



**Recommendation Report Regarding Various
Contracts or Proposed Contracts (or Planned
to be Awarded) to the Non-Profit Organization
Montréal en histoires Within the Context of the
375th Anniversary of Montréal**

**(Lachine and Sud-Ouest Boroughs and Large Parks and
Greening and of Mont-Royal)**

(Sections 57.1.10 and 57.1.23 of *Montréal's City Charter*)

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SUMMARY

The Office of Inspector General conducted an in-depth investigation of the process used by the Lachine and Sud-Ouest boroughs to award contracts by mutual agreement to the non-profit organization Montréal en histoires (MEH) for projects as part of Montréal's 375th anniversary celebrations. More specifically, the investigation focused on a contract by mutual agreement awarded by the Lachine borough for a lighting plan for a maximum amount of \$974,367.14, taxes included (resolution CA16 190190), and the contract by mutual agreement awarded by the Sud-Ouest borough for a project involving an illuminated pathway along the Lachine Canal with lights on bridges and pedestrian overpasses for a maximum amount of \$988,000, taxes included (resolution CA16 220260).

During the investigation, the process followed for two (2) projects of the Large Parks and Greening and Mont-Royal department were also examined by the Office of Inspector General. The first is the project for the development and implementation of a mobile application for the Promenade Fleuve-Montagne for an amount of \$953,832.60, taxes included; the second is the Viger Square redevelopment project for a maximum amount of \$346,079.98, taxes included. These projects were supposed to be awarded to MEH as contracts by mutual agreement but the Municipal Administration decided not to proceed with the award process. Still, in light of the very risky practices identified during his investigation, the Inspector General considers it essential that certain facts be brought to the attention of Montréal's City Council and Agglomeration Council.

The investigation reveals that the non-profit organization Montréal en histoires obtained contracts that it could not execute on its own. The contracts awarded by the Lachine and Sud-Ouest boroughs essentially involve lighting or illuminating buildings or structures. The fact is that MEH does not have the equipment, expertise, skills or personnel to execute the main part of these contracts on its own. Three quarters of the costs of both the Lachine and Sud-Ouest borough projects were associated with the purchase and installation of equipment, for which MEH would have had to rely on suppliers and subcontractors.

Although some MEH executives claim that the organization develops concepts, manages projects and supervises the work of subcontractors, consultants and suppliers, the Inspector General's investigation shows that the concepts and scenarios designed and developed as part of feasibility studies were in fact the work of outside consultants who worked with the organization's director of development. Furthermore, the investigation reveals that the administrative management and executive production of projects obtained by MEH are entrusted to Torrentiel, a business venture contractually tied to the non-profit organization.

The services contemplated by the contracts are therefore not actually being provided by MEH but rather by business ventures acting as suppliers, subcontractors or consultants.

What the Inspector General finds striking is that the investigation reveals the same type of irregularities and schemes that he found during his investigation and indicated in the report and recommendations filed in March 2015 regarding the Horizon 2017 Rehabilitation and Development project, Jean-Drapeau Park Society. MEH obtains contracts by mutual agreement because of its status as a non-profit organization even though a large part of them cannot be executed by its staff and must be entrusted to suppliers, consultants or subcontractors. MEH is therefore acting as a veritable conduit, allowing businesses to obtain public funds through mutual agreement contracts of close to one (1) million dollars with a non-profit organization, whereas the rules for the awarding of contracts were not followed.

As for the Large Parks and Greening and of Mont-Royal, although the Municipal Administration did not follow through with the award by mutual agreement to MEH, the investigation shows that the process followed raises the same concerns as the contracts awarded by the Lachine and

Sud-Ouest boroughs. The Inspector General is of the opinion that the projects were going to be awarded by mutual agreement to MEH even though the organization did not have the resources to execute the entire contract and would have had to entrust several parts to suppliers and subcontractors. An examination of the process followed also reveals risky practices concerning the sound management of public funds and failure to respect a legal opinion issued by Montréal's legal affairs department.

Lastly, the evidence compiled by the Inspector General during his investigation shows that MEH, besides being a conduit organization for suppliers and subcontractors, is actually a front for Torrentiel, a business venture held by Martin Laviolette and Georges Fournier, respectively MEH's general manager/executive producer and administrative director.

By way of the contract between the organization and Torrentiel, the business owned by Martin Laviolette and Georges Fournier can obtain public funds through mutual agreement contracts with MEH, which poses as a non-profit organization but is in fact managed and controlled by a business venture. The confusion between Torrentiel and MEH distorts and compromises MEH's status as a non-profit organization. The City and boroughs believe they are doing business with a non-profit when in fact, they are dealing with business ventures without the competition afforded by the call for tender process, as required by law and the rules ensuring good governance and sound management of public funds.

The principle that applies to any public client is that when a services contract involves expenditures of \$100,000 or more, the contract must be awarded through a public call for tenders unless a legislative exception can be used, such as, for example, when the contract is awarded to a non-profit organization. This is a mandatory public policy that constitutes an essential element of a valid contract. The goal is to make the process competitive with a view to obtaining the best price, allowing free competition and giving interested parties that have the requisite expertise, skills and capacity to contract with an equal opportunity to access public procurement. This is the only way for public clients to protect taxpayer interests and prevent the waste of public funds.

The exception that applies to non-profit organizations is an exception to the principle of equal opportunity for all persons qualified to contract with a municipality. However, in order for it to be awarded a mutual agreement contract, the non-profit must be the one delivering the service contemplated by the contract. It cannot subcontract the bulk of the project it has agreed to carry out and cannot, in any manner, act as a conduit organization for business ventures, because doing so would circumvent the client's obligation to proceed by public tender.

In this case, by their very nature, certain important parts of these contracts seemingly had little to do with the mission of MEH and it was unlikely that its staff could execute them. The contracts awarded by the Lachine and Sud-Ouest boroughs to MEH primarily involved the purchase and installation of equipment. In light of these facts, the Lachine and Sud-Ouest boroughs should have proceeded by public call for tenders in accordance with the general principle enacted by section 573 of the Cities and Towns Act and could not benefit from the exception applicable to non-profit organizations.

The Inspector General concludes that the exception allowing a non-profit organization to obtain a mutual agreement contract was misused. The exception was used as a "catchall" to delegate to the organization parts of the contract that should have been obtained by specialized firms by way of public tender, in order to stimulate competition. Under the pretext of convenience, the mandatory public rules governing the awarding of contracts were breached.

The Inspector General wishes to point out that in the case of the Lachine borough project, some elected officials and city employees stated they were uncomfortable with the process used and the awarding of the mutual agreement contract to MEH. With respect to the projects developed by the



Large Parks and Greening and of Mont-Royal, the City's legal affairs department and Political Cabinet also raised concerns about compliance with the rules governing the contracting process.

The contracting processes followed in this case by the Lachine and Sud-Ouest boroughs adversely affect free competition, equal opportunity and the possibility of obtaining the best possible price. In addition to affecting the integrity of the contracting process, the methods used run counter to the spirit of the law and the principles of sound management of public funds.

Non-compliance with the law must be sanctioned in this case and the contracts awarded declared null and void ab initio since the rules that were breached are essential elements of a valid contract. However, the Inspector General believes he is at the limit of the power to cancel contracts conferred on him by the legislator in section 57.1.10 of Montréal's City Charter since failure to comply with the mandatory provisions of the law and the major irregularities noted unfortunately do not constitute a condition for exercising such power. As such, the Inspector General can only recommend that the mutual agreement contracts awarded to MEH by the Lachine and Sud-Ouest boroughs be cancelled by their respective borough councils. The Inspector General wishes to point out, however, that if it were in his power to cancel these contracts, he would not have hesitated to do so, given the seriousness of the irregularities noted.



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1. Scope of the work

1.1 *Warning*

Under section 57.1.8 of *Montréal's City Charter* (CQLR c. C-11.4), the Inspector General has the mandate to oversee contracting processes and the carrying out of contracts by the City or by a related legal person.

The Inspector General does not conduct any criminal or penal investigations. It conducts investigations of an administrative nature. In this report, wherever the term “investigation” is used, it means an investigation of an administrative nature and under no circumstances shall it be interpreted as referring to a criminal or penal investigation.

The Inspector General states that the masculine gender will be used throughout this report in order to protect the identity of most of the witnesses interviewed. Section 57.1.14 of *Montréal's City Charter* stipulates that:

57.1.14. The inspector general must take all necessary measures to protect the identity of persons who have communicated with him or her. Within the scope of his or her mandate, the Inspector General may nonetheless communicate the identity of such persons to the police service of the city or to the Anti-Corruption Commissioner.

1.2 *Applicable standard of proof*

The Inspector General has a duty to deliver quality reports that are timely, objective, accurate and presented in a manner to ensure that the individuals and organizations under his jurisdiction are able to act on the information provided.

Consequently, in support of his opinions, reports and recommendations, the Inspector General imposes upon himself the burden of proof of the civil standard of the balance of probabilities.¹

2. Context of the investigation

2.1 *Complaints received*

The Inspector General of Montréal received a complaint concerning a mutual agreement services contract involving expenditures of nearly one (1) million dollars, awarded by the Lachine borough to a non-profit organization (hereinafter: MEH), alleging that the contract award violated the rules in effect.

¹ Evidence is sufficient if it renders the existence of a fact more probable than its non-existence (see Article 2804 of the *Civil Code of Québec*).



One month later, the Inspector General received a second complaint, this time in connection with another mutual agreement services contract, also valued at close to one (1) million dollars, awarded by the Sud-Ouest borough to MEH. The second report raised the same concerns as the first.

2.2 Contracts covered by the investigation

Following receipt of these reports, the Inspector General decided to conduct an in-depth investigation into the circumstances leading to the award of several mutual agreement contracts to MEH in order to ensure that the rules had been respected.

The two (2) contracts for which the Inspector General received complaints are contracts whose costs are charged to the budget granted by Montréal to the boroughs for the City's 375th anniversary.

As part of the preparations for the festivities, the City's central services made funding available to the boroughs for local projects.² In this regard, fifteen (15) million dollars was set aside under the 2015–2017 Capital Expenditures Program, following adoption, by Montréal's City Council, on February 24, 2015, of a bylaw authorizing the borrowing of such amount.³

A call for projects was issued in winter 2014–2015. The boroughs had until March 2, 2015, to file a project proposal to the borough coordination department in order to obtain a contribution of up to one (1) million dollars.⁴

Each borough could only present one capital expenditure project. The criteria were as follows: the projects had to represent a tangible legacy for the citizens of Montréal, be unifying and instill pride in the local community, and showcase Montréal's history or heritage.

On April 15, 2015, Montréal's Executive Committee approved nineteen (19) borough legacy projects that the borough coordination department had analyzed and recommended.⁵ In its response to the Notice to an Interested Party, discussed later, the

² Decision-making summary 1154631003 intended to approve borough legacy projects for Montréal's 375th anniversary and related conditions.

³ CM15 0224.

⁴ Decision-making summary 1144631008 intended to adopt a draft loan bylaw authorizing \$15,000,000 to fund capital expenditure projects carried out by the boroughs for Montréal's 375th anniversary and decision-making summary 1154631003 intended to approve the boroughs' legacy projects as part of Montréal's 375th anniversary, and related conditions.

⁵ Resolution CE15 0670.

Lachine borough stated that the projects had to be carried out by mid-December 2016; the boroughs therefore had eighteen (18) months to carry out their projects.

The approved projects included the lighting plan for the Old Lachine cultural sector and the creation of an illuminated pathway along the Lachine Canal with lights on bridges and pedestrian overpasses as well as video projections on the water presented by the Sud-Ouest borough. These are the two (2) mutual agreement contracts awarded to MEH for which the Inspector General received complaints.

During the investigation, other projects were examined by the Office of Inspector General.

These other projects include the development and implementation of a mobile application for the Promenade Fleuve-Montagne and a project involving historical interpretation services as part of the Viger Square redevelopment.

These projects were developed by the Large Parks and Greening and of Mont-Royal (hereinafter: SGPVMR) as part of the festivities surrounding Montréal's 375th anniversary. However, they were not financed with funds granted by Montréal to the boroughs but rather by loan bylaws under the authority of the Agglomeration Council (respectively RCG 15-016 and RCG 15-079).

Although these projects were supposed to be awarded to MEH by way of mutual agreement contracts, the Municipal Administration decided not to proceed with the award process. Still, the Inspector General considers it essential to bring certain facts discovered during its investigation to the attention of Montréal's City Council and the Agglomeration Council.

To summarize, the Inspector General's investigation concerns the following contracts:

- Mutual agreement contract awarded by the Lachine borough to non-profit MEH for a lighting plan for a maximum amount of \$974,367.14 taxes included (resolution CA16 190190).
- Mutual agreement contract awarded by the Sud-Ouest borough to MEH for a project to light bridges and pedestrian overpasses for a maximum amount of \$988,000 taxes included (resolution CA16 220260).

For their part, the following draft contracts will be addressed with a view to highlighting certain risky practices and making recommendations to City Council despite the fact that the Municipal Administration did not follow through with the awarding procedure:

- Draft contract scheduled to be awarded by way of a mutual agreement contract to MEH to develop and implement a mobile application for the Promenade Fleuve-Montagne for an amount of \$953,832.60, taxes included.



- Draft professional services contract scheduled to be awarded by way of a mutual agreement contract to MEH for historical interpretation services as part of the Viger Square redevelopment, for a maximum amount of \$346,079.98, taxes included.

The Inspector General wishes to point out that the investigation did not focus on the subsidies granted by the City to MEH as part of Cité-Mémoire or on their use by the organization.

2.3 Notices to interested parties

In accordance with his duty of procedural fairness, the Inspector General sent Notices to Interested Parties (the "Notice") before releasing the results of his investigation.

On November 9, 2016, the non-profit organization MEH, Torrentiel (a private company), the Lachine and Sud-Ouest boroughs and the SGPVMR received a Notice apprising them of the relevant facts obtained during the Inspector General's investigation and giving them the opportunity to make their comments and representations in writing to the Office of Inspector General.

On November 17, 2016, MEH, Torrentiel, the Lachine borough and SGPVMR each submitted a written response to the Notice. The facts and arguments submitted were considered by the Inspector General and will be addressed in this report.

For its part, the Sud-Ouest borough sent its response to the Office of Inspector General on November 25, 2016.

3. Montréal en histoires, a non-profit organization controlled by a private company

3.1 Facts

3.1.1 Montréal en histoires

MEH was founded in 2006. On its website, MEH describes itself as a non-profit organization that works to develop and implement projects to showcase Montréal's history.

MEH is registered in the Québec Enterprise Register as a non-profit legal person, constituted under Part III of the *Companies Act* (CQLR c. C-38).

Section 5 of MEH's original letters patent, dated February 2, 2006, state the organization's mission as follows:

- Establish and manage a festival on the history of Montréal in the Old Montréal and Old Port areas.
- Promote the cultural, heritage, economic, tourist and social development of Old Montréal and the Old Port.
- Promote and enhance history and heritage education.

As a result of the Inspector General's investigation, MEH's letters patent were amended by a resolution of the organization's board of directors on September 15, 2016. Supplementary letters patent were delivered by the Registraire des entreprises du Québec on September 22 and 26, 2016. In particular, the mission of MEH was reviewed and expanded.

The supplementary letters patent indicate the following purposes:⁶

- Promote Montréal's history and heritage and spark the interest of history and heritage aficionados.
- Promote history and heritage education and encourage the publication of educational tools to this end.
- Allow different audiences to discover and explore the City's history and access digital art projects.
- Develop, organize and administer activities on interesting aspects of Montréal's history and heritage in Old Montréal, Montréal and the metropolitan area.
- Promote the cultural, heritage, economic, tourist and social development of Old Montréal, Montréal and the metropolitan area.
- Promote the national and international development of projects and products developed by the corporation.

According to the Québec Enterprise Register, MEH has between six (6) and ten (10) employees. For his part, the MEH director of development states that the organization currently has between ten (10) and twelve (12) permanent employees.

In its response to the Notice, MEH indicated that on November 17, 2016, MEH had ten (10) full-time employees holding the following positions:

- One (1) director of development hired in January 2014;

⁶ Based on the resolution of the MEH board of directors dated September 15, 2016 and sent to the Registraire des entreprises du Québec in order to modify the purposes for which MEH was constituted.



- One (1) production director hired in January 2014;
- One (1) technical manager hired in April 2014;
- One (1) video coordinator hired in November 2015;
- One (1) administrative assistant hired in January 2016;
- Two (2) project managers hired in May and August 2016;
- One (1) production coordinator hired in August 2016;
- One (1) communications coordinator hired in November 2016;
- One (1) person responsible for historic and educational content (not on the list of employees of September 2016 to which the Office of Inspector General had access).

The Inspector General wishes to start by presenting the following general comments made by witnesses as they will be relevant throughout this report.

The general manager and executive producer of MEH (Martin Laviolette) explained to the Office of Inspector General that the organization must often partner with various companies to execute a large part of its contracts, be it for the supply of equipment, artistic creation, equipment installation and operation or for the IT or technology aspect of projects. However, MEH's technical division can coordinate and supervise the work of suppliers. Martin Laviolette added that even feasibility studies are not carried out entirely by MEH; some parts are outsourced.

For his part, the MEH director of development admitted to the Office that the organization deals with subcontractors because it cannot, on its own, carry out projects in their entirety. According to this director, the organization's focus is managing and coordinating projects.

In the same vein, the administrative director (Georges Fournier) of MEH stated that the organization cannot handle projects on its own and has no choice but to outsource and do business with suppliers and companies to perform the required work. He explained to the Office of Inspector General that from an administrative and office management point of view, it is easier for MEH to outsource unless the resource is required for an extended period of time. The organization therefore has a list of regular suppliers to which it refers.

Lastly, an MEH consultant involved in developing the feasibility studies for various projects admitted that the organization does not have the staff to carry out the projects.

3.1.2 Contractual ties between Montréal en histoires and Torrentiel

The investigation conducted by the Office of Inspector General reveals a contractual agreement between MEH and a private company called Torrentiel (9205-9260 Québec inc.).

Made on January 12, 2012, the agreement was amended and replaced by a new contract on December 19, 2013, which is valid until March 31, 2019, and automatically renewable for an additional five (5) years thereafter unless indicated otherwise in writing by either of the parties. The contract is signed on behalf of the organization by the MEH board chair, and by Martin Laviolette, representing Torrentiel.

It seems that Torrentiel is a production company founded in 2009 by Martin Laviolette, when he was already general manager and executive producer of MEH, and by Georges Fournier, when he was already administrative director of MEH. Torrentiel is a company that designs, organizes, manages, produces and promotes large-scale events.⁷ In its response to the Notice, Torrentiel stated that it has a varied clientele and operates in the cultural, recreational tourism and multimedia sectors. Torrentiel added that it has only two (2) employees (Martin Laviolette and Georges Fournier) and that when necessary, it outsources work to suppliers and consultants to execute its mandates.

On the MEH website, Torrentiel is listed as a partner of the organization. According to the contractual agreement to which the Office of Inspector General had access, Torrentiel is tasked with developing and managing projects obtained by MEH.

Martin Laviolette told the Office that Torrentiel administers the projects and prospects for sponsorships and new mandates for MEH. For his part, the MEH communications director stated that Torrentiel handles all the production aspects of the contracts. In all the contracts and draft contracts contemplated by the investigation, the invoices issued by Torrentiel to MEH stated "Management fees" in the description of the services provided.

Initially, the agreement signed on December 19, 2013, was intended to structure the relationship between MEH and Torrentiel for a particular project called Cité-Mémoire, but the agreement was amended on February 22, 2016, to include the other projects obtained by MEH.

Cité-Mémoire is MEH's flagship project. Accessible via a mobile app and unveiled in May 2016, Cité-Mémoire treats users to augmented reality and points of interest by projecting the history of Montréal at various points in the City.

For all the projects except Cité-Mémoire, Torrentiel's role is to handle the following three (3) elements for MEH:

⁷ See the "WHEREAS" clauses in the contract between MEH and Torrentiel.



- Executive production;
- Administrative management; and
- Management of the partnership.

Schedule B of the agreement, as modified by the amendment of February 22, 2016, details these elements as follows:

Executive production:

- Ensures project's overall implementation and development
- Ensures project's current and future financing
- Manages human, financial and material resources
- Handles government and public affairs
- Develops national and international partnerships
- Liaises between the project's production and the board of directors
- Assumes any other role in connection with the MANDATE and the services offered

Administrative management:

- Manages the project's cash position, financial statements and books
- Handles bookkeeping and liaises with the Montréal en histoires auditor
- Submits financial statements and remittances to lenders and government authorities
- Supports the executive producer in his dealings with the board of directors
- Ensures efficient management of official documents for the board of directors

Management of the sponsorship:

- Develops and implements the sponsorship plan
- Assesses the value of sponsored products and visibilities
- Searches for sponsors together with the executive producer
- Prepares meetings with current and potential sponsors
- Acts as a sponsorship expert for the project

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Torrentiel also covers some of MEH's administrative costs, broken down as follows:

2) Administration fees

- Liability insurance (\$5 million) and errors and omissions insurance
- Management fees and office expenses
- Rent representing 20% of the lease amount
- Travel expenses of the Torrentiel team
- Cell phone expenses for the Torrentiel team
- National and international solicitation fees in connection with operations

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⁸ Contract binding MEH to Torrentiel, amendment of February 22, 2016, Schedule B.

⁹ Contract binding MEH to Torrentiel, amendment of February 22, 2016, Schedule B.

For all these services, Torrentiel receives fees equal to **15% of the total revenues generated** by the projects, plus any applicable tax:

6.2 For the OTHER PROJECTS that could be executed by MEH but that do not involve CITÉ MÉMOIRE, MEH agrees to pay TORRENTIEL commissions, fees and royalties broken down as follows:

*a) Fees for the development and management of OTHER PROJECTS:
An amount equal to 15% of the total gross revenue generated by and in connection with OTHER PROJECTS, plus applicable taxes to cover TORRENTIEL's costs as described in greater detail in SCHEDULE 8 incorporated herein to form an integral part hereof.*

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An MEH employee confirmed that Torrentiel calculates its 15% fees on the amount that MEH collects from the City for the projects, i.e. based on the total value of the contract obtained. This employee explained that Torrentiel invoices MEH shortly after the organization cashes the cheque from the City.

Surprising fact: Some MEH employees perform part of the tasks that fall under Torrentiel's mandate. Although Torrentiel is mandated to handle MEH's administrative management under Schedule B of the agreement,¹¹ MEH counts among its staff the administrative assistant of the organization's administrative director (Georges Fournier), who also happens to be an employee of Torrentiel. The administrative assistant's duties are bookkeeping, entering data and expenses in the accounting system, paying invoices, billing the City and other MEH clients, and handling the monthly bank reconciliation. However, she has been employed by MEH since January 2016 and is paid \$19 per hour by the organization for her services.

3.1.3 Confusion between MEH and Torrentiel

The investigation conducted by the Inspector General reveals several situations that could cause confusion between the actual structure of the organization with which the City and the boroughs do business. These situations pertain to the roles assumed by Martin Laviolette and Georges Fournier.

MEH founder Martin Laviolette, besides being the organization's general manager, executive producer and one of its first directors,¹² is also Torrentiel's president and holds 80% of the company's shares. For his part, Georges Fournier, the administrative director of MEH, is the vice-president and secretary of Torrentiel and holds 20% of the company's shares.

¹⁰ Contract binding MEH to Torrentiel, amendment of February 22, 2016, section 6.2.

¹¹ Schedule B, as modified by the amendment of February 22, 2016.

¹² The letters patent of MEH, dated February 2, 2006, indicate that Martin Laviolette is one of MEH's first directors.



These individuals are Torrentiel's two (2) sole employees. They are paid by the company and not by MEH. Besides their annual salary, Martin Laviolette and Georges Fournier share any corporate dividends available at year-end.

Georges Fournier handles all the accounting for MEH and Torrentiel. As regards MEH, he receives, in particular, cheques from clients, prepares deposit slips, deposits the cheques and records the deposits in the accounting system. As regards Torrentiel, he prepares the invoices that the company submits to MEH.

The Inspector General also wishes to point out that in addition to being general manager/executive producer of MEH and president/majority shareholder of Torrentiel, Martin Laviolette is an employee of the City who has been on leave without pay for many years. He was first hired in 1995 as a white collar worker and then became a strategic advisor (level 2 professional).

Apart from the roles of Martin Laviolette and Georges Fournier at MEH and Torrentiel, another situation caught the Inspector General's attention: the investigation reveals that the contract to handle MEH's communications, press relations and advertising was awarded by the organization to Torrentiel Communications (9332-5264 Québec inc.), a company indirectly held by Martin Laviolette and Georges Fournier.

Created in November 2015, Torrentiel Communications offers telecommunication services, detailed in the Québec Enterprise Register as "media communications, public and press relations, media placement."

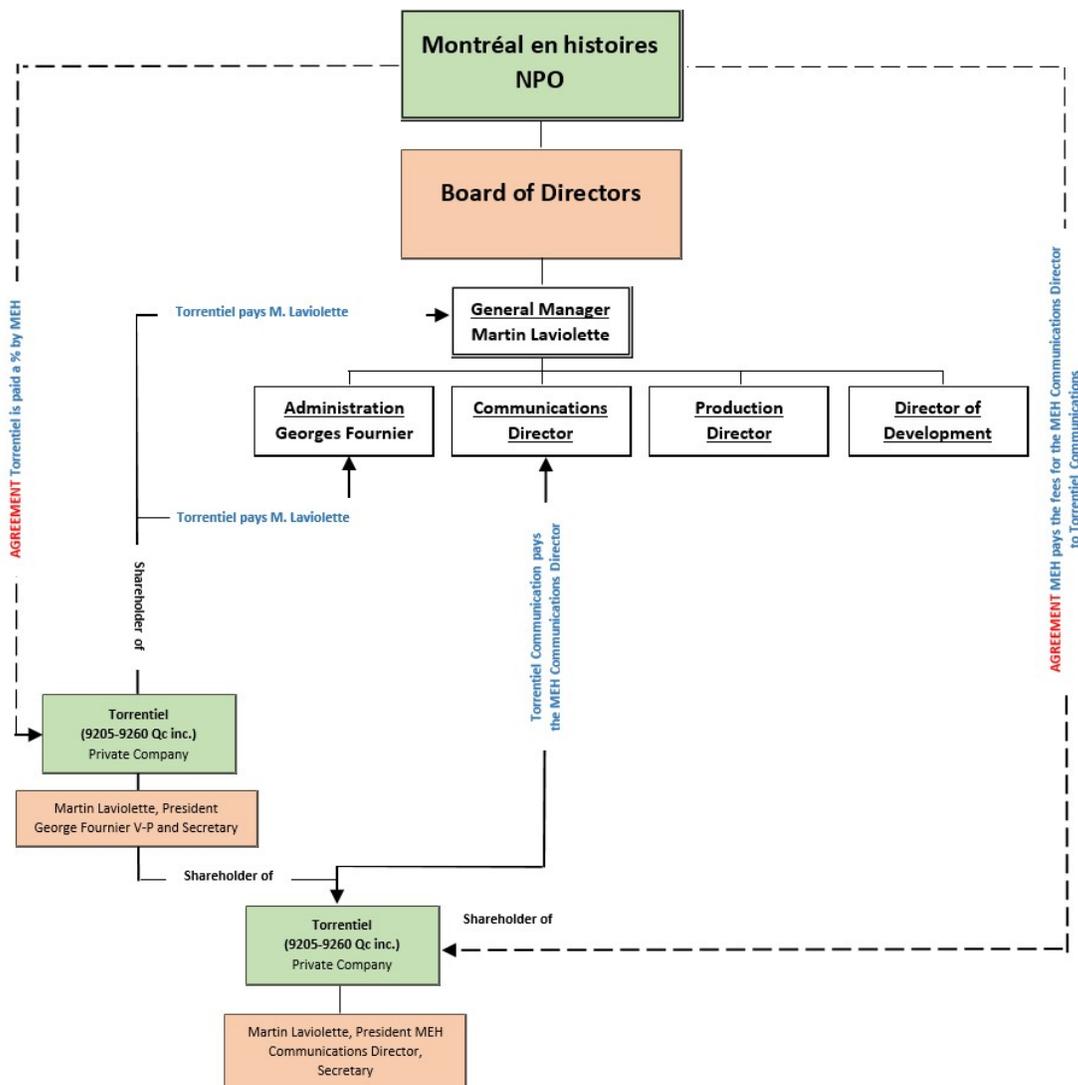
Martin Laviolette is the president of Torrentiel Communications. The company is 50% owned by Torrentiel (Torrentiel being wholly owned by Martin Laviolette and Georges Fournier) and 50% by an individual listed as the communications director of MEH on its website.

Questioned by the Office of Inspector General on this matter, Martin Laviolette explained that the MEH communications director had once been an employee of the organization and had served on its board of directors. Martin Laviolette, Georges Fournier and the communications director jointly decided to create Torrentiel Communications and to mandate the firm to handle MEH's communications. The communications director therefore became an employee of Torrentiel Communications and is paid by this company.

At this point, it also bears mentioning that the premises occupied by MEH, Torrentiel and Torrentiel Communications are on the same floor of a building on McGill Street in Montréal. A visit of the premises by the Office of Inspector General confirmed that the same entrance gives access to the three (3) entities and that there is no other interior division separating them. The entrance door gives access to the offices of MEH, Torrentiel and Torrentiel Communications.

In closing, the Inspector General notes that all the cheques issued by MEH, whether issued to Torrentiel or Torrentiel Communications for payment of their fees, are signed by Martin Laviolette and the MEH board chair.

The following organization chart, prepared by the Office of Inspector General, makes it easier to understand the ties between MEH, Torrentiel and Torrentiel Communications as well as between their officers:



3.2 Analysis

Based on the Inspector General's investigation, Torrentiel's mandate is to administer, develop and manage the projects carried out by MEH. Under the contract between the two (2) entities, Torrentiel is responsible for executive production, administrative management and management of sponsors. More specifically, the company manages the human, financial and material resources of the projects, develops and implements the



projects, acts as liaison between production and the MEH board of directors, and manages the project's financial statements and books.

As compensation, Torrentiel receives fees equal to 15% of the total revenues generated by MEH; in other words, of the total value of contracts obtained. Torrentiel's fees are invoiced and cashed by the company shortly after MEH deposits the cheques issued by the City as payment for the contract.

Yet some MEH employees perform tasks that are part of Torrentiel's mandate and that should be performed by the latter as part of the "administrative management" component of the contract binding the company to MEH. This is particularly the case with Georges Fournier's administrative assistant.

The Inspector General considers that MEH, which presents itself to the City and the boroughs as a non-profit organization, is in reality controlled and run by Torrentiel. Indeed, a number of witnesses, including in particular, Georges Fournier, told the Office of Inspector General that MEH is a business venture or an SME.

There is confusion between MEH and Torrentiel. This confusion is quite apparent, as evidenced by the explanation given by a consultant who works for MEH on feasibility studies, who told the Office of Inspector General that he sometimes billed MEH and other times Torrentiel and that as of 2015, he only bills Torrentiel for services he renders on contracts obtained by MEH. The Inspector General notes that this consultant was hired by Torrentiel as a production manager and that the invoices he issued to the company were passed on by Torrentiel to MEH, since that was who the boroughs had commissioned to conduct the feasibility studies.

In the Inspector General's view, this confusion between Torrentiel and MEH is the direct result of the different roles assumed by Martin Laviolette and Georges Fournier:

- Martin Laviolette and Georges Fournier are founders, employees and shareholders of Torrentiel, in addition to being officers of MEH;
- Martin Laviolette and Georges Fournier therefore represent two (2) entities that have different purposes and whose interests may be different and even contradictory (MEH is a non-profit organization and Torrentiel is a for-profit private company);
- Martin Laviolette and Georges Fournier derive financial benefits from the agreement between MEH and Torrentiel under which the latter is responsible for the management and production aspects of projects carried out by MEH in exchange for fees equal to 15% of the value of the projects;
- The cheques issued by MEH to Torrentiel as payment of the fees are signed by Martin Laviolette and the MEH board chair;
- The mandate to handle MEH's communications was given to Torrentiel Communications, a company created by Martin Laviolette, Georges Fournier and the MEH communications director, previously employed by the

organization. Torrentiel Communications is 50% owned by Torrentiel and therefore indirectly by Martin Laviolette and Georges Fournier. Unlike the period when the communications director was employed by MEH, Martin Laviolette and Georges Fournier today derive a financial benefit from the mandate awarded to Torrentiel Communications;

- The cheques issued by MEH to Torrentiel Communications as payment of the fees are signed by Martin Laviolette and the MEH board chair.

Martin Laviolette and Georges Fournier have placed themselves in situations from which they derive a direct, personal and financial benefit. This could cast doubt on their independence and objectivity when making decisions for MEH.

For the Inspector General, these situations are worrisome as they distort MEH's status as a non-profit organization. The truth is that MEH is a front allowing private companies and individuals to benefit financially from high-value mutual agreement contracts reached with the boroughs, under the pretext that it is a non-profit organization that is exempt from the rules that requires public clients to use the tendering process to award contracts. For the Inspector General, this situation begs the question: With what type of structure are the boroughs actually doing business, a non-profit organization or a business venture? Does the agreement between MEH and Torrentiel allow the latter to benefit from unfair competition by obtaining public mutual agreement contracts through MEH, which claims to be a non-profit organization?

4. Irregularities relating to the Lachine borough contract

4.1 Facts

The project presented by the Lachine borough to the borough coordination department and approved by the Montréal Executive Committee on April 15, 2015, is the lighting plan for the cultural sector of Old Lachine and creation of a public space for festivals.

It should be noted that the creation of a public space for festivals was part of a separate process (a call for tenders was issued) and that only the lighting plan portion was awarded by way of a mutual agreement contract to MEH.

The purpose of the lighting plan project is to highlight the borough's contribution to Montréal's history and heritage by lighting certain iconic areas in the Lachine borough.¹³ The idea is based on a similar project carried out in the LaSalle borough.

¹³ Decision-making summary 1163948010 intended to award a contract for a lighting plan to MEH for a maximum amount of \$974,367.14.



4.1.1 *Search for potential suppliers and solicitation of MEH to conduct the project feasibility study*

In a meeting with the Office of Inspector General, the person responsible for the file at the borough explained that he was tasked with finding suppliers for the project by Lachine's borough director and by its director of culture, sports, recreation and social development.

In its response to the Notice, the Lachine borough claimed that at this stage, only one (1) lighting firm has been approached but since it has expressed no interest after approximately two (2) months of repeated solicitation, the firm is no longer being solicited. The borough said that it knew of no other firms interested in the project.

However, the person responsible for the file at the borough stated that he contacted several firms specializing in building illumination and that could carry out the project to gauge their interest in conducting a feasibility study. He added that these firms all refused to conduct the feasibility study on the grounds that they did not want to jeopardize their chances of obtaining the contract for carrying out the project. At this point, the person responsible for the file at the borough told the Office that the goal was to obtain a concept for the project contemplated by the borough, which was planning to go to tender for the project.

This same person explained that shortly after being tasked with finding potential suppliers, which she says was between the end of 2015 and early 2016, her superior (the borough's administrative services director) told her that the borough had found "someone who will handle this," referring to MEH. This is how she came to learn of the organization's existence.

The investigation shows that a meeting was held on January 12, 2016, during which the general manager and executive producer of MEH (Martin Laviolette) presented the organization to all the borough directors. That same day, the director of the Lachine borough expressed a keen interest in developing the project with the organization.¹⁴ On January 13, 2016, an MEH representative therefore contacted the borough director to present some of the projects already carried out by the organization and to suggest that the borough director meet with Martin Laviolette. Two days later, this meeting was entered in the borough director's electronic agenda, and it was planned that other borough representatives would also be present.

In its response to the Notice, the Lachine borough confirmed that faced with a lack of expertise and a tight deadline, it contacted MEH after the organization's presentation to the borough directors.

According to the evidence gathered during the investigation, on January 20, 2016, MEH was added to the management committee's agenda and on January 26, a committee was

¹⁴ Service offer of January 2, 2016, presented by MEH to the Lachine borough to conduct a feasibility study for the design of a lighting plan, p. 2.

created to monitor the project proposed by MEH. On January 27, 2016, the MEH file was again added to the management committee's agenda.

That same day, a purchase order was issued to MEH, awarding the organization a mutual agreement mandate to conduct a feasibility study at a cost of \$24,949.58, taxes included.¹⁵ The purpose of the study was to provide the borough with a concept and an assessment of the associated costs and to propose an implementation schedule that would allow the borough to meet its deadlines.¹⁶

Based on the service offer presented by MEH for the feasibility study, the payments were made in the following manner¹⁷:

- 60% on signature of the contract;
- 30% at the end of step 4, when the cost estimate for the project implementation and operation and the schedule are completed;
- 10% on submission of the final report.

On January 28, 2016, a letter of intent was sent by the Lachine borough to MEH, at the latter's request. This letter was drafted by an MEH representative to confirm the borough's interest in working with MEH to develop the lighting plan project.

Lastly, the investigation reveals that on March 9, 2016, MEH made a presentation to the elected officials and numerous meetings ensued between MEH and certain borough representatives, in particular, the borough director.

4.1.2 Pressure placed on the person responsible for the file to endorse the project authorization

In a meeting with the Office of Inspector General, the person responsible for the file at the borough stated that after the contract for the feasibility study was awarded, he heard nothing more about the file until the contract for the project was submitted to him for approval.

¹⁵ It should be noted that the monetary threshold set by law to proceed by tender (by invitation) is \$25,000; thus, in order to award a contract by mutual agreement, the cost cannot exceed \$24,999.99, taxes included.

¹⁶ Feasibility study for the development of a lighting plan and other items to enhance the Lachine borough's heritage, presented to the Lachine borough and conducted by MEH in May 2016, revised version so as not to exceed the threshold of one (1) million dollars, p. 3.

¹⁷ Service offer of January 2, 2016, presented by MEH to the Lachine borough to conduct a feasibility study for the design of a lighting plan, p. 11.



At that point, his superior (the borough's director of administrative services) asked him to get involved in the file's decision-making summary in order to validate the procurement process. In other words, his superior asked him to confirm that the file respected the process in place and the contract award rules.

Before it can authorize a file, the City's finance department must obtain confirmation from the Lachine borough's administrative services department that the process was followed.

The person responsible for the file at the borough told the Office of Inspector General that he refused to endorse the authorization requested by his superior for two (2) reasons. First, the contract was for more than one (1) million dollars, which therefore meant that MEH needed authorization from the Autorité des marchés financiers to conclude a public contract under *An act respecting contracting by public bodies* (CQLR, c. C-65.1), authorization that the organization did not have. Second, the person responsible for the file at the borough wondered whether the contract to be awarded was consistent with MEH's mission.

The person responsible for the file at the borough stated that his superior insisted that he endorse the authorization and that he reiterated his refusal to do so.

Shortly thereafter, his superior presented him with a new decision-making summary: the value of the contract had been reduced to less than one (1) million dollars. To do so, certain administrative parts of the contract were modified to reduce the cost of the project. On May 16, 2016, the superior of the person responsible for the file informed the borough director that a non-profit organization required authorization from the Autorité des marchés financiers to enter into contracts of more than one (1) million dollars, that MEH did not have such authorization but had begun the process to obtain it and that "the contract must therefore not exceed \$869,750 or \$999,995 taxes included." The borough director said that one of the project aspects (the augmented reality) would have to be dealt with separately.

Although the contract value was now less than one (1) million dollars, the person responsible for the file at the borough was still uncomfortable because he felt that the project had little to do with the mission of the organization to which it was awarded.

At this point, the person responsible for the file at the borough explained that a lot of pressure was placed on him and that he was asked to blindly endorse the authorization. Although he was uncomfortable with the file, he was obliged to endorse the authorization to indicate that the rules and processes were respected so that the file could move forward.

Thus, on June 8, 2016, the person responsible for the file at the borough appended a note to the decision-making summary stating that everything seemed to be in order and that the services contemplated by the contract were consistent with the mission and skills of the organization.

4.1.3 Questions raised by various parties concerning the process to award the contract to MEH

It is important to point out that between the time the person responsible for the file at the borough refused to endorse the authorization and the time the value of the contract was reduced to less than one (1) million dollars, the person responsible for the file contacted various professionals to ascertain whether his concerns were valid.

He first contacted the person responsible for the file at the City's finance department, who said that he shared the same concerns and had mentioned them to his boss.

A professional working for the Lachine borough had also expressed the same concerns about the award process. This professional had pointed out to the person responsible for the file at the borough that their position was supported by the City's legal affairs department. He mentioned that contracts by mutual agreement with non-profit organizations (NPOs) were a topic of discussion at a recent training session delivered by the legal affairs department. The PowerPoint presentation made during the training session and to which the Office of Inspector General had access, stated the following:

[TRANSLATION] The NPO to which the City awards a contract by mutual agreement cannot act as a conduit for transferring City funds to third parties and in so doing allow the City to circumvent the contract award rules that would otherwise apply. The mandate given to the NPO must be consistent with its mission (pursuant to its letters patent) and the NPO must have the skills and resources to provide the services included in the contract with the City. [...] ¹⁸

The Inspector General's investigation shows that the City's finance department had required that the borough approve the file and check whether the award process was followed because the person responsible for the file in the finance department had concerns about this aspect and was refusing to endorse it, as was the person responsible for the file at the borough. In fact, on June 6, 2016, an employee from the City's finance department asked an employee from the Lachine borough's administrative services department to clarify whether the contract was consistent with MEH's mission and to send him the organization's letters patent.

On June 7, 2016, the Lachine borough's administrative services director sent to the finance department employee, MEH's letters patent then in effect (adopted in 2006—see section 3.1.1 of the report) along with the organization's bylaws. However, the MEH letters patent that were in effect at that time did not reflect the purposes mentioned in the bylaws and the changes were not officially adopted until fall 2016 when the investigation conducted by the Office of Inspector General was already underway.

The Inspector General wishes to point out that the decision to award the contract to MEH was also called into question by an elected official (a borough councillor). In an email to the borough director on May 11, 2016, this elected official suggests launching a competition. He writes:

¹⁸ PowerPoint presentation titled "Les organismes à but non lucratif" (non-profit organizations) dated April 2016 and provided by the City's legal affairs department, slide 21.



[TRANSLATION] I think we should launch a lighting competition or at least issue a call for proposals. **It's really not a good idea to award a contract of close to \$1 million by mutual agreement.** I know that it's not illegal for NPOs, but **lighting done by an NPO just doesn't make sense.** I would understand a contract by mutual agreement if Montréal en histoires were using its team of historians and actors to do the same thing as in Old Montréal, then it would make sense, but **lighting???** **Are they lighting experts?**

And I won't comment on the *historical* content of the blue and orange.

I'd like to discuss this with you before making a proposal to the other council members.¹⁹

[Emphasis added by the Inspector General]

The Office of Inspector General notes that the borough director then forwarded the email to the Lachine borough mayor, Claude Dauphin, without adding any comments.

When interviewed by the Office of Inspector General, the elected official explained that he was not comfortable with the fact that a contract by mutual agreement was awarded to a non-profit organization for work in a field that had nothing to do with its raison d'être. He added that the borough director had told him he did not have time to go to tender.

4.1.4 Contract award to MEH

Once the person responsible for the file at the borough was forced to endorse the file, it was able to move forward. The evidence gathered shows that the file was submitted as a rush to the City's finance department at the request of the boss of the person responsible for the file at the borough.

The contract by mutual agreement for the lighting plan was ultimately awarded to MEH on June 13, 2016, by the Lachine borough council for a total amount of \$974,367.14, taxes included.²⁰

The service agreement between MEH and the Lachine borough, dated June 28, 2016, states that the fees would be paid in the following manner:

¹⁹ Email of May 11, 2016, sent by the elected official to the Lachine borough director concerning Montréal en histoires.

²⁰ Resolution CA16 190190.

SECTION 8
FEES

As consideration for the performance of obligations assumed by the Contractor, the City agrees to pay said Contractor a maximum amount of \$974,367.14 covering all fees and taxes applicable to the Contractor's services.

This amount is payable as follows:

\$250,000	On signature of the agreement
\$500,000	30 days after signature of the agreement (Purchase of programmable and non-programmable equipment, beginning of creation mandates)
\$200,000	60 days after signature of the agreement (Purchase of equipment and start of installation)
\$24,367.14	End of mandate (One week after full commissioning date)

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Thus, an amount of \$750,000 (the first two (2) payments), i.e. more than 75% of the total contract amount, was scheduled to be paid to MEH even before the first deliverables were provided to the borough.

During an inspection at MEH's offices on September 1, 2016, the Office of Inspector General had access to the invoices issued by the organization to the City and to the cheques received as payment. It appears that the second instalment provided for in the agreement, in the amount of \$500,000, had already been deposited by MEH at the time. The MEH director of development explained to the Office that MEH had still not purchased the equipment and that only the site visits had been made to check aspects of the feasibility study.

4.1.5 Subcontracting and project implementation by consultants and private companies

The concept defined by MEH involves [TRANSLATION] "lighting four bridges, six historical buildings, two public spaces and a monument" and "a programming element

²¹ Service agreement concluded on June 28, 2016, between MEH and the Lachine borough and appended to decision-making summary 1163948010 intended to award a contract for a lighting plan to MEH for a maximum amount of \$974,367.14.



associated with all the elements,” i.e. “an illuminated cuckoo clock.”²² The production of the lighting plan was expected to take from June to December 2016, with the launch scheduled for January 1, 2017.²³

The Lachine borough identified several buildings and spaces to showcase in the lighting plan. In its feasibility study, MEH indicated lighting colours that would evoke the borough's history along with various lighting scenarios for each building and structure slated for illumination.²⁴ The feasibility study also detailed the equipment required to implement the proposed concept for the project.²⁵

The MEH director of development told the Office that he was responsible for creating the project, that he developed the concept proposed by MEH in the feasibility study with two (2) outside consultants and that the latter estimated the costs.

According to an MEH employee, it was in fact one of these consultants who drafted the final feasibility report submitted to the borough. This consultant handles MEH's development.

The MEH director of development added that in order to develop the concept, a number of third-party companies were approached to obtain prices for the purchase and installation of equipment, in particular, lighting companies. However, it was MEH that determined the number of work hours required for the project.

One of the consultants who worked on the feasibility study confessed that he was not qualified to carry out lighting projects and explained that this is why he sought out specialized firms.

The MEH director of development added that the City does not have the expertise to make financial estimates and that is why MEH was solicited to conduct feasibility studies.

The Office of Inspector General was given access to MEH's operating revenue report and its details regarding the feasibility study conducted by the organization for the Lachine borough lighting plan. According to the data, the feasibility study contract has an estimated deficit of 14.5%. Of the total expenses incurred in connection with the contract, only 12.5% are for salaries and benefits paid to MEH employees, while more than 86% represent fees paid to Torrentiel, consultants and subcontractors, and reimbursement of expenses

²² Feasibility study for the development of a lighting plan and other items to enhance the Lachine borough's heritage, presented to the Lachine borough and conducted by MEH in May 2016, revised version so as not to exceed the threshold of one (1) million dollars, p. 3.

²³ *Ibid.*

²⁴ *Ibid.*, pp. 6–11.

²⁵ *Ibid.*, pp. 36-37.

incurred, be it for production managers, the preparation of technical plans and specifications, projection tests or installation costs.

More specifically, the charges are broken down as follows (excluding taxes, where applicable):

- \$3,109.87 for the salaries and benefits of four (4) MEH employees;
- \$5,275 paid to three (3) subcontractors for technical plans and specifications;
- \$3,255 for production-related professional services entrusted to the firm Torrentiel;
- \$11,550 in fees paid to consultants acting as production managers;
- \$220 in fees paid to technicians working for a third-party company to perform projection tests;
- \$874.96 in installation costs paid to a third-party company;
- \$277.38 paid to consultants for tools, equipment and materials, and consultants' travel costs.

The invoice and cheque details show that MEH paid Torrentiel 15% of each payment it received from the City, in the days after it cashed the City's cheque.

The Inspector General wishes to point out that the first invoice issued to MEH by Torrentiel for the feasibility study in connection with the Lachine borough project is dated February 5, 2016, i.e. a few weeks before the amendment of February 22, 2016, allowing Torrentiel to charge MEH fees for projects other than Cité-Mémoire.

At the project level, according to the feasibility study, the [TRANSLATION] "main expense categories are associated with the purchase and installation of lighting equipment, and labour."²⁶ The proposed work schedule indicates that the main tasks are to conduct technical studies, order, receive and install equipment, and carry out electrical work and tests. Also, it was initially planned to go to tender for the purchase of equipment:

²⁶ *Ibid*, p. 3.



WORK SCHEDULE														
	2016							2017						
	J	J	A	S	O	N	D	J	F	M	A	M	J	J
BASE PROJECT - LIGHTING PLAN														
Infrastructure for all sites in the lighting plan														
Finalization of technical and validation studies														
Equipment calls for tender														
Equipment orders and receipt														
Planning, installation + electrical work														
Installation and tests														
Launch														

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The labour costs associated with the project implementation are broken down as follows in the feasibility study:

Category and section of budget breakdown	Total amount \$
BASE PROJECT	
Equipment purchase and installation for lighting on bridges (4)	64,175
Equipment purchase and installation for work on buildings, including parking (\$26,500)	548,535
Labour, other costs, contingency fee (\$80,00) and project management (\$80,000)	234,750
Total before taxes for the base project	<u>\$847,460</u>

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It thus appears that 72.3% of the costs associated with the project's implementation are for the purchase and installation of equipment. The details of the service offer submitted show that the vast majority of the expenses were for the purchase of equipment. The equipment installation costs are minimal (about 4% of the total contract budget).

²⁷ *Ibid*, p. 27.

²⁸ *Ibid*, p. 28.

However, the breakdown of the project implementation costs reveals that only 18.26% is reserved for labour and project management fees (if the \$80,000 included for contingencies are removed). The labour costs include the fees of a lighting expert, a project lead and an electrical engineer, as well as fees for production and technical management and graphic design, as shown in the following details:

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Labour, other costs and contingency fee		
1	Expert in lighting design and installation	\$8,000.00
1	LED equipment program	\$5,000.00
1	Inventory receiving and handling	\$4,000.00
1	Travel-delivery-taxis, etc.	\$4,000.00
1	MEH – 7 months / production management	\$8,000.00
1	MEH – 7 months / technical management	\$8,000.00
1	Project manager / 7 months full time	\$28,000.00
1	Electrical engineer / equip. certification	\$1,500.00
25	Hours devoted to graphics/ drawings-renderings	\$1,250.00
1	Related costs – representation	\$3,000.00
1	Insurance / MEH employees and consultants	\$4,000.00
	Contingency fee (10%)	\$80,000.00
	Project management (10%)	\$80,000.00
Grand total (before taxes)		\$234,750.00

According to an MEH employee, in August 2016 the organization hired an employee who was assigned to the Lachine borough project. This employee was responsible for obtaining and comparing prices from suppliers and placing orders.

Also, the Office of Inspector General was given access to MEH's operating revenue report and its details regarding the feasibility study conducted by the organization for the Lachine borough lighting plan.

As at September 9, 2016, MEH had incurred costs of \$106,031.43 for the project. Of this amount, salaries and benefits paid to four (4) MEH employees accounted for \$8,184.04 (or 7.72% of the costs incurred), while \$97,847.39 (or 92.28% of the costs incurred) were paid out for professional production services entrusted to Torrentiel.

The invoice and cheque details show that here too, MEH paid Torrentiel 15% of each payment it received from the City, in the days after it cashed the City's cheque.

²⁹ *Ibid*, p. 34.



On November 23, 2016, the Office of Inspector General obtained an up-to-date report of MEH's operating revenues for the Lachine borough project. The breakdown of the costs incurred is as follows: 5.96% for salaries and benefits paid to MEH employees, 20.63% for professional fees to Torrentiel, 4.5% for fees paid to subcontractors for installation and 68.27% for the purchase of materials.

4.2 Analysis

4.2.1 *Subcontracting and project implementation by consultants and private companies*

The main part of the Lachine borough lighting plan project consists of lighting and illuminating buildings and structures. The majority of the implementation expenses and costs are associated with the purchase and installation of equipment (72.3%).

MEH has neither the equipment nor the personnel to install the materials required to light and illuminate the buildings and structures. It must therefore do business with suppliers, subcontractors and consultants, more specifically, lighting experts and lighting companies, electrical engineers and electricians.

The investigation reveals that MEH has neither the capacity nor the specific knowledge required to perform the main part of the contract. The fact is that MEH's operating revenue reports and its details show that most of the costs incurred by the organization were not associated with employee salaries and that the majority of the work is therefore not executed by MEH.

Some individuals at MEH claim that the organization instead plays the role of a concept developer and project manager by supervising the work of consultants, subcontractors and suppliers.

However, even for the feasibility study, whose purpose was to develop the concept that would then be implemented, MEH turned to outside consultants. An analysis of the MEH operating revenue report reveals that the costs incurred by MEH employees do not represent the majority of the project costs and that the majority of the contract was not performed by MEH employees but by consultants and private third-party companies solicited by the organization. In fact, only 12.46% of the costs are for salaries and benefits paid to MEH employees, while more than 86% represent fees paid to Torrentiel, and to third-party consultants and companies, be it for management fees, production managers, the provision of technical plans and specifications, projection tests or installation costs.

Moreover, the professional production services entrusted to the private company Torrentiel were in fact for the project's production, management and administration.

With regards to execution of the Lachine borough's lighting plan, the fees to be billed by Torrentiel under its contractual agreement with MEH amounted to \$127,119 plus taxes (15% of the total contract value).

On September 9, 2016, i.e. two (2) months after signature of the agreement between MEH and the Lachine borough, the organization's disbursements were as follows: \$8,184.04 for employee salaries and benefits and \$97,847.39 for professional production services paid to Torrentiel.

It is already apparent that the majority of the contract is not being performed by MEH employees but by Torrentiel, which is handling the project's production, management and administration and which had already collected 77% of the total project fees (Torrentiel received \$97,847.39 of the anticipated total of \$127,119) even though the project had just begun and the borough had not yet received any deliverables.

In its response to the Notice, the Lachine borough states that it carefully examined MEH's proposal to determine the proportion of costs associated with equipment and subcontracting. It explains that according to its assessment, the purchase of equipment and supplies for installation accounted for 68% of the total contract value, MEH salaries and operations accounted for 26% and electrical subcontracting work represented 6%. The Lachine borough therefore concluded that there was no reason to believe that the contract could not be performed by MEH's own resources since only 6% of the contract would be subcontracted.

In the Inspector General's opinion, this view of the situation is incorrect. The main part of the contract consists of the purchase of equipment and supplies from third-party companies. Operating revenue details as at November 23, 2016, confirm that only 5.96% of the costs incurred at that date represent salaries and benefits paid to MEH employees. As such, one cannot say that the main part of the contract is performed by MEH resources.

Lastly, in its response to the Notice, the Lachine borough names certain individuals who worked on the project, explaining that it was not aware that subcontractors and consultants were solicited by MEH for the project design. The fact is that some of these individuals were, at the time of the feasibility study, consultants for MEH and not employees.

At this point, the Inspector General considers it essential to stress the following fact. The elected official who had expressed concerns to the borough director about the nature of the contract and MEH's mission told the Office of Inspector General that he also told the borough director that the non-profit organization was not allowed to subcontract aspects of the contract.

The elected official said that the Lachine borough director replied that only a small portion would be subcontracted. The latter used the analogy that you don't need an electrician to "plug in Christmas lights."

This reveals a profound misunderstanding of the nature of the contract by the very same director who signed the service agreement with MEH. In the Inspector General's opinion, it is extremely inappropriate for the borough director to trivialize and ridicule a situation brought to his attention by an elected official.

4.2.2 Irregularities in the contract award to MEH



The Office of Inspector General met with several witnesses who opined that the contract was not consistent with MEH's mission. Based on MEH's letters patent, it does in fact seem that the essential object of the contract is not consistent with the organization's stated mission. Whether one consults the letters patent of 2006 or the supplementary letters patent ratified in fall 2016, lighting and illumination do not seem to be in keeping with MEH's raison d'être. Rather, they are the vehicle or processes which allow the implementation of a concept that could be developed by MEH. The value (before taxes) of this part of the project (equipment purchase and installation costs) is more than \$612,710 according to the cost breakdown in MEH's feasibility study, out of a total contract value of \$847,460 before taxes.

Yet the service agreement between MEH and the borough contains an express statement by the organization to the effect the services covered by the contract are consistent with its mission:

SECTION 2
OBJECT

The City retains the services of the Contractor, which states that the services contemplated by this agreement are consistent with its mission, that it has the requisite skills to provide such services and that it agrees, under the terms and conditions of Schedule 1 appended hereto, to

Execute the Legacy Project for the 375th anniversary of the Lachine borough involving the development of a lighting plan and other items to enhance its historical heritage

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During the award process, various parties repeatedly raised concerns about whether the contract was consistent with MEH's mission: the person responsible for the file at the borough, an employee from the City's finance department also responsible for the file, a professional working for the Lachine borough and an elected borough official. Both the director of the administrative department (the superior of the person responsible for the file at the borough) and the Lachine borough director were apprised of these concerns.

In its response to the Notice, the Lachine borough explains that following concerns raised by staff, it proceeded with additional validations and analyses and even modified a part of the project to ensure its compliance (referring to the reduction in the value of the contract to comply with the threshold set by the Autorité des marchés financiers and above which an authorization to contract is required). The Lachine borough adds that it also made sure that the mandate was consistent with MEH's mission. According to the borough, it was just the time factor that exerted a kind of "pressure" on employees who, given the scope and complexity of the project, may have felt some stress because the decision had to be made quickly.

³⁰ Service agreement concluded on June 28, 2016, between MEH and the Lachine borough and appended to decision-making summary 1163948010 intended to award a contract for a lighting plan to MEH for a maximum amount of \$974,367.14.

However, the investigation shows that rather, it was certain borough managers who exerted pressure to have the decision-making file approved and who tried to silence certain individuals who were expressing concerns about processes not being respected.

Faced with this situation, the Inspector General laments the fact that the very legitimate concerns of some individuals fell on deaf ears and that the borough managers instead chose to exert pressure to quickly push the file forward.

What's more, the issue of going to tender was also raised at various points in this file. The person responsible for the file at the borough said that a call for tender was planned for the project right from the start (even before MEH was solicited). Based on his research, there were other qualified suppliers interested in the project.

Then, the elected official who came to the borough director during the award process suggested to him the possibility of launching a competition or a call for proposals.

The possibility of going to tender was reiterated later in the process, this time for the equipment purchase. The fact is that the feasibility study submitted by MEH included in the schedule of tasks to be performed, a period for the launch of a call for tenders for the equipment. Similarly, in his note of June 8, 2016, appended to the decision-making summary, the person responsible for the file at the borough indicated that MEH would issue a call for tenders for the purchase of equipment to light the buildings.

In the end, no call for tenders was issued in the file.

Once the buildings and structures requiring illumination had been identified (this work was performed in part by the Lachine borough before it solicited MEH) and the lighting concepts and scenarios to evoke the Lachine borough's history and showcase its heritage had been defined, why didn't the Lachine borough issue a call for tenders for the equipment and installation of the materials? Why did it award this part of the contract to MEH?

4.2.3 Carelessness in awarding the contract to MEH

Lastly, the Inspector General finds that the Lachine borough was very careless in establishing the MEH payment schedule.

For the project feasibility study, MEH obtained 60% of the total value of the contract on its signature. Only 10% of the contract value was held back for submission of the feasibility report.

As regards the project implementation, the agreement between MEH and the Lachine borough provides for a payment of \$250,000 at the time of signature, \$500,000 after 30 days and \$200,000 60 days later, holding back just \$24,367.14 for the end of the mandate.



Instead of making progress payments as the goods or services are delivered and on presentation of invoices, the payments are scheduled on certain dates (signature of the contract, 30 days, 60 days).

Within 60 days of signing the agreement, MEH therefore obtains 97.5% of the total contract value and the Lachine borough holds back a mere 2.5% for when MEH completes its mandate. This practice places the borough at risk should the mandate not be completed to its satisfaction since almost the entire budget envelope has been paid to the contractor.

Moreover, the payment schedule agreed between MEH and the Lachine borough covers the total contract value, even the contingencies. As mentioned earlier, the MEH service offer adds a contingency amount of \$80,000 plus taxes to the project cost. This means that according to the payment schedule, MEH is paid an amount representing 9.4% of the contract value when this amount should be held back by the borough and paid only if certain unexpected costs exceed the project budget. Here, the contingency amount was therefore automatically paid to MEH as an integral part of the contract amount. This is not the way contingencies work.

The Inspector General fails to understand the reasons for these decisions and considers this to be poor management of public funds.

5. Irregularities relating to the contract with the Sud-Ouest borough

5.1 Facts

5.1.1 Solicitation of MEH by the Sud-Ouest borough

In January 2015, the Sud-Ouest borough planned a series of meetings with various borough stakeholders to discuss ideas for a legacy project to present to the borough coordination department as part of Montréal's 375th anniversary celebrations.

The Sud-Ouest borough selected a project that involves showcasing the bridges and pedestrian overpasses on the Lachine canal by creating an illuminated pathway and video projections on the water.³¹ The idea came from an urban planning workshop held in Sherbrooke and in which a project was presented that used lighting to showcase certain structures along the St-François river.

As soon as Montréal's Executive Committee accepted the project proposed by the borough, the Sud-Ouest borough approached MEH to conduct a feasibility study for the

³¹ Decision-making summary 2153253002 intended to award a contract to MEH for a feasibility study of a cultural project in the Sud-Ouest borough. This decision-making summary was never approved because the borough chose to issue a purchase order instead.

project. At first, the Sud-Ouest borough intended to develop a concept that would complement a flagship project previously implemented by MEH.

The general manager and executive producer of MEH, Martin Laviolette, explained to the Office of Inspector General that the borough had turned to the organization because it wanted to be part of the Cité-Mémoire mobile application. The Sud-Ouest borough was exploring the possibility of having augmented realities and points of interest incorporated in this mobile application.³²

In August 2015, MEH submitted to the borough a service offer to conduct the feasibility study. Then, on December 9, 2015, a purchase order was issued, awarding MEH a contract by mutual agreement to conduct a feasibility study, for an amount of \$24,949.58, taxes included.³³ The purpose of the feasibility study was to see MEH's vision and concept for the illumination project, to provide the borough with a cost estimate for implementing the concept and to create a work schedule to ensure the timelines were respected.

The amount of \$24,949.58 was to be paid to MEH in the following manner:

4.2 Payment terms

Payment of the cost of this mandate will be made on presentation of invoices and disbursed in the following manner:

• 60% on signature of the contract:	\$13,020
• 30% at the end of step 4:	\$6,510
• 10% on submission of the final report:	\$2,170

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The end of step 4 is when the cost estimate for the project implementation and operation is provided and the schedule is prepared.

5.1.2 *Change of concept initially proposed by MEH in its feasibility study*

In March 2016, MEH submitted its feasibility report to the borough; in June 2016 the organization submitted a service offer for the project.

³² Service offer to conduct a feasibility study, presented by MEH to the Sud-Ouest borough in August 2015, p. 2.

³³ It should be noted that the monetary threshold set by law to proceed by tender (by invitation) is \$25,000; thus, in order to award a contract by mutual agreement, the cost cannot exceed \$24,999.99, taxes included.

³⁴ Service offer to conduct a feasibility study, presented by MEH to the Sud-Ouest borough in August 2015, p. 13.



At first, the concept defined by MEH involved illuminating bridges and pedestrian overpasses along the Lachine Canal, to which additional elements could be added such as a path of augmented realities and points of interest incorporated in the Cité-Mémoire mobile application.³⁵

The MEH feasibility study identifies the structures to be illuminated and defines the lighting colours and technical illumination scenarios to be used.

The cost of the concept proposed by MEH was estimated at over one (1) million dollars, i.e. \$1,016,283.³⁶ Since MEH did not have authorization from the Autorité des marchés financiers to contract with a public body, as required by the *Act respecting contracting by public bodies* (CQLR c. C-65.1), the additional elements were removed from the project. The idea of adding augmented realities and points of interest of the Sud-Ouest borough to MEH's Cité-Mémoire mobile application was therefore dropped.

Apart from this change, most of what was planned and detailed in the feasibility report submitted by MEH in March 2016 was kept in its service offer for the project, presented in June 2016.

The project to be carried out by MEH involved the installation of lighting on six (6) poles and light projection all along the Lachine Canal.³⁷ Interpretation panels were also to be installed adjacent to the illuminated infrastructures.³⁸ The illumination work was to be carried out from June to December 2016; the launch was scheduled for January 1, 2017. The interpretation panels were scheduled to be installed on January 1, 2017, while the light projection portion was to be launched on the City's birthday on May 17, 2017.³⁹

5.1.3 Progression of the project file

A consultant working for MEH told the Office of Inspector General that during a meeting between two (2) Sud-Ouest borough directors and MEH representatives, the possibility of going to tender for certain aspects of the project was discussed.

³⁵ Feasibility study on the creation of an illuminated pathway by lighting bridges and pedestrian overpasses along the Lachine Canal, presented to the Sud-Ouest borough by MEH, dated March 2016, p. 3.

³⁶ *Ibid*, p. 4.

³⁷ Professional services agreement signed on July 12, 2016 between MEH and the Sud-Ouest borough for the project, section 2.

³⁸ Service offer for the creation of an illuminated pathway by lighting bridges and pedestrian overpasses along the Lachine Canal, presented to the Sud-Ouest borough by MEH, dated June 2016, p. 9.

³⁹ *Ibid*, pp. 3-4.

However, this path was not followed and the file proceeded with a view to awarding MEH a contract by mutual agreement.

The head of the urban planning division of the Sud-Ouest borough responsible for the file explained to the Office of Inspector General that the borough relied on the prices submitted by MEH in its service offer for the project, without negotiating or asking for explanations or comparing them with the prices of other companies. In its response to the Notice, the Sud-Ouest borough states that the prices submitted by MEH in its service offer were sufficiently detailed and appeared to be reasonable.

This same division head confessed to the Office of Inspector General that he knows nothing about the contracting process for awarding contracts to non-profit organizations (saying on the subject: [TRANSLATION] "I know zip about it"⁴⁰). On this point, the Sud-Ouest borough explains in its response to the Notice that although the division head wasn't familiar with the contract award rules and procedures, he was supported by the entire borough team.

After the City clerk's office confirmed that he could proceed with the contract, the division head used a draft contract taken from a database to draft the contract clauses, adapting them as needed. The division head explained to the Office that at this stage, he spoke with some MEH officers, in particular, the director of development, Martin Laviolette.

The Office of Inspector General had access to the various draft agreements that were prepared. Initially, the agreement provided for the payments to MEH to be made in the following manner:

- \$150,000 on signature of the agreement;
- \$500,000 once the programmable equipment was purchased and installed;
- \$100,000 once the non-programmable equipment and wall lighting were purchased and installed;
- \$250,000 once the projection was created and produced and the projection equipment installed.

The MEH director of development made and initialled some notes on this draft agreement. Next to the clause breaking down the payments to MEH, the director wrote:

[TRANSLATION] We are an NPO and unfortunately do not have enough liquidity or a line of credit to advance the amounts mentioned here.⁴¹

The MEH director of development therefore proposed the following payment schedule:

⁴⁰ Comment from a transcript of what the division head told the Office of Inspector General during a meeting.

⁴¹ Draft professional services agreement between MEH and the Sud-Ouest borough.



- \$250,000 on signature of the agreement;
- \$500,000 30 days after signature of the agreement (purchase of programmable and non-programmable equipment, beginning of creation mandates);
- \$200,000 60 days after signature of the agreement (purchase of equipment and start of installation);
- \$50,000 at the end of the mandate (one week after the start of the projection).

The head of the Sud-Ouest borough's urban planning division told the Office of Inspector General that he discussed this proposed clause with the borough's administrative director (who was also the interim borough director at the time). The latter asked that the last payment be increased from the originally planned \$50,000 to \$100,000 to ensure the contract would be completed and added that otherwise, he saw no problem with the clauses.

The professional services agreement concluded between MEH and the Sud-Ouest borough on July 12, 2016 contained the following clause concerning payments:

SECTION 8
FEES

As consideration for performance of the obligations assumed by the Contractor, the City agrees to pay said Contractor a maximum amount of nine hundred eighty-eight thousand dollars (\$988,000.00) covering all fees and taxes applicable to the Contractor's services.

This amount is payable as follows:

\$250,000	On signature of the agreement
\$500,000	30 days after signature of the agreement (Purchase of programmable and non-programmable equipment, beginning of creation mandates)
\$150,000	60 days after signature of the agreement (Purchase of equipment and start of installation)
\$100,000	End of mandate (One week after the start of projection)

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⁴² Professional services agreement between MEH and the Sud-Ouest borough, signed on July 12, 2016.

On June 27, 2016, the Sud-Ouest borough council awarded a contract by mutual agreement to MEH for a project to illuminate bridges and pedestrian overpasses, for a maximum amount of \$988,000, taxes included.⁴³

5.1.4 Subcontracting and project implementation by consultants and private companies

With regards to the Sud-Ouest project, the MEH service offer of August 2015 to conduct the feasibility study states that [TRANSLATION] "The entire Montréal en histoires team will work on the feasibility study."⁴⁴ The service offer identifies the MEH director of development as the person responsible for project management and for liaising with outside parties. The offer also states that the MEH production director and technical manager will be involved in the project.

When interviewed by the Office of Inspector General, MEH general manager and executive producer Martin Laviolette stated that the feasibility study was carried out in large part by MEH staff.

That is not, however, what the investigation shows.

On the one hand, the MEH director of development and production director admit that two (2) consultants worked on the feasibility study for MEH. One of these consultants explained to the Office that his mandate included soliciting third-party companies because he was not familiar with the lighting required by the project.

For his part, the second consultant prepared and drafted the feasibility report submitted to the Sud-Ouest borough.

On the other, the versions of the facts provided by the MEH director of development and production director are confirmed by an analysis of the data in the organization's operating revenue report concerning the Sud-Ouest borough lighting project.

As at September 9, 2016, the feasibility study contract reveals an estimated profit of about 6.52%. Of the total costs incurred in connection with the contract, only 9.05% are for salaries and benefits paid to MEH employees, while more than 90% represent fees paid to Torrentiel, consultants and subcontractors, and reimbursement for expenses incurred, be it for management fees, production managers, the provision of technical plans and specifications, design expenses or installation costs.

More specifically, the charges are broken down as follows (excluding taxes, where applicable):

⁴³ Resolution CA16 220260.

⁴⁴ Service offer to conduct a feasibility study, presented by MEH to the Sud-Ouest borough in August 2015, p. 12.



- \$1,835.93 for the salaries and benefits of three (3) MEH employees;
- \$1,077.41 paid to two (2) subcontractors for technical plans and specifications;
- \$2,343.60 for professional production services entrusted to Torrentiel;
- \$12,045 in fees paid to consultants acting as production managers;
- \$1,100 in electrical installation costs paid to a third-party company;
- \$1,650 paid to a third-party company for equipment and design of the signage plan;
- \$214.57 paid to consultants for equipment, printing, historical content and archives, and for their travel expenses.

At the project level, according to the service offer submitted by MEH, the [TRANSLATION] "main expense categories are associated with the purchase of lighting and projection equipment, their installation, and artistic production of the projection (content)."⁴⁵

For its part, the decision-making summary states that the contract awarded to MEH [TRANSLATION] "covers the purchase and installation of lighting and projection equipment, the creation and production of the projection, and project management."⁴⁶

The costs associated with the project's implementation are broken down as follows in the MEH service offer:

⁴⁵Service offer for the creation of an illuminated pathway by lighting bridges and pedestrian overpasses along the Lachine Canal, presented to the Sud-Ouest borough by MEH, dated June 2016, p. 4.

⁴⁶Decision-making summary 1163468001 intended to award a contract for \$988,000 to MEH for a legacy project for the Sud-Ouest borough's 375th anniversary consisting of illuminating bridges and pedestrian overpasses.

Category and section of budget breakdown	Total amount \$
BASE PROJECT	
Equipment purchase and installation for programmable lighting on bridges and pedestrian overpasses	\$507,383.00
Equipment purchase and installation for solar energy work	\$73,550.00
Projection creation and production (\$115,000) and installation (\$151,500) cost	\$266,500.00
Towers and security cameras	\$9,000.00
Management and administration, contingency fee, project manager	\$131,567.00
Total for the project	\$988,000.00

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Three quarters (75%) of the costs associated with the project are reserved for the purchase of equipment and its installation. The installation requires labour, in particular, electricians and electrical engineers, the total cost of which is estimated in the MEH service offer at \$102,050 for the first two (2) components in the table.⁴⁸ Also included in the 75% are projection and installation costs of \$151,500. This mainly involves the purchase of equipment, the fees of an electrical engineer and electrical installation costs.⁴⁹

Only one quarter of the project cost (25%) is for creation and production (\$115,000) and for project management and administration and the salary of a project manager (\$131,567). It is important to point out that MEH also included contingency fees of \$131,567.

The project was suspended following the investigation of the Office of Inspector General, and as a result, has not been completed to date. The organization's operating revenue report for the Sud-Ouest borough lighting project indicates that as at September 9, 2016, only \$3,984.50 had been disbursed by MEH and that this amount covers the salaries and benefits of the MEH employees working on the project.

Martin Laviolette admits that in order to carry out the project to illuminate bridges and pedestrian overpasses in the Sud-Ouest borough, MEH will have to purchase a lot of materials and employ the services of subcontractors, in particular, electricians. He adds

⁴⁷ Service offer for the creation of an illuminated pathway by lighting bridges and pedestrian overpasses along the Lachine Canal, presented to the Sud-Ouest borough by MEH, dated June 2016, p. 33.

⁴⁸ *Ibid*, pp. 35-37.

⁴⁹ *Ibid*, p. 38.



that MEH staff will supervise the work and that the organization has hired someone to work exclusively on managing this project.

5.2 Analysis

5.2.1 Subcontracting and project implementation by consultants and private companies

The borough initially intended to develop a project that would complement the mobile application already created by MEH (Cité-Mémoire) by integrating an augmented reality tour and points of interest into the app. However, this part of the project had to be dropped by the Sud-Ouest borough to bring the value of the contract below one (1) million dollars since MEH did not have the necessary authorization from the Autorité des marchés financiers.

Thus, the main part of the project put forward by the Sud-Ouest borough and awarded by mutual agreement to MEH consists of illuminating bridges and pedestrian overpasses. In other words, the project consists of lighting structures (essentially the same as the Lachine borough project). The project also has a component involving projection on the Lachine Canal along with interpretation panels.

The majority of the implementation expenses and costs are associated with the purchase and installation of equipment (75 %).

MEH has neither the equipment nor the staff to install the materials to light and illuminate the structures along the Lachine Canal. It must therefore do business with suppliers, consultants and subcontractors, in particular, lighting experts and companies, electrical engineers and electricians.

The investigation reveals that MEH has neither the capacity nor the specific knowledge required to perform the main part of the contract.

Some MEH directors claim that the organization instead plays the role of a concept developer and project manager by supervising work performed by subcontractors.

In the service offer submitted by MEH for the project, out of a total value of \$988,000, taxes included, only \$115,000 is allocated to production and creation and less than \$131,567 is reserved for management, administration and the project manager, if the contingency fees included by MEH in this figure are not taken into account.

However, it is important to note that even for the feasibility study, whose purpose was to develop the concept that would then be implemented, MEH turned to outside consultants. An analysis of the MEH operating revenue report reveals that the costs incurred by MEH employees do not represent the majority of the project costs and that the majority of the contract was not performed by MEH employees but by consultants and third-party companies solicited by the organization. In fact, only 9.05% of the costs are for salaries and benefits paid to MEH employees, while more than 90% represent fees paid to Torrentiel, consultants and subcontractors, be it for management fees, production managers, the provision of technical plans and specifications, or installation costs.

Moreover, although according to Martin Laviolette, the project management was entrusted to a new employee hired by MEH, in actual fact, the professional production services entrusted to the private company Torreniel cover the project's production, management and administration.

5.2.2 Irregularity in the contract award to MEH

In the Inspector General's view, as is the case for the contract awarded by the Lachine borough, the project to illuminate bridges and pedestrian overpasses in the Sud-Ouest borough was not consistent with MEH's mission. Based on MEH's letters patent, it does in fact seem that the essential object of the contract is not consistent with the organization's stated mission. Whether one consults the letters patent of 2006 or the supplementary letters patent ratified in fall 2016, lighting and illumination do not seem to be in keeping with MEH's raison d'être. Rather, they are the vehicle or processes which allow the implementation of a concept that could be developed by MEH. The value of this part of the project (equipment purchase and installation costs) is estimated at \$741,433 according to the cost breakdown in MEH's feasibility study, out of a total contract value of \$988,000, taxes included.

According to a MEH consultant, the possibility of going to tender came up at least once in this file.

The Inspector General reiterates the comments he made concerning the Lachine borough's lighting plan project. Once the structures to be illuminated had been identified and the lighting concepts and scenarios to evoke history and showcase the borough's heritage had been defined and the projection and interpretation panels had been created, why didn't the Sud-Ouest borough issue a call for tenders for the equipment and installation of the materials? Why did it award this part of the contract to MEH?

5.2.3 Sud-Ouest Borough's carelessness in awarding the contract to MEH

First, the Inspector General notes that the Sud-Ouest borough solicited the services of MEH to entrust it with the mandate to integrate certain augmented realities and points of interest in the mobile application previously developed by the organization. However, once this part of the project was abandoned and the project focused on structure lighting, no market research was conducted beforehand to identify companies capable of or interested in bidding on the project had a public call for tenders been issued.

Moreover, the Inspector General finds that the Sud-Ouest borough was very careless in establishing the MEH payment schedule.

For the project feasibility study, MEH obtained 60% of the total value of the contract on its signature. Only 10% of the contract value was held back for submission of the feasibility report.

As regards the project implementation, the payment schedule was modified by the MEH director of development so that higher amounts would be paid on signature of the



agreement. The director cites the organization's lack of liquidity as justification for this change.

After the borough partially accepted the proposed modifications, the agreement between MEH and the Sud-Ouest borough provided for a payment of \$250,000 at the time of signature, \$500,000 after 30 days and \$150,000 60 days later, holding back just \$100,000 for the end of the mandate.

Instead of making progress payments as the goods or services are delivered and on presentation of invoices, the payments are scheduled on certain dates (signature of the contract, 30 days, 60 days).

Within 60 days of signing the agreement, MEH therefore obtains 90% of the total contract value and the Sud-Ouest borough holds back a mere 10% for when MEH completes its mandate. Here again this practice places the borough at risk should the mandate not be completed to its satisfaction since almost the entire budget envelope was paid to the contractor.

Moreover, the payment schedule agreed between MEH and the Sud-Ouest borough covers the total contract value, even the contingencies. As mentioned earlier, the MEH service offer adds a contingency amount to the project cost without, however, providing details (\$131,567 is allocated for project management and administration fees, contingencies and the salary of a project manager).

This means that the payment schedule provides for paying MEH an amount that should be held back by the borough and paid only if certain unexpected costs exceed the project budget. Here, the contingency amount was therefore automatically paid to MEH as an integral part of the contract amount. This is not the way contingencies work.

The Inspector General fails to understand the reasons for these decisions and considers this to be poor management of public funds.

6. Irregularities relating to the SGPVMR draft projects

Only the contracts for the Lachine and Sud-Ouest borough projects were awarded by mutual agreement to MEH. As regards the two (2) projects developed by the SGPVMR (development and implementation of a mobile application for the Promenade Fleuve-Montagne and historical interpretation services as part of the of the Square Viger redevelopment), the Municipal Administration decided not to follow through with the award processes undertaken.

Still, the Inspector General considers that the facts revealed during the investigation into these two (2) draft projects must be brought to the attention of City Council. First, because certain aspects of the processes followed reveal reprehensible behaviours and practices that place the City at risk, but also because these draft contracts were going to be awarded by mutual agreement to MEH and raised the same concerns in the Inspector General as the contracts awarded by the Lachine and Sud-Ouest boroughs.

An analysis of these two (2) draft contracts will therefore allow the Inspector General to make certain recommendations to Montréal's City Council.

6.1 *Fleuve-Montagne draft contract*

6.1.1 *Progression of the file to award the contract to MEH*

The SGPVMR landscape architect responsible for the file explained the origin of this file to the Office of Inspector General. He explained that sometime in 2013, the City's Executive Committee asked that a digital component be included in the development of the Promenade Fleuve-Montagne, which connects Old Montréal to Mont-Royal.

The general manager and executive director of MEH, Martin Laviolette, confirmed to the Office of Inspector General that it was the City that contacted MEH for the project.

In June 2015, MEH submitted a service offer to the City for the development of a visual programming concept and a cost assessment for its implementation.

The mandate to conduct a feasibility study was then awarded to MEH, for a maximum amount of \$14,946.75, taxes included, and a professional services agreement was signed between MEH and the City. The specifications for the professional services, dated June 4, 2015, state that the mandate is to [TRANSLATION] “plan the ‘virtual promenade’ component (mobile application) of the ‘Promenade Fleuve-Montagne’ project.”

On September 29, 2015, MEH submitted its feasibility report to the City. The organization proposed an ambitious project with an estimated cost of over two (2) million dollars whereas the City's budget was one (1) million dollars.⁵⁰ The SGPVMR landscape architect responsible for the file explained to the Office of Inspector General that he therefore had to review the project scope and that with help from MEH, the SGPVMR made choices from the proposals in the feasibility report.

On February 12, 2016, MEH thus submitted a modified feasibility report to the City so that the project would be in line with the budget.⁵¹ The SGPVMR then asked the organization, in a letter dated June 10, 2016 to MEH's director of development, to prepare a service offer for the project. The mandate awarded to MEH reads as follows: [TRANSLATION]

⁵⁰In the initial feasibility report, MEH estimated the project cost at \$1,973,000 before applicable taxes: Feasibility study for the development of a virtual programming concept and evaluation of its implementation costs for the Promenade Fleuve-Montagne, presented by MEH to the City, dated September 29, 2015, p. 2.

⁵¹Modifications made to the feasibility study for the development of a virtual programming concept and evaluation of its implementation costs for the Promenade Fleuve-Montagne, presented by MEH to the City and dated February 12, 2016, pp. 2–3.



“Develop and implement a mobile application available for download from the Apple Store or Google Play.”⁵²

The work schedule in the letter sets out three (3) phases: development and production of the application, development and production of the content, and development and production of a creative work.

Thus, on June 18, 2016, MEH submitted its service offer for the development of a mobile application for the Promenade Fleuve-Montagne and a professional services agreement was drafted. The estimated cost for the project was \$953,832.60, taxes included.⁵³

The decision-making file was also prepared. At the City's Executive Council, some questions were raised by an elected official about the cost of developing the mobile application, i.e. whether it was in line with market prices. This elected official wanted the City's IT department (hereinafter: STI) to prepare its own cost estimate.

On July 26, 2016, the SGPVMR was asked to provide clarification since the decision-making summary did not contain a preliminary estimate, as required by law. The SGPVMR landscape architect responsible for the file told the Office of Inspector General that he worked on the cost estimate, which was based on the cost breakdown in MEH's feasibility study. However, he said that the SGPVMR did not ask an independent firm to provide such an estimate for comparison purposes.

On August 3, 2016, the person responsible for providing support to the elected officials on the City's Executive Committee contacted the STI director to request information with a view to asking the latter's department to analyze the estimate provided in the MEH service offer. On August 12, 2016, the STI director said that he found the mobile application development costs [TRANSLATION] “reasonable” although market prices might be [TRANSLATION] “a bit lower.”

The file then followed its course and was supposed to be submitted to the City's Agglomeration Council for ratification on August 25, 2016. However, the Municipal Administration decided not to follow through with the award process.

6.1.2 Execution of “mobile application development and production” component

⁵²Letter of June 10, 2016, drafted by the SGPVMR and addressed to MEH.

⁵³Draft decision-making summary 1164956009 to which the Office of Inspector General had access. This decision-making summary was never ratified and was deleted from the City's decision-making file management system.

The decision to award the contract to MEH was justified by the fact that the organization [TRANSLATION] “has expertise not available within the municipal system and **has all the professional and technical resources required** to define and carry out projects of this scope.”⁵⁴

Under the contract to conduct a feasibility study for the project to provide a mobile application for the Promenade Fleuve-Montagne, MEH had to consult certain firms specialized in mobile development and virtual reality because the organization did not have the skills to evaluate the work required on its own. In all, MEH consulted three (3) IT firms.⁵⁵

Although not mentioned in MEH’s operating revenue report, obtained by the Office of Inspector General, the SGPVMR landscape architect responsible for the file told the Office that in addition to Martin Laviolette, MEH’s director of development, two (2) individuals worked on the organization’s feasibility study and attended the committee meetings. However, these two (2) individuals are not MEH employees but consultants.

Moreover, 9.2% of the value of the contract for the feasibility study was paid to Torrential as fees, i.e. \$1,200 plus taxes.

At regards the project implementation, the MEH service offer states that the [TRANSLATION] “main expense categories are associated with production of the application and its content.”⁵⁶ The project to be awarded essentially involves developing a mobile application:

Category(ies) and budget breakdown ⁷ – portion under MEH’s responsibility	\$
Application development	225,000
Production of digital content	359,500
Computer graphics and design of information files	30,000

⁵⁴ Draft decision-making summary 1164956009 to which the Office of Inspector General had access. This decision-making summary was never ratified and was deleted from the City’s decision-making file management system. See also the same justification in the letter of June 10, 2016 to the MEH from the SGPVMR.

⁵⁵As stated in the feasibility report submitted by MEH: Feasibility study for the development of a virtual programming concept and evaluation of its implementation costs for the Promenade Fleuve-Montagne, presented by MEH to the City, dated by September 29, 2015, p. 25 – footnote 13.

⁵⁶Service offer for the development of a mobile application for the Promenade Fleuve-Montagne, presented by MEH to the City, dated June 18, 2016, p. 22.



Historical research, content development (for about 15 points of interest, additional amounts to be provided for additions)	25,000
Interviews and translation	15,000
MEH project management (including human and administration resources)	130,100
Commissioner for production of creative work	5,000
Budget for 1 creative work	40,000
Addition of both totals (before taxes)	829,600

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The development of the application and the computer graphics and design alone are estimated at \$255,000 plus taxes, accounting for 30.7% of the budget.

MEH's service offer breaks down the labour costs for the application as follows:

4.2 Mobile application team

Application development

	J	A	S	O	N	D	J	F	M	A	M	No. of Hours	Hourly Rate	Total
Project manager	■	■	■	■	■	■	■	■	■	■	■	265	\$80.00	\$21,160.00
Systems architect	■	■	■	■	■	■	■	■	■	■	■	283	\$125.00	\$35,435.00
Mobile developer	■	■	■	■	■	■	■	■	■	■	■	291	\$100.00	\$29,120.00
Mobile developer -2	■	■	■	■	■	■	■	■	■	■	■	291	\$100.00	\$29,120.00
Back end developer	■	■	■	■	■	■	■	■	■	■	■	388	\$100.00	\$38,870.00
Graphic designer	■	■	■	■	■	■	■	■	■	■	■	582	\$85.00	\$49,504.00
QA expert							■	■	■	■	■	290	\$75.00	\$21,791.00
												2390		\$225,000.00

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It thus appears that the following positions had to be filled in order to carry out the project:

- Project manager to coordinate the project and guide the client,⁵⁹

⁵⁷Service offer for the development of a mobile application for the Promenade Fleuve-Montagne, presented by MEH to the City, dated June 18, 2016, p. 22.

⁵⁸ *Ibid*, p. 23.

⁵⁹ *Ibid*, p. 24.

- System architect to work with the development teams to create, design and develop the mobile application;⁶⁰
- Two (2) mobile application developers for the technical and information aspects;⁶¹
- A back-end developer to set up, configure, develop and maintain the server, database and the application in general;⁶²
- A graphic designer for all the ergonomic aspects of the application and interfaces;⁶³ and
- A QA specialist to ensure the quality of the work, compliance with the client's requirements and application testing.⁶⁴

When it submitted its service offer, MEH did not have such resources in its employ, as confirmed by the organization's director of development.

6.1.3 Legal affairs department's opinion concerning the "mobile application development and production" component

The Inspector General's investigation reveals an important fact that will be vital to the analysis: the SGPVMR requested a legal opinion from the City's legal affairs department about the possibility of awarding MEH a contract to develop a mobile application.

The SGPVMR landscape architect responsible for the file explained that following receipt of the feasibility study from MEH, his department realized that MEH clearly had the expertise to develop the content for the mobile application. However, there were questions concerning the development aspect because there were other entities capable of doing the work.

This is why the SGPVMR sought an opinion from the City's legal affairs department. One of the questions submitted was whether, under a contract to develop a virtual programming concept, the non-profit MEH was allowed to enter into a professional services contract with a computer programming consultant for the development of the application while it developed the content. The SGPVMR told the legal affairs departments that the value of the MEH contract would be approximately one (1) million dollars, while the professional

⁶⁰ *Ibid*, p. 24.

⁶¹ *Ibid*, p. 23.

⁶² *Ibid*, p. 24.

⁶³ *Ibid*, p. 24.

⁶⁴ *Ibid*, p. 25.



services contract (awarded to the computer programming consultant) would be worth approximately \$250,000.

The City's legal affairs department issued a legal opinion, which it forwarded to an SGPVMR section head on March 7, 2016. This opinion was then forwarded to the SGPVMR landscape architect responsible for the file.

The legal opinion explains that a non-profit organization awarded a contract by mutual agreement by the City [TRANSLATION] "must provide the services contemplated with its own resources and have the skills to perform such services."⁶⁵ The legal affairs department adds that [TRANSLATION] "the mandate awarded must be consistent with its mission (under its letters patent)."⁶⁶

The legal affairs department concludes that based on the information received, MEH [TRANSLATION] "could not entrust the computer programming to a consultant"⁶⁷ and "should deliver the services through its own resources, i.e. its employees or hire an employee to this end."⁶⁸

If MEH does not have the resources required to deliver the computer programming services, the legal affairs department explains to the SGPVMR that [TRANSLATION] "the City might have to proceed with a call for tenders for a professional services contract for computer programming."⁶⁹

Lastly, the legal affairs department offers the SGPVMR two (2) options to ensure complementary actions in the contract award process. First, the agreement binding the City to MEH could contain a clause requiring the organization to execute its mandate together with the professional who will be awarded the computer programming contract. The second option is to have MEH work with the City on the call for tender documents for the computer programming contract.

6.1.4 Steps taken by the SGPVMR to Remove the "mobile application development and production" component from the contract to be awarded to MEH

The investigation shows that the SGPVMR began following one (1) of the options proposed by the legal affairs department in its opinion of March 7, 2016. On May 5, 2016, the SGPVMR sent a letter to Martin Laviolette of MEH, asking for the organization's

⁶⁵ Legal opinion issued by the City's legal affairs department to the SGPVMR on March 7, 2016.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

collaboration and support to prepare a call for tenders to obtain professional services for the development of the mobile application.

The goal of the SGPVMR was therefore to issue a call for tenders to award the mandate for the development of the mobile application to a specialized external firm. Although it indicated that the date was not yet finalized, the letter said that the call for tenders was scheduled to be issued on July 4, 2016.

On May 12, 2016, MEH replied that it accepted the mandate.

The investigation reveals that the contract to help the City prepare the tender documents was never concluded. A draft letter written by the SGPVMR confirming the issue of a purchase order in this regard and authorizing MEH to begin the mandate was found but it is neither signed nor dated and contains no purchase order number.

In the City's integrated system (SIMON), which contains all the City's purchase orders and invoices, it seems that a file was created for the purpose of issuing a \$10,000 purchase order to MEH for the awarding of the mandate. However, "CANCELLED" was written on the file.

The investigation conducted by the Inspector General reveals that according to the STI, the City would not come out ahead by splitting the Fleuve-Montagne project into two (2) components, one for the development of the mobile application and the other for the development of the content for the mobile application, since it would require too much coordination and the timelines were tight.

Indeed, on August 12, 2016, the STI director communicated with the SGPVMR director and the person responsible for supporting elected officials, informing them that there was a problem with the timelines. He said that a call for tenders would result in [TRANSLATION] "a slightly lower price" than that submitted by MEH for the development of the mobile application but that it would require integrating a new supplier for the development component, in addition to the existing supplier for the application content. He writes:

The mobile application costs of about \$200,000 seem to me to be correct. We could conceivably find a slightly lower price on the market but we would then have to integrate a new application supplier with the existing content supplier. We would lose in this regard and I doubt that in the end, we would really come out on top. Although the firm is not a development firm, it can handle this because they've already done this kind of work.

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When interviewed by the Office of Inspector General, Martin Laviolette confirmed that MEH helped the City go to tender for the mobile application development component but that the decision to entrust the entire project to MEH was taken because the timelines were too tight to go to tender.

⁷⁰ Email from the STI director dated August 12, 2016.



However, the landscape architect said that following these steps, he clearly asked Martin Laviolette and MEH's director of development, at a meeting, whether, if the contract were awarded to MEH, the organization would carry out the project with its employees or with subcontractors. Martin Laviolette responded that MEH employees would be used for the project.

However, when interviewed by the Office and confronted with the facts, MEH's director of development said that at the time the service offer was submitted for the project, MEH did not have a mobile application developer on staff. The director of development added that had MEH obtained the contract, the organization would have hired a team for the project consisting of one (1) or two (2) developers as permanent employees but that the rest of the team would have been made up of consultants.

In closing on the facts of this draft contract, the Inspector General wishes to point out that the file prepared for submission to the elected officials makes no mention of the intervention by the City's legal affairs department or of the legal opinion it issued and sent to the SGPVMR stating that MEH could not entrust the development of the mobile application to a consultant. The decision to go to tender by asking MEH to assist the SGPVMR and to interrupt the process and to award the entire project to MEH because of the tight timelines also does not appear in the decision-making summary.

6.1.5 Analysis of the facts

As mentioned, the analysis of the draft contract for the Promenade Fleuve-Montagne project reveals facts that are relevant to the formulation of recommendations by the Inspector General and that deserve to be brought to the attention of City Council.

The SGPVMR draft contract involves developing a mobile application for the Promenade Fleuve-Montagne. This project essentially has two (2) components: develop and produce a mobile application, and develop and produce the content for the mobile application. In addition to these two (2) main components, the project also calls for the production of a creative work.

The "mobile application development and production" component cannot be carried out by MEH since it does not employ experts in mobile development, computer systems or computer configuration. According to the service offer submitted by MEH to the SGPVMR, these positions correspond to the human resources required for this component. Moreover, the "mobile application development and production" component is one of the main expense categories, evaluated at 30.7% of the total contract cost (\$255,000).

The Inspector General reiterates that MEH had to consult firms specializing in mobile development and virtual reality during the feasibility study in order to evaluate the work required.

The investigation reveals that the SGPVMR studied the possibility of other companies handling the development and production of the mobile application given that MEH had more experience in content development than in the application itself.

After requesting a legal opinion on the matter, the SGPVMR was informed, on March 7, 2016, by the City's legal affairs department that MEH had to provide the services contemplated by the contract with its own resources and have the skills to do so and that it could therefore not entrust the “mobile application development and production” component to a consultant.

In line with one of the proposals made by the legal affairs department, in May 2016, the SGPVMR took steps to launch a call for tenders for this component, asking MEH for help in preparing the tender documents. The call for tenders was scheduled to be launched on July 4, 2016.

The Inspector General was surprised to learn that due to coordination issues and tight timelines, the process was abandoned at the request of the STI director, who admitted that going to tender would result in a lower price than that proposed by MEH for the development of the mobile application.

Given the substantial amount of public funds invested (the contract is close to one (1) million dollars), the Inspector General is surprised that the STI director justifies not removing the development component of the mobile application by stating that although MEH is [TRANSLATION] “not a development firm, [the organization] **should be able to do it.**”

The Inspector General believes that the legal opinion issued by the City's legal affairs department should have been respected and followed. After all, the department's role is to advise the administrative and political authorities of the City and boroughs on how to comply with applicable rules. This department brought to the attention of the SGPVMR the fact that MEH could not entrust the “mobile application development and production” component to a consultant. The fact is that when it submitted its service offer, MEH did not have, and to this day still does not have, the resources and skills required to carry out this key component of the project.

Moreover, the Inspector General considers it very important to bring to the attention of City Council the lack of transparency exhibited towards elected officials in this file.

First, the decision-making summary prepared for the elected officials contained no preliminary cost estimate. The person responsible for providing support to the elected officials on the Executive Committee therefore had to request clarifications from the SGPVMR and a cost validation from the STI director. For its part, the SGPVMR based its cost estimate on the expense breakdown in MEH's feasibility study without consulting an independent firm. For his part, the STI director simply said that he found the mobile application development costs [TRANSLATION] “reasonable” although market prices might be [TRANSLATION] “a bit lower.”

Second, the decision-making summary does not address the legal affairs department's intervention or legal opinion or the steps taken and then abandoned to go to tender to obtain the services of a firm specializing in mobile application development. In the Inspector General's opinion, this information should have been included in order to be



brought to the attention of the elected officials, who are ultimately responsible for awarding the contract.

6.2 *Square Viger draft contract*

6.2.1 *Context of the draft project*

As part of the festivities surrounding Montréal's 375th anniversary, a second project developed by the SGPVMR sought to award a contract for historical interpretation services as part of the Square Viger redevelopment.

Prior to this project, the redevelopment of two (2) blocks had been chosen as the first phase of the Square Viger redevelopment for Montréal's 375th anniversary celebrations.⁷¹

In early 2016, a first observation was made: given the scope, complexity of the work and delays associated with the Square Viger redevelopment, it would not be possible to complete the work by May 2017, as initially planned. In its response to the Notice, the SGPVMR also states that the scope of the project had been expanded. The redevelopment of the blocks would therefore only be completed in summer 2018.⁷²

The SGPVMR landscape architect responsible for the file explained to the Office of Inspector General that the goal was to avoid upsetting the public due to work delays. The idea was to make the site interesting and inviting. Thus, various strategies were introduced, in particular, creating a mobile application that would show the progress of the work and provide historical and heritage information.

MEH's general manager and executive producer, Martin Laviolette, explained to the Office of Inspector General that the organization was approached by the SGPVMR to integrate the Square Viger work site into the Cité-Mémoire mobile application. A meeting recorded on April 8, 2016 in the electronic agenda of the SGPVMR landscape architect confirms that a meeting took place between MEH and the SGPVMR and hand-written notes taken during the meeting confirm that the idea of integrating Square Viger into the Cité-Mémoire circuit was discussed. In its response to the Notice, the SGPVMR explains that this meeting, titled "Rêver le Square Viger," was an opportunity to discuss digital options and that several ideas and proposals were made.

6.2.2 *Prior contract for the supply and installation of cameras*

⁷¹Draft decision-making summary 1166300001 intended to award a professional services contract to MEH for historical interpretation services as part of the Square Viger redevelopment.

⁷²*Ibid.*

On March 10, 2016, an SGPVMR section head solicited MEH in writing, offering the organization the mandate to develop the project contemplated by his department. After the letter was sent, a meeting took place between the SGPVMR and MEH in which the latter guided and advised the SGPVMR's representatives. One of the options offered by MEH included installing cameras on the roofs of buildings surrounding the work sites to follow the progress of the work from its onset in June 2016. The idea was to continuously film the work underway and to then use the images.

The SGPVMR landscape architect responsible for the file told the Office of Inspector General that all this took place in May 2016 and the work was scheduled to start on June 6, 2016. Since there was not enough time to go through the various authorization levels for the purchase and installation of the cameras, the SGPVMR landscape architect explained to the Office that it was agreed to remove the "camera" item from the request and to create a separate, parallel request so that everything could be accepted on time and the cameras installed for the start of the work.

However, the SGPVMR only solicited MEH on June 2, 2016, by letter, to provide and install the cameras. MEH submitted its service offer on June 3, 2016. On June 15, 2016, a purchase order was thus issued to MEH for the supply and installation of cameras, for an amount of \$19,982.66, taxes included.

Although this contract was for less than \$25,000 and could be awarded by mutual agreement by the City to any contractor without the need to go to tender, the Inspector General wishes to point out certain facts in connection with this contract award as they will be referenced later when discussing risky practices concerning the management of public funds.

MEH's service offer for the supply and installation of cameras details the contract cost of \$13,580 before applicable taxes. According to certain communications by MEH's production director, this amount includes administration and management fees negotiated at 14%. An amount of \$3,800 (21.86% of the contract value) was added to the project cost for contingencies. The SGPVMR landscape architect responsible for the file and the SGPVMR section head were both aware of these facts.

The Office of Inspector General had access to MEH's operating revenue report. According to the figures in the report, a profit of \$6,131.97 was recorded for the camera supply and installation contract. The total amount of the project is \$19,982.66 taxes included, i.e. \$17,380 before taxes. In the end, \$16,511 plus taxes were paid to MEH for this contract. According to MEH's operating revenue report, MEH incurred expenses of \$10,379.03 plus taxes. Of this amount, only 11.7% of the costs were for salaries, benefits and travel expenses paid to MEH employees while more than 88% represent fees paid to Torrentiel, suppliers and subcontractors.

More specifically, the charges are broken down as follows (excluding taxes, where applicable):

- \$1,213.28 for the salaries, benefits and travel expenses of four (4) MEH employees;



- \$2,476.65 for production-related professional services entrusted to the firm Torrentiel;
- \$6,690 paid to a contractor for the electrical installation and for the supply, installation and calibration of the cameras, and to program the server.

The details of the invoices and cheques show that MEH paid Torrentiel 15% of the amount MEH received from the City in the days after it cashed the City's cheque.

MEH's production director confirmed to the Office that the request for the supply and installation of cameras was urgent and that he therefore only contacted their usual supplier for the contract.

6.2.3 Draft contract for historical interpretation services as part of the Square Viger redevelopment

In addition to the contract awarded to MEH for the supply and installation of cameras, the draft contract to be awarded to MEH for the Square Viger redevelopment project (despite the fact that the Municipal Administration did not follow through with the award) leads the Inspector General to make recommendations in connection with risky contract award practices.

In May 2016, MEH submitted its service offer for the mobile application project and a draft professional services agreement was then prepared. The estimated cost of the project was \$346,079.98, taxes included, which also consisted of \$79,315.50 for contingencies (i.e. 22.9% of the contract value).⁷³ The decision-making file was also prepared with a view to awarding the contract.

The SGPVMR landscape architect responsible for the file justified selecting MEH by the fact that [TRANSLATION] "everyone does business with Montréal en histoires." He added that no other firm was able to offer a turnkey service similar to the one proposed by MEH. In its response to the Notice, the SGPVMR points out that MEH claimed to have the technical expertise, in-house professional resources and know-how to successfully execute the mandate.

The SGPVMR landscape architect responsible for the file said that his department could have split the mandate and awarded three (3) different service contracts to three (3) different firms but that he did not have the knowledge or expertise required to manage and coordinate the mandates and still deliver the project on time and up to the expected quality standards. In its response to the Notice, the SGPVMR acknowledges that it does not have the knowledge and expertise for the technology aspects and on-site implementation to coordinate the firms' work.

⁷³ Draft decision-making summary 1166300001 to which the Office of Inspector General had access. This decision-making summary was never ratified.

The decision to award the contract to MEH was justified by the fact that the organization [TRANSLATION] “has expertise not available within the municipal system and **has all the professional and technical resources required** to define and carry out projects of this scope.”⁷⁴

The draft contract included the following work:

- the production of five augmented realities with historical figures;
- the production of two virtual realities;
- the design and production of virtual glasses to experience the virtual realities on the project site; and
- the production of five historical clips on the history of Square Viger.⁷⁵

The service offer presented by MEH in May 2016 details the main production costs as follows:

- For the production of the augmented realities with historical figures: historical research, writing of texts, translation of texts into three (3) languages, artists' fees for actors and narrators, recording of narration in studio, audio mixing, integration of images and audio frames in MEH's mobile application, usability tests, touch-ups and polishing;
- For production of the virtual realities: modelling of virtual experiences, fabricating and installing virtual glasses, researching and verifying content, writing and revising texts, searching for archived photos and videos and release of related rights, video editing, 3D production, stitching, translation and voice talent, narration recording in studio, music and sound effects, integration in the application, usability tests, touch-ups and polishing;
- For the production of the historical clips: researching and verifying content, writing and revising texts, translation of texts into three (3) languages, searching for archived photos and videos and release of related rights, editing, recording of narration in studio, artists' fees for narration in 4 languages, integration in the application, usability tests, touch-ups and polishing.⁷⁶

It is therefore apparent that several elements of the project would be carried out by third parties: artists (actors, narrators), who would record the videos and audio frames to

⁷⁴ *Ibid.*

⁷⁵ Production service offer presented by MEH for the Square Viger project, dated May 2016, p. 4.

⁷⁶ Production service offer presented by MEH for the Square Viger project, dated May 2016, pp. 5–8.



integrate into the mobile application, the translation into several languages and inclusion of the content in the application.

The investigation also reveals, based on statements made by MEH's director of development, that the development, design and production of the virtual glasses would be entrusted to one of the organization's subcontractors.

On August 25, 2016, the City's Agglomeration Council was expected to award the contract for the redevelopment of Square Viger to MEH. However, the Municipal Administration subsequently decided not to follow through with the award process.

Still, some of the concerns voiced about awarding the contract by mutual agreement to MEH merit mentioning. On August 4, 2016, the City's Executive Management mentioned the concerns raised by the Political Cabinet to the SGPVMR's director. These concerns call into question the SGPVMR's decision to award a contract by mutual agreement to MEH since the organization appears to [TRANSLATION] "have a certain exclusivity for the 375th" and because a call for tenders could have been launched:

- Which firms other than the NPO Mtl en histoires could have executed this mandate?
- What are the pros and cons of going ahead with Mtl en histoires knowing that the organization has been awarded several mandates in recent years and that it seems to have a certain "exclusivity" with regards to the 375th anniversary?
- Explain why a call for tenders was not issued, even if it meant that Mtl en histoires would ultimately be the successful bidder.

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6.2.4 Analysis of the facts

As mentioned, the analysis of the contract awarded to MEH for the supply and installation of cameras and the analysis of the draft contract for the Square Viger redevelopment project reveal facts that are relevant to the formulation of recommendations by the Inspector General and that deserve to be brought to the attention of City Council.

As regards the contract awarded to MEH for the supply and installation of cameras around the Square Viger redevelopment work site, MEH had neither the equipment nor the personnel to install the required equipment. The organization had to resort to suppliers and subcontractors.

MEH's operating revenue report and the details therein show that most of the expenses incurred by the organization were not for employee salaries and the majority of the work was therefore not performed by MEH. More than 88% of the expenses incurred were for fees and costs charged by subcontractors.

As well, the payment to MEH for this contract includes an amount for contingencies, which should have been held back by the SGPVMR and paid only if certain unexpected costs exceeded the project budget. Here, the contingency amount was therefore automatically

⁷⁷ Email of August 8, 2016, sent by the City's Executive Management to the SGPVMR director.

paid to MEH as an integral part of the contract amount. This is not the way contingencies work. However, it is important to note that after this amount was paid, an agreement was made between MEH and the City whereby the organization would return the contingency amount to the City.

As for the draft contract for the historical interpretations services for the Square Viger redevelopment, it was never awarded to MEH. However, the Inspector General notes that a significant part of the contract would have been performed by MEH subcontractors, in particular, the development, design and production of the virtual glasses but also certain parts of the production of the augmented and virtual realities.

In its response to the Notice, MEH admits that the execution of this project would have required the organization to hire specialized technical resources such as cameramen, editors or programmers.

7. Intervention by the Inspector General with respect to the contracts and draft contracts under investigation

7.1 *Reasons justifying the Inspector General's intervention*

7.1.1 *General principles*

The principle applicable to any public client, including municipalities and therefore the City and its boroughs is that when an insurance, supply, service or construction work contract involves an expenditure of \$100,000 or more, the public client **must** use the **public tender procedure**.⁷⁸

This obligation is imposed by the legislator. It is mandatory, a matter of public policy, and constitutes an essential element of a valid contract.⁷⁹

Recourse to public calls for tender is essentially intended, for the public client awarding the contract, to [TRANSLATION] “**simultaneously reach all interested parties** who have the capacity to conclude contracts, the expertise and the competency required to carry out the contract **so as to generate the greatest amount of competition**.”⁸⁰

⁷⁸See, in particular, as regards municipalities: *Cities and Towns Act* (CQLR, c. C-19), s. 573.

⁷⁹André Langlois, *Les contrats municipaux par demandes de soumissions*, 3rd Edition, Éditions Yvon Blais, Cowansville, 2005 (pp. 222–223).

⁸⁰Me Pierre Giroux and Me Denis Lemieux, *Contrats des organismes publics québécois*, ed. Wolters Kluwer (pages 809–2).



The fundamental principles that underpin the rules governing the awarding of public contracts and that have been reaffirmed by the courts many times⁸¹ exist to ensure:

1. that the best product is obtained for the best price, for the benefit of the public client awarding the contract;
2. free competition; and
3. equal opportunity to access public contracts so that each party has the opportunity to submit an offer and obtain the contract.

When awarding a contract, municipalities must therefore allow competition in order to obtain the best price. In this way, they protect taxpayers' interests and avoid wasting public funds.

There are some exceptions to the principle requiring public clients awarding a contract to resort to the public tender procedure for contracts of \$100,000 or more. One of the exceptions is when the contract is entered into with a non-profit organization.⁸²

Montréal and its boroughs can therefore enter into certain contracts by mutual agreement with a non-profit organization even if their value is greater than the amount requiring a public call for tenders.⁸³ However, this is an exception to the rule that must therefore be interpreted restrictively.

As for subcontracting, it is permitted in contracts awarded by the City and the boroughs unless expressly prohibited in the call for tender documents. However, even when authorized, the contractor cannot resort to subcontracting to perform all the work or services required by the contract:

[TRANSLATION] Subcontracting must necessarily have as its object a part and not the entire work or service. Thus, the subcontract cannot be for the coordination,

⁸¹*R.P.M. Tech inc. v. Gaspé (Ville)*, April 14, 2004, Court of Appeal, REJB 2004-60675 (par. 25); *Drummondville (Ville de) v. Construction Yvan Boisvert inc.*, 2004 CanLII 73066 (QC CA) (par. 1); *Groupe Morin Roy, s.e.n.c. v. Blainville (Ville)*, June 19, 2003, Superior Court, REJB 2003-43965 (par. 24); *Archevêque & Rivest Itée v. Beaucage*, August 22, 1983, Court of Appeal, EYB 1983-118139 (par. 52). See also the case law cited by Me Pierre Giroux and Me Denis Lemieux, *Contrats des organismes publics québécois*, ed. Wolters Kluwer (pages 814–5).

⁸²*Cities and Towns Act* (CQLR, c. C-19), s. 573.3, subsection 2.1.

⁸³Contracts whose object is the supply of insurance, equipment, materials or services other than the collection, transport, transfer, recycling or recovery of residual materials and contracts for the performance of work.

management or supervision of the work, unless the client gives his consent. The performance of these tasks is, in principle, the responsibility of the general contractor in accordance with the provision of article 2099 CCQ. It is therefore prohibited for the general contractor or the service provider to transfer the entire business or service contract with the client to another.⁸⁴

Similarly, extreme caution must be used when resorting to subcontracting in cases where the contract is awarded by mutual agreement to a non-profit organization in order to prevent misuse of the legislative exception to avoid the tendering procedure imposed by law.

On March 23, 2015, the Inspector General submitted to Montréal's City Council a recommendation report regarding the Horizon 2017 Rehabilitation and Development project of the Jean-Drapeau Park Society (hereinafter: JDPS Report) in which he stated that the exception provided in the *Cities and Towns Act* (CQLR, c. C-19) (hereinafter: CTA) could not permit a non-profit organization to obtain a contract by mutual agreement with a value of more than \$100,000 and then subcontract the majority of the products or services it undertook to provide:

[TRANSLATION] Since this is an exception to the principle of equal opportunity for any person qualified to contract with a municipality, the service provided for in the contract must be performed by this organization. This organization cannot subcontract the majority of the product it agreed to produce and serve as a conduit for private companies, which would be a way for the public client awarding the contract to circumvent the obligation to proceed by public call for tenders.⁸⁵

The Inspector General wishes to also reiterate another principle established in the SPJD Report, namely, the consequences of derogating from the mandatory provisions for the awarding of contracts:

[TRANSLATION] It is a well-established principle that the mandatory provisions for the awarding of municipal contracts **are a matter of public policy and non-observance nullifies the contracts**. What remains to determine **is whether all** the provisions of the law must be considered mandatory.

Doctrine summarizes this assumption as follows:

Some jurisprudence questions the real impact of non-compliance with the provisions of legislation on the protection of free competition, equal opportunities between bidders and obtaining the best price or the best offer. This legislation is relevant to our analysis of the Court of Appeal's decision in the L'Immobilière case.

Thus, André Langlois, in his work on municipal contracts awarded by public tender (reference omitted), points out that some decisions focus on "the quality

⁸⁴ *Optique André Besner v. Donat Lecompte & Fils inc.*, J.E. 96-1556 (S.C.).

⁸⁵ *Rapport sur le Projet de revalorisation et de développement, Horizon 2017 de la Société du parc Jean-Drapeau*, submitted by the Inspector General of Montréal to City Council on March 23, 2015, p. 11.



*and effectiveness of using a competitive bidding approach and not on blind compliance with the provisions of the law if the community is not harmed.” We believe that these decisions are essentially well founded and seek to avoid “throwing the baby out with the bath water.” **If the Court finds that non-compliance with the provisions does not affect free competition, equal opportunity and the ability to obtain the best price or offer, it will refuse to intervene.** This is the essence of these decisions.⁸⁶ (emphasis added)*

In other words, if these objectives are undermined, a court would not hesitate to intervene and sanction any illegality by declaring such a contract null and void.

In this case, the Inspector General found several serious violations of these rules in the contracts and draft contracts covered by his investigation, as mentioned earlier and as discussed in the following sections.

7.1.2 MEH's use of suppliers and subcontractors

The problems with the contracts and draft contracts covered by the Inspector General's investigation bear numerous similarities with those discussed in the JDPS Report. As was the case in that report, made public nearly two (2) years ago, the non-profit organization solicited by the City and boroughs is not able to execute the projects on its own.

In its response to the Notice, MEH explains that the organization does not have the means to hire designers or specialized professionals on a permanent basis. MEH admits that its employees work under the direction of Martin Laviolette, himself an employee of Torrentiel (Martin Laviolette is the general manager and executive producer of MEH while being an employee of Torrentiel because this role is part of the mandate entrusted to Torrentiel through the agreement with MEH).

The main part of the Lachine borough's lighting plan and the project to illuminate bridges and pedestrian overpasses in the Sud-Ouest borough involved lighting or illuminating buildings and structures. However, MEH does not have the equipment, expertise, skills or personnel to execute the main part, i.e. the main purpose, of these two (2) contracts on its own.

As confirmed by the accounting data and the versions of the individuals interviewed by the Office of Inspector General, the organization had to resort to suppliers, subcontractors and consultants both for the feasibility study and for the project implementation.

As regards the Lachine borough lighting plan, at the feasibility stage, more than 86% of the costs incurred by MEH were to cover the fees and expenses of consultants and subcontractors. At the project implementation stage, the picture is hardly better: according

⁸⁶ Marc LAPERRIÈRE, *Le système de pondération et d'évaluation des offres et ses embûches; retour sur l'affaire de « L'Immobilière »* (EYB2010DEV, EYB2013DEV1945, dans *Développements récents en droit municipal* (2010), Service de la formation continue du Barreau du Québec, 2010), (page. 8).

to the service offer submitted by the organization, 72.3% of the implementation costs, i.e. more than \$612,710 out of \$847,460 (before taxes), were associated with the purchase and installation of equipment, and part of the costs reserved for labour would have to be for outsourcing because MEH does not have the qualified personnel (lighting expert and electrical engineer).

As regards the project to illuminate bridges and pedestrian overpasses in the Sud-Ouest borough, at the feasibility stage, more than 90% of the costs incurred by MEH were for fees and expenses of consultants and subcontractors. At the project implementation stage, the situation is no different: according to the service offer submitted by the organization, 75% of the implementation costs, i.e. more than \$741,433 out of \$988,000 (before taxes), were associated with the purchase and installation of equipment.

Therefore, the majority of the costs for the Lachine and Sud-Ouest borough projects were associated with the purchase and installation of equipment and payment of lighting experts and electrical engineers. Payments to MEH employees only accounted for a very small part of the costs. The services contemplated by the contracts are therefore not actually being provided by MEH but rather by business ventures acting as suppliers, subcontractors or consultants.

Although some MEH executives claim that the organization is a concept developer and project manager, and that it supervises the work of subcontractors, consultants and suppliers, the fact is that the concepts and scenarios designed and developed as part of the feasibility studies were actually the work of MEH consultants working in concert with the organization's director of development. In its response to the Notice, MEH even admits that a consultant was retained to draft the project feasibility reports.

In its response to the Notice, MEH names the artist and designer of the Lachine borough's lighting plan whose services were retained to implement the concept developed by the organization. A look at the list of MEH's salaried employees reveals that the individual is a consultant of the organization.

What's more, the investigation reveals that the administrative management and executive production of the projects executed by MEH are the responsibility of Torrentiel, a private company contractually linked to the organization and that receives substantial fees for its services. MEH can therefore not claim to be a project manager. As was the case in the JDPS Report on the Quartier international de Montréal (QIM), the Inspector General seriously wonders about the added value MEH brings as a project manager.

The Inspector General is struck by the fact that the same irregularities and scheme brought to light in his investigation of the Horizon 2017 Rehabilitation and Development project of the Jean-Drapeau Park Society were found in the contracts and draft contracts that were going to be awarded to MEH.

In this case, MEH was awarded contracts by mutual agreement because of its status as a non-profit organization even though it did not have the staff to execute the key parts of these contracts and had to entrust them to suppliers, consultants and subcontractors who have the equipment, ability and expertise to perform the necessary work.



It has been nearly two (2) years since the JDPS Report, which garnered extensive media attention and resulted in the municipal authorities taking corrective action.⁸⁷

At this stage, it bears repeating some aspects of the presentation made by the City's legal affairs department shortly before MEH was awarded the contracts and mentioned by some Lachine borough employees:

[TRANSLATION] The NPO to which the City awards a contract by mutual agreement cannot act as a conduit for transferring City funds to third parties and in so doing allow the City to circumvent the contract award rules that would otherwise apply. The mandate given to the NPO must be consistent with its mission (pursuant to its letters patent) and the NPO must have the skills and resources to provide most of the services contemplated by the contract with the City. To this end, the following clause may be inserted in contracts with an NPO:

The Organization declares that the services contemplated by this contract are consistent with its mission and that it has the requisite skills to provide such services.

*The use of outsourcing, other than incidentally, is prohibited, and the Organization agrees to provide most of the services through its own resources.*⁸⁸

The fact is that MEH is acting as a conduit, using its status as a non-profit organization exempt from the contract award rules to allow business ventures (suppliers and subcontractors) to obtain public funds from mutual agreement contracts worth close to one (1) million with the Lachine and Sud-Ouest boroughs.

As for the two (2) SGPVMR draft contracts, although the Municipal Administration did not proceed with them, the Inspector General wishes to point out the similarities with the contracts awarded by the Lachine and Sud-Ouest boroughs and to bring these facts to the attention of City Council because these projects were going to be awarded by mutual agreement to MEH:

- Fleuve-Montagne project:
 - As part of the feasibility study contract, MEH had to consult three (3) firms with expertise in mobile development and virtual reality since the organization did not have the skills to evaluate, on its own, the work to be performed. Also, two (2) consultants worked on the feasibility study submitted by the organization. In addition, 9.2% of the contract value was paid to Torrentiel in the form of project management fees, i.e. \$1,200 plus taxes.

⁸⁷ The actions taken following publication of the report are summarized in the 2015 Annual Report available on the website of the Office of General Inspector.

⁸⁸ PowerPoint presentation titled "Les organismes à but non lucratif" (non-profit organizations) dated April 2016 and provided by the City's legal affairs department, slide 21.

- A major part of the Fleuve-Montagne project consisted of developing and producing a mobile app. Despite the legal opinion received from the City's legal affairs department stating that MEH needed to have the resources to provide the services contemplated by the contract, the organization was going to be awarded the entire project, including development of the mobile application, simply because of tight timelines and because awarding the mobile application portion of the contract to another company would complicate the project's coordination. MEH is not an IT firm and does not have the staff to develop and produce a mobile application.
 - The decision-making summary for the project justified awarding the contract to MEH by stating that the organization [TRANSLATION] "has expertise not available within the municipal system and **has all the professional and technical resources required** to define and carry out projects of this scope." However, the investigation shows that this is not the case.
- Square Viger project:
 - A prior contract by mutual agreement was awarded to MEH for the supply and installation of cameras as part of the redevelopment of Viger Square. The fact is that the organization resorted to suppliers and subcontractors to carry out the main purpose of the contract, i.e. to supply and install cameras. The fees paid to Torrentiel and suppliers account for more than 88% of the costs.
 - As regards the Square Viger redevelopment project, the MEH director of development says that the development, design and production of the glasses would have been entrusted to a subcontractor. This was a significant part of the project given that these glasses were intended for users to experience the virtual realities designed for the project. Moreover, the service offer submitted by MEH shows that other aspects of the contract would have been awarded to subcontractors (in particular, in connection with the augmented and virtual realities—actors, narrators, translators, inclusion of the content in the mobile application).
 - The decision-making summary for the project justified awarding the contract to MEH by stating that the organization [TRANSLATION] "has expertise not available within the municipal system and **has all the professional and technical resources required** to define and carry out projects of this scope." However, the investigation shows that this is not the case.

As regards the projects developed by the SGPVMR, the Inspector General notes that contracts by mutual agreement were going to be awarded to MEH despite the fact that this organization did not have the resources to execute them and that numerous parts would have been entrusted to suppliers and subcontractors.



7.1.3 Decision to breach legislative rules and award the contracts by mutual agreement

First, the Inspector General wishes to emphasize that it does not pass judgment on the quality of the projects designed and developed by MEH in the feasibility studies and proposed to the boroughs and the SGPVMR. The report does not challenge the fact that some of the ideas proposed by MEH to the boroughs and the SGPVMR could be of interest as part of Montréal's 375th anniversary festivities.

However, the Inspector General considers that the Lachine and Sud-Ouest boroughs could not award MEH contracts by mutual agreement for their respective projects. Certain key parts of these contracts involved the supply of equipment and services, which by their very nature were not consistent with MEH's mission and could not realistically be carried out by the organization's staff.

In its response to the Notice, the Lachine borough says that it was sure the project was consistent with MEH's mission to promote history and heritage education. The borough explains that this project [TRANSLATION] "is just the first phase of a broader historical project featuring an animated projection screen, augmented reality murals and educational and cultural walking tours and various points of interest."

However, both for the Lachine and Sud-Ouest borough projects, three quarters of the costs detailed in the feasibility studies and service offers submitted by MEH were associated with the purchase and installation of equipment. Moreover, the feasibility studies indicated the equipment required to implement the concept.

The Sud-Ouest borough argues that it spoke with MEH to make sure the organization's employees would be carrying out the project, except of course, the portion concerning the purchase of equipment.

In the Inspector General's opinion, once the feasibility studies were submitted, the boroughs should have split these aspects of the contracts awarded to MEH and awarded them to suppliers and firms specialized in lighting by way of a public call for tenders. This would have fostered competition and allowed the boroughs to obtain the equipment and services at the best price, as required by law and the principles of sound management of public funds. MEH could have been tasked with making sure that the work was performed in accordance with the concept developed in the feasibility study, provided that it not subcontract this portion of the work.

Rather than separate these aspects of the project and go to tender to find a competitive bidder, the Lachine and Sud-Ouest boroughs instead left it up to MEH to contact equipment suppliers and subcontractors to perform the required services. In these two (2) files, the possibility of issuing a call for tenders for certain parts of the contract was raised during the award process. The boroughs ultimately decided to award the entire contract by mutual agreement to MEH, delegating to the organization the task of finding equipment suppliers and installation subcontractors.

The Inspector General considers that the Lachine and Sud-Ouest boroughs could not award MEH contracts by mutual agreement for their respective projects.

In its response to the Notice, MEH argues that the various projects covered by the Inspector General's investigation were part of the natural evolution of the Cité-Mémoire project, which is intended to provide Montréal with a historic and heritage walking tour and that only the organization can offer [TRANSLATION] "this type of integrated project."

MEH administrative director Georges Fournier explained to the Office that the organization is slowly moving towards a turnkey service. He and the director of development confirm that the organization does not make any profit on the equipment purchases. However, in the Inspector General's view, that is not where the problem lies.

By entrusting the purchase and installation of equipment for the professional illumination of structures and buildings to a non-profit organization that is exempt from the contract award rules, despite the fact that the organization does not have the equipment, personnel, knowledge or expertise required for these services, the Lachine and Sud-Ouest boroughs circumvented the rules to which they are bound and adopted a practice that runs counter to the principles governing public contract awards.

The MEH production director states that the organization often does business with the same suppliers and subcontractors without asking for a quote or specifications, or going to tender. An estimate by phone or email is sufficient to place an order. The production director adds that because the same suppliers are often used, MEH does not do any price comparisons. He states that for the Lachine borough lighting plan, MEH did not provide a cost estimate but that the borough is currently comparing prices.

The MEH production director admits that even when a price comparison is done, the organization does not necessarily select the supplier with the lowest price because competence also comes into play.

For his part, the MEH director of development explains that he considers the tendering process inefficient for equipment purchases because what is required is often too specialized and few suppliers are capable of responding to the call for tender. However, even if there are few suppliers, a call for tenders can be issued to stimulate the market and ensure the lowest price is obtained.

This means that the Lachine and Sud-Ouest boroughs delegated the purchase and installation of equipment and other services to an organization that doesn't worry about costs and that does not compare prices.

In the Inspector General's view, besides running counter to the spirit of the law, this practice is absurd and demonstrates poor management of public funds. The boroughs have misused the legislative exception allowing a non-profit organization to obtain contracts by mutual agreement despite the substantial costs such contracts can entail. They awarded a non-profit organization contracts containing several aspects and a majority of costs that were not consistent with its mission. As well, the organization had neither the expertise nor the ability to execute these contracts.



In its response to the Notice, the Lachine borough explains that [TRANSLATION] “in light of the short timeframe, the public tender option for concept development and execution would have made it impossible to carry out the project as per the criteria and deadlines imposed by the City.” This claim cannot justify such a departure from the mandatory rules, considered public policy, governing public contract awards.

The very nature of certain important aspects of the contracts should have prompted the boroughs to be much more vigilant. After awarding a contract by mutual agreement to MEH to define the concept, the boroughs should not have tasked the organization to supply equipment and services that it could not provide on its own.

The Inspector General concludes that the contracts awarded by the Lachine and Sud-Ouest boroughs **must be declared null and void given that they breach the mandatory provisions governing contract awards**. These rules are a matter of public policy and form an essential part of a valid contract. Failure to respect these rules in this case nullifies the contracts awarded because the failure runs counter to the objectives the City is bound to pursue, i.e. to foster strong competition by way of a public tender unless the services contemplated by the contract can be provided by a non-profit organization.

As regards the SGPVMR, the Inspector General wishes to make the following comments:

- Fleuve-Montagne project:
 - The investigation shows that the portion of the project involving the development and production of a mobile application should have been tendered in order to obtain the professional services of a specialized firm, in accordance with the opinion received from the City's legal affairs department. Here again, citing lack of time and coordination issues, the STI director (consulted to ensure that the costs were consistent with market prices) recommended that the entire contract be awarded by mutual agreement to MEH, knowing full well that the organization did not specialize in these services and that it would have been possible to obtain a lower price by issuing a public call for tenders.
 - In its response to the Notice, the SGPVMR explains that on recommendation of the STI, it chose to award a contract by mutual agreement rather than go to tender for the portion involving the development and production of the mobile application, [TRANSLATION] "because the estimated cost was below one million dollars, the cut-off for awarding a contract to an NPO." In the Inspector General's opinion, this response reveals a profound lack of understanding by the SGPVMR of the rules governing the contractual process and of the reason why it was decided not to follow the opinion of the City's legal affairs department, which recommended proceeding by public tender for this aspect of the contract. The fact is that the monetary threshold of one (1) million dollars is not the threshold set for awarding a contract to an NPO but the threshold above which the NPO must obtain authorization from the Autorité des marchés financiers.
 - The investigation shows that Martin Laviolette assured the landscape architect responsible for the file that the project would be carried out by MEH employees. Also, the organization's director of development told the Office of Inspector General that MEH would hire one (1) or two (2) developers as permanent employees for the project. In this regard, the SGPVMR explains in its response to the Notice that it made sure it was feasible for MEH to hire mobile application developers, but that it [TRANSLATION] "took it for granted that the hiring of one or more mobile app developers by Montréal en histoires was just a matter of time." However, the fact remains that it was risky for the SGPVMR to use a legislative exception to award this part of the contract to a



non-profit organization and not to do a price comparison given that when the contract was awarded, this organization did not have sufficient resources or the requisite expertise to carry out this part of the contract. The SGPVMR should not have simply "taken it for granted" that the developers would be hired considering the warnings received from the legal affairs department.

- In its response to the Notice, the SGPVMR adds that it did issue a [TRANSLATION] "request for a quote" to MEH for the mobile application and that "the call for tender procedure" respected the "established protocol." The SGPVMR says that the call for tenders was issued by the department's Tenders Office, which also opened the bid. The Inspector General wishes to point out that requesting a quote from MEH has nothing to do with a call for tenders procedure and everything to do with awarding a contract by mutual agreement. The MEH service offer cannot be considered a bid submitted as part of a call for tenders. The SGPVMR's view of the procedure followed is therefore incorrect.
- Square Viger project:
 - The contract awarded to MEH to supply and install cameras as part of the Square Viger redevelopment raises the same concerns as the contracts awarded by the Lachine and Sud-Ouest boroughs.
 - Given its value (below \$25,000), the SGPVMR could award the contract by mutual agreement to anyone of its choosing.
 - However, the Inspector General laments the fact that the contract was awarded to MEH when it was clear that the organization was not qualified to perform the work and that work was not consistent with its mission.
 - It bears mentioning that under this contract, more than 88% of the costs incurred by MEH were associated with paying suppliers and contractors who would perform a major part of this contract, i.e. the supply and installation of cameras.
 - Moreover, in its fee breakdown, MEH included administration and management fees negotiated at 14% (\$2,433 plus taxes) and \$3,800 (or 21.86% of the contract value) for contingencies, and realized a profit of \$6,131.97.⁸⁹
 - The Inspector General therefore questions the "added value" brought by awarding the contract to MEH, which can be said to be acting as an intermediary. In terms of management of public funds, the SGPVMR could

⁸⁹ See MEH's operating revenue report for this contract.

certainly have obtained a better price for the services by directly soliciting firms capable of performing the required work.

- In the Inspector General's opinion, claiming that it was urgent to proceed as justification for the contract award does not suffice. Given the contract amount (less than \$25,000), the SGPVMR could very well have awarded a contract by mutual agreement to a specialized firm rather than to an organization that then had to call upon its own suppliers to perform the work.

In its response the Notice, the SGPVMR maintains that both for the Fleuve-Montagne and Square Viger projects, the prescribed rules were respected and that the department made it clear to MEH that as part of the contract award conditions, the organization was required to use its own resources to provide the services.

However, in the Inspector General's opinion, an examination of the processes followed by the SGPVMR reveals various risky practices as regards the sound management of public funds and the awarding of contracts to an organization that has neither the resources nor the expertise to carry out key parts of the contracts. It is important to point out that the City's Executive Management brought to the attention of the SGPVMR director the concerns raised by the Political Cabinet concerning the department's decision to award a contract by mutual agreement to MEH for the Square Viger redevelopment project. The Political Cabinet wondered whether other firms could have executed the mandate, questioned MEH's apparent exclusivity regarding Montréal's 375th anniversary and sought to understand why the SGPVMR did not issue a call for tenders for the project, even if it meant that MEH would ultimately be the successful bidder.⁹⁰

Lastly, concerning the contracting processes followed by the Lachine and Sud-Ouest boroughs and by the SGPVMR, the Inspector General wishes to point out that another procedural vehicle could have been used given the nature of the services required.

The Inspector General believes that at the concept development stage, the boroughs and the SGPVMR could have issued a call for proposals in order to reach a larger pool of companies qualified to suggest an original concept for the projects planned for Montréal's 375th anniversary celebration.

Such a call for proposals would have thus allowed the boroughs and the SGPVMR to foster competition both at the creative and monetary levels. This would have been a more appropriate vehicle since the budget for the boroughs and the SGPVMR was set in advance and selection committees could have been formed to evaluate the proposals based on criteria set out in the call for proposals.

The boroughs would have then had the choice of limiting the proposals to lighting and illumination projects or broadening the concept to other ways of showcasing their heritage. As for the SGPVMR, it could have obtained offers from several firms, including firms specialized in mobile application development because that was the concept proposed by

⁹⁰Email of August 8, 2016, sent by the City's Executive Management to the SGPVMR director.



the City for its 375th anniversary celebrations. A call for proposals would have also meant that the project would have been awarded to the company that defined and developed the selected concept.

7.1.4 Decision to award contracts by mutual agreement to MEH because of its NPO status

The contracts and draft contracts covered by the Inspector General's investigation were awarded (or were to be awarded) to MEH because of its status as a non-profit organization, using the exception to the rule set out under subsection 2.1 of section 573.3 of the *Cities and Towns Act* requiring municipalities to issue a public call for tenders for all contracts involving an expenditure of \$100,000 or more.

Yet the investigation shows that MEH, besides acting as a conduit for suppliers and subcontractors, is in fact a front for Torrentiel, a private company 80% owned by Martin Laviolette and 20% by Georges Fournier, respectively MEH's general manager/executive producer and administrative director.

In fact, Torrentiel is tasked with administering, developing and managing projects obtained by MEH. The company handles the executive production, administrative management and sponsorship management of projects. In particular, it manages the human, financial and material resources, develops and implements projects, liaises between production and the MEH board of directors and handles the financial statements and accounting in connection with the projects. In addition, some MEH employees perform tasks that are part of the mandate entrusted to Torrentiel and that should be handled by the latter.

In its response to the Notice, MEH claims that the contract binding it to Torrentiel is [TRANSLATION] "good for the organization and that the fees paid to Torrentiel are reasonable considering the scope of the mandate and the market value of such services in its field." In this regard, MEH states that between January 2010 and October 2016, it paid Torrentiel \$1.75 million in fees for the services provided for in the contract.

However, because of the confusion between Torrentiel and MEH and the different roles assumed by their officers, the Inspector General questioned MEH's status. Based on their position at Torrentiel (employees, shareholders and officers) Martin Laviolette and Georges Fournier derive direct financial benefits from the contracts concluded by MEH with the City and its boroughs.

What's more, Martin Laviolette and Georges Fournier derive direct financial benefits from certain agreements concluded by MEH, in particular, the agreement between the organization and Torrentiel Communications, which handles MEH's communications. Although MEH states that the mandate to Torrentiel Communications was awarded by its board of directors, that it was extremely careful in doing so, that MEH benefits from the agreement and that the fees paid are [TRANSLATION] "more than reasonable given the scope of the mandate and the market value of this type of service," the fact remains that Martin Laviolette and Georges Fournier benefit financially from this agreement. Moreover, MEH explains that it pays Torrentiel Communications lump-sum fees of \$1,875 plus taxes,

per week, and provides it with some of its office space, free of charge, four (4) days per week. Indeed, under the agreement, [TRANSLATION] "Torrentiel Communications occupies space in MEH's offices" and pays the organization \$300 plus taxes per month, or the equivalent of occupancy of one day per week, because the company sometimes handles mandates awarded by clients other than MEH.⁹¹

Contrary to what MEH seems to be claiming in its response to the Notice, it is not because the organization generates incidental revenues and profits that the Inspector General questions its status as a non-profit organization. Rather, it is the dual roles observed and the lack of separation between MEH and Torrentiel that distorts and compromises MEH's status as a non-profit organization.

In reality, MEH is acting as a conduit for Torrentiel, which as a result benefits from a competitive edge over other business ventures. Indeed, it is rather odd that in its response to the Notice, Torrentiel states that as a [TRANSLATION] "matter of courtesy" the MEH board chair gave it a copy of the response the organization sent to the Office of Inspector General. Torrentiel adds that it agrees with the response sent by MEH and echoes the organization's comments and observations.

In its response to the Notice, Torrentiel states that the service contract concluded with MEH [TRANSLATION] "is perfectly normal under the circumstances" and that as part of its management and development mandate for MEH, Martin Laviolette reports to the organization's board of directors.

For its part, MEH adds that Martin Laviolette and Georges Fournier manage MEH's day-to-day operations as part of a service contract with Torrentiel, that MEH is independent and that its business is administered by a board of directors. Lastly, the organization points out to the Inspector General that Martin Laviolette is not a director of MEH.

However, in the Inspector General's view, the problem is that through the contractual agreement between MEH and Torrentiel, the company owned by Martin Laviolette and Georges Fournier can obtain public funds from contracts by mutual agreement with an organization that presents itself as a non-profit but that in reality is managed and controlled by a business venture.

For their part, the Lachine and Sud-Ouest boroughs and the SGPVMR point out in their respective responses to the Notice that they were not informed of the existence of the production company Torrentiel and its control over MEH. The Lachine borough states that it was not aware of Georges Fournier's involvement in the project and that Martin Laviolette only played a small role at the very beginning of the project.

Here again, rather than being relevant to the Inspector General's analysis, these observations raise a problem with the situation. The City and boroughs believe they are doing business with a non-profit when in fact, they are dealing with business ventures without the competition afforded by the call for tender process, as required by law and the

⁹¹ Extract from MEH's response to the Notice.



rules ensuring good governance and sound management of public funds. **Torrentiel therefore benefits from unfair competition, to the detriment of other business ventures, because its front as a non-profit organization via MEH allows it to obtain public contracts by mutual agreement.**

The legislative exception that allows contracts to be awarded by mutual agreement to a non-profit organization is an exception to the rule and restricts the market and competition. In this regard, this exception must be interpreted restrictively and applied circumspectly. The legislator's intent is certainly not to allow a private company to use a non-profit organization as a front or as a conduit to flout the rules that require municipalities to foster competition. The situation is all the more problematic given that Martin Laviolette is an employee of the City who is currently on leave without pay.

7.1.5 Payment schedules

The Inspector General considers that the payment schedules granted by the Lachine and Sud-Ouest boroughs are problematic and place the boroughs at risk.

In terms of the feasibility studies, MEH received 60% of the total contract value upon signature and only 10% was held back until submission of the report.

In terms of the project implementation, rather than being made as the goods or services were delivered, on presentation of invoices, the payments were made based on specific dates.

For the Lachine borough lighting plan, in the first 60 days of the agreement, MEH obtained 97.5% of the total contract value and the Lachine borough held back a mere 2.5% until MEH completed the mandate.

For the project to light bridges and pedestrian overpasses in the Sud-Ouest borough, MEH obtained 90% of the total contract value and the Sud-Ouest borough held back a mere 10% until MEH completed the mandate.

In its response to the Notice, the Lachine borough explains that the decision to make a larger than usual payment was made to ensure timely delivery of the project, in particular, because a large part of the budget was allocated to the purchase of equipment.

For his part, the MEH director of development justifies such payment schedules by the fact that, as a non-profit organization, MEH does not have sufficient liquidity to get projects off the ground.

However, for the Lachine lighting plan, as of September 9, 2016, i.e. two (2) months after the agreement between MEH and the borough was signed, 92.28% of the total payments for the project's management had already been paid to Torrentiel even though the project had just begun and the borough had yet to receive any deliverables. If the non-profit organization needed an advance to buy the equipment required for the project, why was Torrentiel the first to be paid?

The payment schedules are a departure from the clauses the City usually includes in its contracts. In the Inspector General's opinion, these payment schedules give Torrentiel a competitive edge because it can quickly collect money and obtains advantageous, non-standard payments under the guise of a non-profit organization that does not have sufficient liquidity.

What's more, the payment schedules approved by the Lachine and Sud-Ouest boroughs automatically include contingencies, whereas these amounts should be held back by the boroughs and paid to MEH only in the event of unexpected cost overruns.

As for the SGPVMR, the contract involving the supply and installation of cameras for the Square Viger redevelopment also includes contingencies in the first payment to MEH. Although an agreement was made between MEH and the SGPVMR for reimbursement of the contingencies to the City, it remains that the practice is risky because the roles are reversed: the City has to ask MEH to return the contingency amount whereas the norm is not to pay this amount until the contractor submits proof that the initial budget was exceeded due to unforeseen circumstances.

In the Inspector General's view, the justification for the decisions made by Lachine and Sud-Ouest boroughs and the SGPVMR defies comprehension and therefore, the Inspector General finds that they were careless and guilty of mismanaging public funds.

The Inspector General also wishes to point out to the councils concerned that the contingency amounts were neither detailed nor broken down in the decision-making summaries presented to the elected officials but were instead included by MEH in its service offers. The Inspector General wonders whether the elected officials were aware of this before approving the contract awards or whether these amounts were kept from them by not being included in the decision-making summaries.

7.2 Conclusions concerning the contracts and draft contracts covered by the investigation

The mandate of the Inspector General is to oversee the contracting processes and execution of contracts by the City or by a related legal person so as to prevent breaches of integrity and ensure the City's compliance with the legal provisions and requirements applicable to contract awards and execution.

Before discussing the actions taken with regards to the contracts covered by the investigation, the Inspector General wishes to thank the whistleblowers who contacted him, without whom this investigation would not have been launched. These individuals demonstrated tremendous courage by reporting the irregularities in the contract award process.

Also, it is important to mention that during the Inspector General's investigation, the execution of the contract awarded to MEH by the Sud-Ouest borough was suspended by the borough, and rightly so. Certain sums were not paid to MEH during the investigation so as to minimize the financial consequences and to allow the investigation to follow its



course. As such, the borough asked MEH not to cash the first instalment cheque of \$250,000 and the borough has still not issued the cheque for the second instalment (\$500,000). MEH has therefore yet to receive money for this contract.

The situation concerning the contract awarded by the Lachine borough is different. Although the borough was informed of the Inspector General's investigation, it continued to issue cheques to MEH as per the payment terms in the contract. At the time of writing, the first three (3) instalments totalling \$950,000 taxes included had been paid to MEH. As stated by MEH in its response to the Notice, as of November 17, 2016, close to 85% of the project has been completed. An analysis of the accounting data and future invoices for services in progress and almost completed leads the Inspector General to conclude that in fact, almost 82% of the project has been completed.

This having been established, the Inspector General considers that the investigation shows serious breaches of municipal contract award rules.

The evidence gathered during the investigation shows that the Lachine and Sud-Ouest boroughs awarded contracts by mutual agreement to MEH despite the organization's inability to execute the projects on its own. The fact is that MEH must do business with suppliers, consultants and subcontractors to carry out large parts of the contracts because it does not have the requisite equipment, staff, skills or expertise.

In actual fact, the Lachine and Sud-Ouest boroughs delegated to MEH the purchase and installation of equipment, which accounts for most of the contract costs. To comply with the law, the boroughs should have issued a public call for tenders in order to obtain the best price.

The Inspector General notes numerous breaches of the rules and concludes that the exception allowing a non-profit organization to obtain a contract by mutual agreement, notwithstanding its high value, was misused. The exception was used as a "catchall" to delegate to the organization parts of the contract that should have been obtained by specialized firms by way of public tender in order to stimulate competition. Under the pretext of convenience, the mandatory rules governing contract awards were breached. The end result is that contracts were awarded to MEH despite the fact that it could not execute them on its own.

As a result, the Lachine and Sud-Ouest boroughs awarded contracts to MEH in violation of the mandatory public policy rules governing contract awards. These rules exist to ensure that public clients stimulate enough competition in an open market to obtain the best product or service at the best price so as not to waste public funds.

The contracting processes followed in this case by the Lachine and Sud-Ouest boroughs adversely affect free competition, equal opportunity and the possibility of obtaining the best possible price. In addition to affecting the integrity of the contracting process, the methods used run counter to the law and the principles of sound management.

Non-compliance with the law must be sanctioned in this case and the contracts awarded declared null and void *ab initio* since the rules that were breached are essential elements of a valid contract.

What's more, the investigation reveals that MEH is not able to execute and provide the required services. Thus, MEH is in reality acting as a conduit, using its status as a non-profit organization and the exception to the contract award rules to allow business ventures to obtain money from mutual agreement contracts with the Lachine and Sud-Ouest boroughs.

The Inspector General wonders with what type of structure the boroughs are actually doing business. The investigation reveals that MEH, which presents itself as a non-profit, is actually a front for the business venture Torrentiel, which thus gains a competitive edge over other private companies. The confusion that exists between Torrentiel and MEH and the dual roles assumed by certain officers of MEH at Torrentiel lead the Inspector General to conclude that MEH acts as a conduit, allowing Torrentiel to obtain money from public mutual agreement contracts with the Lachine and Sud-Ouest boroughs.

Section 57.1.10 of *Montréal's City Charter* allows the Inspector General to intervene and cancel contracts when the conditions set forth therein are met:

- 57.1.10 The inspector general may cancel any contracting process involving a contract of the city or of any legal person described in subparagraph 1 of the fifth paragraph of section 57.1.9, or rescind or suspend the carrying out of such a contract if the inspector general:
- (1) 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) is of the opinion that the seriousness of the breach observed justifies the cancellation, rescinding or suspension.
- [...]

The conditions entitling the Inspector General to intervene are cumulative. Firstly, one of the requirements of the call for tenders' document or contract must not have been met or the information provided by the tenderer in this case must have been found to be false. Only when one or other of these is established can the Inspector General rule on the seriousness of the breach.

The Inspector General wondered whether he had to power to rescind the contracts currently in progress in the Lachine and Sud-Ouest boroughs.

In this matter, failure to respect one of the requirements of call for tender documents or the contract can only be invoked and examined in the case of the contract awarded by the Lachine borough.



The fact is that the professional services contract between MEH and the Lachine borough expressly prohibits all but incidental outsourcing:

6.12. acknowledges that the use of outsourcing, other than incidentally, is prohibited, and agrees to provide the majority of the services through its own resources. ⁹²

As mentioned, the service offer submitted by MEH for this project states that 72.3% of the costs associated with the project implementation are for the purchase and installation of equipment and that most of these costs are associated with the purchase of the equipment, the installation costs being minimal (about 4% of the total contract budget).

According to the MEH operating revenue report of November 23, 2016, the project costs are broken down as follows: 5.96% for salaries and benefits paid to MEH employees, 20.63% for professional fees paid to Torrentiel, 4.5% for fees paid to subcontractors for installation and production and 68.27% for the purchase of material.

However, the purchase of equipment cannot be considered as outsourcing. Hence, it is difficult for the Inspector General to conclude that MEH breached this provision of the contract.

Therefore the Inspector General believes he is at the limit of the power to cancel contracts conferred on him by the legislator. The fact is that failure to comply with the mandatory provisions of the law and the major irregularities noted during the investigation as regards the contracts awarded to MEH by the Lachine and Sud-Ouest boroughs unfortunately do not constitute a condition for the Inspector General to apply section 57.1.10 of *Montréal's City Charter* and exercise his power to rescind contracts.

Only if he “finds that any of the requirements specified in a document of the call for tenders have not been met” or if false information is provided by a bidder in the contracting process can the Inspector General intervene and rescind the contract.

The Inspector General believes that the law, as drafted, does not allow him to rescind the contracts awarded by mutual agreement to MEH by the Lachine and Sud-Ouest boroughs notwithstanding their breach of the mandatory and public policy rules governing municipal contract awards.

The Inspector General wishes to point out, however, that if it were in his power to rescind these contracts, he would not have hesitated to do so, given the seriousness of the irregularities noted. The Inspector General must, however, act within the boundaries established by the legislator in section 57.1.10 of *Montréal's City Charter*.

⁹²Service agreement concluded on June 28, 2016, between MEH and the Lachine borough and appended to decision-making summary 1163948010 intended to award a contract for a lighting plan to MEH for a maximum amount of \$974,367.14.

Under section 57.1.23 of *Montréal's City Charter* (CQLR c. C-11.4), the Inspector General may, however, at any time, send a report presenting findings or recommendations that, in his opinion, warrant being brought to the attention of the council concerned.

Given that the majority of the services stipulated in the contracts were carried out by third parties that are not non-profit organizations (be it Torrentiel for the project's management or subcontractors for equipment installation), the Lachine and Sud-Ouest boroughs should have proceeded by public call for tenders as stipulated in the general principle set forth in section 573 of the *Cities and Towns Act*. The boroughs could thus not avail themselves of the exception set forth in subsection 2.1 of section 573.3 to conclude contracts by mutual agreement with MEH despite the latter's status as a non-profit organization.

The Inspector General is therefore of the opinion that the contracts awarded by mutual agreement by the Lachine and Sud-Ouest boroughs to MEH for their respective projects are absolutely null and void as they are contrary to mandatory public policy rules and recommends that they be rescinded by the borough councils.⁹³

THE INSPECTOR GENERAL RECOMMENDS that the Lachine borough council rescind the lighting plan contract awarded by mutual agreement to Montréal en histoires for a maximum amount of \$974,367.14, taxes included (resolution CA16 190190).

THE INSPECTOR GENERAL RECOMMENDS that the Sud-Ouest borough council rescind the contract awarded by mutual agreement to Montréal en histoires for the project to illuminate the bridges and pedestrian overpasses along the Lachine Canal for a maximum amount of \$988,000, taxes included (resolution CA16 220260).

Considering the facts revealed during the investigation and discussed throughout this report, the Inspector General also wishes to recommend to the Lachine and Sud-Ouest borough councils as well as to City Council (due to the practices brought to light in the SGPVMMR's contract award processes) to be especially vigilant when a contract is awarded based on an exception to the rule requiring a call for public tender, particularly if a

⁹³ In this regard, the Inspector General wishes to point out that the boroughs may rescind these contracts at their discretion. Under section 11.1 of the service agreement concluded between MEH and the Lachine borough and section 4.1 of the professional services agreement concluded between MEH and the Sud-Ouest borough, the City can terminate the agreement, [TRANSLATION] "at any time, on written notice and on payment of the services rendered..." These provisions allowing the boroughs to rescind the contract on written notice are consistent with the general rule stipulated in articles 2125 and 2129 of the *Civil Code of Québec*.



non-profit organization is involved. It is vital not to misuse the exceptions provided by law because such exceptions restrict the market.

To this end, given that a legislative exception is involved, the Inspector General believes that any contract over \$100,000 concluded with a non-profit organization, whether it falls under the purview of the Agglomeration Council, City Council or a borough council, should be submitted to the City's legal affairs department for an opinion.

THE INSPECTOR GENERAL RECOMMENDS that any contract over \$100,000 concluded by the City or one of its boroughs with a non-profit organization be submitted to Montréal's legal affairs department for an opinion.

Lastly, given the deficiencies brought to light, particularly in the case of the Fleuve-Montagne project, the Inspector General believes that when a department or borough asks for a legal opinion from the legal affairs department concerning a contract to be awarded, the administrative unit responsible for the contract should inform the elected officials that a legal opinion was requested, make such legal opinion available for consultation and provide them with an explanation as to why the legal opinion was disregarded, if applicable.

THE INSPECTOR GENERAL RECOMMENDS that the administrative unit responsible for the contract inform all the elected officials of any legal opinion sought from the City's legal department in connection with a contract to be awarded, make such legal opinion available for consultation and provide them with an explanation as to why the opinion was disregarded, if applicable.

This recommendation report will be sent to the Lachine and Sud-Ouest borough councils, to City Council and to the Agglomeration Council of Montréal.



THE INSPECTOR GENERAL TRANSMITS, in accordance with section 57.1.23 of *Montréal's City Charter*, a copy of the recommendation report to the mayor of the City and to the clerk to be sent by the latter to the councils concerned, in this instance, the **Lachine and Sud-Ouest borough councils, Montréal's City Council and the Agglomeration Council**.

Inspector General

Denis Gallant, Ad. E.

ORIGINAL SIGNED