73	90.61

It should be noted that all of the bidders that had obtained a score of at least 45 after the evaluation of the first five criteria still had a mathematical chance of obtaining an interim score of 70, needed to qualify for the opening of the price envelope. Moreover, by obtaining a score of 56.73 out of 75 for criteria 1 through 5, Bidder E only needed a score of 13.27 out of 25 (namely 53%) for criteria 6 in order to qualify for the opening of the price envelope.

The price envelope from Daoust-Lestage inc. was the only one opened and the mathematical formula provided in the Act was applied:

$$\frac{(\text{Total score}^{31} + 50) \times 10,000}{\text{Price}}$$

Price

The contract was awarded to Daoust-Lestage inc.

The SPJD management approved this previously unheard of evaluation and weighting system without even questioning its legality.³²

6.2.2 Requirements and Criteria

This call for tenders contained certain criteria that caught the attention of the Bureau de l'inspecteur général.

First, Article 13.1 of the call for tenders stipulated that the bidder and its sub-contractors had to have a [TRANSLATION] “place of business in Québec.” One of the points of Article 1 states that [TRANSLATION] “Considering the renown of the site and the exceptional exhibit held there, the firm or consortium should submit a project of world-class calibre which will stand out for the quality of the plan and design on an international scale.” Some of the witnesses interviewed informed the Bureau de l'inspecteur général that these two (2) criteria were contradictory since, for a world-class project, the bidders should be allowed to recruit subcontractors whose places of business are outside Québec.

Second, the proposal submitted by each bidder had to [TRANSLATION] “demonstrate the firm’s experience with a minimum of four (4) projects, including three (3) development projects completed recently in complex, mixed-use urban environments that had a significant impact on their environments and one (1) project completed along a shore” (Article 7.2.2). The required criteria correspond, in many respects, to various projects completed by the firms Daoust-Lestage inc. and Claude Cormier + Associés.

Table III – Projects Completed by the Firms Daoust-Lestage inc. and Claude Cormier + Associés

Project	Done by	Design start	End of work
Quartier des spectacles – Montréal	Daoust-Lestage inc.	2008	2012 (3 phases)
Promenade Samuel-De Champlain, Phase 1 – Québec	Daoust-Lestage inc.	2005	2008
Sugar Beach – Toronto	Claude Cormier + Associés	2007	2010
Square Dorchester – Place du Canada – Montréal	Claude Cormier + Associés 60% IBI-CHBA 40%	2008	2010 (phase 1)
Quartier international de Montréal	Daoust-Lestage inc. 66% Provencher Roy 17% Beique Thuot Legault 17%	2000	2004

All of the bidders that were not retained with whom the Bureau de l'inspecteur général met consider these criteria very high, very specific and poorly adapted to the mandate covered by the current call for tenders.

First, they consider the criteria to be exceptional, very high requirements, for the completion of major development projects, including rather specific requirements, completed recently in a complex, mixed-use urban environment and having a significant impact on their environment (this refers to obtaining major recognition from the architectural sector, by receiving awards and honours, for example).

Second, the requirement that the firm was to have completed three (3) projects in an urban environment (urban and metropolitan zone) while the mandate in question involves a park on an island in the middle of the St. Lawrence River, having nothing to do with the urban environment, makes this criterion inappropriate in their opinion.

Observations of a Consultant Hired by the QIM to Prepare the Tender Criteria

It is worth mentioning that this affirmation on the part of the bidders that were not retained was confirmed by a consultant hired by the QIM to prepare these criteria. When the Bureau de l'inspecteur général met with this consultant, he explained that he found the criteria required by QIM management too high and ill-suited to the mandate to be completed and that, as a result, they eliminated many firms. He clearly recalled that QIM management insisted on the fact that the firm to be awarded the contract had to be extremely proficient in urban design.

The combination of certain requirements, including the requirement for the bidders to present a world-class project while having a place of business in Québec (for the subcontractors, as well) (Articles 1 and 13.1) and the specificity of the criteria contained in the call for tenders (Article 7.2.2) limited the **openness of the market**, giving Daoust-Lestage inc. an advantage.

Moreover, the bidders had to demonstrate their experience in the completion of at least four (4) projects, including three (3) development projects completed in complex, mixed-use urban environments (Article 7.2.2). Yet, the project in question was set in Parc Jean-Drapeau, outside the urban zone.

6.2.3 Selection Committee Work Timetable

The investigation conducted by the Bureau de l'inspecteur général revealed that the process used was accelerated for a mandate of this type.

According to the evidence gathered, the selection committee's timetable was as follows:

- Monday, June 10, 2013, receive and distribute the offers to the five (5) members of the selection committee;
- Tuesday, June 11, 2013, time reserved for the personal evaluations of the committee members;

- Wednesday, June 12, 2013, from 9:30 a.m. to 12:30 p.m., working meeting of the selection committee;
- Thursday, June 13, 2013 from 12:30 p.m. to 3:45 p.m., interviews with the pre-selected bidders;
- Thursday, June 13, 2013 from 3:45 p.m. to 4: p.m., vote to select the firm.

It is important to note a few details concerning the management of the timetable provided for evaluating the offers received for this call for tenders:

The timetable gave the members of the selection committee one evening and one day to read the bidders' offers, which were voluminous and complex.

A period of 3 hours and 15 minutes was reserved for conducting all of the interviews (Step 6). When the timetable was sent by email, on May 28, 2013, the number of bidders eligible for the interview was unknown, since the call for tenders publication period only ended on June 10, 2013.

A QIM representative informed the Bureau de l'inspecteur général that he usually sends the bids to the members of the selection committee a week in advance so that they have time to read the bids thoroughly. In the case at hand, the QIM Director General explained that this period was shortened due to the pressing deadlines of the project.

All of the members of the selection committee interviewed by the Bureau de l'inspecteur général indicated that the time allocated for reading the bids and making the individual evaluations was sufficient in their opinion, but confirmed that time was tight for everything. Nevertheless, all mentioned that they took the time to make an adequate evaluation of the bids since most of them are used to taking part in this type of selection committee and they know what to look for in the bids.

Most of the firms interviewed by the Bureau de l'inspecteur général, on the other hand, feel that they received a very hasty response indicating that their bid had not been retained. These firms are of the opinion that it generally takes a selection committee much longer to analyze such complex bids, which are packed with information, and reach a final weighting. Most of the firms interviewed stated that they had received a rejection letter dated June 12, 2013, namely the date on which the selection committee members met.

The Bureau de l'inspecteur général questions the hastiness requested in the bid evaluation process. Moreover, it does not understand the justification of pressing deadlines put forward by the QIM Director General. How would taking a week more (the usual time frame) to study the bids endanger the delivery of a project scheduled for November 30, 2013, in keeping with the terms of the service agreement signed by the parties?

Above all, the short amount of time allocated for the interviews with the bidders (3 hours and 15 minutes) even before the bids were opened, leads, at the very least and interpreting the facts in the most favourable light, to a conclusion of poor planning on the manager's part.

6.2.4 Evaluation of the Bidders by the Selection Committee

Based on the analysis of the scores attributed by the members of the selection committee before the individual evaluations were shared, Bidder E apparently obtained a score of 61.88. With the exception of Daoust-Lestage inc., this is the only firm to which the members gave an individual score above the required threshold (60 out of 70), in order to qualify for the evaluation of the proposed approach (criterion 6).

Table IV – Evaluation of Bidder E / Points Awarded Before and After the Meeting of the Selection Committee (in this table, the letter “M” denotes a member of the selection committee)

Criteria	Bidder E				Weighting	
	M1	M2	M3	M4		
Understanding of the mandate	Individual subtotal before the committee	9.5	7.5	6.2	8	10
	Average before the committee	7.80				
	Individual subtotal after the committee	9.5	7.5	7	8	
	Average after the committee	8.00				
Experience of the firm or consortium	Individual subtotal before the committee	19	17	17	16	20
	Average before the committee	17.25				
	Individual subtotal after the committee	17	15	13	10	
	Average after the committee	13.75				
Presentation of the offer	Individual subtotal before the committee	4.5	3.5	4.5	4	5
	Average before the committee	4.13				
	Individual subtotal after the committee	4.5	3.5	3.5	4	
	Average after the committee	3.88				
Experience and expertise of the team	Individual subtotal before the committee	17.5	17.4	16	14	20
	Average before the committee	16.23				
	Individual subtotal after the committee	17.5	17.4	10	14	
	Average after the committee	14.73				
Production capacity	Individual subtotal before the committee	18	16.4	15.5	16	20
	Average before the committee	16.48				
	Individual subtotal after the committee	18	16.4	16.5	14.6	
	Average after the committee	16.38				
Individual total before the committee		61.88				75
Individual total after the committee		56.73				

Difference in score before and after the committee	-5.15
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The individual scores are consolidated, usually by means of an average, to determine the bidder's score. Yet, after the evaluations were pooled, the total score of Bidder E was decreased from 61.88 to 56.73, as shown in the table above. An analysis of the results reveals that:

- all of the members decreased the score attributed to Bidder E. In fact, this firm was the only one for which the members of the selection committee unanimously decreased the score:
- the negative correction of the score attributed to this firm was much more pronounced than for the others;
- the most significant reduction in the score concerned the criterion concerning "the experience of the firm or consortium," and the committee's score for this criterion was composed of the average of the decreased individual scores.
- one committee member decreased his score from 16/20 to 10/20 and another committee member from 17/20 to 13/20.

In short, the pooling of the individual results resulted in the disqualification of Bidder E.

The investigation conducted by the Bureau de l'inspecteur général revealed that, following the interim evaluation, only Daoust-Lestage inc. had obtained a sufficient score, one that was clearly higher in the unanimous opinion of the members of the selection committee, to be invited to the selection interview and complete the qualitative evaluation of the bid.

According to certain members of the selection committee, they took into account the excellent reputations of Daoust-Lestage inc. and Claude Cormier + Associés, which, in their opinion, were the best in Canada and, since they had joined forces, became the unbeatable bidder.

Moreover, following the evaluation, one committee member informed the Bureau de l'inspecteur général that the committee secretary (employed by the QIM) and the QIM Director General, a simple observer, were reticent about qualifying only one (1) bidder for Step 6 (evaluation of the proposed approach). The committee secretary had apparently told this member that they were required by law to invite at least two (2) bidders to the interview (although no such obligation exists in the Act). The committee then studied the possibility of qualifying a second firm that had a score close to the passing score. This event was confirmed by several selection committee members and observers.

However, this member, who was interviewed by the Bureau de l'inspecteur général, explained that he was completely opposed to this approach. He was afraid that the

second bidder (who was less qualified) would be awarded the contract as a result of offering a price that was potentially lower than that of Daoust-Lestage inc.

The QIM employee who acted as the secretary of the selection committee was interviewed by the Bureau de l'inspecteur général. He admitted that he had mentioned, during the committee meeting, the risk inherent in moving a bidder who might propose the lowest price on to Step 6, namely that this could result in the contract being awarded to a bidder that was considered less competent.

Finally, the secretary also mentioned that the QIM Director General, who sat on the committee as an observer, had circulated a document to the members simulating the effect of a price variation on the final score.

6.2.5 Summary of the SPJD-QIM-ET1-PROFAMEN Call for Tenders

The facts surrounding this call for tenders could objectively lead a person to conclude that it was directed.

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 excess, bad faith, discrimination or a failure to observe laws. As reported by the Superior Court in *Therrien c. Ville de Blainville*,³³ 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 written so as to give one person preference over another.**

For a call for tenders to be considered “directed,” it must in some sense be demonstrated that there was an intent to promote one bidder to the detriment of the others³⁴ or that the party giving the work was “manipulative.”³⁵ A court must be satisfied with facts that are sufficiently serious, precise and concurring that serve to infer that the call for tenders was directed.

For the following reasons, the Bureau de l'inspecteur général is of the opinion that, in the case at hand, sufficiently serious, precise and concurring facts exist that would objectively lead a person to conclude that this call for tenders was directed in the favour of the firm retained:

- the requirement of a minimum interim score to be achieved in order for a candidate to be evaluated on a final criterion, resulting in the number of candidates being limited to one;
- the fact that this requirement was clearly illegal since the law requires an interim score to be established by “adding the points obtained for all the criteria”;
- the requirement of criteria, established at the insistence of the QIM, for evaluating the candidates’ experience that refer to projects in mixed-use urban environments, when the mandate to be completed involved a park located outside the urban zone;
- the opinion of a consultant hired by the QIM that these criteria are ill-suited to the project in question;
- the fact that these ill-suited criteria correspond in many respects to various projects completed by the firm retained;
- the notion that these ill-suited criteria objectively maximize the number of points associated with the experience of the firm and the team retained, which counted for 40 points, and that the members of the committee had practically no choice but to give it the best score, namely 37.25/40 (93%);
- the specific manner in which the committee evaluation took place, specifically the actions of the QIM Director General, who circulated a document simulating the effect of a price variation on a final score.

The Impact of this Call for Tenders

The consequences of a contract awarded following this call for tenders, with all of the major irregularities that have been demonstrated, are vast. This relatively modest contract (\$172,422.50) caused competitors to flee, no one who submitted a bid for this call for tenders deigning to take part in a subsequent call for tenders.

This contract gave a clear advantage to the firm Daoust-Lestage inc., which was awarded the following contract for the sum of \$3,622,412.70, almost without opposition (one other bidder). Following this, the Bureau de l’inspecteur général received two reports that led to the present investigation.

As if this were not enough, as will be discussed later, the firm Daoust-Lestage inc. was awarded several contracts by mutual agreement (between Step 1 and Step 2), including one in the amount of \$153,293.29 and two others for \$28,628.78 each (totalling \$210,550.85), contracts that should have been awarded using the call for tenders procedure and the bid evaluation and weighting system.

6.3 Agreement Between the QIM and Daoust-Lestage inc. for Heritage Architecture, Landscape Architecture and Urban Design for the Detailed Draft, Plans and Specifications, and Delivery Stages

On June 25, 2013, the agreement concerning professional heritage architecture, landscape architecture and urban design services for the detailed draft, plans and specifications, and delivery stages, as established in the Parc Jean-Drapeau RDP, was then signed by the QIM and the firm Daoust-Lestage inc., which was awarded the contract for call for tenders SPJD-QIM-ET 1-PROFAMEN. The contract was awarded for the amount of one hundred and seventy-two thousand four hundred and twenty-two dollars and fifty cents (\$172,422.50), including taxes and accessory charges.

In addition to the shortcomings in the call for tenders process abundantly highlighted above, this contract should have been awarded by the SPJD not the QIM. The SPJD is a non-profit body of the city, created under the *Charter of Ville de Montréal*, to which the city has delegated the power to administer, operate, develop, maintain and run Parc Jean-Drapeau. The city could, pursuant to sections 144 and 128 of Schedule C of the *Charter of Ville de Montréal*, delegate such powers to the SPJD. Nevertheless the SPJD could not in turn delegate its authority to sign contracts pertaining to these powers to the QIM.³⁶

As a result, this contract is also invalid for this reason.

6.4 Mutual Agreements SPJD1-GE-021 and SPJD1-GE-025 (Preparation of Perspective Plans for the RDP)

In September and October 2013, two (2) contracts were awarded by the QIM without any call for tenders; they covered the provision of professional services for preparing perspective plans for the RDP. More specifically, they covered the production of pictorial representations of locations intended to enhance the RDP presentation, which was rather technical. The production of these perspective plans was not part of call for tenders SPJD-QIM-ET1-PROFAMEN. This work was requested by the SPJD Director General, following various presentations made to government authorities or elected officials.

According to the SPJD, contract SPJD1-GE-021 served to provide a visual expression of three (3) spaces proposed in the RDP.

- The concourse towards the north starting at the metro station;
- The riverside walk;
- The point at Place des Nations.

The contract was awarded to Daoust-Lestage inc., **without any call for tenders**, in the amount of twenty-eight thousand six hundred and twenty-eight dollars and seventy-eight cents (\$28,628.78) including taxes (\$24,900.000 without taxes). According to the purchase order, the amount of eight thousand three hundred dollars (\$8,300 without taxes) was allocated for producing each of the three (3) perspective plans. The purchase order for this contract is dated September 17, 2013.

The purpose of contract SPJD1-GE-025 was to illustrate three (3) other spaces, using specific views, and illustrate the ambiances for the purposes of producing a video and a summary document (the promotional tools) in the future. The perspectives were for the following sites:

- The amphitheatre, from the hill towards the Calder statue (with a full-capacity crowd);
- Place des Nations, with a view of Quai des Nations;
- Île Sainte-Hélène, from the city, with a view of the walk and the Calder statue.

This contract was also awarded to Daoust-Lestage inc. **without any call for tenders**, for the same amount, namely twenty-eight thousand six hundred and twenty-eight dollars and seventy-eight cents (\$28,628.78) including taxes. According to the purchase order, the amount of eight thousand three hundred dollars (\$8,300.00), without taxes, was allocated for producing each of the three (3) perspective plans. The purchase order for this contract is dated October 28, 2013.

6.4.1 Contracting Procedure

This section demonstrates that the contracting procedure chosen for these contracts does not respect the Act.

Bid Solicitation Method

A) The Act

Section 573.1 of the Act states that a contract for work “may only be awarded after a call for tenders, **by way of written invitation**, to at least two contractors or two suppliers, as the case may be, **if it involves an expenditure of at least \$25,000** [...]” According to case law, the amount of the foreseeable taxes must be taken into consideration when determining the price.³⁷ In other words, a contract in the amount of \$28,628.78 including taxes, which is greater than \$25,000, must be solicited by means of a call for tenders by invitation. Yet, the QIM awarded two (2) successive contracts, **not including taxes**, for the production of six (6) perspectives by mutual agreement.

B) Internal Standards

In the same manner, the *Normes et procédures en approvisionnement du parc Jean-Drapeau* ([TRANSLATION] Parc Jean-Drapeau Procurement Standards and Procedures) specify the level of authorization and means for soliciting suppliers, depending on the amount of the contract. In fact, that document specifies that prices must be requested from at least two (2) suppliers for a contract worth \$10,000 to \$24,999, including taxes. It also stipulates that a call for tenders must be issued by invitation to at least three (3) suppliers for a contract worth \$25,000.00 to \$99,999.99, including taxes.³⁸ The QIM management admitted to the Bureau de l'inspecteur général that it had failed to respect SPJD procedures when it did not request prices from at least two (2) suppliers. Nevertheless, in keeping with the Standards, it should have issued a call for tenders by invitation. The SPJD Director General approved this exception, **but only after the contracts were awarded.**

The Bureau de l'inspecteur général has noted that the two (2) contracts awarded by mutual agreement for a value of \$24,900.00 before taxes were awarded in violation of the rules of the Act since, in fact, these contracts covered an expense greater than \$25,000.00 including net taxes. The QIM should have requested tenders in keeping with the weighting system (two envelopes), as provided in sections 573.1 and 573.1.0.1.1 of the Act. Moreover, the QIM failed to respect the *Normes et procédures en approvisionnement du parc Jean-Drapeau* ([TRANSLATION] Parc Jean-Drapeau Procurement Standards and Procedures).

For the reasons presented earlier, the Bureau de l'inspecteur général is of the opinion that **these contracts are invalid**, since the SPJD did not observe the rules provided in the Act for awarding contracts:

*[...] [TRANSLATION] the provisions requiring the adjudication of certain contracts following requests for bids are **imperative provisions**, having a public character, which ensure that the request for bids becomes a **formality essential to the very existence of the contract.***³⁹ (our emphasis)

The Bureau de l'inspecteur général is astonished that the representatives of the QIM evidently do not master the concept of threshold-setting expense with respect to the means for awarding contracts provided in the Act.

Single Supplier

In order to justify its failure to respect the SPJD's procedures, QIM management invoked the concept of a single supplier. According to them, the work involved an artistic structure and, as a result, it was up to the artist, in this case Daoust-Lestage inc., to promote its own work. Furthermore, a letter was transmitted on January 28, 2014, namely after the purchase orders were issued, to the SPJD Director General to explain the reasons for failing to respect the SPJD's procurement policy. In this letter, the QIM stated that [TRANSLATION] "No other architecture firm can produce perspective plans faithful to the idea developed by the Daoust-Lestage inc. architecture group."

This explanation highlights two distinct elements, **the artistic work** and **the single supplier**, which constitute exceptions to the Act and serve to bypass the invitation process for contracts worth between \$25,000.00 and \$99,999.99 and the public call for tenders process for contracts worth \$100,000.00 and more. Section 573.3 sets out the applicable provisions:

Sections 573, 573.1 and 573.3.0.2 do not apply to a contract

[...]

*(2) whose object is the supply of insurance, equipment, materials or services and that is entered into with a public body within the meaning of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), **or a supplier found, after thorough and documented verification, to be the only one in all the territories covered by an intergovernmental agreement on the opening of public procurement applicable to the municipality that is in a position to provide the equipment, materials or services, or, if the object of the contract is the providing of professional services referred to in section 573.3.0.2, the only one within Québec that is in a position to provide the services;***

[...]

*(4) whose object is the supply of movable property or **services related to cultural or artistic fields**, subscriptions or computer software for educational purposes;*

[...]

With respect to the single supplier, the Act states that, in order to benefit from this exception, the project manager must, **first**, seriously verify to make sure that the supplier is the only one able to provide the service "in all the territories covered by an intergovernmental agreement on the opening of public procurement applicable to the municipality,"⁴⁰ namely in the entire Canadian territory.

The six (6) perspectives produced provide a representation, in the form of a drawing, of the project. They **do not constitute a pure creation requiring an artistic mind**, but reproduce the vision resulting from architectural work assigned to architects. The Bureau de l'inspecteur général is of the opinion that it is difficult to associate the professional services requested with the artistic field. In fact, they are merely an extension of an architect's work.

Based on the explanations provided by QIM management, the organization did not think they had to ensure the uniqueness of the supplier. Therefore, there is no documentary evidence demonstrating the uniqueness of the supplier and no verbal evidence of steps taken in this respect. According to the Bureau de l'inspecteur général, this was simply an *a posteriori* justification for awarding the two contracts by mutual agreement.

In short, the Bureau de l'inspecteur général is of the opinion that both the Act and the *Normes et procédures en approvisionnement du parc Jean-Drapeau* ([TRANSLATION] Parc Jean-Drapeau Procurement Procedures and Standards) were violated with respect to the means for soliciting bids.

The Bureau de l'inspecteur général is astonished that the QIM, hired as a project manager, does not seem to master the concept of unique supplier and what is meant by a work of art within the meaning of the Act.

7. Additions Between Step 1 and Step 2



Promotional tools, which had not been planned for initially in the first agreement signed by the SPJD and the QIM, were added between Step 1 and Step 2. More specifically, these promotional tools included a promotional video, a promotional version of the RDP and presentations.

7.1 Agreement Between the QIM and the SPJD to Develop Tools to Promote, Provide Information about and Present an RDP

For these additions, a contract was signed by the SPJD and the QIM, without a call for tenders. This was a contract for professional services to develop tools to promote, provide information about and present the RDP, which was signed on October 10, 2013.



It represents an amount of two hundred and ten thousand five hundred and fifty-three dollars (\$210,553.00), including taxes.

7.1.1 Performance of Work by a Third Party

Out of a budget of two hundred and ten thousand five hundred and fifty-three dollars (\$210,553.00), two hundred thousand five hundred and fifty three dollars (\$200,553.00) were allocated for mandates handled by commercial undertakings. The QIM received a fee of ten thousand dollars (\$10,000) for “coordinating or managing” sub-contractors. Thus, it was not the QIM that provided the service requested, but several commercial undertakings.

For the reasons presented earlier, the Bureau de l’inspecteur général is of the opinion that these contracts are invalid, since the SPJD did not observe the rules provided in the Act for awarding contracts, which the courts consider imperative.⁴¹

Since the majority of the services to be provided were handled by a third party that was not a non-profit organization, the SPJD should have issued a public call for tenders, in keeping with the principle provided in section 573 of the Act. The SPJD could not benefit from the exception provided in paragraph 2.1 of section 573.3 of the Act to sign such a mutual agreement with the QIM, even if it enjoys the status of a non-profit organization.

7.1.2 Cost Estimate

As indicated earlier, the investigation conducted by the Bureau de l’inspecteur général demonstrated the fact that no estimate was prepared before the contract was awarded to the QIM. For the reasons presented, the Bureau de l’inspecteur général is of the opinion that the lack of estimate prepared before the contract was awarded affects its legality.

7.2 Agreement Between the QIM and Daoust-Lestage inc.

On October 11, 2013, the day after the contract was signed by the SPJD and the QIM, a contract was signed, with no call for tenders, by the QIM and Daoust-Lestage inc. This was a contract for professional heritage architecture, landscape architecture and urban design services to develop tools to promote, provide information about and present the RDP. This contract represented an amount of one hundred forty-two thousand three hundred and thirty-three dollars (\$142,333.00), including taxes. Following a few

additions, the amount was increased to one hundred and fifty-three thousand two hundred and ninety-three dollars (\$153,293.00), including taxes.

As indicated in an earlier section, the SPJD, which represents Ville de Montréal, could **not delegate** its power to contract to the QIM. In addition to the major irregularity discussed in the following point, this contract could not be awarded by the QIM. The SPJD should have been the contracting party.

Bid Solicitation Method

Since this contract was for more than \$100,000, a public call for tenders should have been issued. QIM management invoked the concept of a single supplier in order to justify the fact that it did not do so. This matter was discussed as part of the analysis of two contracts in the previous section. For the reasons provided earlier, the Bureau de l'inspecteur général is of the opinion that this justification cannot be accepted. As a result, this contract is invalid since it was not awarded in keeping with the correct method for awarding contracts, namely through a public call for tenders combined with a bid evaluation and weighting system.

7.3 Call for Tenders by Invitation SPJD-QIM-ET1-VIDEOPROMO

7.3.1 Description of the Call for Tenders

Since Daoust-Lestage inc. was not technically able to produce the promotional video, the QIM issued a call for tenders by invitation, SPJD-QIM-ET1-VIDEOPROMO, covering the production of a promotional video in four (4) versions: short, long, French, English. The call for tenders document informed the bidders that the maximum budget for this project was thirty thousand dollars (\$30,000.00), excluding taxes. The contract was awarded to Graph Synergie for thirty-four thousand four hundred ninety-two dollars and fifty cents (\$34,492.50), including taxes. The QIM issued the invitation to four (4) firms.

7.3.2 Tender Period

Subsection 573.1 of the Act stipulates that, for a call for tenders by invitation:

A contract referred to in any of the subparagraphs of the first paragraph of subsection 1 of section 573 or in section 573.3.0.2 may only be awarded after a call for tenders, by way of written invitation, to at least two contractors or two suppliers, as the case may be, if it involves an expenditure of at least \$25,000 and of less than \$100,000.

The first subparagraph of paragraph 2 and paragraphs 3 to 8 of Section 573 apply to awarding a contract covered by the first subparagraph.

573. *The following contracts, if they involve an expenditure of \$100,000 or more, may only be awarded after a call for public tenders by way of an advertisement in a newspaper:*

[...]

2. The time for the receipt of tenders shall not be less than eight days.

[...]

However, the call for tenders was issued on October 15, 2013, and the publication period ended on October 18, 2013, four (4) days after the call for tenders was issued. Three (3) firms withdrew on the same day the invitation was issued. The investigation revealed that one of the firms did not submit a bid as a result of the brief amount of time allowed for preparing and submitting a bid. Another firm stated that it would not have been able to deliver the video and the associated products within the timetable imposed by the QIM. The only firm that submitted a bid proposed the maximum price indicated in the call for tenders, namely thirty thousand dollars (\$30,000.00), excluding taxes.

The Bureau de l'inspecteur général noted that the QIM violated the law by publishing the call for tenders by invitation for a period of less than eight (8) days, as prescribed in the Act.

The Bureau de l'inspecteur général also noted that the tender period had a significant discouraging effect for potential bidders. It is, to say the least, surprising in this context that the QIM did not solicit more firms, since it knew that three (3) of the four (4) firms solicited would not submit bids.

Once again, the Bureau de l'inspecteur général is astonished by the fact that the QIM representatives obviously do not master the timeframes required by the Act for receiving bids.

8. Step 2 – Preparation of the Detailed Draft



Step 2 of the project involved the preparation of the detailed draft of the project, namely the preparation of technical studies and preliminary plans and specifications.

8.1 Agreement Between the QIM and SPJD for the Preparation of a Detailed Draft

For this step, a mutual contract was signed by the SPJD and the QIM. The SPJD gave the QIM a mandate to prepare a detailed draft for the project. This agreement was signed on October 16, 2013, for an initial amount of seven hundred and seven thousand ninety-six dollars (\$707,096.00), including taxes. Forty-two thousand nine hundred and eighty-eight dollars and thirty-five cents (\$42,988.35) were added to the initial amount on September 5, 2014, by means of a contract amendment.

8.1.1 Work Done by a Third Party

Although this contract clearly referred to hiring sub-contractors to prepare the detailed draft for the project (Article 3.1.2 of the agreement), it was later the SPJD that awarded all of the contracts directly, after calls for tenders were issued by the QIM, once the services of the Ville de Montréal had intervened, at the end of 2013, as confirmed by SPJD management.

8.1.2 Cost Estimate

As already highlighted, the investigation conducted by the Bureau de l'inspecteur général demonstrated that no estimate was prepared before the contract was awarded to the QIM. For the reasons already presented, the Bureau de l'inspecteur général is of the opinion that the lack of estimate prepared before the contract was awarded affects its legality.

Once again, the Bureau de l'inspecteur général is of the opinion that SPJD management did not protect the taxpayers' interests when it failed to verify whether the QIM's service offer reflected the market reality.

8.1.3 Progress Made with Respect to the Deliverables and Billing

It should be noted that the SPJD gave the QIM a mandate to prepare a detailed draft for the project. The agreement ended with the last payment, and the SPJD was to receive, by September 30, 2014, at the latest, the preliminary plans and specifications described in the agreement. In the contract signed on October 16, 2013, by the SPJD and the QIM, they agreed on the payment schedule set out below:

Payments	Date of the invoice	Amount of the invoice
1	2013-11-30	\$70,709.60
2	2013-12-31	\$70,709.60
3	2014-01-31	\$70,709.60
4	2014-02-28	\$70,709.60

5	2014-03-31	\$70,709.60
6	2014-04-30	\$70,709.60
7	2014-05-31	\$70,709.60
8	2014-06-30	\$70,709.60
9	2014-07-31	\$70,709.60
10	2014-08-31	\$70,709.60
TOTAL BEFORE AMENDMENT		\$707,096.00
Amendment 1	2014-09-05	\$42,988.35
TOTAL – STEP 2		\$750,084.35

Since the QIM could not do the work itself, it issued calls for tenders to architecture and engineering firms. These firms in turn invoiced the SPJD based on the progress of their work. In short, the invoices sent by the QIM to the SPJD should normally have been proportional to the progress of the work done by the firms.

The investigation conducted by the Bureau de l'inspecteur général revealed that, as at September 30, 2014, the delivery date stated in the agreement for the delivery of the plans and specifications:

- architecture firm Daoust-Lestage inc.⁴² had billed the SPJD for \$171,185.69, representing a work progress percentage of **11.8%**, based on the services provided by the professionals assigned to the project;
- engineering firm WSP Canada Inc.⁴³ had billed the SPJD for \$67,151.23, representing a work progress percentage of **9.1%**, based on the services provided by the professionals assigned to the project;
- the QIM, which supervised the work done by the above-mentioned firms and was responsible for delivering the deliverables, billed for \$750,084.35, or **100%** of the fees, with no evidence of work completed other than monthly invoices worded, for example, as follows: “Management fees, Payment of February 28, 2014.”

The Bureau de l'inspecteur général is of the opinion that it is abnormal for the QIM to have billed the SPJD for 100% of its professional fees when the preliminary plans and specifications had not been completed and delivered as at September 30, 2014. With

respect to the billing of the firms responsible for producing the plans, the most advanced firm had completed only **11.8%** of the work.

The Bureau de l'inspecteur général also finds it peculiar that an amendment made to the initial agreement to extend it by a month, at a cost of \$42,988.35, contained no details justifying that amount, which was paid. Moreover, since the Step 2 agreement ended on August 31, 2014, and the Step 3 and Step 4 agreement started on October 1, 2014, this amendment provided payment for the QIM for the only month not covered by one of those two (2) agreements.

8.2 Public Call for Tenders SPJD-QIM-ET2-PROAMEN for Professional Heritage Architecture, Landscape Architecture and Urban Design Services

Further to the signing of the agreement for professional services for the preparation of a **detailed draft** (Step 2), signed by the SPJD and the QIM, the QIM issued another public call for tenders, SPJD-QIM-ET2-PROAMEN. This call for tenders covered the services of professionals in heritage architecture, landscape architecture and urban design for the **detailed draft**, the plans and specifications and the completion of the project, as established by the RDP. Published from October 4, 2013, to October 22, 2013, it was the principal call for tenders for architecture services. Two (2) bidders submitted service offers.

As mentioned previously, following the intervention of the services of the Ville de Montréal at the end of 2013, the SPJD directly awarded all subsequent contracts resulting from the calls for tenders issued by the QIM, as confirmed by SPJD management.

8.2.1 Evaluation and Weighting System

For this call for tenders, the method used to evaluate and weight the bids was identical to that used for call for tenders SPJD-QIM-ET1-PROFAMEN. As a result, this process is invalid for the same reasons. To summarize, this unusual rule is a flagrant violation of the Act⁴⁴ since it does not determine the interim score for each bid by adding the points obtained using all of the criteria, as stipulated in the Act.

In the case at hand, the bidders had to achieve the passing score for criteria 1 to 5, before being evaluated with respect to criterion 6. The table below indicates the points awarded by the selection committee.

Table V – Interim Score Awarded by the Selection Committee for Each Bidder

Evaluation steps	Score per firm (results)	
	Firm A	Daoust-Lestage inc.
Criteria 1 to 5	55.60	71.60
Criterion 6 (proposed approach)	NOT APPLICABLE The bidders that did not obtain the passing score of 60/75 for criteria 1 through 5 were evaluated for criterion 6 (proposed approach).	23.40
Interim score	55.60	95.00

It is worth noting that, with a score of 55.60 out of 75 for criteria 1 through 5, Bidder A only needed a score of 14.4 out of 25 for criterion 6 in order to qualify for the opening of the price envelope.

The price envelope from Daoust-Lestage inc. was the only one opened.

The analysis of this call for tenders also revealed another unusual requirement in municipal contracting developed by the QIM and approved by SPJD management: the obligation for a bidder to propose an imposed minimum price.

Requirement of an Imposed Minimum Price

The call for tenders document established a minimum price for the work. Therefore, the prices proposed by the bidders had to be equal to or greater than the price indicated in the call for tenders. Article 6.2.3 of the call for tenders, concerning the presentation of the bid, reads as follows:

*[TRANSLATION] Based on the call for tenders documents, the firm shall propose all of the professional services, highlighting the best quality/quantity ratio for fees for a **minimum price of 6.85%** of the direct construction costs, to which the applicable taxes are added [...]*

Therefore, the fees proposed in the price submission (a minimum of 6.85%) would be applied to the final budget for the project.⁴⁵ The following calculation would then be



applied to each bidder that obtained the interim score (70 out of 100) required for opening envelope no. 2 (price proposal):⁴⁶

$$\frac{(\text{Interim score} + 50) \times 10,000}{\text{Price}}$$

Price

The price envelope from Daoust-Lestage inc. was the only one opened. This firm proposed the minimum fee permitted, namely 6.85%.

The QIM informed the Bureau de l'inspecteur général that the reasoning for setting a minimum price was to offer fees sufficient to obtain quality professional services. People working in the field who were interviewed by the Bureau de l'inspecteur général, however, stated that the minimum rate required for the professional fees was very profitable. According to these individuals, there was little chance that a bidder would propose a price greater than the minimum price imposed, namely 6.85%. According to the evidence gathered during the investigation, Bidder A proposed the same price.

Under the circumstances, did Bidder A have any choice but to set the price at the minimum? Proposing a price greater than 6.85% would inevitably disadvantage a bidder at the mathematical calculation step provided for by the Act.

In the absence of competition concerning the price, this procedure makes the mathematical formula provided for in the Act null and void:

Section 573.1.0.1.1 CTA

Where a contract for professional services is to be awarded, the council must use a system of bid weighting and evaluating whose establishment and operation are consistent with the following rules:

[...]

(e) establish the final score for each tender that has obtained an interim score of at least 70, by dividing the product obtained by multiplying the interim score increased by 50 by 10,000, by the proposed price.

This minimum price requirement, deemed very profitable based on the evidence gathered, completely eliminates the free play of competition. A bidder that had been declared competent to provide the professional services required, namely one that had obtained the passing score of at least 70%, would have been systematically removed from the two envelope system by a better qualified competitor since the price factor had become theoretical.

In the opinion of the inspector general, this once again goes against the legislator's objectives, namely to have competition play a role in awarding contracts for professional services and obtain the best quality-price ratio possible.

Thus, the taxpayers do not have an opportunity to benefit from professional services that are deemed competent at a price determined by free competition. In this case, it is impossible to obtain the offer with the best quality-price ratio.

According to the doctrine:

*[TRANSLATION] If the Court determines that the failure to observe the provisions does not hamper **free competition, equal opportunity and obtaining the best price or the best offer**, it will refuse to intervene. This is at the core of these decisions.⁴⁷*

On the contrary, a court would not hesitate to intervene and penalize the present illegality by declaring the contract invalid.

The Director General of the SPJD justified this requirement saying that it was intended to ensure quality work and that, in the end, it would have served to avoid extras. For the QIM Director General, when “*you use the two envelop system*” it’s “*almost always the lowest that gets in, even with the quality exercise.*” In this way, he wants to avoid claims for delays or additional requests.

These arguments do not hold water. In this case, what purpose would the evaluation committee serve? Is its role not specifically to evaluate the quality of the offers?

A great deal of time could be spent discussing the consequences, legitimate or not, evoked by the representatives of the SPJD and the QIM. Whether or not there is agreement, the legislator decided that a bidder will be deemed competent to accomplish work if a selection committee gives it a score of 70%. In the *L'Immobilière* case, the Québec Court of Appeal stated:

*[TRANSLATION] It appears that, when awarding contracts for professional services, the need to weight the price criteria using the quality of the proposal played a decisive role in the development of the new provision. Section 573.1.0.1.1 was not included in Bill 106 when it was tabled. During consultations held by a commission with respect to the bill, the Minister responsible wondered about the difficulties encountered by certain municipalities during the course of municipal evaluation work awarded solely on the basis of the lowest price tendered. **This sometimes resulted in subordinates doing the work who were incapable of providing quality services.***

Moreover, the deputy minister explained to the Commission that, in keeping with the bill under consideration, the passing score was 60 out of 100. Following requests submitted to the legislator with respect to placing greater importance on the quality criteria, **the passing score was increased to 70.**⁴⁸

Moreover, the price factor takes on its full importance and becomes the determining factor in the event of equal scores, at the end of the process:

Section 573.1.0.1.1 CTA

Where a contract for professional services is to be awarded, the **council must use a system of bid weighting and evaluating whose establishment and operation are consistent with the following rules:**

[...]

The council shall not award the contract to a person other than:

- (1) the person whose bid was received within the time fixed and obtained the highest final score, subject to subparagraphs 2 and 3;
- (2) where **subparagraph 1 applies to more than one person**, the person tendering **the lowest price**, subject to subparagraph 3;

This means that, in the case of equal scores, the bidder that proposes the lowest price will be awarded the contract.

Moreover, during the parliamentary work surrounding the adoption of section 573.1.0.1.1, the Minister of Municipal Affairs insisted on several occasions on the fact that the price is also a criterion even if “not everyone agrees with this.”⁴⁹

We will never know how much could have been saved if competition had been fully and truly allowed. Are the public administrators not responsible for protecting the taxpayers’ interests by allowing the free play of competition?

8.2.2 Requirements and Criteria

The requirements and criteria to which the bidders were subject in the case of this call for tenders are almost identical to those required in call for tenders SPJD-QIM-ET1-PROFAMEN, namely:

- to have a place of business in Québec;
- to present a world-class project that would stand out for its development and design quality on the international scene;
- to demonstrate the firm's experience in a minimum of five (5) projects⁵⁰ including three (3) development projects completed recently in complex, mixed-use urban environments and having a significant impact on their environments and one (1) rehabilitation, restoration or transformation project involving a building or site with a protected heritage value that required procedures involving decision-making authorities such as the Conseil du Patrimoine de Montréal, and one (1) project along a shoreline.

Once again, the criteria required correspond, in many respects, to various projects completed by the firms Daoust-Lestage inc. and Claude Cormier + Associés.⁵¹

The individuals interviewed by the Bureau de l'inspecteur général mentioned that the combination of certain requirements, including asking the bidders to present a world-class project while having a place of business in Québec (for the subcontractors as well) and the specificity of the call for tenders criteria, gave Daoust-Lestage inc. an advantage.

Moreover, the bidders had to demonstrate their experience in the completion of at least four (4) projects, including three (3) development projects competed in complex, mixed-use urban environments (Article 7.2.2). Yet the project in question was to take place in Parc Jean-Drapeau, outside the urban zone.

8.2.3 Competitive Advantage

Only two bidders, including Daoust-Lestage inc., took part in this call for tenders. During the meetings conducted by the Bureau de l'inspecteur général, several firms or consortia stated that they did not submit bids for this call for tenders as a result of the competitive advantage enjoyed by Daoust-Lestage inc. The reasons are provided below.

When they noted the results of the first call for tenders (SPJD-QIM-ET1-PROFAMEN), several firms or consortia believed that the QIM and the SPJD had given an advantage to Daoust-Lestage inc. According to these bidders, it seemed obvious that this firm would be awarded the contract for call for tenders SPJD-QIM-ET2-PROAMEN. Therefore, they did not want to invest time and effort in bidding.

Moreover, certain firms or consortia believed that Daoust-Lestage inc. had been given an advantage by being awarded the contract and doing the work for the first call for tenders (SPJD-QIM-ET1-PROFAMEN). More specifically, according to the witnesses interviewed, Daoust-Lestage inc. had an advantage in terms of the level of understanding of the mandate (criterion 1 of the evaluation of the offer) and in terms of the presentation of the mandate (criterion 6 of the evaluation of the offer).

Consultation of the RDP

Moreover, Article 5.12 of the call for tenders states that [TRANSLATION] “Upon appointment, the RDP [for which the concepts and plans were developed during the first call for tenders contract, awarded to Daoust-Lestage inc.] may be consulted by the bidders at the offices of the QIM, solely as of October 15, 2013.” It should be noted that the call for tenders publication period ran from October 8, 2013 to October 22, 2013, giving the firms or consortia that would have wanted to submit a bid little time in which to consult the RDP and prepare their bid.

Moreover, the investigation revealed that the final RDP had not been completed during the call for tenders publication period, since it was completed on December 11, 2013.

The fact that it had done the work for the first call for tenders and that the other bidders could only consult the RDP during the last week of the call for tenders in order to prepare their bids could have given the firm retained a competitive advantage.

8.3 Agreement Between the SPJD and Daoust-Lestage inc. for Heritage Architecture, Landscape Architecture and Urban Design

Following the call for tenders analyzed in the previous section, an agreement was signed by the SPJD and Daoust-Lestage inc. on August 15, 2014. This agreement covered the services of professionals in heritage architecture, landscape architecture and urban design for the detailed draft, the plans and specifications and the completion of the project, as established by the RDP for Parc Jean-Drapeau. This agreement represents an amount of three million six hundred and twenty-two thousand four hundred and twelve dollars and seventy cents (3,622,412.70), including taxes.

Considering the major irregularities amply discussed in this report with respect to call for tenders SPJD-QIM-ET2-PROAMEN for which this agreement was signed, namely:

- The requirement to achieve a minimum score for a call for tenders without all of the evaluation criteria being scored in order to qualify for the opening of the price envelope
- and
- the requirement of an imposed minimum price

the Bureau de l'inspecteur général is of the opinion that, based on the hypothesis where such a case were to be brought before the court, the court would penalize these irregularities by declaring the contract invalid.

8.4 Calls for Tenders SPJD-QIM-ING-CIVIL and SPJD-QIM-ING-STRUCTURE

Further to the signing of the agreement for professional services for the preparation of a detailed draft, signed by the SPJD and the QIM, the QIM issued several calls for tenders simultaneously, including two public calls for tenders, namely SPJD-QIM-ING-CIVIL and SPJD-QIM-ING-STRUCTURE. Essentially, the circumstances and the events were the same for these two calls for tenders. They were published by the QIM from January 30, 2014, to February 27, 2014.

Call for tenders SPJD-QIM-ING-CIVIL concerned professional engineering consultancy services as part of the RDP. More specifically, it concerned the preparation of preliminary plans and specifications and the preparation of final plans and specifications and the services to be provided during the construction work. Five (5) bidders submitted service offers. The contract was awarded to WSP Canada Inc. for an amount of one million six hundred and twenty-seven thousand nine hundred and eight dollars and fifty-two cents (\$1,627,908.52), including taxes.

Call for tenders SPJD-QIM-ING-STRUCTURE concerned professional engineering consultancy services as part of the RDP. More specifically, it concerned professional structural engineering services. Six (6) bidders submitted service offers. The contract was awarded to WSP Canada Inc. for an amount of eight hundred and thirty-one thousand eight hundred and eleven dollars and ninety-three cents (\$831,811.93), including taxes.

8.4.1 Evaluation and Weighting System

The investigation conducted by the Bureau de l'inspecteur général demonstrated that a new employee at the SPJD was assigned to verify the compliance of the call for tenders documents prepared by the QIM (approximately 24 hours prior to their publication). Following his analysis, the employee informed his immediate supervisor about his concerns with respect to the legality of certain criteria contained in these calls for tenders.

One of this new employee's concerns pertained to the fact that the bidders had to achieve a passing score for criteria 1 to 5 before they could be evaluated with respect to the proposed approach (criterion 6).⁵² The employee in question believed this procedure was discriminatory.

In order to examine this issue, the SPJD management formally asked the QIM to postpone the closing date for submitting bids (initially, the date for the end of the publication period was February 13). The QIM opposed that request, mentioning the prohibition with respect to publishing an addendum less than two (2) business days before the closing date for submitting bids. The analysis of the information gathered by the Bureau de l'inspecteur général reveals that SPJD management had been notified that the SPJD could be held accountable for this illegal methodology. In response to the SPJD's request, the QIM finally published addendum no. 4⁵³ postponing the closing date to February 27.

According to an SPJD manager, it was occasionally difficult to ensure that requests for corrections or modifications were made by the QIM in a systematic manner, as if the client did not have the last say. According to a representative of the SPJD, the QIM had an erroneous vision of its role under the service agreement.

Postponing the closing date provided time to issue a new addendum concerning the correction of the method for evaluating the offers. Addendum no. 5⁵⁴ was published on February 21, 2014, in order to change, among other things, Article 11 concerning the evaluation method. In summary, the passing score for criteria 1 to 5 was withdrawn.

As a result, all of the bidders were evaluated for **all of the criteria** and were given an interim score in keeping with the Act. Tables VI and VII indicate the scores awarded by the selection committee for calls for tenders SPJD-QIM-ING-CIVIL and SPJD-QIM-ING-STRUCTURE.

Table VI – Interim Score Awarded by the Selection Committee for Each Bidder for Call for Tenders SPJD-QIM-ING-CIVIL

Evaluation steps	Score per firm (results)				
	Firm A	Firm B	Firm C	Firm D	WSP Canada Inc.
Interim score (criteria 1 to 6)	29.8	71.4	72.9	80	94

Table VII – Interim Score Awarded by the Selection Committee for Each Bidder for Call for Tenders SPJD-QIM-ING-STRUCTURE

Evaluation steps	Score per firm (results)					
	Firm A	Firm B	Firm C	Firm D	Firm E	WSP Canada Inc.
Interim score (criteria 1 to 6)	63.4	64.3	73.1	75.0	79.4	83.5

In other words, when the interim score for each bidder was established by adding the points achieved by the bidder for all of the criteria, pursuant to the Act, the correction made to the method had the following consequences for each of the bids:

- SPJD-QIM-ING-CIVIL: four (4) out of five (5) bidders obtained the passing score (70 out of 100) needed for the opening of envelope no. 2 (price proposal). After analysis, if the initial method had been used, only two (2) bidders would have qualified for the opening of envelope no. 2.
- SPJD-QIM-ING-STRUCTURE: four (4) bidders out of six (6) obtained the passing score (70 out of 100) needed for the opening of envelope no. 2 (price proposal). After analysis, if the initial method had been used, only three (3) bidders would have qualified for the opening of envelope no. 2.

The QIM's resistance to a change requested in the methodology, which an SPJD employee considered discriminatory, is abnormal in the relationship between a client and a professional. This case illustrates the fact that the QIM seemed to want to behave as the true project manager. It had an erroneous vision of its role.

The Bureau de l'inspecteur général noted that the correction to the bid evaluation and weighting system allowed the selection committee to meet all of the bidders in order to evaluate them about their proposed approach. The bidders were therefore evaluated with respect to all of the criteria as part of the qualitative assessment of their offer. Finally, Addenda no. 4 and no. 5 enabled more bidders to qualify for the opening of the price envelope.

This correction also ensured Article 11 of the specifications complied with the Act.⁵⁵

An Imposed Minimum Price

At the same time, as in the case of call for tenders SPJD-QIM-ET2-PROAMEN, the bidders' offers had to include minimum professional fees.⁵⁶ Article 6.5 of the two calls for tenders reads as follows:

[TRANSLATION] In order to obtain the best expertise possible and ensure adequate fees for quality services, the rate proposed by the bidder **cannot be less than 100%** of the “*Tarif d’honoraires pour services professionnels fournis au gouvernement par des ingénieurs*” (*Engineers’ fee schedule*). Any bid less than 100% will automatically be rejected.

The SPJD Director General justified the requirement of the minimum price, 100% of the *Engineers’ fee schedule*, to the Bureau de l’inspecteur général by reiterating that he wanted to obtain quality work and that, in the end, it would prevent extras. For the QIM Director General, when you use the two envelope system, it’s “almost always the lowest that gets in, even with the quality exercise.” In this way, he wanted to avoid claims for delays or additional requests.

A comment is necessary: it is astonishing to note in this call for tenders a form of justification for this unusual requirement. How will the desire for “the best expertise possible” for “quality services” be guaranteed by the requirement of a minimal fee set at 100% of the *Engineers’ fee schedule*, when these criteria are evaluated as part of the qualitative evaluation made by the selection committee? Is the first role of a selection committee not to ensure the quality of the offers?

Moreover, the witnesses interviewed as part of the investigation conducted by the Bureau de l’inspecteur général for call for tenders SPJD-QIM-ING-CIVIL mentioned that the minimum rate imposed (100%) made the contracts very profitable. Some of them even stated that it was refreshing to see calls for tenders, like those issued by QIM-SPJD, for which the price was not truly taken into consideration in the evaluation of the bid and for which the successful bidder was assured a high profit margin. There was no point in taking the risk of losing a contract by increasing the profitability slightly (by bidding at a rate higher than 100%). Therefore, it is not surprising that the bidders that qualified for the opening of envelope no. 2 all submitted bids at the rate of 100% of the *Engineers’ fee schedule*. Tables VIII and IX illustrate the scores awarded to each bidder for calls for tenders SPJD-QIM-ING-CIVIL and SPJD-QIM-ING-STRUCTURE once the calculation was applied.

Table VIII – SPJD-QIM-ING-CIVIL – Final Score Awarded by the Selection Committee for Each Bidder

Evaluation steps	Score per firm (results)				
	Firm A	Firm B	Firm C	Firm D	WSP Canada Inc.

Interim score (criteria 1 to 6)	29.8	71.4	72.9	80	94
Proposed price	Not qualified	100%	100%	100%	100%
Final score	Not qualified	0.86	0.87	0.92	1.02

Table IX – SPJD-QIM-ING-STRUCTURE – Final Score Awarded by the Selection Committee for Each Bidder

Evaluation steps	Score per firm (results)					
	Firm A	Firm B	Firm C	Firm D	Firm E	WSP Canada Inc.
Interim score (criteria 1 to 6)	63.4	64.3	73.1	75.0	79.4	83.5
Proposed price	Not qualified	Not qualified	100%	100%	100%	100%
Final score	Not qualified	Not qualified	1.71	1.73	1.79	1.85

The ranking of each bidder therefore remained the same for the final score as for the interim score since all of the qualified bidders proposed a rate at 100%. Under the circumstances, did the bidders have any choice but to set their price at the minimum? Proposing a price greater than 100% would inevitably disadvantage a bidder at the mathematical calculation step provided for by the Act.

Obviously, the proposed price had no bearing on the offers received.

For the reasons given in an earlier section of this report, the Bureau de l'inspecteur général notes that the requirement of a minimum price, as stipulated in Article 6.5 of the two (2) calls for tenders, completely eliminated the free play of competition in the opening of envelope no. 2 (price proposal). Thus, the taxpayers did not have an opportunity to benefit from professional services that are deemed competent at a price determined by free competition.

The Market Price

In order to better understand the reality of the Montréal market for professional engineering services, the Bureau de l'inspecteur général compared calls for tenders for professional engineering services issued in 2011. This concerned a large-scale project, namely the Quartier des spectacles, phase 4. It should be noted that only the prices were analyzed. This project is interesting for comparison purposes since, in addition to the fact that it involved several fields of engineering, it included parties that were also

involved with the Parc Jean-Drapeau project, including the QIM and engineering firm Genivar (now WSP Canada Inc.). For this project, the Ville de Montréal had delegated the QIM to act as project manager. In that position, the QIM issued four (4) engineering calls for tenders for distinct fields. Unlike the calls for tenders issued on behalf of the SPJD, those issued for the Ville de Montréal **did not include the clause imposing the minimum rate of 100%** of the *Engineers' fee schedule* as the minimum price. In the absence of that clause, Genivar (WSP Canada Inc.) was awarded the four (4) contracts; the results are presented in Table X.

Table X – Results of the Calls for Tenders

Date	Project	Type of professional services	Project manager	Contractor	Amount tendered	Percentage of the rate increase used for a maximum of 100% ⁵⁷
May 2011	Quartier des spectacles	Civil	QIM	Genivar	\$876,010.00	75.8%
May 2011	Quartier des spectacles	Mechanical / Electrical	QIM	Genivar	\$379,876.00	81.6%
May 2011	Quartier des spectacles	Structure	QIM	Genivar	\$245,528.50	76.6%
May 2011	Quartier des spectacles	Traffic	QIM	Genivar	\$139,800.00	79.2%

It is interesting to note that, when the call for tenders did not impose a minimum price, Genivar (WSP Canada Inc.) was able to propose competitive prices that are clearly below (between 75% and 82%) the maximum rate increase, namely 100% of the rate, even when the delegated project manager was the QIM.

No one can doubt the competence of that firm, since it was the best qualified firm, obtaining scores of 94% and 83.5% for two calls for tenders studied for the investigation.

As a result, it is inaccurate to claim, as the Directors of the QIM and SPJD have done, that requiring a minimum rate guarantees quality work. Rather, it guarantees that the taxpayers may have paid too much for professional services. Is it not the role of an

organization such as the SPJD to make sure that quality public works are provided at the best price for the taxpayers?

Finally, the Bureau de l'inspecteur général is of the opinion that, in addition to constituting poor management of public funds, requiring a minimum price hampers the legislator's objectives:

*[TRANSLATION] The procedure imposed by the legislator has two objectives: to bring competition into play when cities award contracts for professional services and to obtain the **best possible quality/price ratio**.⁵⁸ (our emphasis)*

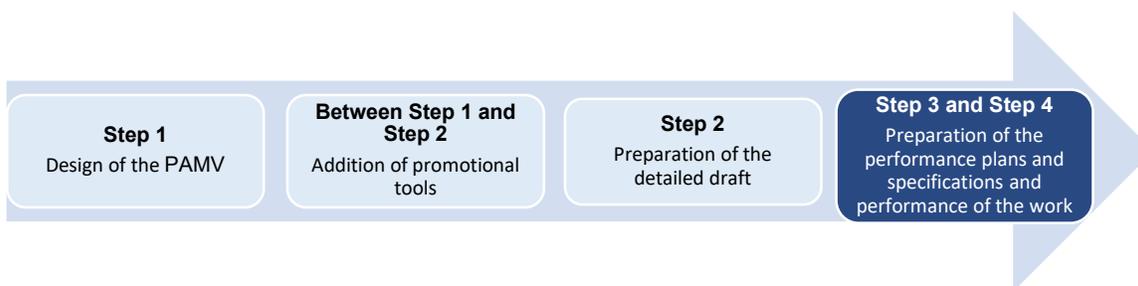
8.5 Agreements Between the SPJD and WSP Canada Inc. for Civil, Environmental, Geotechnical and Hydraulic Engineering Work

Following call for tenders SPJD-QIM-ING-CIVIL, an agreement was signed on August 18, 2014, between the SPJD and WSP Canada Inc. (agreement covering professional services for civil, environmental, geotechnical and hydraulic engineering work as established by the RDP for Parc Jean-Drapeau). Initially, the contract was for an amount of one million six hundred and twenty-seven thousand nine hundred and eight dollars and fifty-two cents (\$1,627,908.52), including taxes.

On September 10, 2014, another agreement was signed between the SPJD and WSP Canada Inc. (agreement for professional structural engineering services as part of the Parc Jean-Drapeau development program. This contract was awarded following call for tenders SPJD-QIM-ING-STRUCTURE in the amount of eight hundred and thirty-one thousand eight hundred and eleven dollars and ninety-three cents (\$831,811.93), including taxes.

Considering the major irregularities found in calls for tenders SPJD-QIM-ING-CIVIL and SPJD-QIM-ING-STRUCTURE, namely the requirement of a minimum price, which resulted in the agreements, the Bureau de l'inspecteur général is of the opinion that, according to the hypothesis of the matter being submitted to a court, the court could penalize such irregularities by declaring such contracts invalid.

9. Preparation of the Performance Plans and Specifications (Step 3) and Performance of the Work (Step 4)



Steps 3 and 4 of the project entailed the completion of the work.

9.1 Agreement Between the QIM and the SPJD for Project Management Services for the Preparation of Plans and Specifications for Implementing the RDP Projects

On September 18, 2014, as part of Steps 3 and 4, a new contract was signed by the SPJD and the QIM by mutual agreement. The SPJD assigned the QIM to complete the work (project management agreement for the preparation of plans and specifications for and completion of the RDP projects). This agreement was for the amount of one million six hundred and seventy-six thousand five hundred and forty-five dollars and fifty-six cents (\$1,676,545.56), including taxes.

This contract is currently in effect and scheduled for completion on or before December 31, 2017.

9.1.1 Cost Estimate

As already highlighted, the investigation conducted by the Bureau de l'inspecteur général demonstrated that no estimate was prepared before the contract was awarded to the QIM. For the reasons already presented, the Bureau de l'inspecteur général is of the opinion that the lack of estimate prepared before the contract was awarded affects its legality.

Once again, the Bureau de l'inspecteur général is of the opinion that SPJD management did not protect the taxpayers' interests when it failed to verify whether the QIM's service offer reflected the reality of the market.

9.1.2 Payment Calendar

In Article 8.2.1 of this agreement, the SPJD and the QIM agreed on the following payment schedule:

Payments	Date of the invoice	Amount of the invoice, including taxes
1	2014-10-31	\$42,988.35
2	2014-11-30	\$42,988.35
3	2014-12-31	\$42,988.35
4	2015-01-31	\$42,988.35
5	2015-02-28	\$42,988.35
6	2015-03-31	\$42,988.35
7	2015-04-30	\$42,988.35
8	2015-05-31	\$42,988.35
9	2015-06-30	\$42,988.35
10	2015-07-31	\$42,988.35
11	2015-08-31	\$42,988.35
12	2015-09-30	\$42,988.35
13	2015-10-31	\$42,988.35
14	2015-11-30	\$42,988.35
15	2015-12-31	\$42,988.35
16	2016-01-31	\$42,988.35
17	2016-02-29	\$42,988.35
18	2016-03-31	\$42,988.35
19	2016-04-30	\$42,988.35
20	2016-05-31	\$42,988.35
21	2016-06-30	\$42,988.35
22	2016-07-31	\$42,988.35
23	2016-08-31	\$42,988.35
24	2016-09-30	\$42,988.35
25	2016-10-31	\$42,988.35
26	2016-11-30	\$42,988.35
27	2016-12-31	\$42,988.35
28	2017-01-31	\$42,988.35
29	2017-02-28	\$42,988.35
30	2017-03-31	\$42,988.35
31	2017-04-30	\$42,988.35
32	2017-05-31	\$42,988.35
33	2017-06-30	\$42,988.35
34	2017-07-31	\$42,988.35
35	2017-08-31	\$42,988.35
36	2017-09-30	\$42,988.35
37	2017-10-31	\$42,988.35
38	2017-11-30	\$42,988.35
39	2017-12-31	\$42,988.35
CONTRACT TOTAL		\$1,676,545.65

This table illustrates that the QIM's fees were paid on a monthly basis. The Bureau de l'inspecteur général is astonished that the SPJD agreed to these payment terms. When asked about this matter, the QIM Director General had the impression that this calendar corresponded to the budget projections and that the purchase orders would have revealed the professional services actually provided. The investigation conducted by the Bureau de l'inspecteur général revealed instead that the SPJD always receives monthly invoices, without supporting documentation, worded, for example, as follows: "Management fees, Payment of [date]...".

Under the circumstances, it is difficult for the SPJD to exercise control in order to determine the work actually done by the QIM.

10. Authorizations

10.1 Approval of the Evaluation Grids and the Selection Committees

Evaluation Grids

Pursuant to section 573.1.0.1.1 of the Act, the SPJD's board of directors is responsible for authorizing the evaluation and weighting criteria before the call for tenders is issued:

*Where a contract for professional services is to be awarded, the **council must use a system of bid weighting and evaluating** whose establishment and operation are consistent with the following rules:*

(1) the system must have a minimum of four evaluation criteria in addition to price;

[...]

The investigation conducted by the Bureau de l'inspecteur général revealed that the evaluation criteria for the calls for tenders analyzed were determined by the QIM and later approved by the SPJD Director General. When the calls for tenders were issued, the SPJD's board of directors had not approved any grid for evaluating the criteria.

The auditor general of the Ville de Montréal had made the same observation in the report he submitted to the city council and the urban agglomeration council for the year ended December 31, 2012. He formulated a recommendation concerning the authorizations, which reads as follows:

3.3.B. Recommendation

*In order to provide greater transparency, we recommend that the **Société du parc Jean-Drapeau** take the necessary measures to:*

*ensure that the bid **evaluation grid** that will be used to evaluate the offers as well as the **composition of the selection committee** responsible for evaluating the offers received **be approved by the Société du parc Jean-***

Drapeau board of directors prior to the launch of the call for tenders or that this authority be delegated where permitted by the Cities and Towns Act;

[...]

in order to ensure compliance with the provisions of section 573 of the Cities and Towns Act pertaining to the awarding of professional service contracts.⁵⁹

SPJD Management was aware of the report submitted by the auditor general of Ville de Montréal and had specifically made a commitment to implement the recommendations provided in that report.

The investigation revealed that the SPJD board of directors did adopt a resolution approving three (3) standard evaluation grids for analyzing bids for calls for tenders “involving a qualitative analysis.”

However, this resolution was adopted on March 27, 2014, namely after all of the calls for tenders covered by this report. As a result, these evaluation grids are only valid for calls for tenders issued after March 27, 2014.

In the case at hand, the approvals given by the SPJD Director General with respect to the evaluation criteria for calls for tenders are illegal since he did not have the authority to make these decisions given the fact that this responsibility falls to the SPJD’s board of directors.

Selection Committees

Pursuant to section 573.1.0.1.1 of the Act, the nomination of the members of the various selection committees must be approved by the SPJD’s board of directors:

Where a contract for professional services is to be awarded, the council must use a system of bid weighting and evaluating whose establishment and operation are consistent with the following rules:

[...]

*(3) **the council shall establish a selection committee consisting of at least three members, other than council members [...]***

The second to last paragraph of section 573.1.0.1.1 of the Act states that “The council may adopt a by-law **delegating** the power to establish a selection committee **to an officer or employee** of the municipality and setting the conditions and procedures for the exercise of the delegated power.”



The investigation conducted by the Bureau de l'inspecteur général revealed that the members of the selection committees were chosen by the QIM and approved by the SPJD Director General. When the members of the selection committees were approved, the SPJD's board of directors had adopted no delegation resolution authorizing the Director General to approve the selection committees for calls for tenders SPJD-QIM-ET1-PROFAMEN, SPJD-QIM-ET2-PROAMEN, SPJD-QIM-GEN-ARPENTAGE and SPJD-QIM-ING-CIVIL.

With the exception of call for tenders SPJD-QIM-ING-STRUCTURE, the Bureau de l'inspecteur général noted that the SPJD Director General violated the Act by authorizing the establishment of selection committees for the public calls for tenders covered by this report. The approvals given by the SPJD Director General are illegal since he did not have the authority to make these decisions, this responsibility devolving upon the SPJD's board of directors if such powers have not been delegated.

In short, the SPJD Director General illegally approved:

- calls for tenders including an illegal evaluation and weighting system and selection criteria unsuited to certain projects;
- the establishment of selection committees.

The SPJD general management did not apply the rules of law. This breach is all the more serious since the SPJD was clearly aware of these serious shortcomings concerning its contract awarding and management process after the city's auditor general tabled his report.

10.2 Authorization of the Executive Committee of Ville de Montréal

In keeping with its letters patent, the SPJD must obtain the prior authorization of the city's executive committee before awarding a contract with a value greater than \$2,000,000.00 or a term greater than five (5) years.

Research conducted by the Bureau de l'inspecteur général revealed that the decision-making file for awarding contracts resulting from several calls for tenders, including SPJD-QIM-ET2-PROAMEN, was to be submitted to the executive committee on February 26, 2014.⁶⁰ On February 24, this file was suspended since it was to be reviewed by various city departments that had not been called on at that point. Despite the absence of authorization, the SPJD, through the QIM, **committed expenses pertaining to this call for tenders without the contract being in effect.**

Indeed, on February 5, 2014, the QIM, on behalf of the SPJD, had already issued a purchase order to architecture firm Daoust-Lestage inc. for the amount of ninety-nine thousand one hundred and fifty dollars (\$99,150.00), excluding taxes. This amount totals one hundred and thirteen thousand nine hundred and ninety-seven dollars and seventy-one cents (113,997.71), including taxes. This purchase order concerned professional architecture fees that pertained directly to call for tenders SPJD-QIM-ET2-PROAMEN. Although the identity of the future contractor was known, the contract had not been awarded when the purchase order was issued.

The city's executive committee authorized the SPJD to award professional service contracts on July 2, 2014, nearly five (5) months after the purchase order was issued.

Although the agreement signed by the SPJD and Daoust-Lestage inc. on August 15, 2014, includes an article stipulating that [TRANSLATION] "Daoust-Lestage inc. acknowledges that it has received, through the QIM, an advance on its fees of \$99,150, including taxes, [...] which is included in the overall remuneration of 6.85%," **neither the QIM nor the SPJD Director General was legally authorized to grant a mandate to start the work before the contract was awarded.** The SPJD Director General justified this decision by invoking the desire not to cause delays in the completion of the work.

Moreover, the purchase order dated February 5, 2014, mentioned an amount including taxes that was greater than \$100,000.00. However, according to the rules of the SPJD, the SPJD Director General could not authorize an expenditure greater than \$100,000.00. As a result, the purchase order was revised on July 29, 2014. The new amount is the same as that indicated on the first purchase order, namely \$99,150.00, with the exception that this time the taxes are included.

The Bureau de l'inspecteur général has noted that, despite the lack of authorization from the city's executive committee and the lack of approval from the SPJD's board of directors, the SPJD Director General authorized the performance of the contract resulting from call for tenders SPJD-QIM-ET2-PROAMEN. In this way, he bypassed the approval process and acted illegally.

The Bureau de l'inspecteur général is of the opinion that the purchase order was most likely modified downward so that the approval required would remain at the level of the Director General of the SPJD and not its board of directors. The Bureau de l'inspecteur général questions this approach. In fact, one can presume that the SPJD's board of directors would never have agreed to pay such a sum when the contract was not yet signed and, above all, had not yet received the approval of the Ville de Montréal executive committee.

11. Conclusion

On February 4, 2015, when questioned personally by the inspector general, the Director General of the SPJD had difficulty explaining the services actually provided by the QIM as at that date. Moreover, he also had a great deal of difficulty explaining the details of

the invoices submitted by the QIM. It is easy to understand why. Indeed, the monthly invoices submitted by the QIM include very few details; they are based on a calendar of automatic expenditures submitted monthly until December 31, 2017, well after the 375th anniversary celebrations.

As of January 13, 2015, two million, four hundred and thirty-seven thousand seven hundred and eleven dollars (\$2,437,711.00) had been spent on the project. Of that amount, according to the estimates of the Bureau de l'inspecteur général, the QIM seems to have received \$1.1 million for its professional fees as the project manager.

As amply demonstrated in this report, four (4) agreements for professional services were awarded by mutual agreement by the SPJD to the QIM. All of these agreements were awarded in violation of the rules of the *Cities and Towns Act*.

Moreover, eight (8) other contracts were analyzed by the Bureau de l'inspecteur général. They all contain major irregularities concerning the contract awarding process.

At the end of its investigation, the Bureau de l'inspecteur général notes:

- the QIM's lack of knowledge with respect to several rules concerning the awarding of contracts;
- major violations of the *Cities and Towns Act*.

In the case at hand, the Bureau de l'inspecteur général has serious questions about the added value provided by the QIM as a project manager.

12. Recommendations

Whereas the Bureau de l'inspecteur général is of the opinion that the following agreements, which are still in effect, are tarnished by major irregularities:

1. ***Project management services agreement for preparing performance plans and specifications for and implementing an RDP signed by the SPJD and the QIM on September 19, 2014;***

No prior estimate was prepared for this agreement before it was adopted by the SPJD, in violation of section 477.1 of the Act. The legislator's objective when enacting the obligation for a municipality to prepare an estimate before contracting is to ensure that it obtains the best price when soliciting contracts. Obtaining the best price remains one of the means for the SPJD to protect the interests of the taxpayers. It is therefore a matter of public interest. Without a prior estimate, it could not know whether the service offer received from the QIM truly reflected the market. This is an essential formality and failure to respect it results in invalidity.

2. ***Professional services agreement for heritage architecture, **landscape architecture and urban design** for the detailed draft and the performance plans and specifications, as established in the Parc Jean-Drapeau***

rehabilitation and development program signed by the SPJD and Daoust-Lestage inc. on August 15, 2014.

This agreement introduced two illegal requirements:

- 1. The requirement to achieve a minimum score for a call for tenders without all of the evaluation criteria being rated in order to qualify for the opening of the price envelope.**

This requirement is contrary to the requirement of clause c) of the 3rd subparagraph of the first paragraph of section 573.1.0.1.1 of the Act:

Where a contract for professional services is to be awarded, the council must use a system of bid weighting and evaluating whose establishment and operation are consistent with the following rules [...]

- c) establish an interim score for each tender by adding the points obtained for all of the criteria;*

If it had not been for this requirement, which is contrary to the law, the bidder that had been rejected for the last step would have only needed a score of 14.4 out of 25 to qualify for the opening of the price envelope. In the opinion of the inspector general, this bidder suffered damage.

2. An imposed minimum price

This minimum price requirement, deemed very profitable based on the evidence gathered, completely eliminates the role of competition. A bidder that would have been declared competent to provide the professional services required, namely one that had obtained the passing score of at least 70%, would have been systematically removed from the two-envelope system by a better qualified competitor since the price factor became theoretical.

In the opinion of the Bureau de l'inspecteur général, this once again goes against the objectives of the legislator, namely to have competition play a role in awarding contracts for professional services and obtain the best quality-price ratio possible.

Thus, the taxpayers do not have an opportunity to benefit from professional services that are deemed competent at a price determined by free competition. In this scenario, it is impossible to obtain the offer with the best quality-price ratio. This is a violation for which, in the opinion of the Bureau de l'inspecteur général, a court would not hesitate to rule and penalize the illegality by declaring the contract invalid.

- 3. Agreement covering professional civil, environmental, geotechnical and hydraulic engineering services as established in the Parc Jean-Drapeau rehabilitation and development program signed by the SPJD and WSP Canada Inc. on August 18, 2014;**

And

4. ***Agreement for professional structural engineering services as established in the Parc Jean-Drapeau rehabilitation and development program signed by the SPJD and WSP Canada Inc. on September 10, 2014;***

An imposed minimum price

These two agreements also included the same requirement, namely the obligation for bidders to propose a minimum professional fee rate that *cannot be less than the 100% of the Engineers' fee schedule*. For the reasons summarized with respect to the architecture agreement above and discussed in detail in this report, this requirement is illegal and is a major violation of the Act.

Power of the Inspector General to Intervene

Pursuant to section 57.1.10 of the Charter of Ville de Montréal, the inspector general may cancel any contracting process, rescind any contract or suspend carrying out any such contract of the city or any legal person related to the city, when the two following conditions are combined:

- (1) *he finds that any of the requirements specified in a document of the call for tenders or a contract has not been met or that the information provided in the contracting process is false; and*
- (2) *he is of the opinion that the seriousness of the breach observed justified the cancellation, rescinding or suspension.*

The failure to observe imperative provisions of the Act and the major irregularities noted above do not, unfortunately constitute a condition for allowing the application of section 57.1.10 of the *Charter of Ville de Montréal*. Only the failure to meet the “requirements specified in a document of the call for tenders” or the presence of “information provided in the contracting process [that] is false” would enable the inspector general to cancel a contract.

As a result, the inspector general cannot rescind the four (4) above-mentioned professional services agreements on his own authority.

The inspector general would, however, like to point out that if he could have rescinded these contracts he would have done so for all these cases without hesitation since the irregularities noted are so serious.

Unilateral Right to Rescind a Service Contract

Although the inspector general cannot rescind these professional services agreements on his own authority, the SPJD can rescind them at its discretion. Indeed, pursuant to Article 13.1 of the *project management services agreement for preparing performance*

*plans and specifications for and implementing an RDP signed by the SPJD and the QIM, the SPJD can end the agreement [TRANSLATION] “by giving written notice of three (3) weeks, paying **solely** the cost of the services provided...”*

The SPJD’s right to rescind the contract simply by giving notice reiterates the general rule provided in Article 2125 of the Civil Code of Québec. The lack of recourse for the loss of anticipated profits with recourse only for the fees already incurred reiterates the general rule provided in Article 2129 of the Civil Code of Québec.

2125. The client may unilaterally resiliate the contract even though the work or provision of service is already in progress.

2129. Upon resiliation of the contract, the client is bound to pay to the contractor or the provider of services, in proportion to the agreed price, the actual costs and expenses, the value of the work performed before the end of the contract or before the notice of resiliation and, as the case may be, the value of the property supplied, where it can be put into his hands and used by him.

For his part, the contractor or the provider of services is bound to repay any advances he has received in excess of what he has earned.

In either case, each party is liable for any other injury that the other party may have suffered.

The right to unilateral termination must be exercised in good faith, in keeping with pertinent considerations.⁶¹ Failure to respect a statutory provision is a pertinent consideration and can be invoked by the project manager itself.⁶²

With regard to the *professional services agreement for heritage architecture, landscape architecture and urban design for the detailed draft and the performance plans and specifications, as established in the Parc Jean-Drapeau rehabilitation and development program signed by the SPJD and Daoust-Lestage inc.* on August 15, 2014, Article 21 of the call for tenders did not provide for unilateral termination. In this case, we must turn to the law, namely the Civil Code of Québec.

Articles 2125 and 2129 of the Civil Code of Québec cited above enact the unilateral right of termination and reimbursement solely for the expenses incurred and not for lost profits.⁶³



The right to unilateral termination provided for in the Civil Code of Québec also applies to the *agreement for professional civil, environmental, geotechnical and hydraulic engineering services as established by the Parc Jean-Drapeau rehabilitation and development program*, signed by the SPJD and WSP Canada Inc. on August 18, 2014, and the *agreement for professional structural engineering services as established in the Parc Jean-Drapeau rehabilitation and development program signed by the SPJD and WSP Canada Inc.* on September 10, 2014.

CONSIDERING paragraphs 2, 3 and 4 of section 57.1.23 of the *Charter of Ville de Montréal*:

The inspector general may also, at any time, send the mayor and the clerk any report presenting findings or recommendations that, in the opinion of the inspector general, warrant being brought to the attention of the council. The mayor shall table the report before the council at the first regular sitting following its receipt.

The inspector general may include any notices or recommendations in these reports that, in his or her opinion, must be brought before the council.

In addition, the inspector general may, at any time, submit any notice or recommendation he or she considers necessary to any decision-making authority of the city.

CONSIDERING the failure to observe the imperative provisions of the Act;

WHEREAS, to the extent that major irregularities were noted by the inspector general, and more specifically the following:

1. In the case of four (4) agreements, each providing for fees of more than \$100,000.00 to be paid to the QIM, the SPJD did not prepare a prior cost estimate, contrary to the Act;
2. The interests of the taxpayers were not protected, since no estimates were prepared in an effort to obtain the best price;
3. This failure is all the more serious since the SPJD was clearly aware of this serious shortcoming concerning the contract awarding and management process after the city's auditor general tabled his report in 2012;

4. The first two (2) professional services agreements signed by the SPJD and the QIM, given their wording, were not awarded in keeping with due contracting process. They should not have been awarded by mutual agreement but rather through a public call for tenders;
5. The contracts awarded by mutual agreement by the QIM and the SPJD to Daoust-Lestage inc. were also not awarded through due contracting process. They too should have been awarded through a public call for tenders or by invitation;
6. The SPJD, as the delegate of the Ville de Montréal, could not delegate its contracting capacity to the QIM, although the QIM did contract on behalf of the SPJD for certain contracts;
7. The requirements and criteria requested in certain calls for tenders could have limited the openness of the market. For example, the suppliers had to demonstrate their experience in development projects undertaken in mixed-use complex environments while the mandate was outside the urban zone;
8. The evaluation and weighting system for certain calls for tenders, as established by the QIM and approved by the SPJD, resulted in inequity in terms of the evaluation of the bidders. This system limited market competition. The methodology used completely eliminates the role of competition for the opening of envelope no. 2 (price envelope);
9. Sufficiently serious, precise and concurrent facts would objectively lead someone to conclude that the call for tenders which resulted in the *Agreement between the QIM and Daoust-Lestage inc. for heritage architecture, landscape architecture and urban design for the detailed draft, plans and specifications and delivery* was directed in favour of the firm retained;
10. In three (3) calls for tenders, the quality factor was the only one considered in the evaluation of the bids, while the objective of the bid evaluation and weighting system is to attain the best quality-price ratio;
11. In this respect, a minimum price was required on more than one call for tenders in order to bid;
12. This minimum price was deemed very profitable by several people interviewed, compared with normal market costs;
13. As a result, no bidder had an interest in bidding above that price;
14. This minimum price rendered the mathematical formula provided for in the *Cities and Towns Act* null and void by systematically favouring the supplier with the best score in terms of the qualitative evaluation of the service offer;



15. The taxpayers did not, as a result, have an opportunity to benefit from professional services that were deemed competent at a price determined by free competition;
16. The requirement to achieve a minimum score without all of the evaluation criteria being rated in order to qualify for the opening of the price envelope, as was required in certain calls for tenders, was a flagrant violation of the *Cities and Towns Act* since it did not determine the interim score of each bidder by adding the points obtained for all of the criteria;
17. The QIM invoiced the SPJD for 100% of its professional fees, for the *professional service agreement for preparing a detailed draft*, from October 16, 2013, to September 30, 2014, when the preliminary plans and specifications had not been completed and delivered by September 30, 2014. With respect to the billing of the firms responsible for producing the plans, the most advanced firm had completed only 11.8% of the work;
18. The SPJD Director General exceeded his authority by approving the selection criteria for all of the public calls for tenders mentioned in this report while this authority comes exclusively under the jurisdiction of the SPJD's board of directors;
19. The SPJD Director General exceeded his powers by approving the selection committees for almost all of the public calls for tenders covered by this report. The Director General of the SPJD did not have the authorizations required by his board of directors;
20. The SPJD Director General bypassed the approval process by authorizing the performance of a contract that was not in effect despite the absence of prior authorization from the city's executive committee and the SPJD's board of directors;
21. The SPJD Director General authorized an expenditure of \$99,150.00 in February 2014 in the absence of a contract between the SPJD and architecture firm Daoust-Lestage inc.;
22. It is generally obvious that the general management of the SPJD and the QIM deliberately ignored the imperative provisions of the *Cities and Towns Act* concerning the process for awarding and managing municipal contracts;

TAKING INTO CONSIDERATION all of the foregoing, the Bureau de l'inspecteur général RECOMMENDS that the board of directors of the Société du parc Jean-Drapeau

RESCIND all of the following contracts, which are still in effect:

1. Project management services agreement for preparing performance plans and specifications for and implementing an RDP signed by the SPJD and the QIM on September 19, 2014;
2. Professional services agreement for heritage architecture, landscape architecture and urban design for the detailed draft and the performance plans and specifications, as established in the Parc Jean-Drapeau rehabilitation and development program signed by the SPJD and Daoust-Lestage inc. on August 15, 2014;
3. Agreement covering professional civil, environmental, geotechnical and hydraulic engineering services as established in the Parc Jean-Drapeau rehabilitation and development program signed by the SPJD and WSP Canada Inc. on August 18, 2014;
4. Agreement for professional structural engineering services as established in the Parc Jean-Drapeau rehabilitation and development program signed by the SPJD and WSP Canada Inc. on September 10, 2014.

The inspector general also RECOMMENDS to the city council of the Ville de Montréal:

1. **For the remainder of the *Horizon 2017* rehabilitation and development project:**
 - **That the Administration, in the interests of healthy management of public funds,⁶⁴ offer centralized expert services on behalf of the city for project management, legal affairs and procurement;**
2. **With respect to awarding contracts for an expenditure of \$100,000 or more, from the time of the drafting of calls for tenders, as applicable, until contracts are awarded:**
 - **That the Administration offer the SPJD centralized expert services, specifically with respect to procurement and legal affairs;**
3. **For the planning and control of upcoming large-scale projects:**
 - **That the Administration offer centralized expert services for managing large projects.**

Moreover, the inspector general also **RECOMMENDS** to the board of directors of the Société du parc Jean-Drapeau:

1. For the remainder of the *Horizon 2017* rehabilitation and development project.
 - To accept, as applicable, the city administration's offer of project management, legal affairs and procurement services;
2. With respect to awarding contracts for an expenditure of \$100,000 or more, from the time of the drafting of calls for tenders, as applicable, until contracts are awarded:
 - To accept, as applicable, the city administration's offer for services specifically concerning procurement and legal affairs;
3. For the planning and control of upcoming large-scale projects:
 - To accept, as applicable, the city administration's offer for services to manage large-scale projects;
4. To ensure the implementation of all of the recommendations concerning the contract awarding and management process presented to the SPJD by the auditor general of Ville de Montréal in the report he submitted to the city council and the urban agglomeration council for the year ended December 31, 2012.

Appendix A

	Name of the agreement	Date	From	To	Amount, incl. taxes	Contract awarding procedure	Irregularities
Step 1 – Design of the rehabilitation and development program for Parc Jean-Drapeau	Professional services agreement for preparing the Parc Jean-Drapeau rehabilitation and development program	Feb. 28, 2013	SPJD	QIM	\$1,002,504.00	Mutual agreement	- No estimate - Incorrect contract awarding procedure
	Call for tenders SPJD-QIM-ET1-PROFAMEN – Step 1 – Professional services in heritage architecture, landscape architecture and urban design for preparing concepts and plans for the Parc Jean-Drapeau rehabilitation and development program	May 21–June 10, 2013	QIM	Daoust-Lestage inc.	\$172,462.50	Public call for tenders	Imposition of an eliminatory criterion contrary to clause c) of the 3rd subparagraph of the first paragraph of section 573.1.0.1.1 of the Act.
	Professional services in heritage architecture, landscape architecture and urban design for preparing concepts and plans for the Parc Jean-Drapeau rehabilitation and development program	June 25, 2013					
	Mutual agreement – Progress of the development plans for the production of perspectives for three sites (the mall toward the north from the metro, the riverside promenade and the point at Place des Nations)	Sept. 17, 2013	QIM	Daoust-Lestage inc.	\$28,628.78	Mutual agreement	- Incorrect contract awarding procedure
	Mutual agreement – Additional perspectives – presentation of the project (the parterre, from the hill towards the Calder statue (with full capacity crowd), Place des Nations, with a view of Quai des nations and Île Saint-Hélène from the city, with view of the promenade and the Calder Statue)	Oct. 28, 2013	QIM	Daoust-Lestage inc.	\$28,628.78	Mutual agreement	- Incorrect contract awarding procedure
Promotional tools	Professional services agreement for the development of tools to promote, provide information about and present a rehabilitation and development program	Oct. 10, 2013	SPJD	QIM	\$210,553.00	Mutual agreement	- No estimate - Incorrect contract awarding procedure
	Professional services in heritage architecture, landscape architecture and urban design for the development of tools to promote, provide information about and present the Parc Jean-Drapeau development program	Oct. 11, 2013	QIM	Daoust-Lestage inc.	\$142,333.00	Mutual agreement	- Incorrect contract awarding procedure - Illegal sub-delegation
	Call for tenders SPJD-QIM-ET1-VIDÉOPROMO	Oct. 15–18, 2013	QIM	Graph Synergie	\$36,792.00	Call for tenders by invitation	Tender period less than that required by law
	Purchase order – Production of a promotional video	Dec. 19, 2013	SPJD				

	Name of the agreement	Date	From	To	Amount, incl. taxes	Contract awarding procedure	Irregularities
Step 2 – Preparation of the detailed draft	Professional services agreement for preparing a detailed draft	Oct. 16, 2013	SPJD	QIM	\$707,096.00	Mutual agreement	- No estimate
	Addendum no. 1 – Professional services agreement for preparing a detailed draft	Sept. 5, 2014	SPJD	QIM	\$42,988.35		
	Call for tenders SPJD-QIM-ET2-PROAMEN – Step 2 – Professional services in heritage architecture, landscape architecture and urban design for the detailed draft and the plans and specifications as established in the Parc Jean-Drapeau rehabilitation and development program	Oct. 8–22, 2013	SPJD	Daoust-Lestage inc.	\$3,622,412.70	Public call for tenders	- Imposition of an eliminatory criteria contrary to clause c) of the 3rd subparagraph of the first paragraph of section 573.1.0.1.1 of the Act - Imposition of a fixed minimum price
	Professional services agreement in heritage architecture, landscape architecture and urban design for preparing the detailed draft and the performance plans and specifications as established in the Parc Jean-Drapeau rehabilitation and development program	August 15, 2014					
	Call for tenders SPJD-QIM-GEN-ARPENTAGE – Professional surveying services	Oct. 2–17, 2013	QIM	Les arpenteurs-géomètres Gendron, Lefebvre & associés	\$91,290.15	Public call for tenders	
	Purchase order – Provision of professional surveying services	Oct. 23, 2013	SPJD				
	Call for tenders SPJD-QIM-ING-CIVIL – Professional civil, environmental, geotechnical and hydraulic engineering services for the Parc Jean-Drapeau rehabilitation and development program	Jan. 30–Feb. 27, 2014	SPJD	WSP Canada Inc.	\$1,627,908.52	Public call for tenders	- Imposition of a fixed minimum price
	Agreement for professional civil, environmental, geotechnical and hydraulic engineering services as established in the Parc Jean-Drapeau rehabilitation and development program	August 18, 2014					
	Call for tenders SPJD-QIM-ING-STRUCTURE – Professional structural engineering services for the Parc Jean-Drapeau rehabilitation and development program	Jan. 30–Feb. 27, 2014	SPJD	WSP Canada Inc.	\$831,811.93	Public call for tenders	- Imposition of a fixed minimum price
	Professional structural engineering services agreement for the Parc Jean-Drapeau rehabilitation and development program	Sept. 10, 2014					
	Call for tenders SPJD-QIM-ING-MEC-ELE - Professional electrical and mechanical engineering services for the Parc Jean-Drapeau rehabilitation and development program	Jan. 30–Feb. 27, 2014	SPJD	Dessau	\$478,301.75	Public call for tenders	Not studied
	Professional electrical and mechanical engineering services agreement for the Parc Jean-Drapeau rehabilitation and development program	Sept. 10, 2014					
	Name of the agreement	Date	From	To	Amount, incl. taxes	Contract awarding procedure:	Irregularities
Step 3 – Preparation of the performance plans and specifications and Step 4 – Performance of the work	Project management services agreement for preparing the performance plans and specifications for and implementing the rehabilitation and development program	Sept. 18, 2014	SPJD	QIM	\$1,676,545.56	Mutual agreement	No estimate

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