



[This is an English version of the report originally submitted in French to Montréal's City Council on June 20th, 2016]

**Recommendation Report Concerning the
Cancellation of the Contracting Process
involving Two (2) Snow Removal Contracts in
the Borough of
Mercier-Hochelaga-Maisonneuve
(MHM-102-1621 and MHM-104-1621)
(section 57.1.23 of Montréal's City Charter)**

June 20, 2016

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SUMMARY

The Office of Inspector General conducted an investigation to determine whether collusion or attempts at collusion had taken place during call for tenders 16-15049, for the four (4) snow removal sectors in the borough of Mercier-Hochelaga-Maisonneuve covered by the call for tenders.

The investigation reveals that Louis-Victor Michon, the director of operations at J.L. Michon Transports inc., has initiated numerous contacts with a single competitor with the intention of convincing him not to bid on the contract that J.L. Michon Transports inc. had obtained following the previous call for tenders issued in 2011. Through these contacts, Louis-Victor Michon also wanted his competitor to convince other contractors, with whom he has friendship ties, not to bid on the contract performed by J.L. Michon Transports inc. during the 2006-2011 period.

The evidence collected by the Inspector General consists in particular of clear and unequivocal admissions expressed by Louis-Victor Michon and of recordings of two (2) conversations between Louis-Victor Michon and a representative of the competitor that took place on May 27 and June 3, 2016.

In the opinion of the Inspector General, the evidence demonstrates that Louis-Victor Michon attempted, unsuccessfully, to conclude agreements of a collusive nature with a competitor in order to “protect” the snow removal contract that J.L. Michon Transports inc. had obtained in the borough of Mercier-Hochelaga-Maisonneuve following the previous call for tenders (2011) and to increase his chances of obtaining the contract once again under call for tenders 16-15049.

It appears that, after the opening of the bids submitted, J.L. Michon Transports inc. was the lowest bidder for two (2) contracts of the borough of Mercier-Hochelaga-Maisonneuve: MHM-102-1621 and MHM-104-1621. These contracts, which are for five (5) years, were to be awarded to J.L. Michon Transports inc. on June 20, 2016, for the amounts of \$6,166,521.85 and \$6,183,277.49, respectively.

The Inspector General considers that the facts uncovered during the course of the investigation are serious and would justify the cancellation of the contracting process currently underway in order to prevent a company that uses collusive tactics from obtaining the contracts. However, as a result of the very restrictive wording of section 4.3 of the City's Contract Management Policy (Politique de gestion contractuelle de la Ville de Montréal), the Inspector General cannot order such a cancellation since, according to section 57.1.10 of Montréal's City Charter, he must find a failure to respect the call for tenders' documents or be in the presence of false information provided by the contractor during the contracting process.

The City's Contract Management Policy, as it is written, only requires the signatory of the tender to make a solemn declaration to the effect that, to his personal knowledge and after verification, the tender submitted was not established with collusion, with communication with another competitor, or after an arrangement, in particular as to the decision whether or not to submit a tender. In the case at hand, Louis-Victor Michon is not the signatory of the bid of J.L. Michon Transports inc.

Since the opening conditions of section 57.1.10 of Montréal's City Charter do not allow the Inspector General to declare, on his own, that the contracting process underway is null, he recommends, under section 57.1.23 of Montréal's City Charter, that the City Council cancel the process to be finalized on June 20, 2016, with respect to the two (2) contracts in the borough of Mercier-Hochelaga-Maisonneuve to be awarded to J.L. Michon Transports inc.

Moreover, the Inspector General recommends that the City's Contract Management Policy be reviewed in order to give full effect to the objectives of the policy designed to fight collusion. Furthermore, had it not been for the restrictive wording of this policy, the Inspector General would

have recommended to the City Council that it exclude J.L. Michon Transports inc. from any call for tenders initiated by the City for five (5) years.



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1. Scope of the Work

1.1 *Warning*

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

The Inspector General does not conduct any criminal or penal investigations. It conducts investigations of an administrative nature. Throughout this report, every time the term "investigation" is used, it means an investigation of an administrative nature and at no time shall it be interpreted as referring to a criminal or penal investigation.

1.2 *Applicable Standard of Proof*

The Inspector General places upon itself the obligation of delivering quality reports which are timely, objective, accurate and presented in such a way as to ensure that the individuals and organizations under its jurisdiction are able to act on the information transmitted.

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

2. Context of the Investigation

At the time of the publication of the *Report on Snow Removal and its Practices in Montréal*, filed at the City Council on November 23, 2015, the Inspector General indicated that the surveillance of snow removal activities in Montréal would extend beyond the submission of this report of recommendations.

The investigation conducted enabled the Inspector General to obtain sufficient information to observe that several collusion and market control schemes are established in the snow removal industry in Montréal.

¹ If the evidence serves to indicate that a fact is more likely to exist than not to exist, that is a situation of preponderance of evidence (see art. 2804 of the Civil Code of Quebec).



With this information in hand, the Inspector General indicated a desire to “as of now, exercise an increased supervision over the awarding and carrying out of contracts through inspections and visits while snow removal operations are underway”.²

The Inspector General added that this constant monitoring would enable him to “take action with respect to specific contracts, by making decisions as needed, if he notes fraudulent manoeuvres and serious failings, as provided in section 57.1.10 of the Charter”.³

In the *Report on Snow Removal and its Practices in Montréal*, the Inspector General affirmed he was able to notice that certain sectors of the market are controlled by some contractors or are perceived in the industry as belonging historically to certain contractors. The Inspector General also noted that contractors contact one another during the call for tenders’ period in order to know their intentions with respect to the contracts they bid on. These contacts intend to dissuade contractors to bid in a given sector or to convince them to adjust their bidding price.

The Inspector General pointed out that the notion of protecting a territory reflected the manner in which the contractors act when they submit bids:

“Through interviews with the various witnesses, in particular the contractors, a first finding appears clear for the Office of Inspector General: the notion of protecting a territory is deeply rooted in the manner in which the contractors approach contracts. The notion of a territory or contract belonging to a contractor was frequently raised. Several contractors referred to snow removal sectors as “their” sectors. The contractors also said, during meetings with the Office of Inspector General, that they decided to bid on the “contract of Contractor X” or in the “sector belonging to Contractor Y” when talking about contracts for which there was a call for tenders. The language used is very revealing since the contracts do not “belong” to the contractor, even less so before they have been awarded.”⁴

One of the recommendations formulated in order to fight collusion in the snow removal industry consisted in combining the calls for tenders that expire in the same year so that a single call for tenders is launched, and this, for each category of snow removal contract. This measure was intended to make it more difficult for the contractors to control the market and to generate more competition. To comply with this recommendation, the City

² *Report on Snow Removal and its Practices in Montréal*, submitted to Montréal's City Council on November 23, 2015, p. 2.

³ *Report on Snow Removal and its Practices in Montréal*, submitted to Montréal's City Council on November 23, 2015, p. 2.

⁴ *Report on Snow Removal and its Practices in Montréal*, submitted to Montréal's City Council on November 23, 2015, p. 8.

Council had to determine the conditions for issuing a single call for tenders that applies to all of the snow removal sectors.

The Inspector General also recommended that a form be included in the call for tenders documents so that the contractors submitting a bid declare any contact with other contractors concerning the call for tenders during the call for tenders' period.

3. Contract subject to the investigation of the Inspector General

On April 5, 2016, Montréal's Procurement Service (Service de l'approvisionnement de la Ville de Montréal) launched call for tenders 16-15049. As recommended by the Inspector General in his public report dated November 23, 2015 and in accordance with the regulatory measures put in place by Montréal's City Council,⁵ this call for tenders aims to award twenty (20) snow removal contracts for roads and sidewalks in twenty (20) different sectors, spread across seven (7) boroughs.

The call for tenders was issued on the electronic public tendering system (Système électronique d'appel d'offres du gouvernement du Québec – S.É.A.O.) and published in the daily newspaper *Le Devoir*. It was published between April 5 and May 18, 2016. Initially, the deadline to submit a bid was April 27, 2016 but it was then postponed to May 18, 2016. In all, three (3) addenda were produced and twenty-four (24) tenders were submitted. The opening of the bids took place on May 18, 2016.

The following table shows, for each borough, the contracts to be awarded following this call for tenders, as well as the lowest compliant bidder for each of these contracts, as it appears in the project of the decision-making summary no 1164631004. However, it is worth mentioning that the awarding of the contracts will only be finalized on June 20, 2016, during the next meeting of Montréal's City Council. At the moment, no contract has been awarded.

Borough	Contract	Successful bidder
Ahuntsic-Cartierville	AHU-101-1619 AHU-102-1619	Pavages d'Amours inc. Groupe Imog inc.

⁵ In response to the recommendations of the Inspector General, Montréal's City Council authorized the amendment of the *Règlement sur la délégation de certains pouvoirs relatifs au réseau de voirie artérielle aux conseils d'arrondissements* (08-055) in order to revise the division of the roles and responsibilities of the boroughs in snow removal activities. From now on, Montréal's City Council has jurisdiction on the integrated planning of operations, the launching of call for tenders and the awarding of contracts. The delegation of authority to the boroughs is therefore limited.



Lachine	LAC-102-1620 LAC-104-1620	Pavages d'Amours inc. Marina matériaux et équipements
Le Plateau-Mont-Royal	PMR-101-1621 PMR-102-1621	Les Entreprises Michaudville inc. Les Entreprises Michaudville inc.
Le Sud-Ouest	S-O-103-1621 S-O-104-1621	Pavages d'Amours inc. Pavages d'Amours inc.
Mercier-Hochelaga-Maisonneuve	MHM-101-1621 MHM-102-1621 MHM-103-1621 MHM-104-1621	Déneigement Moderne inc. J.L. Michon Transports inc. Les Excavations Payette Ltée. J.L. Michon Transports inc.
Ville-Marie	VMA-103-1618 VMA-104-1618 VMA-105-1618	9055-0344 Québec inc. Les Excavations Super inc. Les Excavations Super inc.
Villeray-St-Michel	VSP-101-1620 VSP-102-1620 VSP-103-1620 VSP-104-1620 VSP-107-1620	Pépinière Michel Tanguay inc. Les Entrepreneurs Bucaro inc. Transport Rosemont inc. Les Excavations Payette Ltée. Transport Rosemont inc.

The Inspector General received a complaint concerning two (2) contracts in the borough of Mercier-Hochelaga-Maisonneuve (MHM-102-1621 and MHM-104-1621) alleging that there were acts of a collusive nature during the tendering process.

These contracts, valid for five (5) years, are valued more than six million dollars each, taxes included (more precisely, they are respectively worth \$6,166,521.85 and \$6,183,277.49). The successful bidder is the contractor J.L. Michon Transports inc.

The Inspector General opened an investigation to determine if there was collusion or an attempt at collusion in the contracting process for the four (4) snow removal sectors of the borough of Mercier-Hochelaga-Maisonneuve (hereafter: "MHM").

Before releasing the results of his investigation, the Inspector General sent to the party concerned a Notice to an interested party, in accordance with his duty of procedural fairness.

On June 13, 2016, the contractor J.L. Michon Transports inc. received the Notice containing the relevant facts gathered during the investigation of the Inspector General, so that he could be apprised of these facts and give in writing his comments and representations to the Office of Inspector General.

On June 17, 2016, J.L. Michon Transports inc. provided the Inspector General with its response to the Notice to an interested party. The facts and arguments presented in this

response were considered by the Inspector General and will be addressed in the text of the report.

4. Evidence gathered

4.1 Interviews conducted during the investigation

The interviews conducted during the investigation of the Inspector General lead to the conclusion that numerous contacts were initiated by an individual from the contractor J.L. Michon Transports inc. These contacts were intended to reach an agreement of a collusive nature with a competitor in the borough of MHM.

As it will be demonstrated, the actions taken before, during and after the publication of the call for tenders 16-15049 had two (2) purposes:

1. convince the competitor not to bid on the contracts that J.L. Michon Transports inc. won in the borough of MHM following the previous call for tenders launched in 2011; and
2. persuade the competitor to convince other contractors not to bid on the contracts that J.L. Michon Transports inc. won in the borough of MHM following the previous call for tenders launched in 2011.

The individual from J.L. Michon Transports inc. referred to above is Louis-Victor Michon. He presents himself to the Office of Inspector General as being the director of operations of the company and states that he is currently in the process of buying the company owned by his father, Jean-Louis Michon. In his response to the Notice to an interested party, the lawyer for J.L. Michon Transports inc. explains that, at the moment, the company is wholly owned by Jean-Louis Michon, who is also president and secretary.⁶

The identity of the competitor contacted by Louis-Victor Michon will not be disclosed, because of the duties of confidentiality of the Inspector General.⁷ The company will thus be identified in this report as being the “competitor”.

During his investigation, the Inspector General interviewed representatives of the competitor of J.L. Michon Transports inc., but also Louis-Victor Michon so that he could explain his version of the facts.

⁶ Response of J.L. Michon Transports inc. dated April 17, 2016 to the Notice to an interested party sent by the Inspector General on June 13, 2016.

⁷ Section 57.1.14 of Montréal's City Charter.



4.1.1 *Contacts initiated before the call for tenders' period*

When Louis-Victor Michon was interviewed by the Office of Inspector General on June 9, 2016, he admitted that during the Winter 2015-2016, that is before the publication of call for tenders 16-15049, he contacted his competitor. He wanted his competitor to convince other contractors, with whom he has ties of friendship, not to bid on the snow removal contract J.L. Michon Transports inc. performed between 2011 and 2016.

Louis-Victor Michon declares that he then pronounced the following words:

[TRANSLATION]

« I would like it if [these contractors] would also go towards all the contracts [...] that they do not only come to mine [...]. In the sense that, do not only send them to mine, because things will start to ramp up. If they come to mine, I will go everywhere.”⁸

The competitor contacted by Louis-Victor Michon declined this request.

It is interesting to note that some of the contractors identified by Louis-Victor Michon to his competitor were described by the Inspector General in his *Report on Snow Removal and its Practices in Montréal* dated November 23, 2015 as being contractors whose “authority [...] forces their competitors to “respect” their territories”. They were also reported as being part of “a limited group of contractors that was described repeatedly by several of the witnesses as contractors no one dares to bid against” and as being connected to organized crime.⁹

Before the publication of the call for tenders, the competitor also affirms that Louis-Victor Michon went to see him at his garage to ascertain his interest in bidding on this contract. He explains to the Office of Inspector General that Louis-Victor Michon told him it was not “all right” that he bids on “his” contract.

4.1.2 *Contacts initiated during the call for tenders' period*

Louis-Victor Michon confessed to the Office of Inspector General that he had multiple contacts with the same competitor during the bidding period of call for tenders 16-15049 in order to know his intentions with respect to the snow removal contract that J.L. Michon Transports inc. won in the borough of MHM following the previous call for tenders (2011).¹⁰

⁸ Interview of Louis-Victor Michon with the Office of Inspector General on June 9, 2016.

⁹ *Report on Snow Removal and its Practices in Montréal*, submitted to Montréal's City Council on November 23, 2015, p. 11.

¹⁰ Interview of Louis-Victor Michon with the Office of Inspector General on June 9, 2016.

Louis-Victor Michon states that he contacted his competitor by phone and in person three (3) or four (4) times during the call for tenders' publication period and that he told him "do not come in my [snow removal] sector"¹¹.

Louis-Victor Michon referred to this contract as being "his" contract. It is useful to underline that this revealing language is part of a measure used to protect a territory, as the Inspector General already stated in his report of recommendations filed in November 2015¹².

The competitor declares to the Office of Inspector General that he told Louis-Victor Michon he would bid on this contract and that approximately one (1) week before the submission deadline, Louis-Victor Michon returned to see him to know if he changed his mind, to which the competitor explains to the Office that he replied in the negative.

The day before the filing and the opening of the bids submitted, that is on May 17, 2016, Louis-Victor Michon went back to see his competitor at his garage. Questioned by the Office of Inspector General on this matter, Louis-Victor Michon explains that he mentioned to his competitor that he would reimburse the sum of money his competitor gave him five (5) years ago, that is one hundred thousand dollars (\$100,000). The condition was that the competitor and the contractors with whom he has friendship ties would not bid against J.L. Michon Transports inc. on "his" contract in the borough of MHM¹³. The competitor declined this refund offer.

Regarding the sum of one hundred thousand dollars (\$100,000), it is important to specify in which context it was given.

Louis-Victor Michon had requested from his competitor this amount of money during the last call for tenders launched in 2011. He asked this sum because he made it possible for his competitor to recover a snow removal contract that another contractor won at the expense of the competitor (the competitor performed this snow removal contract between 2006 and 2011).

Louis-Victor Michon admits to the Office of Inspector General that he intervened in two (2) contract exchanges in order to reorganize the distribution of snow removal sectors between contractors in the borough of MHM in 2011. He assigned to a contractor a contract he won in the borough of Rivière-des-Prairies–Pointe-aux-Trembles so that this contractor would, in return, accept to assign to the competitor of J.L. Michon Transports inc. the contract he won in the borough of MHM.¹⁴

As part of this intervention and upon request of Louis-Victor Michon, the competitor who obtained the contract in the borough of MHM had to pay the fees associated with the

¹¹ Interview of Louis-Victor Michon with the Office of Inspector General on June 9, 2016.

¹² *Report on Snow Removal and its Practices in Montréal*, submitted to Montréal's City Council on November 23, 2015, p. 8.

¹³ Interview of Louis-Victor Michon with the Office of Inspector General on June 9, 2016.

¹⁴ Interview of Louis-Victor Michon with the Office of Inspector General on June 9, 2016.



assignment of the contract in the borough of Rivière-des-Prairies–Pointe-aux-Trembles (\$31,000 paid by cheque). The competitor also had to financially compensate Louis-Victor Michon by giving him the sum of one hundred thousand dollars (\$100,000) in cash.

4.1.3 *Contacts initiated after the submission of the bids*

Even after the submission of the bids, the contacts between the two (2) contractors continued.

Louis-Victor Michon admits that the day of the opening of the bids, that is on May 18, 2016, he invited his competitor over the lunch hour to a restaurant located on Place Jacques-Cartier in Montréal, close to City hall where the price envelopes were submitted.

The contractors just submitted their bids but the tenders received by the City still had not been opened. During lunch, the two (2) contractors disclosed to each other the prices of their bids.¹⁵

As it appears from the table comparing the lowest bidders following the opening of the bids submitted (table page 3 and 4 of the report), J.L. Michon Transports inc. is the lowest bidder for two (2) contracts in the borough of MHM: MHM-102-1621 and MHM-104-1621.

The competitor explains to the Office of Inspector General that the day following the public opening of the bids, that is on May 19, 2016, Louis-Victor Michon invited him to his garage during a phone call. Once on site, Louis-Victor Michon offered to subcontract to his competitor one of the two (2) snow removal contracts for which J.L. Michon Transports inc. was the lowest bidder in the borough of MHM.

Louis-Victor Michon told his competitor he could resort to subcontracting by using his competitor's equipment and by paying his competitor's employees, while ensuring that it would not show.

To that effect, it should be remembered that on February 15, 2016, the Inspector General rescinded a snow removal contract subcontracted in violation of the call for tenders' documents in the borough of Ahuntsic-Cartierville (call for tenders 12-12312).¹⁶

When his competitor declined the subcontracting proposal, Louis-Victor Michon offered to withdraw his tender on one of the contracts. The competitor informs the Office of Inspector General that he told Louis-Victor Michon he would not pay to have J.L. Michon Transports

¹⁵ Interview of Louis-Victor Michon with the Office of Inspector General on June 9, 2016.

¹⁶ *Rescinding of the Snow Removal Contract (Call for Tenders 12-12312) in the Ahuntsic-Cartierville Borough*, February 15, 2016, available on the Office of Inspector General's Website: <https://www.bigmtl.ca/content/uploads/2016/06/rescinding-snow-removal-contract-ahuntsic-cartierville-borough.pdf>

inc. withdraw its bid. Louis-Victor Michon then responded that if he did not want to pay, the company would not withdraw its tender.

Questioned on the subject by the Office of Inspector General, Louis-Victor Michon explains that he offered to buy some of his competitor's equipment at a good price and to employ his staff, but that his competitor declined the offer.¹⁷ Louis-Victor Michon then tells the Office of Inspector General that instead he offered to assign one of his two (2) contracts to his competitor.

Finally, the competitor contacted by Louis-Victor Michon during call for tenders 16-15049 stated that Louis-Victor Michon recently reproached him for not preventing contractors, with whom he has friendship ties, to bid against J.L. Michon Transports inc., as he was told to do during the Winter 2015-2016.

4.2 Response of J.L. Michon Transports inc. to the Notice to an interested party

On June 13, 2016, the Inspector General sent a Notice to an interested party to J.L. Michon Transports inc. setting out the relevant facts gathered during his investigation, so that it could give in writing his comments and representations. The response to this notice was received on June 17, 2016.

Confronted with the admissions Louis-Victor Michon made to the Office of Inspector General and with the facts reported by the competitor, J.L. Michon Transports denies, in its response to the Notice to an interested party, that contacts were initiated by Louis-Victor Michon with a competitor in order to convince him not to bid on contracts that the company had won following the previous call for tenders in 2011 and to persuade him to convince other contractor to do the same.

In its response, J.L. Michon Transports inc. explains instead that, being the next-door neighbour of its competitor for more than thirty (30) years, legitimate contacts took place such as cordial business dealings involving the loan or the rental of equipment parts and/or truck parts for the carrying out of certain local or regional contracts.

J.L. Michon Transports inc. refutes any discussion, before or after the call for tenders' publication period, through which Louis-Victor Michon tried to know the intentions of his competitor. The company also rejects the allegation that Louis-Victor Michon told the competitor that it was not all right to bid on his snow removal contract.

The company also denies that Louis-Victor Michon told his competitor "do not come in my [snow removal] sector", although Louis-Victor Michon himself reported this to the Office of Inspector General during his interview on June 9, 2016. The company alleges these statements are incorrect and should be tempered, without however underlining the nuances nor clarifying the facts.

¹⁷ Interview of Louis-Victor Michon with the Office of Inspector General on June 9, 2016.



Concerning the confession by Louis-Victor Michon that he contacted his competitor during the Winter 2015-2016 so that he could convince contractors with whom he has friendship ties not to bid on contracts of J.L. Michon Transports inc., the company replies that these discussions did not intend to convince anyone not to bid, but rather aimed at ensuring that everyone was aware that J.L. Michon Transports inc. would now bid on several contracts, in order to prevent threats and attempts at blackmail.

From the Inspector General's point of view, this version of events does not hold water when compared to the version given by the representatives of the competitor which is furthermore supported by the admissions by Louis-Victor Michon, the individual who initiated the contacts.

Regarding the assignment of contracts that took place in 2011 and in which Louis-Victor Michon admits he intervened so that his competitor would recover a snow removal contract won by another contractor, the company states that these events are not relevant and cannot be considered by the Inspector General. According to J.L. Michon Transports inc., the assignment of contracts was performed in proper form and all the documentation was signed and submitted to the City. The discussion that took place in this context would not have influenced the bidding process followed by the company in 2016.

The Inspector General considers that the assignment of contracts of 2011 is relevant in that it reveals the context in which the sum of one hundred thousand dollars (\$100,000) was given to J.L. Michon Transports inc. by its competitor. Yet, this sum was subject to a refund offer during call for tenders 16-15049. This refund offer was presented by Louis-Victor Michon in order to convince his competitor not to bid against J.L. Michon Transports inc. and to convince other contractors to do the same. These facts were admitted by Louis-Victor Michon during his interview with the Office of Inspector General on June 9, 2016. Therefore, the assignment that took place in 2011 is relevant to the investigation conducted by the Inspector General.

With regards to the offer that Louis-Victor Michon made to withdraw the bid on one of the contracts of the borough of MHM for which J.L. Michon Transports inc. was the lowest bidder following the opening of the bids of call for tenders 16-15049, the company declares that Louis-Victor Michon never offered a withdrawal in exchange for financial compensation. Still according to the company, the only one who made such statement would be its competitor and J.L. Michon Transports inc. refused to participate in this discussion.

Finally, in its response to the Notice to an interested party, J.L. Michon Transports inc. affirms to have respected the rules and to have broken free from the past culture described in the *Report on Snow Removal and its Practices in Montréal* of the Inspector General dated November 23, 2015.

4.3 Audio evidence

During its investigation, the Office of Inspector General had access to two (2) audio recordings of conversations that took place on May 27, 2016 and June 3, 2016 between Louis-Victor Michon and his competitor.

It is essential to underline that these conversations were recorded solely on the competitor's initiative and not upon request of the Inspector General. The competitor then decided to give copy of the recordings freely and voluntarily to the Office of Inspector General.

These recordings allow the corroboration of the facts brought to light by the interviews conducted during the investigation as well as to contradict certain assertions made by J.L. Michon Transports inc. in its response to the Notice to an interested party.

The recordings reveal the attempt of Louis-Victor Michon to reach an agreement of a collusive nature with his competitor so that the latter does not bid against J.L. Michon Transports inc., as attested by the following extracts:

[TRANSLATION]

- Louis-Victor Michon, speaking about a representative of the competitor: “Ya know, I offered him, I didn’t even, and he’s so proud that, ya know, he doesn’t even want to do business with me.”¹⁸
- Louis-Victor Michon: “It was an offer like that, ya know, that we can work together even though I’m aware, but ya know, we each did our things.”¹⁹
- Representative of the competitor: “You dangle that you want us to help each other and all that, but you...”

Louis-Victor Michon: “No, no, no, I don’t dangle, I wanted, I wanted, I wanted, I don’t dangle I wanted and it didn’t work out. [...] Ya know, ya know, this is what I wanted, one contract. Now, I got two because we each did our things on our own, because you were stuck [on the 100,000].”²⁰

- Louis-Victor Michon: “Me, I told you, I told you [name of the representative of the competitor], I give it to you the 100, you don’t put a price. [...] It would have

¹⁸ Audio recording of the conversation of May 27, 2016, timing: 5 min 52 sec.

¹⁹ Audio recording of the conversation of May 27, 2016, timing: 32 min 22 sec.

²⁰ Audio recording of the conversation of May 27, 2016, timing: 33 min 28 sec.



worked out, you would have your contract below, you would have 100 and one more contract, imagine if it had worked out.”²¹

- Louis-Victor Michon: “No but ya know, even in the transportation, in the transportation it wouldn’t have bothered me if you were there because there are others, ya know, but I found it arrogant. Ya know, I found, he thinks he’s smarter than everyone, and he thinks he’s, ya know. For me, for me, one, one contract gives you enough. Look, ya know. Try to get it at the lowest possible but me, I bid everywhere and [...] Ya know, it’s to not give a shit about anyone. Me, I would have liked it if we did it together, but it didn’t, it didn’t happen [...]”²²

Regarding the request made by Louis-Victor Michon to his competitor to contact contractors with whom he had friendship ties (identified as contractors X, Y and Z in the conversation below) to convince them not to bid against J.L. Michon Transports inc., the following extracts are relevant:

[TRANSLATION]

- Representative of the competitor: “And ya told us we didn’t stop others from coming in your contract, ya said that”

Louis-Victor Michon, speaking about another representative of the competitor: “I told him...”

Representative of the competitor: “It’s revenge because we didn’t stop [contractors X and Y] from going to your contract, of course!”

Louis-Victor Michon: “Me, I’m being attacked on all sides, and he doesn’t care, like if he thinks he doesn’t have anything to do with this. He said he would come to my contract. It’s true that he doesn’t have anything to do with this. It’s all right if he doesn’t wanna talk and it’s his choice, it’s all right it’s like that he did it. That, that I don’t hold it against him, but me I just defended myself, ya know.”²³

- Louis-Victor Michon: “It was up to [name of a representative of the competitor] to go tell [contractors X and Z] [...]. Me, that’s what I offered to [name of a representative of the competitor], ya know, and then, ya know, he didn’t have anything to do. And then, you, you, I’m telling you, I don’t know what to do, I

²¹ Audio recording of the conversation of May 27, 2016, timing: 13 min 13 sec.

²² Audio recording of the conversation of June 3, 2016, timing: 3 min 33 sec.

²³ Audio recording of the conversation of May 27, 2016, timing: 3 min 11 sec.

don't know what to do to... to, ya know, yes I understand that you've been betrayed, me too I felt betrayed, I really felt like shit."²⁴

- Louis-Victor Michon: “[name of a representative of the competitor] knew it... hell, because I started to talk to him about it last winter anyways.”²⁵
- Louis-Victor Michon: “But apart from that, when [contractor X] put a price on my contract, I was mad... [...] It, it, it, ya know, [name of the competitor] he could have gone to see [contractor X].”²⁶
- Louis-Victor Michon: “Well, at one point, it's the same thing. Look, the bid was all fucked up because of that, because [name of a representative of the competitor] at one point didn't want to take a bit of work, a bit of responsibility to try to protect me. Ya know, he didn't want to protect me, he almost told me “do your things, get out, do your things” [...].”²⁷

Concerning the assignment of contracts that took place in 2011, the following extracts are relevant:

[TRANSLATION]

- Louis-Victor Michon: “Five (5) years ago, I made arrangements with you and you never made a better move in your life.”²⁸
- Louis-Victor Michon: “Last time, I think it ended really well, you say “I paid, paid, paid” [...] It ended really well, you got three beautiful contracts at a good price.”²⁹
- Louis-Victor Michon: “I'm really comfortable with what I did, ya know. I sold a contract, I didn't declare the 100,000 as income for tax purposes.”³⁰

²⁴ Audio recording of the conversation of May 27, 2016, timing: 40 min 1 sec.

²⁵ Audio recording of the conversation of May 27, 2016, timing: 1 h 4 min 18 sec.

²⁶ Audio recording of the conversation of June 3, 2016, timing: 49 min 43 sec.

²⁷ Audio recording of the conversation of June 3, 2016, timing: 3 min 33 sec.

²⁸ Audio recording of the conversation of May 27, 2016, timing: 8 min 24 sec.

²⁹ Audio recording of the conversation of May 27, 2016, timing: 35 min 42 sec.

³⁰ Audio recording of the conversation of May 27, 2016, timing: 43 min 52 sec.



The audio recording of May 27, 2016 also reveals that for Louis-Victor Michon, the contacts initiated are not considered as being collusion because the actions did not result in increased prices.³¹ According to Louis-Victor Michon, he only tried to “defend” himself.

5. Analysis

5.1 *Analysis of the evidence gathered*

The investigation conducted by the Inspector General shows that Louis-Victor Michon unsuccessfully attempted to reach agreements of a collusive nature with a competitor in order to “protect” the contract J.L. Michon Transports inc. won in the borough of MHM following the previous call for tenders (2011) and thus, to increase his chances of obtaining it once again under call for tenders 16-15049.

The facts reported by representatives of the competitor are confirmed by clear and unequivocal admissions expressed by Louis-Victor Michon to the Office of Inspector General during his interview of June 9, 2016. The facts are also corroborated by listening to the two (2) audio recordings of conversations that took place on May 27, 2016 and June 3, 2016 between Louis-Victor Michon and his competitor, as it appears from the extracts provided in section 4.3 of the report.

Despite the numerous admissions Louis-Victor Michon made when interviewed by the Office of Inspector General, Louis-Victor Michon denies that he attempted to reach or conclude an agreement with the competitor he contacted. According to Louis-Victor Michon, these contacts intended to make his competitor understand he had the right to bid in sectors in which contracts were traditionally awarded to his competitor.

The same version is given by J.L. Michon Transports inc. in its response of June 17, 2016 to the Notice to an interested party of the Inspector General.

The Inspector General is of the opinion that this version is inconsistent with the evidence gathered, that is with the interviews of witnesses conducted, the admissions from Louis-Victor Michon and the audio recordings.

5.2 *Requirements of the call for tenders’ documents*

In submitting a tender, every contractor commits to comply with the City’s Contract Management Policy (Politique de gestion contractuelle de la Ville de Montréal) which aims

³¹ Audio recording of the conversation of May 27, 2016, timing: 1 h 4 min 18 sec.

at reinforcing the principles of healthy competition, efficiency, ethics, transparency and equity.³²

The City's Contract Management Policy is part of the call for tenders' documents and is appended to the general administrative clauses. With regard to collusion, the policy stipulates the following in section 4.3:

[TRANSLATION]

4.3 Non-collusion

In submitting a tender, its signatory solemnly declares that, to his personal knowledge and after a serious verification, the following persons:

- the tenderer;
- a subcontractor;
- one of the employees of the tenderer or of a subcontractor that would be affected to the carrying out of the contract covered by the call for tenders;
- a person who is associated to the tenderer or that was associated to the tenderer at some point during the submission period;

established this tender without collusion and without having communicated or agreed to an arrangement with a competitor, an organization or a person, other than the tenderer, associated or not to the tenderer, regarding prices, methods, factors or formulas used to calculate prices, or as to whether or not to submit a tender, or the decision to submit a tender that does not meet the specifications of the call for tenders.

If the City discovers that this declaration is inaccurate, the tender is declared non-compliant and rejected. Moreover, this tenderer and every person associated to him or who was associated to him at some point during the submission period, as well as any other person mentioned above, who participated to one of the aforesaid acts, are precluded from all call for tenders for five (5) years from the date of the rejection of this tender.

Likewise, if the City discovers during the carrying out of the contract that the solemn declaration of the tenderer was inaccurate, on one of the abovementioned persons' admission, or if this collusion or arrangement is acknowledged by a tribunal's decision, the City reserves the right to rescind the contract at its sole discretion, without prejudice to its other rights and recurses against its co-contractor. The latter and every other person who is associated to him or was associated to him at some point during the six (6) months preceding the beginning of the submission period, as well as any other abovementioned persons, who participated to one of the aforesaid acts, are precluded from all call for tenders for five (5) years from this discovery.

The solemn declarations contained in the City's Contract Management Policy constitute declarations from the signatory of the tender in accordance with section 27.1 of the Instructions to tenderers of call for tenders 16-15049 which stipulates:

³² See the section entitled "Principles" of the City's Contract Management Policy.



[TRANSLATION]

In submitting a tender, its signatory makes all the solemn declarations contained in the City's Contract Management Policy adopted by the City or by the Borough and part of this call for tenders, according to the Cities and Towns Act, and makes the commitments provided in paragraph 6 of this policy (appended).

5.3 *Intervention powers of the Inspector General*

The intervention powers of the Inspector General are foreseen in section 57.1.10 of Montréal's City Charter:

57.1.10. The Inspector General may cancel any contracting process involving a contract of the City or of any legal person described in subparagraph 1 of the fifth paragraph of section 57.1.9, or rescind or suspend the carrying out of such a contract if the Inspector General

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

[...]

According to this provision, to be able to cancel a contracting process involving a contract, the Inspector General must be confronted with a failure to comply with one of the requirements of the call for tenders' or contract's documents, or with false information provided in the contracting process.

The Inspector General considers that the facts revealed by the investigation are serious and show attempts at collusion by Louis-Victor Michon, the director of operations at J.L. Michon Transports inc.

From the Inspector General's point of view, these facts would justify the cancellation of the tendering process currently under way to prevent a company engaging in collusive tactics from obtaining contracts. However, because of the restrictive wording of section 4.3 of the City's Contract Management Policy, the Inspector General cannot pronounce the nullity.

Indeed, the Inspector General cannot conclude that the tender submitted by J.L. Michon Transports inc. breaches the City's Contract Management Policy, does not respect the requirements of documents of call for tenders 16-15049, or contains false information within the meaning of section 57.1.10 of Montréal's City Charter.

Section 4.3 of the City's Contract Management Policy requires that the **signatory of the tender** solemnly declare that, **to his personal knowledge and after a serious verification**, the tenderer, its employees and every person associated with the tenderer

established the tender without collusion and without having communicated or agreed to an arrangement with a competitor, in particular as to whether or not to submit a tender.

For call for tenders 16-15049, the signatory of the tender of J.L. Michon Transports inc. is Jean-Louis Michon. The individual that communicated with the competitor of J.L. Michon Transports inc. for the purpose of concluding an agreement of a collusive nature is Louis-Victor Michon.

Louis-Victor Michon is the son of the signatory of the tender and he presents himself to the Office of Inspector General as being the director of operations of the tenderer. Interviewed by the Office of Inspector General, he states he has been, in the past, an employee of J.L. Michon Transports inc. He specifies that for the last year and a half, he was paid for his responsibilities within the company through another company acting as subcontractor (Déneigement Malvic inc.). His pay comes from a cheque issued by J.L. Michon Transports inc. to this subcontractor.

Louis-Victor Michon has been directly involved in the development of the tender submitted by J.L. Michon Transports inc. in response to call for tenders 16-15049. During his interview with the Office of Inspector General, Louis-Victor Michon explains that he calculated the different costs requested in the tender schedule, determined the price of the tender, took the decision to obtain two (2) surety bonds and also took the decision to bid on the two (2) contracts in the borough of MHM.

But there is more: in the tender of J.L. Michon Transports inc., Louis-Victor Michon is the individual designated as being the person to contact “about service requests”, “urgent service requests”, “technical information” and “repair requests”.³³

Louis-Victor Michon confessed to the Office of Inspector General that he contacted his competitor to ask him not to bid and to convince other contractors not to bid on a contract J.L. Michon Transports inc. had won in 2011. However, he was not the one who had to make a solemn declaration stating that, to his personal knowledge, the tenderer, his employees and every person associated to the tenderer established the tender without collusion and without communicating or agreeing to an arrangement with a competitor, in particular as to whether or not to submit a tender.

Under the City’s Contract Management Policy, the only one who has a duty to make this solemn declaration is the signatory of the tender, in this case Jean-Louis Michon.

In its response to the Notice to an interested party, J.L. Michon Transports inc. declares that its only officer is Jean-Louis Michon and that only the latter is authorized to transact on behalf of the company and to engage its responsibility. The company, through its lawyer, adds that the discussions or actions revealed by the investigation of the Office of

³³ This is what appears from the information mentioned in the tender presented by J.L. Michon Transports inc., in Section IV of the call for tenders’ documents entitled “Tender Form – Additional Information” (Formulaires de soumission – Renseignements complémentaires), at page 77.



Inspector General [TRANSLATION] “were never required, requested, nor authorized” by Jean-Louis Michon and that [TRANSLATION] “the role of Louis-Victor Michon in this file is not relevant in light of the administrative decisions taken by Jean-Louis Michon to get the contracts MHM-102-1621 and MHM-104-1621”.

The Inspector General here encounters an obstacle he cannot resolve because he is limited by the legal framework of his powers and by the wording of the City’s Contract Management Policy.

6. Conclusion

Considering the extremely restrictive wording of section 4.3 of the City’s Contract Management Policy and even though this is an undesired effect in terms of the tools available to fight corruption, the conditions for applying section 57.1.10 of Montréal’s City Charter do not allow the Inspector General to pronounce, on his own initiative, the nullity of the contracting process currently under way. Under section 57.1.23 of Montréal’s City Charter, the Inspector General can only recommend to the City Council to cancel the contracting process that will be finalized on June 20, 2016, in respect to the two (2) following contracts of the borough of MHM: MHM-102-1621 and MHM-104-1621.

In its response of June 17, 2016 to the Notice to an interested party, J.L. Michon Transports inc. considers it would be disproportionate to blame it for the discussions that took place in a context of good neighbourliness, when there was no collusion nor agreement reached with others bidders and when [TRANSLATION] “the outcome achieved is highly positive for the City”.

J.L. Michon Transports inc. states having offered the most competitive price in the taxpayers’ best interest. The company claims to be [TRANSLATION] “the City’s best business partner in this field and also the best ally in the population’s interest”. The company adds that its financial viability largely depends on contracts obtained and that its viability would be affected by any unfavorable decision by the Inspector General.

These considerations have no importance given that the investigation of the Inspector General reveals numerous contacts initiated by Louis-Victor Michon with a competitor intending to reach agreements of a collusive nature. The fact that J.L. Michon Transports inc. ultimately submitted the lowest bid after its competitor refused to conclude a collusive arrangement is unrelated with what the Inspector General fights against: collusion.

The Inspector General adds that moreover, had it not been for the restrictive wording of section 4.3 of the City’s Contract Management Policy, he would have recommended to the City Council to preclude J.L. Michon Transports inc. from all call for tenders for five (5) years, according to section 4.3 paragraph 3, which reads as follow:

[TRANSLATION]

If the City discovers that this declaration is inaccurate, the tender is declared non-compliant and rejected. Moreover, this tenderer and every person associated to him



or who was associated to him at some point during the submission period, as well as any other person mentioned above, who participated to one of the aforesaid acts, are precluded from all call for tenders for five (5) years from the date of the rejection of this tender.

That being said, the Inspector General recommends that a review of the City's Contract Management Policy be conducted so that, when there are fraudulent tactics like the ones observed during this investigation, full effect be given to the objectives of the policy designed to fight collusion. This review should also aim at preventing the undesired consequences that may result from the application of this policy. Indeed, the City's Contract Management Policy, as currently worded, does not provide an adequate control of collusion. It easily offers to the companies bidding on the City's calls for tenders a way to avoid the application of the foreseen consequences.

FOR THE FOLLOWING REASONS,

The Inspector General

RECOMMENDS the cancellation of the contracting process involving the snow removal contracts MHM-102-1621 and MHM-104-1621 of the borough of MHM as part of call for tenders 16-15049.

RECOMMENDS that a review of the City's Contract Management Policy (*Politique de gestion contractuelle de la Ville de Montréal*) be conducted in order to give full effect to the objectives of the policy designed to fight collusion.

INFORMS the City that contacts between J.L. Michon Transports inc. and a competitor intending to reach an agreement of a collusive nature took place at the initiative of the director of operations of J.L. Michon Transports inc., during the tendering process 16-15049.

TRANSMITS, in accordance with section 57.1.23 of Montréal's City Charter, a copy of this recommendations reports to the mayor of the City, and to the clerk to be sent by the latter to the city council involved, in this instance Montréal's City Council.

The Inspector General,

Denis Gallant, Ad. E.

ORIGINAL SIGNED