



[This is an English version of the Summary Statement transmitted in French to the Montréal City Council on February 25, 2019]

## **Recommendation Report Concerning the Contracting Process for the New Indoor Aquatic Complex at Centre Rosemont (Call for Tenders Nos. 16-15580 and 5846)**

*(s. 57.1.23 of the Charter of Ville de Montréal, Metropolis of Québec)*

February 25, 2019

Office of Inspector General  
1550 Metcalfe Street, Suite 1200  
Montréal, QC H3A 1X6  
Telephone: 514 280-2800  
Facsimile: 514 280-2877

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

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

Montréal 





## SUMMARY

*This report concerns the contracting process for the construction of the new indoor aquatic complex at Centre Rosemont, i.e. call for tenders No. 5846.*

*Following the adoption of the Montréal Aquatic Intervention Plan in 2013, Ville de Montréal recently implemented one of its components, the Montréal Aquatic Program, specifically, the construction of indoor aquatic facilities component. The program is intended to select, organize and financially support the boroughs with projects to build indoor aquatic facilities.*

*Ville de Montréal plans to build five (5) aquatic centres in the next few years, including one at Centre Rosemont – the subject of this report – representing budgeted investments of more than \$150 million.*

*The investigation by the Office of Inspector General (“OIG”) focused on the choice of swimming pools for the construction of Centre Rosemont. The objective was to shed light on the procedure used by Ville de Montréal to draft call for tenders No. 5846, on the two professional firms whose services were retained following call for tenders No. 16-15580, and on the allegations of bias in favour of a certain swimming pool manufacturer.*

*The investigation revealed several failures on the part of some individuals working for these firms, as well as Ville de Montréal stakeholders, including the project manager. The Inspector General therefore considers it appropriate to intervene in this matter and bring these failures to the attention of City Council.*

*In the present case, the Ville de Montréal project team called on architectural and engineering firms to advise them on the design of Centre Rosemont, the preparation of the plans, specifications and tender documents for its construction, and on supervision of the work. They did this through call for tenders No. 16-15580, which was awarded to Poirier Fontaine architectes Inc. (“PFA”) and GBI Expert-Conseils Inc. (“GBI”) by City Council on January 23, 2017.*

*The investigation showed that the Ville de Montréal project team initially favoured construction of swimming pools based on one available process; namely a concrete pool with a ceramic coating. However, following the recommendation of GBI pool specialist Réjean Savard and PFA architect Daniel Fontaine, the project team changed their mind and instead chose to go with another type of pool; namely a modular pool and more specifically, a pool manufactured by one company in particular, Myrtha Pools (“Myrtha”).*

*Thus, as of December 2017, the Ville de Montréal project team intended to specify Myrtha products in the documents comprising call for tenders No. 5846, while allowing potential bidders wishing to propose another brand to submit an equivalency request. It is important to point out that this practice was permitted under the legal framework in force until April 19, 2018.*

*However, the OIG obtained evidence that in past projects involving Réjean Savard and/or Daniel Fontaine, the equivalence criteria developed by them were unattainable for bidders wishing to propose brands other than Myrtha.*

*Email exchanges and Réjean Savard’s testimony revealed that when he received such equivalency requests in 2011-2012, he was not familiar with the products of the other brand, i.e.*



*the modular pools manufactured by Natare Pool Corporation (“Natare”). He therefore contacted the Canadian supplier of Myrtha products, who listed a series of technical elements specific to Myrtha and products unique to Myrtha that Natare could not possibly replicate. Réjean Savard admitted that he then based his own equivalency evaluation criteria on these elements. In each of the past call for tenders analyzed, the equivalency requests were denied.*

*As mentioned, the Centre Rosemont project and call for tenders No. 5846 were on track to follow the same path: the tender documents were going to specify Myrtha products and the equivalency requests were going to be evaluated by Réjean Savard and Daniel Fontaine. What’s more, when interviewed by OIG investigators, Réjean Savard made very telling comments, saying that when a construction call for tenders is launched with his firm, a Myrtha pool will be installed, and that the market is closed.*

*The OIG then met with the Ville de Montréal stakeholders to relate the findings of the investigation so far and allow them to make the necessary adjustments to avoid issuing a call for tenders biased in favour of a given manufacturer. Subsequently, the Office of Comptroller General was asked to intervene in its advisory role to the administrative units and guide the Centre Rosemont project team to ensure that actions were taken to remedy the situation before the publication of call for tenders No. 5846.*

*It bears mentioning that between its start in 2017 and its end initially scheduled for the end of summer 2018, the drafting process for call for tenders No. 5846 was governed and greatly affected by two legal frameworks. In addition to the regime in effect before April 19, 2018 and discussed previously, which allowed a particular brand to be specified in a call for tenders, the second legal framework applicable to call for tenders No. 5846 is the one that has been imposed since April 19, 2018 under section 573.1.0.14 of the Cities and Towns Act.*

*This framework stipulates that if a municipality requires technical specifications for a product, service or work, it must describe them in terms of performance or functional requirements rather than in terms of descriptive characteristics. Only when this is not possible may it use the descriptive characteristics of the product, service or work sought, and in which case, it must allow equivalency requests and may prescribe how these will be evaluated. This significantly changes how calls for tenders are drafted.*

*Thus, at the time of its intervention in August 2018, the Office of Comptroller General informed the Ville de Montréal project team on the workings of the new legal framework. It was then agreed that the tender documents, which until then had been prepared under the former legal regime and specified several Myrtha products, had to be rewritten to remove references to the Myrtha brand and replace them with neutral performance criteria. However, the investigation revealed that these instructions were not followed.*

*The evidence shows that despite the interventions of the OIG and the Office of Comptroller General, both the Ville de Montréal project manager and Daniel Fontaine drafted performance criteria incorporating several features of Myrtha products and included documents which, when read together, still only allowed Myrtha products to qualify for call for tenders No. 5846.*

*In essence, the documents comprising call for tenders No. 5846 show that with respect to the modular pools, the tender as currently drafted is biased towards a particular manufacturer and does not comply with section 573.1.0.14. Similarly, if it had been published under the former*



*legal regime, the facts revealed by the investigation show that it would also have been biased towards a particular manufacturer because of the unfair evaluation of equivalency requests.*

*Consequently, the Inspector General recommends that the documents comprising call for tenders No. 5846 pertaining to modular pools be amended so as to comply with the legal framework now in effect and allow free competition. Furthermore, a strict and impartial equivalency process is central to ensuring a balance between the client's needs and the objective of fair competition underlying public tenders. The facts revealed by this case support the need for increased oversight of such a process.*

*The Inspector General would like to point out that this report is not intended as a technical analysis to determine the type of swimming pool that Ville de Montréal should select but is instead aimed at ensuring the integrity of the contracting process.*





## Table of contents

<b>1. Scope of work.....</b>	<b>1</b>
1.1 Warning.....	1
1.2 Applicable standard of proof .....	1
1.3 Notice to an interested person .....	1
<b>2. Context of the investigation by the OIG.....</b>	<b>2</b>
2.1 Description of the Centre Rosemont project .....	3
2.2 Complaint received.....	3
2.3 Roles of PFA and GBI in the Centre Rosemont project.....	3
2.4 Comments concerning the document drafting process for tender No. 5846 .....	4
2.5 Scope of the investigation and details.....	5
<b>3. Facts revealed during the investigation .....</b>	<b>6</b>
3.1 Pool construction methods.....	6
3.2 First phase of drafting the documents comprising tender No. 5846.....	6
3.2.1 <i>Ville de Montréal's original choice.....</i>	<i>6</i>
3.2.2 <i>Change following the involvement of PFA and GBI.....</i>	<i>7</i>
3.2.3 <i>Meeting of March 29, 2017 for the Centre Rosemont project.....</i>	<i>7</i>
3.2.4 <i>Considerations concerning the requirement to meet FINA standards .....</i>	<i>9</i>
3.2.5 <i>Continuation of the pool selection process.....</i>	<i>9</i>
3.2.6 <i>Ville de Montréal changes its choice of pool type.....</i>	<i>10</i>
3.2.7 <i>Allegations of biased calls for tenders due to refused equivalency requests in past projects.....</i>	<i>11</i>
3.3 Second phase of drafting the documents comprising tender No. 5846 .....	15
3.3.1 <i>Start of the OIG's investigation .....</i>	<i>15</i>
3.3.2 <i>Continuation of the drafting process for tender No. 5846 after the start of the OIG's investigation .....</i>	<i>15</i>
3.3.3 <i>Meeting with OIG representatives.....</i>	<i>17</i>
3.3.4 <i>Another change in type of pool .....</i>	<i>18</i>



3.3.5	<i>Involvement of the Office of the Comptroller General.....</i>	18
3.4	Third phase of drafting the documents comprising tender No. 5846 .....	19
3.4.1	<i>Tender No. 5846 documents concerning modular pools.....</i>	19
3.4.2	<i>Development of performance criteria.....</i>	20
3.4.3	<i>Preparation of fact sheet 13-150 S of tender No. 5846.....</i>	25
3.5	Publication of tender No. 5846.....	32
3.5.1	<i>Questions received once tender No. 5846 was published.....</i>	32
<b>4.</b>	<b>Analysis .....</b>	<b>32</b>
4.1	Concerning tender No. 5846.....	33
4.1.1	<i>The performance criteria for the modular pools allowed only Myrtha to bid..</i>	33
4.1.2	<i>Fact sheet 13-150 S allows only Myrtha to submit a bid for modular pools and does not comply with section 573.1.0.14 of the Cities and Towns Act.....</i>	33
4.1.3	<i>The modular pool option under tender No. 5846 was biased towards Myrtha</i>	34
4.2	Concerning Réjean Savard and Daniel Fontaine .....	34
4.2.1	<i>Under the current regulatory framework.....</i>	35
4.2.2	<i>Under the old regulatory framework.....</i>	35
4.3	Concerning Ville de Montréal.....	36
4.3.1	<i>The Ville de Montréal project manager helped create bias in favour of Myrtha products for the modular pool option in tender No. 5846.....</i>	36
4.3.2	<i>The actions of the Ville de Montréal project manager and project team during the investigation by OIG.....</i>	38
4.3.3	<i>The document drafting process for tender No. 5846 concerning modular pools must be revisited.....</i>	38
4.3.4	<i>The need to train and supervise staff following the enactment of section 573.1.0.14 of the Cities and Towns Act.....</i>	41
<b>5.</b>	<b>Responses to the Notices to Interested Parties .....</b>	<b>42</b>
5.1	Réjean Savard and GBI.....	42
5.1.1	<i>Interference in the choice of product.....</i>	42
5.1.2	<i>Biased or out-of-context statements .....</i>	43
5.1.3	<i>Suggested involvement of third-party experts .....</i>	44



5.2	Daniel Fontaine and PFA.....	44
5.2.1	<i>Positions on modular pools.....</i>	45
5.2.2	<i>Irrelevance of previous tenders.....</i>	45
5.2.3	<i>Complexity of writing a performance specification .....</i>	46
5.3	Ville de Montréal.....	46
5.4	The different modular pool suppliers.....	46
<b>6.</b>	<b>Conclusion.....</b>	<b>47</b>



## 1. Scope of work

### 1.1 *Warning*

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

The Inspector General does not conduct criminal investigations. Her role is to conduct 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 investigation.

### 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 her jurisdiction are able to act on the information provided.

Consequently, in support of her opinions, reports and decisions, the Inspector General imposes upon herself the burden of proof of the civil standard of the balance of probabilities.<sup>1</sup>

### 1.3 *Notice to an interested person*

In accordance with her duty of procedural fairness, before releasing the findings of her investigation and exercising her powers of recommendation under section 57.1.23 of *Montréal’s City Charter*, the Inspector General sends the parties concerned a Notice to an Interested Party indicating the facts gathered during the investigation (the “Notice”).

On receipt of the Notice, the persons concerned may submit written comments, representations or observations they consider relevant or that could influence the Inspector General’s decision.

---

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



Such a Notice was sent on January 29, 2019 to the successful bidders of call for tenders No. 16-15580: Poirier Fontaine architectes Inc. and GBI Expert-Conseils Inc.<sup>2</sup> A Notice was also sent to certain Ville de Montréal stakeholders: the Land Development and Technical Studies Directorate of the Rosemont—La-Petite-Patrie borough and the Ville de Montréal Property Management and Planning Department.

A Notice was also sent to Myrtha Pools Canada Inc., to its former Canadian and Québec supplier, and to the Québec supplier of Natare products. The Inspector General would like to point out that her investigation did not uncover any failure by these companies, their officers or employees to comply with the legal and regulatory provisions relating to public contracts under call for tenders No. 5846. The Notice was sent to them in view of their status as interested parties to the outcome of the investigation, notably in consideration of the consequences that a public intervention by the Inspector General could have in their regard.

Some of the Notice recipients sent responses. The facts and arguments submitted by these parties were considered by the Inspector General and will be addressed in this report.

## 2. Context of the investigation by the OIG

Following the adoption of the Montréal Aquatic Intervention Plan in 2013, Ville de Montréal recently implemented one of its components, the Montréal Aquatic Program, specifically, the construction of indoor aquatic facilities. The program is intended to select, organize and financially support the boroughs with projects to build indoor aquatic facilities.

Ville de Montréal plans to build five (5) aquatic centres in the next few years, including one at Centre Rosemont – the subject of this report – representing budgeted investments of more than \$150 million.

Given the magnitude of these current and future investments and in accordance with the mandate entrusted to her by the legislator, the Inspector General investigated the contracting process used by Ville de Montréal in call for tenders No. 5846 for the construction of an indoor aquatic complex at Centre Rosemont (“tender No. 5846”).

---

<sup>2</sup> Based on information in the Québec Enterprise Register, the successful bidder of call for tenders No. 16-15580, Beaudoin Hurens Inc., changed its name on November 17, 2017 to GBI Expert-Conseils Inc. For ease of reading, this report refers only to the company's current name.

## **2.1 Description of the Centre Rosemont project**

The Centre Rosemont aquatic complex project involves the construction of a new indoor aquatic complex, a common entrance hall and a pedestrian mall connecting them to Centre Rosemont's existing three (3) components: the library, the community centre and the old pool.

With regards to Centre Rosemont's "indoor aquatic complex," which is the main focus of the OIG's investigation, it must have two (2) pools: a semi-Olympic swimming pool and an acclimation pool.

## **2.2 Denunciation received**

During its investigation, the OIG received a complaint to the effect that tenders involving the firms Poirier Fontaine architectes Inc. ("PFA") and GBI Expert-Conseils Inc. ("GBI") contained specifications that were biased in favour of one pool manufacturer. It was also alleged that a GBI employee, Réjean Savard, systematically refused equivalency requests for other manufacturers' pools. Thus, only the pool manufacturer whose specifications were indicated in the tender could qualify, resulting in tenders biased in its favour.

## **2.3 Roles of PFA and GBI in the Centre Rosemont project**

In the present case, at the time of the investigation, tender No. 5846 for Centre Rosemont was being drafted by Ville de Montréal, together with PFA and GBI, whose services were retained following call for tenders No. 16-15580 [TRANSLATION] "professional architectural and building engineering services for construction of an indoor aquatic complex in Centre Rosemont" ("tender No. 16-15580").

On January 23, 2017, City Council awarded them the contract following tender No. 16-15580, published on October 12, 2016. The contract was for up to \$2,528,827.71, contingencies and taxes included.

Under the contract awarded following tender No.16-15580, PFA and GBI had to provide their services during the project design, and the preparation and production of plans and estimates, specifications and other tender documents for the construction of the aquatic complex at Centre Rosemont.

PFA and GBI were to advise the Ville de Montréal project team on the type of pool to choose for the aquatic complex and help draft the documents for tender No. 5846.

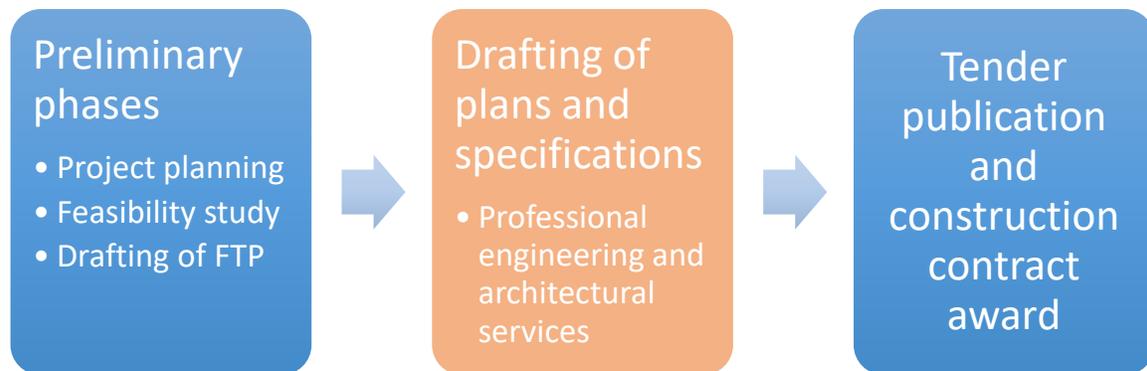
In addition, during the construction tender phase, as project coordinator, PFA was to prepare the tender documents and addenda, analyze the bids, make contracting-related recommendations and provide any other tender-related services. This included evaluation of pool equivalency requests.



## 2.4 Comments concerning the document drafting process for tender No. 5846

The following introductory remarks concerning the document drafting process for tender No. 5846 will help situate the reader.

In general, a technical project the size of Centre Rosemont requires the completion of various preliminary steps before the construction tender is issued. These steps are summarized in the following table:



First, there are the preliminary project planning and feasibility study phases, followed by the pre-project phase. At this stage, Ville de Montréal develops a functional and technical program (“FTP”) in the form of a document outlining its vision and main criteria for the design and execution of the entire Centre Rosemont project, including the pools.

Second, Ville de Montréal must develop concrete plans and specifications that can be used to prepare the tender for the Centre’s construction. To this end, it may issue a call for tenders for professional services. In the present case, it issued tender No. 16-15580 for architectural and engineering services, awarded to PFA and GBI.

Third, once the plans and specifications are drafted, a call for tenders is issued for the construction, and the construction contract is awarded. In the present case, tender No. 5846 was issued for the construction of Centre Rosemont.

This report concerns the second stage, identified in orange in the above table. Following the advice and recommendations of the professionals retained for this purpose, the Ville de Montréal employees assigned to the Centre Rosemont project worked to finalize choices concerning various elements and materials to be incorporated in the plans and specifications. Their task at this stage included selecting the type of pool to be used.

This choice was critical for what followed since it would affect the plans and specifications that would be provided to future bidders in the construction tender phase. It is at the drafting stage of the tender documents that the client, Ville de Montréal, has the power to specify its own needs for the project and list the performance criteria that the products proposed by potential bidders must meet or provide the descriptive characteristics of the product it is seeking.

The drafting of tender documents is therefore a key moment in the contracting process since it sets out the expectations of Ville de Montréal and the rules for public tendering. It therefore defines the pool of potential bidders. Therefore, if the City is too vague, it could be faced with a variety of problems such as products or services that do not meet its quality requirements and conversely, if the criteria are too strict, it will eliminate many contractors and the City could face allegations of biased tendering.

It was at this second stage and on the subject of drafting the documents for tender No. 5846 that the OIG conducted the investigation covered in this report.

## **2.5 Scope of the investigation and details**

Thus, the investigation mainly concerned the choice of pools to be used for the construction of Centre Rosemont. The goal was to shed light on the drafting process used by Ville de Montréal, PFA and GBI for tender No. 5846, as well as on the allegations that the tender was biased in favour of a certain pool manufacturer with a view to ensuring compliance with the rules governing contract awards and fair treatment of potential bidders.

It should be noted that the OIG's investigation is not intended as a technical analysis to determine the type of pool Ville de Montréal should choose or to favour one pool type over another. The role of the OIG is to prevent breaches of integrity and to ensure that the contracting process is fair.

The investigation revealed several failures on the part of some individuals working at PFA and GBI as well as certain Ville de Montréal stakeholders, particularly the project manager. The Inspector General therefore considers it appropriate to intervene in this matter and bring these failures to the attention of City Council.

It is important to point out that the investigation did not cover the professional services provided by PFA or GBI for other sections of the specifications in tender No. 5846 for the construction of Centre Rosemont or the quality of the services they provided concerning the development and construction of the other aquatic centre projects mentioned in this report.

Lastly, the names in the various communications reproduced in this report have been redacted using blue boxes. To assist the reader, the content appearing in white in the blue boxes identifies the senders and recipients of the communications while preserving their anonymity.



### 3. Facts revealed during the investigation

The facts revealed during the investigation and detailed below show that the process of drafting tender No. 5846 for the Centre Rosemont project was long and characterized by many twists and turns that can be divided into three separate phases and which will be discussed in turn.

#### 3.1 *Pool construction methods*

First, it bears mentioning that according to the facts revealed by the investigation, two general choices were available to Ville de Montréal in terms of construction methods for the two pools at Centre Rosemont, either a so-called traditional method with a concrete base covered with ceramic (“concrete-ceramic”) or a prefabricated modular-type system (“modular pool”).

According to the witnesses interviewed, Spanish, Japanese, Italian and American companies make modular pools. Lately, the Italians and the Americans have been shown to be the most active players in the Québec public procurement markets, more specifically, Myrtha Pools, a commercial division of A&T Europe S.p.a. (“Myrtha”), and Natara Pool Corporation (“Natara”).

#### 3.2 *First phase of drafting the documents comprising tender No. 5846*

The first phase of drafting the tender documents took place mainly in 2017. This section will discuss the process that led the Ville de Montréal project team to change their choice of pool, on the recommendation of Daniel Fontaine and Réjean Savard, from concrete-ceramic to the modular system manufactured by Myrtha.

At the end of this phase, tender No. 5846 would thus specify Myrtha products and allow equivalency requests, which would be evaluated by Daniel Fontaine and Réjean Savard.

##### 3.2.1 *Ville de Montréal's original choice*

In the project's preliminary phase, neither the FTP produced by Ville de Montréal employees assigned to the Centre Rosemont project nor any of the documents comprising tender No. 16-15580 specifically stated the method to be used in the design and construction of the pools.

However, according to several Ville de Montréal employees assigned to the Centre Rosemont project and interviewed by OIG investigators, the project team was originally in favour of a concrete-ceramic pool.

### *3.2.2 Change following the involvement of PFA and GBI*

Ville de Montréal employees assigned to the Centre Rosemont project said that it was only after Réjean Savard became involved, in particular, during a meeting concerning the integrated design process on March 29, 2017, that they began to consider other construction scenarios and move towards the solution proposed by GBI and PFA, i.e. modular pools manufactured by Myrtha.

Réjean Savard himself confirmed to OIG investigators that early on he introduced the idea of changing the type of pool from concrete-ceramic to products manufactured by Myrtha, thereby confirming the original direction of the Ville de Montréal project team. However, he stated that the Ville de Montréal project manager constantly postponed the matter to a later date.

An email obtained by the OIG corroborates Réjean Savard's testimony. On January 27, 2017, just four (4) days after the contract resulting from tender No. 16-15580 was awarded to PFA and GBI, Réjean Savard wrote to Daniel Fontaine informing him that he was preparing a file on Myrtha pools for the Centre Rosemont project.

### *3.2.3 Meeting of March 29, 2017 for the Centre Rosemont project*

As mentioned earlier, a meeting was held on March 29, 2017 concerning the Centre Rosemont project and according to the testimonies collected by the OIG, it was a determining factor in how things would play out.

During this meeting, Réjean Savard, accompanied by Daniel Fontaine, gave a presentation solely on Myrtha pools.

Ville de Montréal employees assigned to the Centre Rosemont project retained the following elements from the presentation.

#### *3.2.3.1 A presentation biased towards Myrtha products*

Ville de Montréal employees assigned to the Centre Rosemont project felt that the presentation sounded like a Myrtha sales pitch or an infomercial and that it was blatantly in favour of only this product, so much so that Réjean Savard gave them the impression of being a Myrtha sales rep.

When interviewed by OIG investigators, Réjean Savard admitted that his presentation was a summary of the benefits of Myrtha technology.

In response to comments from Ville de Montréal employees that he gave the impression of being a Myrtha sales rep, Réjean Savard replied that he should not be viewed as a Myrtha representative, but rather as someone who is sold on their products.



To support his stance that Myrtha pools are superior in every respect, he took Myrtha brochures and samples out of his briefcase to show to OIG investigators.

Rejean Savard then repeated to OIG investigators that since there are no Québec installers for Spanish modular pools, in his view, Ville de Montréal had only to decide between a concrete-ceramic pool and a Myrtha pool.

He went on to say that when a construction tender is launched with his firm, only a Myrtha pool will be installed and that the market is closed.

Regarding Daniel Fontaine, the Ville de Montréal employees said that he seemed more circumspect and had no preference for either type of pool. However, he did explain that concrete-ceramic pools made it more difficult to respect dimensional tolerances and height differences, that there was a shortage of skilled tile installers and that Myrtha pools made it easier to address the project team's budget and schedule concerns.

### *3.2.3.2 Comments on Myrtha's competitors*

According to the Ville de Montréal employees assigned to the Centre Rosemont project, Réjean Savard told them that there were other modular pool manufacturers in the world, including in Europe, the U.S. and Japan. However, he added that these manufacturers did not bid on public tenders here because they were too far from Québec and the projects were not big enough for them. He therefore did not show them products produced by Myrtha's competition as possible alternatives for the Centre Rosemont project.

As the OIG's investigation shows in section 3.2.7, both Réjean Savard and Daniel Fontaine knew that at least one of Myrtha's competitors was present on the Québec market, i.e. Natare. Réjean Savard admitted that he never talked about Natare pools with the Ville de Montréal project team.

### *3.2.3.3 Discussions on concrete-ceramic pools*

Ville de Montréal employees present at the meeting of March 29, 2017 said there were heated exchanges between Réjean Savard and another City employee, recognized as an in-house expert on swimming pools and particularly concrete-ceramic pools.

In favour of concrete-ceramic pools, this employee confirmed that he was shocked by Réjean Savard's presentation. While acknowledging the pros and cons of both types of pools, he criticized Rejean Savard for his general lack of objectivity as a consultant and, more specifically, for his clear bias in favour of Myrtha, as well as the lack of or incorrect information provided about the other types of pools, particularly in terms of the number of qualified tile installers for concrete-ceramic pools.

### 3.2.4 Considerations concerning the requirement to meet FINA standards

Section 5.3.3.5 of the FTP specifies that the swimming pool and its equipment, such as the starting blocks, must meet the requirements of the Fédération internationale de natation (“FINA”) to hold competitions.

Réjean Savard told OIG investigators that he was an expert in FINA standards and related regulations. He pointed out that while the architect is responsible for the pool, he is an expert who makes sure that it meets FINA standards. He said that he checks the architect’s work in this regard.

Réjean Savard added that he wanted to propose to the City a modular pool that meets FINA standards. According to him, he hardly ever builds concrete-ceramic pools anymore because clients want competition pools and concrete-ceramic ones have more trouble meeting FINA standards. As a result, the last time he suggested that a client build a concrete-ceramic competition pool was in 1996.

In short, according to him, if a client says he wants a pool that meets FINA standards, he will ultimately end up with a Myrtha pool. However, he tells does not tell that to the client.

It should be noted that FINA’s pool specifications manual does not require that the pool be modular or concrete-ceramic. Rather, it must meet a variety of standards, including one concerning dimensional tolerances.

### 3.2.5 Continuation of the pool selection process

Following the meeting of March 29, 2017, Ville de Montréal employees assigned to the Centre Rosemont project said the project team took almost a year to decide on the type of pool.

For his part, the City employee viewed as an in-house pool expert and specialized in concrete-ceramic pools produced a document that analyzed and responded point by point to what he called the benefits attributed by Réjean Savard to Myrtha pools and that provided arguments in favour of concrete-ceramic pools. He sent this document to the other members of the Ville de Montréal project team. He was subsequently not invited to the other meetings on the Centre Rosemont project.

For their part, other Ville de Montréal employees assigned to the Centre Rosemont project said they analyzed Réjean Savard’s arguments in favour of Myrtha and the counter-arguments of the City’s in-house pool expert. They said they did not consider or check whether there were other modular pool manufacturers because they relied on Réjean Savard’s presentation of March 29, 2017 in which he claimed that no other manufacturers were active in Québec. Consequently, all they had to do was to decide between a concrete-ceramic pool and a Myrtha pool.

A comparative table prepared by the Ville de Montréal project team on November 24, 2017 is telling in this regard given that its title is [TRANSLATION] “Comparison of traditional



pools versus Myrtha” rather than the more general [TRANSLATION] “versus modular pools.” It provides a list of criteria used to compare concrete-ceramic and Myrtha pools. Members of the Ville de Montréal project team admitted that this table was not factual and contained a lot of hearsay about the pools compared.

Some of the elements concerning Myrtha products considered by the project team seem to be based on the pro-Myrtha presentation given by Réjean Savard on March 29, 2017, as well as on the benefits that he touted during his interview with OIG investigators.

The members of the project team said that since there was no comparative data on the two (2) types of pools, they did not do a price comparison. However, in their view, the difference would be negligible.

On November 27, 2017, in response to a question by the Ville de Montréal project manager, Réjean Savard confirmed that besides Myrtha, another company based in Spain manufactured modular pools.

### *3.2.6 Ville de Montréal changes its choice of pool type*

On December 4, 2017, the Ville de Montréal project manager told Réjean Savard and Daniel Fontaine that he accepted their recommendation to install Myrtha pools rather than concrete-ceramic pools. In other words, from that point on, it was agreed that the documents comprising tender No. 5846 would specify Myrtha pools as well as the other products unique to the company, much in the same manner as mentioned in section 3.2.7 and in accordance with the regulatory framework in effect at the time.

Also, according to their testimonies, the members of the Centre Rosemont project team planned to allow bidders to present equivalency requests, if applicable, for other types of modular pools. While they all agreed that such equivalency requests would be evaluated by the professionals assigned to the project, one member thought that this would be the responsibility of the architect, Daniel Fontaine, while two others thought that it would be GBI and Réjean Savard.

According to Daniel Fontaine, the equivalency requests for the pool would be analyzed by the architectural firm (PFA) and not by the engineering firm (GBI), while equivalency requests for equipment would be analyzed by the engineering firms.

It is interesting to note that Réjean Savard told OIG investigators that GBI and PFA had prepared all the plans based on Myrtha pools even before receiving confirmation of the change in pool type on December 4, 2017. According to him, if Ville de Montréal had remained with its original choice, GBI and PFA would have changed their plans accordingly.

### *3.2.7 Allegations of biased calls for tenders due to refused equivalency requests in past projects*

As mentioned earlier, the OIG received a denunciation alleging that Réjean Savard systematically refused equivalency requests for other pool brands, which, combined with the fact that the specifications required Myrtha products, biased the tenders in favour of the latter.

Given that Réjean Savard and Daniel Fontaine played a role, as discussed above, in ensuring that Myrtha products were originally specified in tender No. 5846, the OIG analyzed equivalency requests submitted to them in previous projects.

The investigation shows that in the four (4) pool construction projects involving Réjean Savard or PFA, all four (4) specified Myrtha products and four (4) equivalency requests were submitted by the Québec supplier of Natare products. All were refused, preventing the company from submitting a bid on its own or through a general contractor using its products.

In addition, the email and letter exchanges reproduced below show that the criteria used by Réjean Savard or Daniel Fontaine to evaluate the equivalency requests were developed based on the technical details of Myrtha products or products unique to Myrtha, as suggested by the former Canadian supplier of Myrtha products.

For example, in the case of an equivalency request submitted on March 21, 2012 in connection with a project at Parc Clément Jetté in the Montréal borough of Mercier-Hochelaga-Maisonneuve, the Natare supplier sent its equivalency request to the project manager as well as to Réjean Savard and Daniel Fontaine.

The following day, the Québec supplier of Myrtha products sent Réjean Savard the following email from the Canadian supplier of Myrtha products, listing a series of technical details that the proponent would have a hard time demonstrating:



----- Original Message -----

**From:** Ex-fournisseur canadien des produits Myrtha

**To:** Fournisseur québécois des produits Myrtha

**Cc:**

**Sent:** Wednesday, January 11, 2012 5:57 PM

**Subject:** Myrtha comparison

The Myrtha specification typically requires that proponents of alternatives provide samples, drawings, photos and references of completed projects where they have executed successfully all the details shown for the project. This is more valuable than asking them to draw how they might do it, given the chance. For St-Lin, there are numerous details that you could expect Natara to have a hard time demonstrating, including:

Curved wall, skimmer ceramic (this is a patented solution so having done it will end in court), adjustable base frame, fingerwalls, joint on beach where gutter meets skimmerwall, Softwalk (ask for samples – they can only get changeroom mats, not Softwalk), panel sealing detail (another reason for the cold-weld) samples, tile adhesive and grout, top frame of skimmerwall (behind the panel and supporting the top flange). We saw them using galvanized bolts in the pool, and have seen pools abandoned due to lack of warranty support by Natara, so getting references for any of these will put you in touch with bad news.

Sincerely,



*Email sent by the former Canadian supplier of Myrtha products to the Québec supplier of Myrtha products and obtained by the OIG on March 6, 2018 following a request for production sent to GBI*

On March 27, 2012, Réjean Savard forwarded this email to Daniel Fontaine. That same day, a second email, reproduced below, was sent by Réjean Savard to Daniel Fontaine listing a series of criteria that could be used to evaluate the equivalency request for Natara products:

**De:** Réjean Savard  
**Envoyé:** Tuesday, March 27, 2012 12:02 PM  
**À:** 'Daniel Fontaine'  
**Objet:** équivalence bassin modulaire CLÉMENT JETTÉ

Daniel,

Voici les éléments requis pour débiter l'étude d'équivalence aux bassins modulaires :

1. Le bassin récréatif utilise la technologie de Rénovation, veuillez nous transmettre les info techniques et réalisation de ce type de bassin.
2. Nous transmettre la liste de projet réalisés au Québec tel que demandé à l'article 4 se la section 13-400.
3. Veuillez nous confirmer l'utilisation de la membrane Évolution.
4. Veuillez nous confirmer l'utilisation de retour d'eau *Strhlenturbolenz*.
5. Veuillez nous confirmer l'utilisation de sortie d'eau du type monolytique.
6. Veuillez confirmer que les détails s'adaptent aux plans des professionnels (architecture, structure et mécanique) la reprises des plans doit être assumé par l'équivalence. (article 4 de la section 13-400)
7. Veuillez confirmer que les pièces inox sont sans soudure.
8. Veuillez confirmer que l'eau du bassin n'est jamais en contact direct avec les parois et les goulottes. (article 8.2, section 13-400).

D'autres items seront requis à ces préalables et feront l'objet d'une analyse.

La soumission doit être basé sur le produit spécifié et l'alternative si acceptée doit être proposée avec le crédit s'y rattachant.

**Réjean Savard, M.Sc., MBA, M.Eng.**  
NACEV CONSULTANTS INC.

*Email sent by Réjean Savard to Daniel Fontaine and obtained by the OIG on March 6, 2018 following a request for production sent to GBI*

Daniel Fontaine reiterated the criteria developed by Réjean Savard based on the criteria of the supplier of Myrtha products in his correspondence to the project manager tasked with evaluating Natare's equivalency request.



**De:** Daniel Fontaine [REDACTED]  
**Envoyé:** Tuesday, March 27, 2012 2:40 PM  
**À:** [REDACTED]  
**Cc:** Réjean Savard; [REDACTED]  
**Objet:** RE: Piscines du parc Clément-Jetté - Demande d'équivalence PRÉCISION

Monsieur [REDACTED].

Comme à chaque soumission publique, NATARE tente de faire obtenir une équivalence de ses produits mais à notre avis son produit ne rencontre pas les performances du système de Myrtha Pool. Pour ce faire ce dernier doit fournir la documentation suivante :

Voici les éléments requis pour débiter l'étude d'équivalence aux bassins modulaires :

1. Le bassin récréatif utilise entre autre la technologie de Rénovation, veuillez nous transmettre les infos techniques et réalisation de ce type de bassin au Québec par ce fabricant.
2. Nous transmettre la liste de projet de bassins modulaires réalisés au Québec tel que demandé à l'article 4 de la section 13-400.
3. Veuillez nous confirmer l'utilisation de la membrane Évolution.
4. Veuillez nous confirmer l'utilisation de retour d'eau *Strhlenturbolenz*.
5. Veuillez nous confirmer l'utilisation de sortie d'eau du type monolytique.
6. Veuillez confirmer que les détails s'adaptent aux plans des professionnels (architecture, structure et mécanique) la reprise des plans doit être assumé par l'équivalence. (article 4 de la section 13-400)
7. Veuillez confirmer que les pièces inox sont sans soudure.
8. Veuillez confirmer que l'eau du bassin n'est jamais en contact direct avec [Daniel Fontaine] (l'acier inoxydable) des parois et des goulottes. (article 8.2, section 13-400).

D'autres items seront requis à ces préalables et feront l'objet d'une analyse.

La soumission doit être basé sur le produit spécifié et l'alternative si acceptée doit être proposée avec le crédit s'y rattachant.

Espérant ces informations utiles.



*Email sent by Daniel Fontaine to the Ville de Montréal project manager and obtained by the OIG on April 26, 2018 following a request for production sent to GBI*

On March 28, 2012, the project manager informed Natara that its equivalency request was rejected because [TRANSLATION] “based on the tender documents, our professionals consider that your product does not meet the desired requirements.” Natara’s requests for clarification were never answered.

When interviewed by OIG investigators, Réjean Savard first said he did not recall whether an equivalency request had been submitted for the Clément-Jetté project in the Mercier-Hochelaga-Maisonneuve borough.

When the investigators reminded him that there indeed had been one, he then said he remembered that the Québec supplier of Natara products had made a request and that he had to give his opinion on the water returns and mechanical systems.

Finally, when the investigators showed him the aforementioned emails, Réjean Savard admitted that he had established the equivalency evaluation criteria for the Natara pools

based on the technical elements listed therein. Réjean Savard also told OIG investigators, putting his hands on either side of his eyes, that he had looked at the equivalency requests with blinders.

### **3.3 Second phase of drafting the documents comprising tender No. 5846**

The second drafting phase of the documents comprising tender No. 5846 took place between December 2017 and August 2018. It was characterized by the start of the OIG's investigation into the allegations mentioned earlier of a biased call for tenders, the actions taken by the Ville de Montréal project manager, Réjean Savard and Daniel Fontaine to avoid opening the door to other bidders, and the enactment of a new legislative provision.

The new section 573.1.0.14 of the *Cities and Towns Act*, which came into force on April 19, 2018, was a game-changer for the drafting of the documents comprising tender No. 5846 in that the City had to express its needs in terms of performance criteria or functional requirements rather than specifying particular products.

Thus, at the end of this phase, the Office of the Comptroller General (OCG) intervened in the drafting of the documents comprising tender No. 5846 to make sure that neutral criteria replaced the specification of Myrtha products.

#### *3.3.1 Start of the OIG's investigation*

Just as Ville de Montréal was changing its choice of type of pool, the OIG was beginning to verify the drafting process for tender No. 5846. As mentioned earlier, after receiving information alleging that calls for tenders were biased in favour of Myrtha because PFA and GBI rejected equivalency requests, the OIG interviewed several stakeholders as well as the other witnesses mentioned in this report.

#### *3.3.2 Continuation of the drafting process for tender No. 5846 after the start of the OIG's investigation*

Faced with questions concerning the possibility that tender No. 5846 was biased in favour of Myrtha products and the fact that a competitor was rejected, both the Ville de Montréal project manager and Réjean Savard and Daniel Fontaine used a variety of technical considerations to justify their choice of these products. Their actions, which will be discussed in the following three (3) subsections, are all indicative of an exclusionary process. In other words, rather than re-evaluating the options available based on the City's stated needs and making the appropriate changes to the criteria of tender No. 5846, the actions taken all sought to validate the choice made in 2017 in favour of Myrtha products by finding reasons to reject the other manufacturers and maintain the product specification.



Some of the elements discussed in the following subsections will subsequently play a crucial role in drafting the performance criteria for tender No. 5846. They will be analyzed in greater detail in section 3.4.2.

### *3.3.2.1 Email of May 25, 2018*

First, the Ville de Montréal project manager sent an email to Réjean Savard on May 25, 2018, asking him, among other things, to provide [TRANSLATION] “technical arguments that would ensure that Myrtha’s competitors would be unable to provide acceptable prefabricated pools to meet the City’s needs, as stated in the project’s FTP.” [sic]

### *3.3.2.2 Internal PMPD study*

On June 4, 2018, the Ville de Montréal project manager received the results of a study that he had commissioned and that was conducted internally by employees of the Ville de Montréal Property Management and Planning Department (“PMPD” and “internal PMPD study”). After an analysis of more than fifty (50) different technical, descriptive and functional criteria of Myrtha and Natare pools, the study concludes that the companies offer similar products.

The following day, the Ville de Montréal project manager informed Daniel Fontaine and Réjean Savard that an OIG investigation was underway regarding the approval of equivalencies in calls for tenders specifying Myrtha pools and sent them the internal PMPD study.

On this occasion, the Ville de Montréal project manager emphasized that the conclusion of this study, which he characterized as [TRANSLATION] “perhaps hasty,” worried him and that certain issues related to quality and durability may have been [TRANSLATION] “entirely overlooked” by the study’s authors. He therefore formulated seven (7) questions on specific aspects of Myrtha or Natare products and asked Daniel Fontaine and Réjean Savard to present [TRANSLATION] “technical arguments that would make it possible to distinguish between the different products,” because [TRANSLATION] “if we can’t do so, we’ll have to open the tender to other products and, more specifically, to Natare.”

On June 7, 2018, Réjean Savard responded that the internal PMPD study may have been produced by people who do not have expertise in the field of modular swimming pools, stating that it is not signed, contains false statements and does not really address the technical aspect. Réjean Savard concluded his email by saying that there would certainly be a reply to the study or technical points to come; the Ville de Montréal project manager replied that he expected him to point out the [TRANSLATION] “ill-considered technical aspects.”

Daniel Fontaine’s response to the internal PMPD study arrived on June 20, 2018, stating that it was possible for neophytes not to understand the difference between Natare and Myrtha pools but that the devil is in the details. Although he did not feel the need to justify

his choice in favour of Myrtha pools, he said that since there was an ongoing investigation, he would be prepared to provide arguments to support his position.

These were eventually sent by email to the Ville de Montréal project manager on July 10, 2018. Responding point by point to the criteria of the internal PMPD study, Daniel Fontaine concluded that the Natara products currently installed in Québec are not equivalent to Myrtha products.

It should be noted that neither the OIG nor the OCG were informed by the Ville de Montréal project manager that there was an internal PMPD study.

### *3.3.2.3 Comparative table prepared by the Ville de Montréal project manager*

In addition to his email of May 25, 2018, the internal PMPD study and the request he sent to Daniel Fontaine and Réjean Savard to provide negative feedback on the study, the Ville de Montréal project manager also tried to support his position that Natara and Myrtha products were not equivalent.

First, on July 24, 2018, the project manager received an email from an engineer from the Ville de Montréal Infrastructure, Roads and Transportation Department. At the request of the former, the engineer explained the welding standards, including welding on a construction site. The engineer doubted that Natara could meet these standards and that it would be up to the project manager to determine whether he could reject the company's bid on this basis. He also expressed the opinion that stainless steel welds made on a construction site run the risk of contamination.

Then, as attested by another email dated July 24, 2018, the project manager sent to the other Ville de Montréal employees assigned to the Centre Rosemont project a table he prepared summarizing the main characteristics of the Natara pool, which in his view, are not equivalent to a Myrtha pool. According to him, [TRANSLATION] “these characteristics alone are reason enough for the PMPD not to accept a [potential] equivalency request from Natara,” the main reason being to avoid welding on the construction site.

He also pointed out that Daniel Fontaine had provided even more arguments to [TRANSLATION] “reject Natara” on July 10, 2018 but deemed that these arguments were not as decisive as those presented in his table.

It should be noted that the Ville de Montréal project manager informed neither the OIG nor the OCG that a comparative table had been produced.

### *3.3.3 Meeting with OIG representatives*

On July 26, 2018, OIG representatives met with Ville de Montréal employees assigned to the Centre Rosemont project to inform them of a preliminary summary of the facts gathered to date and relevant for continuing the drafting of documents comprising tender No. 5846.



### 3.3.4 *Another change in type of pool*

Following the meeting with OIG representatives, the Ville de Montréal employees assigned to the Centre Rosemont project opted to return to their original choice of concrete-ceramic pools. Based on the emails obtained, this decision was motivated by a desire to avoid any controversy associated with the publication of an OIG report.

The Ville de Montréal project manager informed Daniel Fontaine and Réjean Savard of this new direction on August 9, 2018 and asked them to modify their plans and specifications accordingly. While highly critical of this change in direction, Daniel Fontaine informed the project manager that he planned to take the necessary steps to meet the proposed schedule.

### 3.3.5 *Involvement of the Office of Comptroller General*

The OCG was asked to assist the project team with the drafting of the documents comprising tender No. 5846.

A separate OIG entity that reports to the City Manager's Office, the OCG is responsible for:

- Promoting and ensuring ethical behaviour and respect for the values of the organization;
- Ensuring application of the Code of Conduct for Ville de Montréal employees;
- Ensuring the implementation and effectiveness of controls necessary for the sound management and use of the City's public funds, internal resources and assets, in accordance with applicable laws, regulations and frameworks;
- Exercising an advisory role to the administrative units and participating in the management of internal control reporting.

The last responsibility allows it to be more actively involved, as in the present case, in an advisory capacity to a Ville de Montréal unit to help the unit draft a call for tenders that respects the regulatory framework.

At a meeting on August 21, 2018 between OCG representatives and members of the Centre Rosemont project team, the stakeholders agreed on the following points.

First, it would be counter-productive to have an instinctive response to the question of modular pools. Since Centre Rosemont was the first of several pools to be built over the next few years under the Ville de Montréal Aquatic Program, it was better to establish standardized quality specifications that could be used for subsequent projects.

It was therefore agreed that tender No. 5846 would henceforth provide for two (2) options for bidders, one for a concrete-ceramic pool and an equivalent one for modular pools.

Then, with respect to the modular pool option, it was decided that to avoid any biased tenders, the plans, specifications and other tender documents should not contain any reference to Myrtha. In short, they should be neutral. The OCG also informed the members of the Centre Rosemont project team that the new section 573.1.0.14 of the *Cities and Towns Act* came into force on April 19, 2018.

Under this section, where a municipality requires technical specifications for goods, services or work, it must describe those specifications in terms of performance or functional requirements rather than in terms of descriptive characteristics. If it cannot do so, it must stipulate that any equivalency to the descriptive characteristics will be considered compliant and may prescribe how equivalency to these characteristics will be evaluated. Thus, the Centre Rosemont project team had to establish performance criteria that determined, in a neutral manner, the minimum quality expectations for the modular pools and subsequently have them approved by the OCG.

Lastly, a neutral technical committee would be set up, in particular, to review the tender documents before the tender's publication and to evaluate any equivalency request that might be received for modular pools.

### **3.4 Third phase of drafting the documents comprising tender No. 5846**

This third and final phase of drafting the documents comprising tender No. 5846 took place between the meeting with the OCG at the end of August 2018 and the final publication of the tender on October 25 of that same year.

It mainly focused on the process used to prepare two key parts of the tender documents: the performance criteria for modular pools and the related fact sheet 13-150 S. While any bidder for the modular pools had to meet all the requirements set out in these two parts of tender No. 5846, the requirements had to be neutral, as agreed during the meeting with the OCG.

However, according to the evidence below, only Myrtha products qualified for tender No. 5846.

#### **3.4.1 Tender No. 5846 documents concerning modular pools**

Tender No. 5846 consists of several documents, of which the following two are of particular interest concerning the modular pools:

- Sections 11.2 and following of the special administrative clauses (“SAC”) prepared by Ville de Montréal listing the sixteen (16) performance criteria to be met by bids proposing a modular pool, failing which they would be rejected (“tender No. 5846 performance criteria”), and



- fact sheet 13-150 S titled [TRANSLATION] “Special Requirements – Modular Pools (Option B)” (“fact sheet 13-150 S”).

The OIG’s investigation shows that the performance criteria for tender No. 5846 were developed mainly by the Ville de Montréal project manager and Daniel Fontaine. Fact sheet 13-150 S was prepared under the supervision of Daniel Fontaine, as per PFA’s and GBI’s obligations under the contract awarded following tender No. 16-15580.

The following subsections detail the facts gathered during the OIG’s investigation of the drafting process that led to the final versions of these documents, i.e. as included in tender No. 5846 at the time of its publication.

### *3.4.2 Development of performance criteria*

As previously mentioned, it was agreed at the end of the meeting between members of the Centre Rosemont project team and OCG representatives that in order to comply with section 573.1.0.14 of the *Cities and Towns Act*, the performance criteria:

- had to determine, in a neutral manner, the minimum quality requirements for modular pools;
- should not mention Myrtha products;
- had to be submitted to the OCG for approval.

However, evidence gathered during the investigation indicates that the performance criteria, while not explicitly referring to Myrtha products, were based on technical details of these products, were not neutral and only allowed Myrtha products to qualify.

The Ville de Montréal project manager failed to provide certain pieces of information that would have enabled the OCG to have a complete picture of the situation. Besides the internal PMPD study and the comparative table prepared by the Ville de Montréal project manager, the latter failed to indicate that he had used the technical details of Myrtha products to develop the performance criteria for tender No. 5846.

#### *3.4.2.1 Original source of tender No. 5846 performance criteria*

On September 13, 2018, the Ville de Montréal project manager sent an email to Daniel Fontaine and Réjean Savard in which he proposed sixteen (16) criteria that he had developed himself and that would be used to evaluate bids containing a modular pool option. He tells them that these criteria, [TRANSLATION] “which are intended to be as neutral as possible, are based directly on my analysis of Myrtha pool equivalencies dated July 24, 2018,” and on an earlier version of fact sheet 13-150 S previously issued by PFA on July 10. As will be explained in detail in subsection 3.4.3, this version of the fact sheet specified several products and details unique to Myrtha.

This therefore means that the performance criteria for tender No. 5846 prepared by the project manager were developed on the basis of two documents decidedly in favour of Myrtha products and one of which was expressly intended to exclude Natara products. It is also clear that these documents had an impact on the performance criteria that were ultimately published.

First, it will be recalled that the pool equivalency analysis to which the project manager refers was prepared by him. It was discussed in subsection 3.3.2.3. In this analysis, he detailed the main characteristics of the Natara pool, which in his view, did not make it equivalent to the Myrtha pool, and that these alone [TRANSLATION] “are reason enough for the PMPD to reject any equivalency request from Natara.” The most important reason was his desire to avoid any on-site steel welding, which posed a contamination risk.

As for the Myrtha products, it appears from both the fact sheet 13-150 S of tender No. 5846 and from the earlier call for tenders drafted by Réjean Savard or Daniel Fontaine that they are mechanically assembled, i.e. by bolting.

The two assembly characteristics of Natara and Myrtha products were directly incorporated into one of the performance criteria of tender No. 5846:

Fact sheet 13 400S specifying Myrtha products Call for tenders for Clément-Jetté park, Mercier-Hochelaga-Maisonneuve borough	Tender No. 5846 performance criteria Centre Rosemont
[TRANSLATION] “8.2 [...] All stainless steel parts are <b>seamless</b> to avoid risk of corrosion and are assembled by bolting. The pool water must never be in direct contact with the stainless steel portion of the walls and gutters.	“4. The modular structural components of the panels and/or the system must be seamless and mechanically assembled on site.”

Then, the Ville de Montréal project manager indicated that the performance criteria he developed for tender No. 5846 were also based on fact sheet 13 400S provided by Daniel Fontaine. The process used to develop fact sheet 13 400 S will be discussed in greater detail in section 3.4.3; however, it bears mentioning at this stage that it specified and detailed several characteristics of Myrtha products.

As the following table shows, performance criteria No. 10 and No. 11 of tender No. 5846 seem to be directly related to the unique characteristics of Myrtha products set out in fact sheet 13 400S:



<b>Fact sheet 13 400S specifying Myrtha products Call for tenders for Clément-Jetté park, Mercier-Hochelaga-Maisonneuve borough</b>	<b>Tender No. 5846 performance criteria Centre Rosemont</b>
<p>[TRANSLATION] “8.1 General [...] EVOLUTION-type, <u>PVC membrane</u>, approved for pool use, must be used. [...] They must be <u>welded together</u> and to the walls using a three-step process. [..]</p> <p>8.2 [...] The pool construction method for this project uses an assembly of metal detail parts catalogued and referenced by A&amp;T EUROPE S.p.A and marketed under the Myrtha Pools or equivalent brand. <u>These parts or components must be prefabricated and pretreated.</u> [..]</p> <p>These walls are coated on the pool side with a <u>calendered PVC sheet installed before machining.</u> They are then <u>shop formed</u> and include all the bends, openings or holes for receiving fasteners and accessories specific to the project. [...]</p> <p>8.3 Waterproofing</p> <p>Vertical components and gutters: [...] Depending on the item, the connections will be made by:</p> <ul style="list-style-type: none"> <li>- Installing a PVC cord <u>and welding with liquid PVC</u> for the pool wall.”<sup>3</sup></li> </ul>	<p>“10. <u>Any PVC or other finish on the modular wall components must be factory applied.</u> PVC sheets to cover the walls that are sealed and mechanically attached are not acceptable.</p> <p>11. Joints between PVC components (wall panel modules, gutter modules, floor covering) must be <u>welded with liquid PVC or a hot air thermofusion process.</u>”</p>

In addition, it should be noted that in its response to the Notice, Myrtha Pools Canada Inc. stated that “A Myrtha Pool is a custom manufactured product based around the proprietary process of hot calendaring rigid PVC sheets to modular stainless-steel self-supporting panels.” Thus, performance criterion No. 11 reproduced in the above table mentions an exclusive Myrtha patented assembly process.

In short, while under the terms agreed with the OCG, the performance criteria tender of No. 5846 were to be neutral, the above passages demonstrate that by using his

<sup>3</sup> Emphasis added by the OIG.

comparative study and previous fact sheets specifying Myrtha products, the project manager developed performance criteria that only Myrtha could meet.

#### *3.4.2.2 Ville de Montréal project manager's doubts concerning the performance criteria of tender No. 5846 and request to delete the email*

In his email of September 13, 2018, besides sending the performance criteria he developed and discussed above, the Ville de Montréal project manager also expressed many concerns about the approach taken after the meeting with the OCG on August 21, 2018.

In this regard, he wrote that [TRANSLATION] “the criteria to be established (based on the current modular pool market) will in any case only allow Myrtha pools to qualify. Even if the tender were issued with two sets of plans, Myrtha and concrete-ceramic, it would not open the tender to more bidders.” He also expressed doubt that he could create a competent technical committee on modular pools.

Given that the project manager was in the process of developing the performance criteria with the help of Daniel Fontaine and Réjean Savard, the fact that he already felt that these same criteria would allow only Myrtha to bid is disturbing.

The Ville de Montréal project manager sent an almost identical version of this email to the Centre Rosemont project team.

The next day, September 14, 2018, the Ville de Montréal project manager sent them another email asking that they delete the email of September 13, 2018 and that they ask anyone to whom they may have forwarded his email to do the same. He justified his approach by saying that [TRANSLATION] “the wording of this email could jeopardize the continuity of the project.”

It bears mentioning that the project manager was one of the members of the Centre Rosemont project team interviewed by the OIG on July 26, 2018. He was therefore aware that an investigation was underway concerning the pools. His request to destroy the email thus suggests that he did not want the OIG to know his conclusion about the ultimate effect of the performance criteria he was developing.

An email obtained by the OIG also reveals that at least one other member of the Centre Rosemont project team confirmed to the project manager that his request had been complied with and the email of September 13, 2018 had been destroyed.

#### *3.4.2.3 Involvement of Daniel Fontaine in drafting the performance criteria of tender No. 5846*

On September 18, 2018, Daniel Fontaine replied to each point of the Ville de Montréal project manager's email of September 13, 2018.



Several of his suggested changes to the performance criteria were ultimately included in the final version of the documents comprising tender No. 5846.

Lastly, it bears mentioning that the paragraphs regarding the concerns mentioned by the Ville de Montréal project manager in the email of September 13, 2018 no longer appeared in the body of the email commented by Daniel Fontaine.

#### *3.4.2.4 Validation of the process by the OCG*

On September 25, 2018, the Ville de Montréal project manager sent an email to his supervisor to be forwarded to the OCG for approval. It set out the purpose and general approach for developing performance criteria, which were then listed.

The project manager also suggested four (4) members for the technical committee, including himself and two (2) other City employees on the Centre Rosemont project team. As mentioned in section 3.3.5, setting up this committee was one of the elements agreed at the meeting of August 21, 2018 with the OCG. This committee was responsible for, among other things, reviewing the documents comprising tender No. 5846 and evaluating equivalency requests and bids received with a view to preventing a biased call for tenders.

When asked whether the committee members included the in-house expert favourable to concrete-ceramic pools, the Ville de Montréal project manager said no. In his view, the in-house expert was less interested by modular pools and was busy temporarily replacing a superior. It was therefore out of respect for the latter that he did not invite him to sit on the committee.

On September 26, 2018, the OCG validated the process as presented by the Ville de Montréal project manager, in other words, without it being informed of the internal PMPD study or the project manager's comparative table and without knowing that the performance criteria were developed based on this table and PFA's fact sheet 13 400S specifying Myrtha products.

#### *3.4.2.5 Final changes made to the performance criteria of tender No. 5846*

Between their validation by the OCG and publication of tender No. 5846, the performance criteria were reworked one last time to remove three (3) that were deemed to be contract conditions and to add one (1) criterion requiring the bidder to show that it has completed three (3) projects involving the installation of the proposed modular pool in the last ten (10) years and that the pool has been in operation for at least three (3) years.

#### *3.4.2.6 Comments of the Ville de Montréal project manager*

When interviewed by OIG investigators after publication of tender No. 5846, the Ville de Montréal project manager made several comments that shed additional light on the performance criteria, their preparation and impact on the number of potential bidders.

While he initially denied doing so, he later admitted that he had drafted these criteria himself. Considering the aforementioned facts and the project manager's subsequent statements, the Inspector General believes the second statement is accurate.

According to him, the performance criteria for tender No. 5846 specified what Ville de Montréal does not want rather than what it is looking for in a modular pool.

For example, he said that he knew of a supplier of modular pools in western Canada but that it did not have a representative in Québec, which he considered an important criterion in terms of after-sales service and warranty. This criterion therefore left only Myrtha and Natare.

Similarly, the project manager justified the criteria related to the pool installer's and supplier's past experience, saying that he wanted to make sure that Ville de Montréal was not the guinea pig for new products.

According to the Ville de Montréal project manager, the criteria were not only intended to eliminate Natare, they were also conceived based on what could be proposed to the City. In his opinion, had the goal been to eliminate Natare, two (2) of the sixteen (16) criteria would have been sufficient. He added that if Natare wants to be considered, the company will have to develop a new product, because the one installed in another municipality does not meet his criteria.

He concluded by saying he knew that there were no other companies besides Myrtha in Québec that could submit a bid meeting the performance criteria in the SAC.

The Ville de Montréal project manager also said that the technical committee did not review the documents before tender No. 5846 was published because that was not its role. OIG investigators did not find any evidence that the technical committee reviewed the tender documents. However, the facts gathered about the meeting of August 21, 2018 with the OCG show that this should in fact have been its intended role, and in light of the project manager's comments, it would have been extremely beneficial if an independent technical committee had done so.

#### *3.4.3 Preparation of fact sheet 13-150 S of tender No. 5846*

As mentioned at the beginning of section 3.4, in addition to the performance criteria, the modular pools proposed by bidders also had to meet the specifications detailed in fact sheet 13-150 S in order to be accepted under the modular pool option of tender No. 5846. The following subsections discuss the preparation of this fact sheet.



### 3.4.3.1 *Drafting history of previous versions of fact sheet 13-150S of tender No. 5846*

Daniel Fontaine told OIG investigators that over the years, he developed a section of standardized specifications for modular pools. This is fact sheet 13 400S, mentioned in subsection 3.4.2.1 and sent to Ville de Montréal by PFA in July 2018. The fact sheet underwent some changes, which will be addressed in the following subsections, and was finally inserted as fact sheet 13-150 S in tender No. 5846.

In order to understand the process used to draft the previous versions of fact sheet 13-150 S, OIG investigators interviewed the president of the company that was the exclusive supplier of Myrtha products in Canada until May 2018.

Described by Daniel Fontaine as the “anchor” of the company that manufactures Myrtha pools in Canada, the president of the former Canadian supplier of Myrtha products admitted working on several projects with Réjean Savard and PFA in the past few years. He said that he tried to get involved as soon as possible in a bidding process.

He stated that his company could provide the person in charge of drafting tender documents with standard specifications and concept drawings showing products unique to Myrtha such as Softwalk flooring. At the architect’s request, he could send him fairly detailed project drawings, including plans and sections showing the entire pool that could be used to illustrate the pool’s integration with the rest of the building. Some or all of these drawings could then be inserted in the tender documents. In his opinion, this was a powerful sales tool.

He added that architects like PFA who have already built Myrtha pools have these drawings and can therefore copy/paste product details into their tender documents.

According to the president of the former Canadian supplier, once the tender documents included specifications for Myrtha products and the drawings of City employees were based on Myrtha’s, his company would often obtain the contract. However, he pointed out that competitors from the United States, Japan or Spain have submitted bids and sometimes managed to “beat” the specifications of Myrtha products.

For his part, Daniel Fontaine told OIG investigators that his firm, PFA, had an advisory relationship with this former Canadian supplier. PFA called the former supplier when it had a technical problem, questions about the design of certain plan aspects or any other required information. Daniel Fontaine said that the former Canadian supplier sometimes referred PFA’s questions to Myrtha’s headquarters in Italy.

Although he said that Myrtha produced fabrication drawings for each project, his firm only took the ones it needed. He said he believed it may have happened once that his firm used Myrtha’s drawings in plans and specifications to help the general contractor understand the interface. However, Daniel Fontaine said that Myrtha would not charge PFA for the drawings and PFA would not charge the City for the hours Myrtha spent preparing the drawings.

According to Réjean Savard, Myrtha would handle the pool design, prepare the calculation notes, shop drawings, installation manuals and data sheets. The architect would then append the Myrtha plans to the tender documents.

It should be noted that section 1.07 of fact sheet 13-150 S stipulates that [TRANSLATION] “the bid must be based on the detailed description of the modular pool system set out in the specifications and construction plans for all the relevant trades. The supplier/installer must take into account each of the characteristics described.”

### *3.4.3.2 Content of versions prior to fact sheet 13-150 S*

In order to compare them with fact sheet 13-150 S, the OIG obtained the fact sheets for five (5) previous calls for tenders, prepared either by PFA, by Nacev Consultants Inc., a firm for which Réjean Savard worked and that was acquired by GBI in 2008 (“Nacev”), or by GBI.

Whether drafted by PFA, Nacev or GBI, the fact sheets dealing with special requirements for modular pools for these five (5) projects all specified Myrtha products and all were similar to the specifications and equivalency clause drafted.

For example, some specified Evolution membranes or Strahlenturbolenz water returns. It should be noted that the president of the former Canadian Myrtha supplier told OIG investigators that the Evolution membrane was developed by Myrtha and was not available to other companies, while the Strahlenturbolenz returns were produced by a German company that was purchased by Myrtha.

In his January 11, 2012 email reproduced in section 3.2.7, Myrtha's former Canadian supplier named the following as one of the many criteria he expected Natara to have difficulty meeting: “Softwalk (ask for samples - they can only get changeroom mats, not Softwalk).” While this proprietary Myrtha product was not included in the tenders that had already been published at the time of the email, it is interesting to note that the subsequent tender fact sheets all contain references to this product.

In other words, earlier versions of fact sheet 13-150 S specified and detailed products that were unique to Myrtha. Although this was permitted under the legal framework at the time these tenders were published, the make-up of these earlier versions is important because, on the one hand, the Ville de Montréal project manager relied on such a fact sheet to develop the performance criteria and on the other, fact sheet 13-150 S for tender No. 5846 has numerous similarities with these previous versions.



#### *3.4.3.3 Initial transmission of an earlier version of fact sheet 13-150 S to the Ville de Montréal project manager*

On July 12, 2018, the Ville de Montréal project manager received an earlier version of fact sheet 13-150 S from a PFA employee. The title of the attachment identified the document as 13 400S.

Although the OIG did not obtain a copy of the earlier version of fact sheet 13 400S, the aforementioned facts, along with the project manager's comments in response to the email, the instructions referred to in subsection 3.4.3.4 below and the comparison with the final version of fact sheet 13-150 S for tender No. 5846 all demonstrate that this version of the fact sheet sent in July 2018 was similar to the earlier versions of fact sheet 13 400. In other words, it specified Myrtha pools as well as other products unique to Myrtha, all in accordance with the choice that had been made by the Centre Rosemont project team before the intervention by the OIG and the OCG.

It will be recalled, as discussed in subsection 3.4.2.1, that this version of fact sheet 13 400S was one of the sources from which the Ville de Montréal project manager drew to develop the performance criteria for tender No. 5846.

On July 18, 2018, the project manager and Daniel Fontaine exchanged emails in which the former set out a series of changes to be made to fact sheet 13 400S and to which the latter responded.

Among other things, the project manager questioned the rationale for the requirement that a modular pool installer had to have installed four (4) pools in Québec. He then pointed out to Daniel Fontaine that this [TRANSLATION] “seems to be a clause to eliminate any competition even that of a (theoretical) competitor who would offer a product identical to Myrtha's” and wondered whether two (2) pools would be enough. The only justification Daniel Fontaine could provide was that he expected the installer to have the necessary experience and expertise.

However, he furnished no reason as to why the construction of four (4) pools in Québec would be a guarantee of expertise and experience whereas two (2) pools were not enough. The evidence shows that only Myrtha could meet this experience criterion.

This requirement was maintained and appeared in fact sheet 13-150 S when tender No. 5846 was published.

#### *3.4.3.4 Instructions to Daniel Fontaine and Réjean Savard following the final decision on the choice of pool*

Following the interview of August 21, 2018 with the OIG, a Ville de Montréal employee sent an email to Daniel Fontaine and Réjean Savard informing them of the City's new direction concerning pools. He explained that going forward, [TRANSLATION] “equivalencies will have to be analyzed on the basis of performance criteria without direct

reference to Myrtha and their standard details will not be indicated in the tender documents.”

A few days later, that same Ville de Montréal employee sent an email to Daniel Fontaine and Réjean Savard pointing out that several elements of the tender documents, as they were then drafted, were standard Myrtha details, Myrtha-specific products or otherwise limited competition.

### 3.4.3.5 Comparison between fact sheet 13-150 S and the earlier versions

Although fact sheet 13-150 S, as published in tender No. 5846, does not expressly refer to Myrtha, a comparison of this fact sheet and the early 13 400 fact sheets reveals similar or identical passages, including in “1. General”, “2. Structure” and “3. Waterproofing” of section “3.01 Technical Description.”

In reality, as the following underlined extracts of fact sheet 13-400 S for the aforementioned Clément-Jetté park tender in the Mercier-Hochelaga-Maisonneuve borough and fact sheet 13-150 for tender No. 5846 show, only the express references to Myrtha appear to have been removed while the product characteristics or descriptions remained the same:

<b>Fact sheet 13 400S specifying Myrtha products Call for tenders for Clément-Jetté park, Mercier-Hochelaga-Maisonneuve borough</b>	<b>Fact sheet 13-150 S Tender No. 5846 Centre Rosemont</b>
<p>[TRANSLATION] “8.1 General</p> <p><u>The requested product quality is based on Myrtha modular pool systems.</u></p> <p>.1 The walls must be panels of AISI 304 stainless steel, laminated on the inner swimming pool face with a laminated hard PVC layer. The lamination process must allow the panel to be worked and bent in excess of 180 degrees. The panels must be factory punched to allow fastening of the accessories and be protected with a film that will be removed after installation. The PVC must be sky blue.”</p>	<p>[TRANSLATION] “1. General:</p> <p>1. The walls must consist of 316 and AISI304/441 stainless steel panels, and the portion that will form the inside of the pool must have a permanently welded layer of hard PVC. The lamination process must allow the panel to be worked and bent in excess of 180 degrees. The panels must be factory punched to allow fastening of the accessories and be protected with a film that will be removed after installation. The PVC must be white.”</p>



<p>[TRANSLATION] “8.2 Structure [..]</p> <p>The pool construction method for this project uses a set of metal detail parts catalogued and <u>referenced by A&amp;T EUROPE S.p.A and marketed under the Myrtha Pools or equivalent brand.</u> These parts and components must be prefabricated and pretreated.”<sup>4</sup> [sic]</p>	<p>[TRANSLATION] “2. Structure: [..]</p> <p>2. The pool construction process for this project uses an assembly of essentially metal detail parts. These parts and components must be prefabricated and pretreated. (The contractor must ensure the compatibility of the equipment of all the trades concerned. See the mechanical engineering documents in particular.)” [sic]</p>
--	--

Moreover, both this portion of fact sheet 13-150 S and those reproduced below explain in as much detail as fact sheet 13-400 S what appears to be the machining and assembly method specific to Myrtha products:

<p><b>Fact sheet 13 400S specifying Myrtha products Call for tenders for Clément-Jetté park, Mercier-Hochelaga-Maisonneuve borough</b></p>	<p><b>Fact sheet 13-150 S Tender No. 5846 Centre Rosemont</b></p>
<p>[TRANSLATION] “3. EVOLUTION-type membranes made of special PVC and approved for pools must be used. They will cover the pool base and part of the walls. They must be welded together and to the walls using a three-step process.</p>	<p>[TRANSLATION] “3. The membranes must be made of special PVC approved for use in pools. They will cover the pool base and part of the walls. They must be welded together and to the walls using a three-step process.</p>
<p>[TRANSLATION] “8.2 Structure</p> <p>The distinctive feature of the process lies in its design, which does not rely solely on predefined models but can create a wide variety of pool forms depending on their use and with few dimensional constraints. [...]</p> <p>These walls are assembled two by two on 2mm stainless steel support buttresses bent and perforated depending on the project.” [sic]</p>	<p>[TRANSLATION] “2. Structure</p> <p>1. The distinctive feature of the process lies in its design, which does not rely solely on predefined models but can create a wide variety of pool forms depending on their use and with few dimensional constraints. [...]</p> <p>6. These walls are assembled two by two on 2mm stainless steel support buttresses bent and perforated depending on the project.”</p>

<sup>4</sup> Emphasis added by the OIG.

Lastly, fact sheet 13-150 S of tender No. 5846 contains the same references to proprietary Myrtha products, such as the Softwalk foam mat, or to products manufactured by a company acquired by Myrtha, such as Strahlenturbolenz inlets. It is useful to recall the comments of the former Canadian supplier that these products are only available to Myrtha.

<b>Fact sheet 13 400S specifying Myrtha products Call for tenders for Clément-Jetté park, Mercier-Hochelaga-Maisonneuve borough</b>	<b>Fact sheet 13-150 S Tender No. 5846 Centre Rosemont</b>
<p>[TRANSLATION] “7.2 Pool description:</p> <p>1. B-1 25 m swimming pool (6 lanes)</p> <p>Dimensions: 25.030 m x 13.6 m x (1.13m to 2.50m variable depth) including:</p> <ul style="list-style-type: none"> <li>- A first section 12.030 metres long and depth ranging from 1.13 to 1.23 m. The base of this portion of the pool must be covered with an anti-skid membrane installed on a 15 mm thick foam mat designed for this purpose, for example, SOFTWALK. [...]</li> </ul>	<p>[TRANSLATION] “2.02 – Description:</p> <p>1. B-1 25 m swimming pool (8 lanes)</p> <p>1 Dimensions: 25.012 m x 20.400 m x (1.230 to 2.230m variable depth) including:</p> <ul style="list-style-type: none"> <li>- A first section 4,205 mm long and depth ranging from 1.230 to 1.280 m. The base of this portion of the pool must be covered with an anti-skid membrane installed on a 15 mm thick foam mat designed for this purpose, for example, SOFTWALK. [...]</li> </ul>
<p>[TRANSLATION] “8.1 General [...]</p> <p>4. <i>Strahlenturbolenz</i> water returns must be used and factory calibrated based on pressure loss.”</p>	<p>[TRANSLATION] “1. General: [...]</p> <p>3. [...] <i>Strahlenturbolenz</i> water returns must be used and factory calibrated based on pressure loss.” (Positioning, sizing, connection and installation, see mechanical engineer).”</p>

As mentioned earlier, section 1.07 of fact sheet 13-150 S stipulates that [TRANSLATION] “the bid must be based on the detailed description of the modular pool system set out in the specifications and construction plans for all the relevant trades. The supplier/installer must take into account each of the characteristics described.” In addition, section 1.08 of fact sheet 13-150 S dealing with equivalencies is marked [TRANSLATION] “not applicable.”



This means that to be considered compliant, any bid submitted by a contractor offering modular pools other than Myrtha must fully comply with the portions of fact sheet 13-150 S relating to the description of the Myrtha product machining and assembly method and include products that are only available to Myrtha.

#### *3.4.3.6 Comments of the Ville de Montréal project manager concerning fact sheet 13-150 S under tender No. 5846*

When interviewed by OIG investigators, the Ville de Montréal project manager acknowledged that the criteria in fact sheet 13-150 S conflicted with the performance criteria in the SAC. Contrary to those in the SAC, which specified what the City did not want, he felt that the criteria in 13-150 S set out specifically what it was seeking.

However, he concluded that this did not change anything because the performance criteria allowed only Myrtha products to qualify.

### **3.5 Publication of tender No. 5846**

Tender No. 5846 was published on October 25, 2018. The deadline for receiving bids was originally set for November 29, 2018 but was postponed to March 14, 2019.

#### *3.5.1 Questions received once tender No. 5846 was published*

On November 19, 2018, the Ville de Montréal project manager received two emails from potential bidders stating that two sections of fact sheet 13-150 S limited potential competition by excluding products from certain modular pool manufacturers.

The two sections in question required that the pool be bolted instead of welded on site and that the pool water never come in direct contact with the stainless steel portion of the pool. The authors of these two (2) emails requested permission to submit an equivalency or to modify these criteria, which the project manager refused.

The Ville de Montréal project manager confirmed to OIG investigators that he had received the two (2) emails of November 19, 2018 and that he responded to them himself. He said that he knew the questions came from a representative of the Québec supplier of Natara products who questioned the performance criteria that he had drafted and that the reason he refused without additional explanation was to avoid potential legal action.

## **4. Analysis**

The facts detailed above lead the Inspector General to make the following observations following the investigation concerning tender No. 5846.

## 4.1 Concerning tender No. 5846

### 4.1.1 *The performance criteria for the modular pools allowed only Myrtha to bid*

The Ville de Montréal project manager's email of September 13, 2018 shows that the performance criteria [TRANSLATION] “stem directly from [his] analysis of Myrtha pool equivalencies dated July 24, 2018” and from fact sheet 13 400S of the specifications previously sent by PFA on July 10, two documents decidedly in favour of Myrtha, one of which explicitly sought to exclude Natare products.

The ultimate effect of drawing from such sources is presented in detail in subsection 3.4.2.1 and was recounted to OIG investigators by the project manager himself, who concluded by saying that he knew that there were no other companies besides Myrtha in Québec at this time that could submit a bid meeting the performance criteria in the SAC.

The Inspector General therefore notes that the performance criteria of tender No. 5846 allowed only Myrtha products to qualify for the modular pool option.

### 4.1.2 *Fact sheet 13-150 S allows only Myrtha to submit a bid for modular pools and does not comply with section 573.1.0.14 of the Cities and Towns Act*

Based on the facts revealed by the investigation, the same conclusion must also be drawn with regards to fact sheet 13-150 S.

First, at the request of a Ville de Montréal employee, Daniel Fontaine and PFA removed the references to the Myrtha brand. However, they did not remove references to proprietary Myrtha products such as the Softwalk foam mat or products manufactured by a company acquired by Myrtha, such as Strahlenturbolenz inlets.

Then, fact sheet 13-150 S specifically detailed several characteristics of the Myrtha product machining and assembly process. Numerous examples to this effect were presented in section 3.4.3.5. In this regard, it will be recalled that in its response to the Notice, Myrtha Pools Canada Inc. specified an exclusive characteristic of its product manufacturing process, one that is found virtually verbatim in both fact sheet 13-150 S and in the fact sheets of the five (5) other calls for tenders examined.

Lastly, clause 1.07 stated that the bid for a modular pool [TRANSLATION] “must be based on the detailed description of the modular pool system set out in the specifications and construction plans” and [TRANSLATION] “must take into account each of the characteristics described.” When this clause is read together with the next clause (1.08), which states that equivalencies are [TRANSLATION] “not applicable,” it becomes clear that fact sheet 13-150 S obliged all bidders opting for a modular pool to respect all the requirements in that fact sheet.



Given that many of the [TRANSLATION] “characteristics described” are specific to Myrtha products, the Inspector General thus finds that fact sheet 13-150 S allowed only Myrtha products to qualify as acceptable modular pools under tender No. 5846.

Under section 573.1.0.14 of the *Cities and Towns Act* described earlier, when a municipality requires technical specifications for a product, it must describe it in terms of performance or functional requirements rather than in terms of descriptive characteristics. If it cannot do so, it must stipulate that any equivalency to the descriptive characteristics will be considered compliant and may prescribe how equivalency to these characteristics will be evaluated.

In the present case, as just mentioned, section 1.08 of fact sheet 13-150 S under tender No. 5846 states [TRANSLATION] “not applicable” under the [TRANSLATION] “Equivalency” heading. This must therefore mean that fact sheet 13-150 S sets out performance criteria or functional requirements. However, the facts revealed by the investigation and presented in section 3.4.3 and above indicate that fact sheet 13-150 S contains several passages that are most descriptive of Myrtha products and what’s more, of their machining and assembly process.

In other words, in order to ensure that tender No. 5846 complied with the applicable legal framework, fact sheet 13-150 S should either have been drafted to include only performance criteria or functional requirements, or and allowed the submission of equivalency requests.

#### *4.1.3 The modular pool option under tender No. 5846 was biased towards Myrtha*

In short, the combination of performance criteria, fact sheet 13-150 S and the fact that equivalency requests were not accepted leads the Inspector General to conclude that the option for modular pools under tender No. 5846 was biased in favour of Myrtha products.

## **4.2 Concerning Réjean Savard and Daniel Fontaine**

The facts revealed by the investigation show that Réjean Savard and Daniel Fontaine consider Myrtha products to be the best on the market for the Ville de Montréal’s Centre Rosemont project.

The Inspector General does not seek to challenge their conclusion or to draw another conclusion regarding other products available on the market. In keeping with her mandate, the Inspector General instead wishes to ensure that bidders are treated fairly under calls for tenders not biased in favour of a product, that tender documents are not restrictive and do not exclude other products, and that equivalency requests are fairly evaluated.

However, this was not the case here. In light of the facts revealed by the investigation and set out above, the Inspector General believes that as currently drafted, tender No. 5846 does not comply with section 573.1.0.14 of the *Cities and Towns Act*, is biased and was

likely also biased under the previous legal framework. The actions and comments of Réjean Savard and Daniel Fontaine contributed greatly to this finding.

#### *4.2.1 Under the current regulatory framework*

Once section 573.1.0.14 of the *Cities and Towns Act* came into force, it was no longer possible to proceed in the same manner as before 2018. In other words, one could no longer simply specify Myrtha products and all the accessory equipment. Instead, Ville de Montréal first had to state its needs in terms of performance criteria or functional requirements.

Following the intervention of the OIG, Daniel Fontaine and Réjean Savard were instructed to amend the tender documents by removing standard Myrtha details, Myrtha-specific products or anything that otherwise limited competition. They were also told that the [TRANSLATION] “equivalencies must be analyzed on the basis of performance criteria without direct reference to Myrtha and without the inclusion of their standard details in the tender documents.”

However, the finding in subsection 3.4.3 is clear concerning fact sheet 13-150 S prepared under the supervision of Daniel Fontaine: it only allowed Myrtha to bid.

The Inspector General also notes Daniel Fontaine’s input into the performance criteria developed by the Ville de Montréal project manager, all the while having been informed, based on an email from him on September 13, 2018, that the criteria would allow only Myrtha to bid.

In short, their reluctance to change their approach, which used to allow them to simply specify a product, contributed to making tender No. 5846 biased under the current legal framework.

#### *4.2.2 Under the old regulatory framework*

The facts revealed by the investigation show that Daniel Fontaine and Réjean Savard had developed a way of doing things under the previous legal framework, namely to specify a product that they considered to be the best and to allow the submission of equivalency requests. While specifying products was entirely permissible, the facts show a problematic implementation of the equivalency clause on their part, particularly when combined with their actions and their comments to OIG investigators.

First, concerning the implementation of the equivalency clause, it is clear that Réjean Savard and Daniel Fontaine analyzed past requests based on criteria that the competition could not possibly meet. In fact, they used Myrtha-specific technical elements and products listed by the Canadian supplier of these products, which he expected Natare to be unable to satisfy. Such an approach made it impossible for any Myrtha competitor to qualify.



Then, concerning the actions with respect to tender No. 5846:

- Réjean Savard clearly stated four days after the contract following tender No. 16-15580 was awarded that he planned to prepare a presentation of Myrtha products;
- he repeatedly tried to convince the City's project manager to address the issue of modular pools;
- he presented a complimentary presentation blatantly promoting Myrtha products that he himself admitted was a summary of the benefits of Myrtha products; and
- he prepared plans and specifications based on Myrtha pools even before he received confirmation that the City would select this type of pool.

With regard to Réjean Savard's comments to OIG investigators, the Inspector General would like to make the following observations:

First, Réjean Savard said he was sold on Myrtha products. He then took samples of Myrtha products out of his briefcase to show OIG investigators, all the while claiming that he was not a Myrtha sales rep. Moreover, Réjean Savard said that if a client says he wants to have a pool that meets FINA standards, the reality is that he will end up with a Myrtha pool; however, he does tell that to the client. Lastly, he also argued that when a construction tender is launched with his firm, the only product that will be installed is a Myrtha pool and that the market is closed.

It is clear to the Inspector General that Réjean Savard and Daniel Fontaine like Myrtha products. The Inspector General would like to reiterate that she has no interest in contradicting this position.

However, given the manner in which Réjean Savard and Daniel Fontaine evaluated the previous equivalency requests of a Myrtha competitor and knowing that they planned to use the same fact sheet with the same equivalency clause, the Inspector General wonders how these professionals could have fairly evaluated an equivalency request from a Myrtha competitor for the Centre Rosemont project. Without a fair evaluation of equivalency requests, one has to wonder how bias could have been avoided in the Centre Rosemont call for tenders.

### **4.3 Concerning Ville de Montréal**

#### *4.3.1 The Ville de Montréal project manager helped create bias in favour of Myrtha products for the modular pool option in tender No. 5846*

As the one who drafted the performance criteria for tender No. 5846 which, as mentioned in section 4.1.1, allowed only Myrtha to submit a compliant bid for the modular pools, the Ville de Montréal project manager contributed to making the modular pool option in tender No. 5846 biased in favour of Myrtha products. What's more, the facts set out above show that the project manager knew that the performance criteria he had developed would have such a consequence.

In this regard, it must first of all be pointed out that in his email of September 13, 2018, containing his first draft of said criteria, he wrote that these [TRANSLATION] “stem directly from [his] analysis of equivalencies to Myrtha pools dated July 24, 2018” and from fact sheet 13 400S of the specifications previously sent by PFA on July 10. However, while he specified that these criteria [TRANSLATION] “are intended to be as neutral as possible”, he knew that they were based on two documents decidedly in favour of Myrtha, one of which he had written to explicitly exclude Natare products.

Moreover, as mentioned in section 3.4.2.6, not only did he tell OIG investigators after publication of tender No. 5846 that only Myrtha products could meet the performance criteria, he knew this when he began drafting them.

In fact, even as he listed the performance criteria he had himself developed, he said that [TRANSLATION] “the criteria to be established (based on the current modular pool market) will, in any case, allow only Myrtha pools to qualify. Even if the tender were issued with two sets of plans, Myrtha and concrete-ceramic, it would not open the tender to more bidders.”

His email sent the next day asking the other members of the Ville de Montréal project team to destroy the email he sent the previous day also demonstrates that he was aware of the potential impact of these performance criteria, claiming that [TRANSLATION] “the wording of this email could jeopardize the continuity of the project.”

Finally, although he knew that the OIG and the OCG had expressed concern that tender No. 5846 would be biased in favour of Myrtha products and it had been agreed with the Comptroller General to develop neutral performance criteria in order to open the door to other bidders, the project manager did not inform either the OIG or the OCG of the existence of elements that were crucial to their understanding of the process used to draft the performance criteria.

He failed to disclose:

- the internal PMPD report concluding that Myrtha and Natare products were similar;
- the comparative table that he created in July 2018 concluding that Myrtha and Natare were not equivalent in his view; and
- the fact that he used this table and fact sheet 13 400S sent by PFA and specifying Myrtha products and their technical machining and assembly characteristics to draft the performance criteria.

What's more, his request to destroy the email of September 13, 2018 was likely to prevent its content from reaching the OIG or the OCG.

As a result, neither the OIG nor the OCG had a complete picture of the situation at the time of the events. Tasked with validating the process used to draft performance criteria to ensure competitive bidding, the OCG could not do so as it did not have full knowledge of the facts. Had it been fully informed, the OCG would likely have intervened.



In essence, based on the facts revealed by the investigation, the Inspector General finds that the Ville de Montréal project manager helped make the modular pool option of tender No. 5846 biased in favour of Myrtha products by drafting performance criteria he knew and admitted would allow only Myrtha products to qualify, by his conduct and by failing to disclose crucial information that could have prevented such a situation.

#### *4.3.2 The actions of the Ville de Montréal project manager and project team during the investigation by OIG*

The Ville de Montréal project manager and some members of the Centre Rosemont project team were interviewed for the first time in spring 2018. They were again interviewed by OIG representatives at the end of July 2018. They therefore knew that an investigation by the OIG was underway concerning the possibility that the modular pool portion of tender No. 5846 was biased in favour of Myrtha products.

Nevertheless, after sending his email of September 13, 2018, the Ville de Montréal project manager, as stated in his email of the following day, asked the members of the project team to destroy this email, arguing that [TRANSLATION] “the wording of this email could jeopardize the continuity of the project.” An email obtained by the OIG reveals that at least one other member of the Centre Rosemont project team confirmed to the project manager that he had complied with his request and destroyed the email in question.

Thus, aware that an investigation was underway and that an email would probably be highly relevant to the investigation, the project manager asked that this piece of evidence be destroyed and at least one employee complied.

The Inspector General denounces such behaviour, the seriousness of which cannot be overstated.

#### *4.3.3 The document drafting process for tender No. 5846 concerning modular pools must be revisited*

As mentioned at the beginning of this report, the step of specifying the City's needs or the specific products it requires is a pivotal moment in the tender document drafting process. The impact of a badly-crafted process can be double-edged in that it can lead to a result that does not meet the municipality's needs or to a biased tender that prevents competition and does not allow fair treatment of bidders. It is therefore a critical part of ensuring the integrity of the municipal contracting process.

To this end, jurisprudence and doctrine have long recognized that a municipality enjoys wide discretion in defining its needs.<sup>5</sup> Respectful of such a principle, the Inspector General certainly does not wish to interfere or dictate which products are best suited to the City's needs.

However, the needs definition process must be carried out in a truly equitable and neutral manner without a preconceived desire to exclude competition. For example, it is clear that if the City uses the attributes of a certain product to develop the criteria for its tender, it is highly probable that only bids offering this product will be deemed compliant. Undoubtedly, the end result will be a biased call for tenders as well as an inherently flawed procurement process that does not comply with the regulatory framework.

In the present case, the evidence gathered during the investigation shows that Ville de Montréal would do well to revisit or rework its needs definition process for swimming pools, particularly in light of the change in legal framework for the specification of products henceforth dictated by section 573.1.0.14.

Indeed, before the start of the OIG's investigation, the Ville de Montréal team did not look for other modular pool manufacturers besides Myrtha. As previously noted, they relied primarily on Réjean Savard's comments about the benefits of Myrtha products and the lack of competitors on the Québec market. Myrtha products were deemed to meet the City's needs and hence would be specified in the tender documents.

However, in the meantime a legislative change took place, the City became aware of another modular pool supplier in Québec and received the internal PMPD study showing that the other supplier's products were similar to Myrtha's. Before the OIG's and the OCG's intervention, the Ville de Montréal project team, especially the project manager, did not attempt to reassess the options that would be available if their needs were defined based on neutral performance criteria. Instead, they wanted to continue with Myrtha products. Thus, the internal PMPD study was quickly discredited and the team went out of its way to demonstrate that Natara products were inadequate. The project manager's emails speak volumes in this regard.

Indeed, when the internal PMPD report was first sent to Réjean Savard and Daniel Fontaine, the project manager asked for technical arguments to distinguish the different products stating that [TRANSLATION] "if we can't do this, we'll have to open the tender to the various products available and, more particularly, to Natara." Similarly, in the email sent with his comparative table, the project manager told the project team that his arguments [TRANSLATION] "alone are reason enough for the PMPD not to accept an

---

<sup>5</sup> See, in particular, *Descimco inc. c. St-Hyacinthe (Ville de)*, 2013 QCCS 1150; *Soprema inc. c. Commission scolaire du Chemin-du-Roy*, 2009 QCCS 3018; HÉTU, Jean and Yvon DUPLESSIS, *Droit municipal, principes généraux et contentieux*, Wolters Kluwer, Feuilles mobiles, para 9.104 and following; LANGLOIS, André, with the collaboration of Pier-Olivier FRADETTE, *Les contrats municipaux par demandes de soumissions*, 4th ed., Éditions Yvon Blais, Cowansville, 2018, p. 217 and following.



equivalency request from Natara,” even before the construction tender was issued and Natara had the opportunity to submit such a request.

In short, they had made their choice in favour of Myrtha products and since they already knew how they would respond to any equivalency request that might be submitted by Natara, all that remained was to find the right arguments to justify their response. In other words, although the City was previously permitted to specify a product and decide whether to accept equivalency requests, the evidence in the present case shows that even if published under this old legal framework, tender No. 5846 would have been biased and contrary to the fundamental precepts of fairness to bidders.

Even by transposing tender No. 5846 to the new legal framework dictated by section 573.1.0.14 of the *Cities and Towns Act*, the finding is the same and tender No. 5846 remains biased.

Henceforth, as mentioned earlier in this report, rather than specifying or describing product characteristics, municipalities must translate their technical specifications into performance or functional requirements. Only if they are unable to do so can they provide the descriptive characteristics of the product.

In other words, in a tender, a municipality’s first reflex must be to state its needs in terms of performance or functional requirements and allow bidders to propose suitable solutions.

As noted in section 4.1.1 above, the performance criteria allowed only Myrtha to submit a compliant bid for the modular pools. As well, in addition to containing a multitude of descriptive characteristics without allowing equivalency, which in itself is contrary to section 573.1.0.14, fact sheet 13-150 S also allowed the submission of only Myrtha products.

Thus, rather than taking advantage of the OCG intervention to come to terms with the dramatic change brought about by section 573.1.0.14 in the way of drafting calls for tender and re-examining its real needs concerning modular pools, the team attempted to include Myrtha-specific technical specifications in a performance criteria mould.

Developing truly neutral performance criteria is difficult if your starting point is a product specification, i.e. a position with an inherent bias in favour of a certain product.

Beyond the positions adopted by Réjean Savard, Daniel Fontaine and the project manager steadfastly against any equivalency between Myrtha and Natara products, various pieces of evidence gathered in this investigation support a different point of view.

Not surprisingly, the opinion of the Québec supplier of Natara products is that they could adequately meet the City’s needs. However, there is also the internal PMPD study, which concluded that the two products were similar. Réjean Savard himself admitted knowing that a Natara competition pool had been built in the United States.

Then there is the opinion of Ville de Montréal’s in-house pool expert who had recognized the pros and cons of the solution he preferred, concrete-ceramic pools, but also of the Myrtha pools presented by Réjean Savard and Daniel Fontaine.

Hence, there are many solutions that may or may not meet a client's needs. In this regard, the Inspector General again reiterates that she is not seeking to endorse one option or product over another. Rather, she would like to emphasize that under the new legal framework, the City can no longer limit itself to specifying a single product, no matter how good it may be, but rather must draft its tenders based on the performance or functional requirements of a product based on a rigorous analysis of its real needs.

In short, faced with many different opinions and given the magnitude of future financial investments for Centre Rosemont and the other aquatic centre projects to be built under the Montréal Aquatic Program's construction of indoor pool facilities component, the Inspector General recommends that the City, at the very least, revisit its needs definition process for swimming pools and proceed, if necessary, to a pool qualification or certification process, in accordance with section 573.1.0.2 of the *Cities and Towns Act*.

#### *4.3.4 The need to train and supervise staff following the enactment of section 573.1.0.14 of the Cities and Towns Act*

Aside from the aforementioned impact of the enactment of section 573.1.0.14 of the *Cities and Towns Act* on tender No. 5846, two elements must be mentioned that may have a more global impact on the City's contracting process.

First, when interviewed by OIG investigators, the Ville de Montréal project manager stated, among other things, that he had never receiving training on this provision. As shown in the previous section, the legislative section in question is both new and innovative. In the Inspector General's view, it is therefore essential that Ville de Montréal ensure that all personnel assigned to contracting receive the necessary training and supervision to comply with this legal provision.

Next, section 573.1.0.14 of the *Cities and Towns Act* states that in the case of a tender that provides the specifications of a product in terms of descriptive characteristics, the municipality *must* ensure that any equivalency to these descriptive characteristics will be considered compliant and that it may prescribe how such equivalency will be evaluated.

In the present case, the previous tenders discussed earlier attest, among other things, to the wide discretionary power given to those who evaluate equivalency requests, and to the apparent lack of documentation in support of their decision. This left the field open to developing evaluation criteria that could be reasonably met only by Myrtha, while providing the Québec supplier of Natare products extremely brief and sometimes contradictory answers.

Furthermore, a strict and impartial equivalence process is central to ensuring a balance between the client's needs and the objective of fair competition underlying public tenders.

The OIG's verifications indicate that Ville de Montréal does not have a framework for evaluating equivalency requests. The Inspector General therefore recommends that Ville de Montréal adopt rules to this effect.



## 5. Responses to the Notices to Interested Parties

In accordance with her duty of procedural fairness, the Inspector General summarized the above findings in the Notices she sent on January 29, 2019. Several recipients submitted a response to these Notices, which will be discussed next.

### 5.1 *Réjean Savard and GBI*

The response received from Réjean Savard and GBI contained three main themes.

#### 5.1.1 *Interference in the choice of product*

First, they argued that they only specify products that they can recommend as professionals based on known or demonstrated specifications and performance. In this regard, they said that their recommendation of Myrtha products is justified, timely, based on specific technical studies and provided independently without any personal interest in specifying or promoting a product.

They stated, among other things, what they consider to be cost overrun issues and delays caused primarily by the dearth of contractors specializing in concrete-ceramic pools. They cited a November 2018 study conducted as part of the Centre Rosemont project according to which the price of a modular pool is lower than its concrete-ceramic counterpart. Since their professional fees are based on a percentage of the project cost, they pointed out that their compensation would be lower by proposing a modular pool and hence that they did not stand to gain financially in this regard.

Réjean Savard and GBI also replied that through its FTP, the City stated its needs and desire to have an exceptional competition facility that meets FINA standards. Based on their experience and knowledge, Myrtha products meet all these conditions, are easy to maintain, versatile and respect the City's sustainable development policy. They therefore informed Ville de Montréal of these products but stressed that [TRANSLATION] “the City's role is not to design the project but to sign off on the choice made by its professionals and employees involved, based on technical and performance criteria and in accordance with municipal policy.”

Réjean Savard and GBI then accused the OIG of inserting itself in a trade war between two suppliers of modular pools and showing bias in favour of and promoting one supplier. Furthermore, and in what is a contradiction, the OIG initially lobbied for concrete-ceramic pools to be considered equivalent to modular pools.

In their opinion, the OIG was not objective in reporting the facts of the investigation concerning Natara products. They argued that based on their own analysis, these products are not equivalent to Myrtha's and that other professionals who inspected the only Natara pool in Québec agreed that the products do not meet their technical

requirements. According to Réjean Savard and GBI, this shows why Myrtha has more pools installed in Québec.

Lastly, they argued that [TRANSLATION] “based on [the OIG’s] logic, the City should have specified equipment solely on the basis of the company’s ownership of the equipment”.

As previously mentioned, this report does not seek to contradict Réjean Savard’s and GBI’s choice of Myrtha products or to show that they do not meet the City’s needs. It also does not seek to convince Ville de Montréal or the professionals that Natare products are either equivalent to Myrtha’s or meet the City’s needs.

The Inspector General’s ultimate goal has always been motivated by the mandate entrusted to her by the legislator, to oversee the contracting process and prevent breaches of integrity. As such, when the legal framework permitted the specification of products, the issue was whether equivalencies were being evaluated fairly, whereas under section 573.1.0.14 of the *Cities and Towns Act*, the issue concerns the drafting of neutral performance criteria allowing free and open competition. The Inspector General’s role is not to rule on technical debates about products but to ensure the equitable treatment of bidders and a fair contracting process.

#### *5.1.2 Biased or out-of-context statements*

According to Réjean Savard’s and GBI’s responses, the facts of the investigation were cherry picked and constitute a collection of anecdotes and opinions.

More specifically, concerning the comments made by Réjean Savard when he was interviewed by OIG investigators, GBI’s response considered the use of the terms “sales rep” and “sold on” malicious given that all Mr. Savard wanted to say was that he believed in the quality of Myrtha products. The Inspector General does not challenge this belief at all; rather these were the expressions used by Réjean Savard himself.

GBI’s response states further that the samples of Myrtha products shown by Réjean Savard during his interview with investigators were intended to show them the technology features by using a sample that they kept at their office. It should be noted that Réjean Savard was interviewed at the OIG office and that he left these Myrtha samples and pamphlets with the investigators.

As for the equivalency requests from previous projects, GBI said that turning to Myrtha to evaluate its competition was a way of doing things for them not in order to establish a technical equivalency but to assess the supplier’s quality and to encourage additional questions. GBI maintained that the details required on this occasion were relevant and justified by specific technical considerations, but that they are beyond the scope of the OIG’s expertise. GBI also felt that the OIG’s use of the word [TRANSLATION] “blinders” in relation to Réjean Savard’s evaluation was taken out of context and that what he was trying to say is that as a representative of an engineering firm, his mandate was more limited given that the pool was the architect’s responsibility.



As previously stated, in the Inspector General's opinion, the evidence instead shows that no Myrtha competitor could meet the criteria since Réjean Savard acknowledged that he prepared them based on Myrtha-specific technical details or products, all at the suggestion of the former Canadian supplier of Myrtha products. Regardless of whether the evaluation was part of Réjean Savard's mandate, the Inspector General notes that the emails obtained show that he was the one who developed the evaluation criteria.

Then, GBI maintained that it was an excess of jurisdiction to analyze the equivalency requests for previous calls for tenders issued outside Ville de Montréal's territory. The Inspector General wishes to stress, as she did at the beginning of this report, that this analysis is not intended to draw conclusions on these tenders. It was made necessary by the complaint received alleging that tenders were biased due to the systematic refusal of equivalency requests and by the similarity found between the facts of the complaint and the facts leading up to tender No. 5846.

Lastly, as regards the meeting of March 29, 2017, GBI was critical of the OIG for relying on third-party impressions cherry-picked to match the seemingly desired focus and for influencing the perception of City employees by steering the conversation during the interviews. At the same time, however, GBI acknowledged that the purpose of the presentation was to highlight the benefits of a technology from which the City could benefit. Thus, the Inspector General considers that the facts gathered from the various witnesses interviewed, including Réjean Savard, are essentially consistent with this last statement by GBI.

### *5.1.3 Suggested involvement of third-party experts*

GBI wrote that it maintained [TRANSLATION] "its already stated position that given the highly technical matters involved in this case, it would have been simpler and more productive for the City to consult third-party experts and to put all the qualified experts in contact to identify the strengths and weaknesses of the process and the suppliers in question in order to come up with recommendations."

Besides the fact that this was precisely part of the mandate entrusted to GBI under the contract resulting from tender No. 16-15580, the Inspector General notes that GBI's position is in agreement with her recommendation that a neutral pool certification or qualification process, in accordance with section 573.1.0.2 of the *Cities and Towns Act*, would be appropriate in this case.

## **5.2 Daniel Fontaine and PFA**

Daniel Fontaine's and PFA's response to the Notice is similar to that of Réjean Savard and GBI on two main points, their observations concerning Myrtha and Natara products, and the fact that they considered previous tenders irrelevant.

### *5.2.1 Positions on modular pools*

First, Daniel Fontaine reiterated that his preference for modular rather than concrete-ceramic pools is based on experience. In this regard, he mentioned the potential delays associated with concrete-ceramic pools due to the quality control required and the impact on the client's budget. He maintained that he had done the right thing and explained to the project team the elements on which the selection of a pool system should be based. He stressed that he did not make the City change its decision about the pool, that he did not make a formal recommendation in this regard, and that the City made a free and voluntary decision on this matter.

He then reiterated his opinion that Natare is not an acceptable product for Ville de Montréal. He stated that this opinion is based on their inability to build FINA-certified 25m 8-lane modular pools. He also stated that only one Natare pool has been built in Québec and that he considers the project a disaster in that it does not meet the performance, quality, reliability and durability criteria that Ville de Montréal and he himself are looking for. He also supported his position with the comments he wrote in the internal PMPD study, which he concluded provided important evidence that Natare is not equivalent to Myrtha.

In this regard, Daniel Fontaine believes that the July 24 email from the project manager was reported in a biased way when it says that he, Daniel Fontaine, provided more arguments to eliminate Natare through his comments on the internal PMPD study. However, this is the precise wording of the project manager's email.

Lastly, he maintained that the OIG does not have the authority to rule on the technical quality of pools.

The Inspector General reiterates that a technical analysis to determine the type of pool Ville de Montréal should select was not the purpose of the investigation or of this report. This is not the role of the OIG.

### *5.2.2 Irrelevance of previous tenders*

On the question of previous tenders, Daniel Fontaine expressed the general opinion that they are not relevant for the analysis of tender No. 5846.

More specifically, he pointed out that the documents Natare provided for its previous equivalency requests were general corporate pamphlets rather than detailed technical datasheets. Here again, the Inspector General wishes to point out that the purpose of her analysis of past equivalency requests was not to question their outcome but to examine the fairness of the required criteria.

Similarly, he maintained that it was misleading to say there were strong similarities between the previous fact sheets and fact sheet 13-150 S, and opined that presenting the history of the fact sheet's development was malicious and had nothing to do with this case.



Considering the facts set out in section 3.4.3, the Inspector General considers that the evidence does in fact show a strong similarity between the previous versions of fact sheet 13-150 S. Furthermore, since Daniel Fontaine included this fact sheet in the tender No. 5846 documents, it was important to understand the history of this document in order to measure its ultimate impact on the amount of potential bidders.

### *5.2.3 Complexity of writing a performance specification*

Lastly, Daniel Fontaine stated that writing about modular pools using descriptive characteristics is difficult and beyond his expertise. In his view, the City should be responsible for drafting performance specifications [TRANSLATION] “as the complexity of the task is beyond the scope of normal service delivery.”

## **5.3 Ville de Montréal**

The response to the Notice came from the PMPD and was intended to add a nuance to the equivalency process.

Indeed, the PMPD made it clear that according to the procedure currently set out in the tender documents, since the professionals assigned to the project are responsible for the design, they are also the ones who evaluate and decide whether to accept equivalency requests.

However, the PMPD also acknowledged that there is no procedure to compel professionals to provide Ville de Montréal with the equivalency requests they rejected and the reasons for their decision.

The Inspector General welcomes this nuance and notes that it is consistent with her own analysis of the equivalency request process outlined in subsection 4.3.4. Better oversight of this process is required and the proposal put forward by the PMPD is an interesting possibility in this regard.

## **5.4 The different modular pool suppliers**

Myrtha Pools Canada Inc. stated that it terminated its relationship with its former Canadian supplier in May 2018 and has since opened a Canadian branch, whose employees are subject to the company's code of ethics.

The company also stated that their product is defined as follows:

“A Myrtha Pool is a custom manufactured product based around the proprietary process of hot calendaring rigid PVC sheets to modular stainless-steel self-supporting panels.”

With respect to the Québec supplier of Myrtha products, its response focused on the distinction between the past legal framework and the one currently in force, as well as on the fact there were no integrity violations with regards to the Centre Rosemont project.

Lastly, the Québec supplier of Natara products stated it had no comments to add.

The Inspector General would like to point out that her investigation did not uncover any failure by these companies, their officers or employees to comply with the legal and regulatory provisions relating to public contracts under call for tenders No. 5846. The Notice was sent to them in view of their status as interested parties to the outcome of the investigation, notably in consideration of the consequences that a public intervention by the Inspector General could have in their regard.

## 6. Conclusion

Under section 57.1.23 of Montréal's City Charter , the Inspector General may, at any time, send a report presenting findings or recommendations that, in her opinion, warrant being brought to the attention of the council concerned.

For all of the reasons set out in this report, the Inspector General concludes that as currently drafted, the modular pool option of tender No. 5846 is biased in favour of Myrtha products and does not respect the applicable regulatory framework. However, considering that this facet of tender No. 5846 represents only a portion of a broader aquatic centre project, and considering the scope of work completed to date on the rest of the Centre Rosemont project, the Inspector General believes it is not appropriate or necessary to cancel the entire tender. However, it is imperative for Ville de Montréal to overhaul the modular pool option to make it compliant with the applicable legal framework.

Moreover, in the Inspector General's view, the actions of Daniel Fontaine and Réjean Savard noted in this investigation greatly contributed to making the pool portion of tender No. 5846 biased in favour of Myrtha products. Consequently, the mandate entrusted to them under the contract resulting from tender No. 16-15580 must be re-evaluated.

According to Daniel Fontaine, in his response to the Notice, the drafting of performance specifications for modular pools is beyond his expertise. For their part, in their response to the Notice, GBI and Réjean Savard reiterated their position that it would be more productive [TRANSLATION] "to put all the qualified experts in contact to establish the strengths and weaknesses of the process and the suppliers in order to determine suitable recommendations."

The Inspector General is therefore of the opinion that Daniel Fontaine and Réjean Savard should no longer be involved in the pool portion of the Centre Rosemont project. Regardless of the type of pools that will be installed, there is cause for concern that they will use the Centre Rosemont results to support and justify their position in favour of Myrtha pools. In this regard, the Inspector General recommends that PFA and GBI not be assigned to supervise the pool work.



As regards future aquatic centre projects, the investigation revealed as many opinions on the different pool construction processes and products as there are users of these products and processes. The Inspector General reiterates that she will not endorse any of these products. Therefore, given the major investments to come in this area and to prevent a recurrence of the same problems noted in the present case, she believes it would be useful for Ville de Montréal to proceed with a pool certification or qualification process.

Lastly, this report also highlights the need for Ville de Montréal to ensure better oversight of equivalency requests. Such a process is crucial and when properly carried out ensures healthy and fair competition between bidders while meeting the City's needs. On the other hand, a lack of oversight can lead to the development of unachievable criteria making it impossible to uphold the principles of fairness and healthy competition underpinning public tenders.

FOR THESE REASONS,

The Inspector General

**RECOMMENDS** that tender No. 5846 be amended to respect the current regulatory framework.

**RECOMMENDS** that PFA and GBI not be assigned to overseeing the pool portion following tender No. 5846.

**RECOMMENDS** that Ville de Montréal proceed with a pool certification or qualification process, in accordance with section 573.1.0.2 of the *Cities and Towns Act*, given the other aquatic centre projects planned under the Montréal Aquatic Program's construction of indoor aquatic facilities component

**RECOMMENDS** that Ville de Montréal develop a clear framework for the evaluation of equivalency requests received in connection with calls for tenders.

**SENDS**, in accordance with section 57.1.10 of *Montréal's City Charter*, a copy of this decision to the Mayor of the City as well as to the clerk, who shall in turn send it to the City councils concerned.



**SENDS**, in accordance with section 57.1.18 of *Montréal's City Charter*, a copy of this decision to the Autorité des marchés publics in light of its mandate under Chapter V.2 of the *Act respecting contracting by public bodies*.

The Inspector General,

Ms. Brigitte Bishop

**ORIGINAL SIGNED**