



[This is an English version of the report originally submitted in French to Montréal's City Council on October 27, 2014]

Report and Recommendations Concerning Call for Tenders 13-13242 (Sainte-Catherine Interaction Project)

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Office of Inspector general
1550 Metcalfe Street, Suite 1200, 12th Floor
Montréal, Québec H3A 1X6
Telephone: 514-280-2800
Facsimile: 514-280-2877

BIG@bigmtl.ca

Montréal 

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Acronyms

OCG.....Office of the Comptroller General of Montréal (Bureau du contrôleur général)

OIG Office of Inspector general

SITE..... Department of Infrastructures, Transportation, and the Environment (Service des infrastructures, des transports et de l'environnement)



1. Subject

In May 2014, the Office of Inspector general (hereinafter: OIG) received a complaint alleging that a supplier who won a call for tenders had an advantage due to its involvement in a mutual agreement contract for preliminary studies directly linked to the call for tenders. During the investigation, other elements were added to the initial analysis plan to provide a complete portrait of the situation.

This report deals with Call for Tenders 13-13242 for *[TRANSLATION] The provision of professional services for the implementation of a citizen interaction process as part of the Rue Saint-Catherine Ouest project*. On March 27, 2014, the firm Acertys won the call for tenders.

2. Scope and Limitations of the Investigation

In order to perform a thorough analysis of the file, the OIG conducted a technical and contextual investigation. It should be mentioned that the Administration is aware of the file and it has already been the subject of a partial analysis by the city's Office of Comptroller General (Service du contrôleur général (hereinafter: SCG)). However, the latter did not have the statutory powers conferred upon the OIG to enable it to obtain all the information needed for the investigation.

3. Applicable Standards and Norms

During the investigation, the focus of the analysis centred on the following standards and norms:

3.1. Montréal's Contract Management Policy

Section 1.3 of the Policy deals with bidders' communications with a representative of the City and stipulates that all communications must be conducted strictly with the person designated, in the call for tenders documents, as in charge of the call for tenders, or with the SCG if the communication deals with the conduct of the person in charge or with the integrity of the contract awarding process. In the case at hand, the person in charge was the agent of the Procurement service (Service de l'approvisionnement).

Section 3.2 of the Policy deals with ensuring that no communications with the intention to influence a person has or will occur during the tendering period.

3.2. Reference Guide for Evaluation Weighting Systems, Selection Committees and Technical Committees

Section 3.1.2 of the Guide sets out the rules governing the composition of selection committees. The criteria for contracts, for which the fees may vary between \$25,000 and \$500,000, are as follows:

[TRANSLATION]

- *At least two managers must be part of the committee;*
- *At least one member must come from a department or borough other than the one directly affected by the contract;*
- *No direct or indirect reporting relationship may exist between committee members;*
- *The project manager must not be part of the committee, even as an observer.*

3.3. Code of Conduct for Montréal Employees (Chapter 3 – Integrity)

[TRANSLATION]

Section 1 – article 3: *The employee must make every reasonable effort to avoid being put in a real, potential or apparent conflict of interest situation [...] with a business.*

Section 6 – article 1: *The employee, in the performance of his or her duties, must refrain from acting, attempting to act or omitting to act in a way that favours his or her personal interests or those of another individual or legal entity.*

Section 7 – article 3: *The employee must comply with current administrative practices and procedures.*

4. Scope of the Investigation

During the period between May 5, 2014 and the end of September 2014, the OIG interviewed twenty-one (21) witnesses, including ten (10) individuals in charge from the firms that tendered a bid or expressed an interest in the call for tenders. Various documents, as well as the report of the SCG, were consulted. Under the powers conferred upon it by the *Montréal City Charter*, the OIG also obtained, from various sources, certain information that was necessary for a thorough analysis.



5. Limitations

The findings of this report deal only with the call for tenders in question and the management practices surrounding it. At no time may these findings be generalized to all tendering processes or to a related process in a similar field of activity.

6. Description of the Events

6.1. Context of the Call for Tenders

Call for Tenders 13-13242 was issued as part of the implementation of a citizen interaction process for the Saint Catherine Street West (Rue Saint-Catherine Ouest) project. The Department of Infrastructures, Transportation, and the Environment (Service des infrastructures, des transports et de l'environnement) (hereinafter: SITE), which is in charge of the project, needed to retain the professional services of a firm. The director entrusted the mandate to a manager, who was newly hired at the city, as the SITE's division head. The entire project began in March 2013 and is supposed to continue until December 2016.

In the months preceding the call for tenders targeted by the OIG's investigation, a preliminary study was done by the SITE division. The mandate of this study was mainly to identify the stakeholders and needs for the implementation of the Saint Catherine Street West project. On the recommendation of the division head, the contract for this study, in the amount of \$23,644.63 (including taxes), was awarded by mutual agreement in July 2013 by a SITE director.

Call for Tenders 13-13242 was issued on December 18, 2013, and the tendering period ended on January 20, 2014. The selection committee met on January 28, 2014, to evaluate the bidders, and the contract was awarded on March 27, 2014 (by a decision of the Urban Agglomeration Council). The awarded contract was in the amount of \$266,569.54 (including taxes).

Table 1 presents the visual timeline of the above-mentioned events that are relevant to the investigation.

[TRANSLATION]

TABLE 1 : Timeline of Major Events

	Jul-13	Aug-13	Sept-13	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14
Preliminary Study	1 2	3			4				
Awarding of the Contract						5	6 7	8	9

Project Timeline : March 2013 to December 2016

Preliminary Study

1. Awarding of the preliminary study contract
2. Preliminary study start-up meeting
3. Completion of the preliminary study
4. Final report

Awarding of the Contract

5. Issuing of the call for tenders
6. Tendering of the bid
7. Meeting of the selection committee
8. Report of the Service du contrôleur général
9. Resolution by the authorities to award the contract

Two (2) important points about this call for tenders require clarification:

A) Emphasis on Compliance with the Timeline

Some witnesses that the OIG met with mentioned the importance of complying with the timeline for completion of the project, since a delay could affect:

- the work schedule for the Saint Catherine Street West project, including the replacement and rehabilitation of the underground water mains; and
- the City's ability to deliver part of the project for the festivities marking the 375th anniversary of Montréal.

B) Negative Experience Not to Be Repeated

Some witnesses that the BIG met with expressed a concern about the project, specifically the need to avoid repeating certain negative experiences encountered with certain large-scale or similar projects (such as the St-Laurent Blvd project). As an added guarantee of quality, the division sought to team up with partners who had experience on similar large projects.

6.2. Parties that Obtained the Specifications

In all, twelve (12) firms obtained the specifications once it was issued, including two (2) firms that obtained them as a result of a category error in the SEAO (a moving company



and a travel agency), two (2) firms that were unable to provide the service, and one (1) firm that did not indicate any interest. Out of all these firms, only one (1) firm tendered a bid and met all the required criteria, the firm Acertys.

6.3. Specifications Criteria

The call for tenders included elimination criteria and evaluation criteria, some of which were of particular interest to the OIG:

1. **Section III, article 7.1, clause 1:** A requirement that the firm must have completed at least two consultation mandates for large-scale projects (\$100,000 minimum).

Preliminary Findings and Analyses

The OIG's analysis of the first elimination criterion (experience on a \$100,000 project) confirmed that very few firms, potentially three (3), could meet this requirement.

2. **Section III, article 7.2, clause 6:** A requirement that the project manager must have at least 20 years' experience with citizen interaction on large-scale projects of similar complexity and hold a university degree.

Preliminary Findings and Analyses

The OIG's analysis of this evaluation criterion established that three (3) firms could not submit a tender.

The combination of this second criterion with the first severely restricted competition.

3. Date of the Submission of Tenders, January 20, 2014

During meetings with the OIG's investigators, several parties that had obtained the specifications mentioned that the publication date of the call for tenders, from December 18, 2013 to January 20, 2014, was not conducive to an open market. Five (5) of the eight (8) firms that indicated an interest in this call for tenders estimated losing two weeks of preparation time because of the holiday season and felt that it put them at a disadvantage. Some mentioned that they had incurred additional costs to have employees work during the holiday season in order to be able to take part in the process (given the limited number of workdays). Finally, the call for tenders also mentions that [Translation] "the city will not answer any questions between December 20, 2013 and January 6, 2014."

Preliminary Findings and Analyses

The OIG finds that the period for submitting a tender had a significant withdrawal effect on many potential bidders, as several preferred not to take part. In fact, five (5) of the firms could not meet or had difficulty meeting the timelines. Some mentioned that a proper response required some 100 hours of preparation and that their employees would have had to work overtime during the holiday season. In our opinion, issuing a call for tenders during this period is a debatable choice, since it is not optimal for several potential bidders.

4. Entry Error in the SEAO

The project was not entered in the proper category in the SEAO (electronic public tendering system). It was entered in Section S17 "Transportation, Travel and Movement." This error explains why two (2) firms that are not in the proper business sector obtained the specifications and did not submit a tender.

Preliminary Findings and Analyses

While the entry error in the SEAO was not a determining factor, the OIG considers that it was one more barrier to an open market since some of the parties the OIG met with, that had obtained the specifications, mentioned having to search a long time for the call for tenders because it was in the wrong category. It is quite possible that other potential firms failed to find it.

After investigating, the OIG concludes that the entry error was unintentional and was not connected to the persons in charge of the call for tenders.

5. Overview of the Elimination and Evaluation Criteria

In order to provide a comprehensive overview of the elimination and evaluation criteria mentioned in earlier sections, Table 2 visually presents, in cascading order, the elimination of firms by criteria or by reasons. Parties that obtained the specifications are identified by a letter in order to protect their anonymity.

[TRANSLATION]

TABLE 2 : Reasons for Elimination, Withdrawal or Explanation

REASONS	FIRM A	FIRM B	FIRM C	FIRM D	FIRM E	FIRM F	FIRM G	FIRM H	FIRM I	FIRM J	FIRM K	ACERTYS
SÉAO categorization Error												
Criterion: experience with \$100,000 project	N/A	N/A										
Criterion: project manager for 20 years	N/A	N/A										
Criterion: timeline (Dec. 18, 2013-Jan. 20, 2014)	N/A	N/A										
Criterion : experience completing work												
Others									Unable to provide service	Unable to provide service	No interest	

In looking over the table, it can be observed that firms A and B obtained the specifications for a project outside of their field of expertise as a result of an entry error in the SEAO. Firms C, D, E, F, G and H were eliminated on the basis of one or several criteria. For their part, firms I and J were unable to provide the service because their role is either to send calls for tenders to clients or to carry out engineering work. That left only two (2) players, firm K and Acertys. Firm K explained to the OIG's investigators that it was not interested in tendering a bid because it preferred projects that involved smart technology and design and production development. In the end, only Acertys remained on the list.

Preliminary Findings and Analyses

The OIG concludes that the combination of criteria represented a strong barrier to entry for the competition. Consequently, since soliciting the market proved ineffective, the best price was not necessarily offered and one supplier may have been unduly advantaged. If the criteria had been less restrictive, we estimate that at least six (6) additional firms could have taken part in the competition.

6.4. Preliminary Work for Call for Tenders 13-13242

6.4.1. Awarding of a Mutual Agreement Contract of less than \$25,000

As mentioned earlier, the contract for the preliminary study, for an amount of less than \$25,000, was awarded by mutual agreement on July 17, 2013, by a SITE director, on the recommendation of the division head.

According to the information obtained by the OIG, the choice of the firm Acertys to conduct the preliminary study came about as the result of a simple suggestion made to the division head by a third party.

The OIG finds that several firms could have conducted the preliminary study. Acertys was chosen after only two (2) consultations, the first with a city official and the second with one of the executives at an outside firm that carries out large-scale projects for the city.

Preliminary Findings and Analyses

The OIG did not investigate the contract for the preliminary study and does not question the quality or price of the supplier. However, the few analyses and consultations carried out in the search for a fair market price deserves a comment on how the contract was awarded.

Good practices require that, even if a contract is awarded by mutual agreement, a minimum of steps should be carried out to ensure a competitive price is obtained. The privilege to award mutual agreement contracts, a privilege allowed by the legislator, is intended to make public organizations more efficient (in particular by speeding up the awarding of contracts), but it does not release city officials from the responsibility of conducting at least a summary analysis of the market. This can be done, for example, by contacting a few suppliers to get a quote or by reviewing the price of similar contracts that have been awarded.



6.4.2. Participation of the Firm that Conducted the Preliminary Study

The allegation made to the OIG concerns the fact that Acertys, the firm that was awarded the final contract, had also conducted the preliminary study. Some firms mentioned that Acertys should not have been able to participate since it had an undue advantage over the competition.

It should be noted, however, that the SITE division, which is in charge of the project, as well as Acertys, sought prior advice from the Procurement service (Service de l'approvisionnement) as to whether a firm that had taken part in the preliminary study could also submit a tender in response to the call for tenders. The Procurement service issued a notice that such participation complied with the rules.

Preliminary Findings and Analyses

The rules currently in effect in Montréal allow firms that have conducted a preliminary study to participate in the call for tenders process resulting from this study, **provided that the preliminary study has been published** to enable other bidders to have access to the same information. The fact that the preliminary study was conducted by Acertys is not, therefore, a breach of the current rules in effect at the City. During the investigation, however, several parties that had obtained the specifications confided to the OIG their perception of an unfair competitive advantage.

The problem is not a legal one but rather an ethical one, especially as regards the appearance of unfairness. The involvement of a supplier, from the design phase of a project still in its embryonic stage, who participates and directs a preliminary study and who develops initial contacts with the city officials in charge of the project, could raise doubts as to the impartiality of the tender process or favour a particular supplier.

Moreover, the parties that obtained the specifications perception of a possible favouritism was reinforced by the fact that the contract for the preliminary study was awarded by mutual agreement.

A typical mitigation solution for this type of problem (perception of unfairness) could have been to lower the evaluation criteria to the usual standards. This would have enabled firms to take part in the tendering process and showcase their experience. Also, knowing that the supplier of the preliminary study might be interested in the contract resulting from the study, the division could have awarded the contract for the preliminary study by a public or invited call for tenders. Awarding the contract in this way would have provided greater transparency.

6.5. Work Involved in Drafting the Call for Tenders

6.5.1. Market Study and Identification of Firms Able to Respond to the Call for Tenders

During the OIG's investigation, several employees of the SITE division as well as the division head confirmed with certainty that Acertys met all the criteria of Call for Tenders 13-13242. However, city officials involved in the project did little to verify whether other firms could also meet the criteria prior to issuing the call for tenders.

One explanation for this, among others, was the position taken within the division to refrain from direct contact with firms to avoid creating the perception of an unfair advantage. The result was that the designated employee did not contact any of the firms but made some basic verifications on the Internet. Moreover, the employee was unaware that the advisers in the Procurement service could conduct a market study, and he himself did not have the time to do it.

For his part, the agent of the Procurement service asked this same employee several times whether there were several firms that could qualify. The employee answered yes; however, the OIG was unable to find evidence of any analysis having been done, other than an email from the employee dated January 22, 2014 (after the opening of the bids) mentioning that three (3) firms could qualify.

Preliminary Findings and Analyses

The OIG concludes that several city officials knew that few firms met the criteria of the call for tenders. Most were aware that Acertys met all the criteria but they were unable to confirm whether any other firms could also do so.

No market study was done prior to the issuing of Call for Tenders 13-13242 to determine the number of potential bidders. No risk analysis or documentation justifying the restrictive criteria was produced. And no consideration was given to how to manage the potential risk of severely limiting the pool of candidates.

After analyzing the situation, the OIG finds that only two (2) firms could actually meet the restrictive criteria, one of which was not interested in the project.



6.5.2. Employee Communication with the Market

During the investigation, an additional event surfaced and became the subject of analysis by the OIG. An employee of the SITE division, in their position with the City for only a short period of time, believed that a simple reading of call for tenders being prepared, that it was highly likely that only one bidder would be able to meet all the criteria. To be sure, this employee contacted an acquaintance working for a firm in the field and asked him to approach third parties to validate whether other potential firms would be able to submit a tender. This request was made at the employee's initiative, without considering the consequences.

Preliminary Findings and Analyses

When meeting with the OIG, the employee in question stated that he had acted in good faith and in the interest of the City. The results of the investigation confirm that the phone call had no consequences.

6.5.3. Preparation of the Call for Tenders Criteria

During the preliminary study period, an employee of the SITE division prepared the first draft of the call for tenders specifications, basing himself on similar large-scale projects (such as the Hippodrome and Square Viger projects). Subsequently, several meetings were held within the division between the employees and the division head to discuss each criterion. During these meetings, several members of the "project team" raised concerns with the division head that the elimination criterion of having completed two (2) \$100,000 projects was high and that there was a risk of restricting the market. The division head decided nonetheless to keep the criterion.

Regarding the criterion that the project manager have 20 years' experience, several employees mentioned to the division head that this criterion seemed high and that 15 years would be sufficient. The division head maintained this criterion at 20 years.

Preliminary Findings and Analyses

The OIG found that the employees of the SITE division raised concerns about the potential risk of eliminating suppliers and severely limiting the market on several occasions.

It should be noted that the division head, who was newly hired by the City, stated in an interview that she could rely on experienced people in her team when preparing this project. This large-scale mandate was the first one entrusted to her. While highly experienced, she had no previous experience with the type of project involved in the call for tenders (social acceptability). We find it difficult, therefore, to understand why

she gave so little consideration to her employees' recommendations, with the result that the OIG now has to conduct an investigation. It is a manager's prerogative to make difficult decisions and sometimes disagree with the team for the good of the organization. However, decisions must be motivated, justifiable and supported by a thorough analysis of the consequences. We found none of these requirements in this case.

The division head explained to the OIG's investigators that the primary reason for having high criteria was intense pressure for the project to succeed without impediment. It should be recalled that there was a desire not to repeat certain errors of the past and to choose the best firm to ensure this.

The OIG is of the opinion that the selection criteria level can be high or adapted to ensure winning conditions for a project, however:

- it must not significantly restrict competition (in this case, only two (2) suppliers met the criteria);
- ethical considerations (in particular, fairness) must be taken into account, especially when the firm involved in the preliminary study later takes part in the call for tenders resulting from its study; and
- a market study must validate the risks associated with the criteria that are retained and make it possible, where necessary, to amend these criteria if so desired, for example, to encourage an open market.

6.5.4. Confusion About the Role of the Project Manager and the Division Head

Good procurement practices require that, when issuing a call for tenders, the manager must identify an employee to act as the project manager. This employee is often the most technically competent to define the needs, criteria and specific requirements of a project and, eventually, is the one in charge of dealing with the successful tenderer for the provision of services. The project manager is somewhat of an expert in the field for the contract.

Section 3.1.2 of the *Reference Guide for Evaluation Weighting Systems, Selection Committees and Technical Committees* states that: [TRANSLATION] "The project manager may not be part of the committee, even as an observer." The purpose of this restriction is to strengthen the integrity and the transparency of the evaluation process. Because of his or her central role in designing the project, the project manager is asked to refrain from taking part in the selection committee to ensure independence and objective decision making. The segregation of duties would not be optimal and there would be a very real risk of conflict of interest should the project manager wish to give a firm undue advantage.



The OIG observed that one of the division's employees was clearly identified as the project manager, as prescribed in the *Reference Guide*. We found, however, that in practice the involvement of the division head was such that she appropriated the role of project manager. In fact, the division head was heavily involved in the call for tenders, participating in and deciding on:

- the criteria appearing in articles 7.1 and 7.2 of Section III;
- the specific administrative clauses; and
- the limitations on competition contained in them.

In spite of this involvement, the division head chose to take part in the selection committee.

Preliminary Findings and Analyses

An employee of the SITE division was officially designated as the project manager. In spite of this, the OIG found that, through her ongoing involvement and decisions directly affecting the drafting of the criteria and clauses of the call for tenders specifications, the division head was, in fact, the project manager.

6.5.5. Participation of the Division Head in the Selection Committee

Initially the employees of the division involved in the project, along with the designated project manager, had no intention of including the division head on the list of members for the selection committee, viewing it as a potential conflict of interest. The project manager submitted a choice of four (4) members to serve on the selection committee. These did not include the division head.

However, in response to the division head's request to participate in the committee, the project manager wrote an email to the agent at the Procurement service to ask if the division head was too involved in the mandate to participate on the committee. It should be noted that the project manager left on maternity leave the very day that the email was sent.

Subsequent to the departure of the employee on maternity leave, a new employee took over the role of project manager within the division. The division head insisted that the replacement add her to the list of names for the selection committee that was to be sent to the Procurement Service. Given the chain of command and her new responsibility, the replacement did not dispute this request.

For its part, the Procurement service is responsible for ensuring that rules are complied with based on the information in its possession. The procurement agent had no way of knowing that the division head, now part of the selection committee, had decided on the call for tenders criteria and should not have taken part in the selection committee.

Preliminary Findings and Analyses

The OIG finds that, in addition to assuming the role of project manager in practice, the division head also placed herself in a precarious situation by insisting on being part of the selection committee. As a result of her participation, the composition of the selection committee for the call for tenders does not comply with the *Reference Guide for Evaluation Weighting Systems, Selection Committees and Technical Committees* because it includes, in reality, the true project manager who established the elimination and selection criteria. The objectives of strengthening the integrity and the transparency of the evaluation process were thus compromised.

As well, by acting as the project manager and requesting a seat on the selection committee, the division head contravened the *Code of Conduct for Montréal Employees* and placed herself in a clear conflict of interest situation. The division head had received training on the *Code of Conduct for Montréal Employees* in August and could therefore not have been unaware of her problematic position.

In some other organizations, the Procurement Directorate (Direction de l'approvisionnement) is responsible for choosing and forming selection committees, making any interference more difficult.

6.5.6. Division Head's Communications with a Bidder

During the investigation, the OIG discovered that the SITE's division head had contacted a supplier by phone during the call for tenders period. In an initial conversation, she advised Acertys that the call for tenders had been issued. In a subsequent conversation, she inquired as to whether Acertys had submitted a tender. The division head did not approach any other potential bidders.

Preliminary Findings and Analyses

The BIG finds that, by communicating with a supplier during the call for tenders process, the division head went against the *Contract Management Policy* governing communications between bidders and a representative of the City (article 1.3).

In addition, the OIG learned that it was an executive at the firm who mentioned to the division head, during the second telephone call, that he was uncomfortable with the situation and that communications should not have taken place. The executive



preferred that they speak again after the once the call for tenders process had ended. This information was also corroborated during the investigation.

6.5.7. Shortcomings in the Training of a New Manager from the Private Sector

OIG investigators met with the director to whom the division head reports in order to understand the circumstances surrounding the events and how the unit is managed. Our investigation showed that the division head had failed to inform her director about the details of her decisions regarding the criteria of the call for tenders, her seat on the selection committee, her communications with Acertys and the absence of a study of the potential market.

When OIG investigators met with the director, he was surprised at the way his division head had acted and admitted entrusting her with the mandate without questioning the practices used. This trust stemmed mainly from the fact that they had worked together in the private sector (for different firms but on common projects) several years earlier. The director mentioned that his division head could rely on experienced employees in her division. Finally, he stated that if the employees had felt they were in a problematic situation or were uncomfortable with the division head's decisions, they would have come to see him.

Preliminary Findings and Analyses

The OIG finds that there appears to have been a deficiency in the supervision of a new employee coming from the private sector. It is unusual that a director assign a new employee from the private sector who has no knowledge of the city's practices to one of the most sensitive projects, without requiring any accountability or verification to ensure that everything is proceeding smoothly. This was the first project entrusted to the division head by this director.

After various meetings, the OIG finds that employees failed to inform the director of certain problems mainly because of the reporting structure. Several employees mentioned to us that they did not want to betray the division head.

There were also several red flags that should have alerted the director to the fact that the call for tenders could be highly problematic.

6.5.8. Complaints During the Call for Tenders Process

During the period from December 18, 2013 to January 20, 2014, the Procurement Service received complaints from three (3) parties that had obtained the specifications alleging that the call for tenders was directed. On February 11, 2014, the Directorate general (Direction générale) sent a request to the Office of Comptroller General (SCG) to initiate an investigation, which was completed seven (7) days later.

The conclusions of this investigation were as follows:

[TRANSLATION]

- *“The SCG did not identify any action or measure that might cast doubt on the legality of the call for tenders process.*

- *It is the authorities’ responsibility to set and approve the conditions of the call for tenders to achieve the desired objective while taking into consideration the scope and complexity of the project.*

- *Given the absence of a preliminary study, the criticisms raised by the two (2) parties that obtained the specifications represent a risk for the city.*

Subject to the foregoing, the process may proceed.”

Accordingly, the Procurement Directorate and the team that provides support to the authorities, entered the following note in the decision-making summary to help the executive committee members take a position on the matter:

[TRANSLATION]

“The validations conducted by the Office of Comptroller General revealed no action or measure that might cast doubt on the legality of the call for tenders process. In particular, the allegations that the call for tenders was directed or adapted toward one firm proved to be unfounded.”

Finally, on May 5, 2014, one of the parties that obtained the specifications issued a public statement in *La Presse*, saying that he considered the call for tenders as having been directed. It should be noted that, at the same time, two (2) other firms indicated the same thing to the Procurement service.



Preliminary Findings and Analyses

The OIG finds that the impression that the call for tenders may have been directed was very much present among the parties that obtained the specifications, as well as within the city administration, which requested that the SCG check into the matter.

7. Remarks: Objectives of the Public Service's Procurement Process

In the case of Call for Tenders 13-13242, the OIG finds that considerable emphasis was placed on efficiency in order to produce a deliverable in a short amount of time due to a tight schedule. The importance given to this objective was to the detriment of other essential public service objectives. Such an imbalance can result in additional costs, a loss of integrity in the process or disinterest on the part of suppliers.

The four (4) objectives of the public service's procurement process are to:

- achieve maximum savings and efficiency;
- promote competition between organizations, suppliers and contractors;
- ensure fair and equitable treatment of all the parties involved; and
- make the procedures used and the decisions made by city officials transparent to ensure accountability.

Given the many large-scale projects that the city must carry out and the pressure to meet deadlines, the OIG feels compelled to mention that it is essential to strike a balance between the four (4) objectives of the procurement process.

8. Summary of the Findings

In light of the investigation, the Office of Inspector general finds:

1. That the rules currently in effect in Montréal permit firms that conduct a preliminary study to participate in the resulting call for tenders process, provided that the preliminary study is published in order to allow other bidders access to the same information.
2. That the fact that the firm that conducted the preliminary study later participates in the resulting call for tenders is not a legal problem but rather an ethical one, especially in regards to the appearance of unfairness.
3. That the elimination criterion of having completed two (2) consultation mandates for large-scale projects (of at least \$100,000) restricted the open market to three (3) firms, one of which had no interest in the project.
4. That the evaluation criterion of having at least 20 years' experience in citizen interaction on large-scale projects restricted the competition to three (3) firms.
5. That the tendering period had a significant withdrawal effect for many potential bidders.
6. That the misclassification of the call for tenders in the SEAO was an additional barrier to an open market since some of the parties that were met with who had obtained the specifications stated that they had to search a long time to find the call for tenders as it was in the wrong category. It is therefore possible that other potential firms failed to find it.
7. That no market study was produced prior to Call for Tenders 13-13242 to determine the number of potential bidders. No risk analysis or documentation justifying the restrictive criteria was produced.
8. That the combination of all the conditions previously mentioned resulted in a strong barrier to entry for the competition.
9. That several division officials knew that few firms could meet the call for tenders criteria. Most were aware that the firm Acertys met all the criteria but could not confirm whether other firms could also meet them.
10. That these same employees raised concerns with the SITE's division head on several occasions about the potential risk of eliminating all suppliers or severely restricting the market, and that the latter made management decisions for each of the criteria without any thorough analysis of the consequences.



11. That in addition to assuming the role of project manager in practice, the division head placed herself in a precarious situation by insisting on being part of the selection committee.
12. That the composition of the selection committee for the call for tenders does not comply with the *Reference Guide for Evaluation Weighting Systems, Selection Committees and Technical Committees* due to the fact that it includes the project manager in practice who established the elimination and selection criteria.
13. That, by communicating with the supplier during the call for tenders process, the division head went against the *Contract Management Policy* governing communications between bidders and a representative of the Ville de Montréal (Section 1.3)
14. That there were shortcomings in regards to the supporting framework provided to a new division head from the private sector who was used to a different way of operating.
15. That there were several red flags that should have alerted the director to the fact that the call for tenders could be highly problematic.

9. Recommendations

In view of paragraphs 2, 3 and 4 of section 57.1.23 of the *Montréal City Charter*:

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

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

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

Considering that the Office of Inspector general is of the opinion that:

- **The call for tenders did not promote a competitive market.**
- **The call for tenders was highly problematic** given the specifications criteria, the communications surrounding the call for tenders and the conduct of the selection committee.
- The events investigated **do not reflect well on the officials and expertise of the employees** of the organization. Changes to procedures are therefore required to avoid the recurrence of a similar situation.
- Following the investigation, the OIG **cannot confirm that Acertys influenced the conduct or result of the contract awarding process**, but it is clear that this firm had an undue advantage in the process.



The inspector general recommends to the Montréal City Council:

- That the Administration **reassess** the rules currently in force in Montréal that allows firms conducting a preliminary study to participate in the call for tenders process in order to minimize the impression shared by a great number of parties that obtained the specifications that a firm conducting a preliminary study has a major advantage.
- That, during public calls for tenders, the Administration **ensure the existence** of market studies indicating that several suppliers qualify for the call for tenders, in order to encourage healthy competition.
- That the Administration **increase awareness** among city officials of the need, in the awarding of mutual agreement contracts, to put together a minimum of supporting documents that present an analysis and justify the management decision, in the interest of transparency, traceability and fairness.
- That, wherever possible, the Administration **limit** the number of calls for tenders during the holiday season or provide appropriate extensions.

Moreover, the Office of Inspector general (OIG) has noted the various findings observed during the investigation and will adjust its ethics and integrity training plan to:

- **Increase awareness** and encourage thinking among new employees about the differences between the rules governing the awarding of contracts in the public and private sectors.
- **Increase awareness** among city officials of the importance of segregating the duties of the project manager and the selection committee.
- **Increase awareness** among city employees, who find themselves in an uncomfortable or abnormal situation, to reporting the situation to the tip line of the Office of Inspector general (OIG).

This training plan will be deployed to employees and elected officials in 2015.

CONCLUSION

Under Section 57.1.10 of the *Montréal City Charter*, the inspector general may cancel any contracting process involving a contract of the city, 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.*

In the case at hand, the investigation conducted by the Office of Inspector general did not reveal any non-compliance with a requirement of the call for tenders documents or any false information given in the contracting process of the said contract. Accordingly, based on the very limited legislative framework governing such matters, the Inspector general may not, of his own accord, rescind the contract.

Given all of the above, the Office of Inspector general (OIG) leaves the decision on whether it is appropriate to cancel the contract between the City and Acertys to the discretion of the City Council.