

[This is an English version of the decision originally submitted in French to Ville-Marie Borough Council on September 9, 2015]



## **Rescinding of the Contract for the Rental of a Hydraulic Excavator Awarded Under Call for Tenders 14-13430**

**(section 57.1.10 of *Montréal's City Charter*)**

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## SUMMARY

*The Office of Inspector General (hereinafter: OIG) received information relative to the awarding of a contract for the rental of a hydraulic excavator in the Ville-Marie borough (contract awarded to Excavation R. Lécuyer & Fils Inc. as part of call for tenders 14-13430).*

*It would appear that this three-year contract, in the amount of \$1,327,961.25, is being performed in contravention of major requirements stipulated in the call for tenders: the equipment provided by Excavation R. Lécuyer & Fils Inc. does not appear to meet the criteria set out in the borough's technical specifications.*

*Consequently, the OIG conducted a thorough investigation to verify the validity of call for tenders 14-13430 and make a determination as to the successful bidder's compliance with the requirements set out in the call for tenders. During its investigation, the OIG met with 25 witnesses, namely employees of the Ville-Marie borough, of the Rolling stock and workshops Service (Service du matériel roulant et des ateliers) and of the Procurement Service (Service de l'approvisionnement), companies that had requested to obtain the specifications as well as the contractor who won call for tenders 14-13430, i.e., Excavation R. Lécuyer & Fils Inc. The OIG also conducted two (2) site visits and inspected the equipment used by the successful bidder to perform the contract. Furthermore, six (6) requests to produce documents were filed with the Ville-Marie borough, the City's Procurement Service (Service de l'approvisionnement de la Ville de Montréal) and certain contractors relevant to the investigation, including Excavation R. Lécuyer & Fils Inc. The purpose of these requests was to collect the data and information needed to analyze the contracting process.*

*As described in this report, the company to which the contract was awarded, i.e., Excavation R. Lécuyer & Fils Inc., is performing a contract using equipment that differs from the equipment described in its bid, and furthermore, said equipment does not meet certain important mandatory technical specifications, namely with respect to the required category of excavator, engine power and excavation depth.*

*Also troubling in this investigation is the finding that this company, seeking to obtain a contract of a rather substantial value, led the borough to believe that it owned one of the required pieces of equipment by falsifying a document, namely a hydraulic excavator data sheet. Finally, the investigation conducted by the OIG shows that the company received the approval of the Ville-Marie borough for this piece of equipment—even though it clearly did not meet the stipulated requirements—following a shoddy compliance study conducted by the assigned borough managers.*

*In accordance with section 57.1.10 of Montréal's City Charter (CQRL c. C-11.4) and based on the facts exposed above, the Inspector General has no choice but to rescind the rental contract awarded to Excavation R. Lécuyer & Fils Inc.*



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## 1. The Facts

### 1.1 Launching of call for tenders 14-13430

On February 10, 2014, the Ville-Marie borough launched a call for tenders (14-13430) via the Quebec government's electronic tendering system (Système électronique d'appel d'offres – S.E.A.O.). The purpose of this call for tenders is to rent a hydraulic excavator for work required on the water supply system.

The call for tenders provides for a one-year contract totalling 3,850 hours as well as two optional one-year periods of 3,850 hours each. Thus, the contract covers the years 2014 to 2016.

According to the information provided in the decision-making summary, 12 companies requested to obtain the project specifications but there was only one bidder, i.e., Excavation R. Lécuyer & Fils Inc.

It is stipulated in the decision-making summary that the equipment is of a specialized nature and that, to the knowledge of the Procurement Service (Service de l'approvisionnement), there are few bidders that own this type of equipment.

On April 8, 2014, by way of resolution CA14 240157, the Ville-Marie borough awards the contract at an hourly rate of \$100 for years 2014, 2015 and 2016 to Excavation R. Lécuyer & Fils Inc., with a maximum total expense of \$1,327,961.25.

Before examining the specifics of this call for tenders, it is important to describe the context in which it was developed as well as the history of Excavation R. Lécuyer & Fils Inc. in the Ville-Marie borough.

### 1.2 Excavation R. Lécuyer & Fils Inc.

The company has its head office in St-Édouard but also operates a place of business in the Ville-Marie borough, namely a garage it uses to store its equipment. It currently employs a total of four people, namely three operators/drivers and an administrator. It owns three pieces of heavy machinery, a 12-wheel truck and a bulldozer.

The investigation shows that Excavation R. Lécuyer & Fils Inc. has been listed as a registered supplier of the *Rolling stock and workshops Service* (Service du matériel roulant et des ateliers) of Montréal for several decades. Among the various equipment owned by the company, the one that interests the OIG in its inquiry is a TAKEUCHI TB285 hydraulic excavator.

Excavation R. Lécuyer & Fils Inc. has regularly performed excavation work on the Ville-Marie borough's water supply and sewer systems for more than 12 years. The company's president, Mr. Yvon Lécuyer, explained to the OIG that, at the time, the *Rolling stock and workshops Service* used a list of suppliers, which included his company, to assign work based on seniority and geographic location in accordance with the equipment voucher system.



### **1.3 Overview of the Rolling stock and workshops Service's Operations and Connection to the Equipment Voucher System**

Equipment vouchers have been used since the 1950s. This practice, developed at a time when contracts were awarded practically in the absence of any rules, was intended to accelerate payment by the city to suppliers hired via the *Rolling stock and workshops Service* to provide all types of equipment (hydraulic excavators, concrete saws, transport trucks, etc.) for ad hoc needs. In its payment system, the city would assign fictional employee numbers to its suppliers so they could be paid on a weekly rather than monthly basis, according to previously agreed upon rates.

When a borough requires equipment (with or without operators) that it does not own, it contacts the *Rolling stock and workshops Service's* dispatch centre to obtain it. The dispatch team then consults the list of registered suppliers that are available to work and assigns a supplier based on the proximity of its main place of business and its seniority on the list, alternating them one by one.

The *Rolling stock and workshops Service* is responsible for seeing to the appropriateness of the equipment for the work to be performed and the compliance with all rules regarding insurance.

### **1.4 Assignment of Excavation R. Lécuyer & Fils Inc. in the Ville-Marie Borough**

Given that the company's garage is located in the Ville-Marie borough and that the company has been registered on the *Rolling stock and workshops Service's* list for many years (approximately 30 to 40 years seeing as the initial registration dates back to Mr. Lécuyer's father), the borough assigned work to the company on a year-round basis. Mr. Lécuyer informed the OIG that he contacted the Ville-Marie borough every morning to obtain an assignment from the forepersons to carry out excavation work with a team of the borough's blue-collar diggers.

Rather than requesting the equipment they required, the borough's forepersons made specific requests to the *Rolling stock and workshops Service* to obtain the services of Excavation R. Lécuyer & Fils Inc. They justified their choice by the fact that this company had the necessary qualifications and was among the borough's preferred suppliers. In the forepersons' opinion, several of the borough's underground assignments were difficult to carry out and required specific expertise that the company possessed.

Moreover, the borough's forepersons insisted on the fact that the hydraulic excavator operated by Excavation R. Lécuyer & Fils Inc. provided *unequaled excavation depth*. It must be noted that Mr. Yvon Lécuyer, the company's president, claims that the TAKEUCHI TB285 excavator is registered with the *Rolling stock and workshops Service*. However, the excavator on file is a TAKEUCHI TB175 excavator (equipment number 0399-109). It appears that the company owned this excavator in the past but that the *Rolling stock and workshops Service's* file was not updated when the company replaced it with the TAKEUCHI TB285.

### **1.5 Intervention of the Legal Affairs Department (Service des affaires juridiques)**

In December 2009, following a request for an opinion on the ratification of a contract awarded by mutual agreement, the City's Legal Affairs Department noted a certain level of confusion surrounding the understanding and use of the equipment voucher procedure.

According to the witnesses met by the OIG, it would appear that the equipment voucher procedure was used over the years without any question as to whether it was necessary to proceed by call for tenders, mutual agreement or tenders by invitation. Awarding orders on the basis of an equipment voucher resembled what is observed today when orders are awarded under a framework agreement previously approved by the appropriate authorities following a public call for tenders.

The City's Legal Affairs Department set clear limits on the use of this system with respect to the rules applying to the contracting process. It indicated that the City could use this system only to award contracts by mutual agreement, i.e., contracts representing a net expense of less than \$25,000. The Legal Affairs Department also reiterated the importance of planning the work ahead of time.

The Legal Affairs Department also brought to the *Rolling stock and workshops Service's* attention the rule prohibiting the division of contracts<sup>1</sup>, *unless the division is warranted on grounds of sound administration*. It specified that it was not an acceptable practice to rent equipment on a daily or weekly basis when it was obvious that the equipment was needed in one place for an extended period.

However, provided that the expense did not exceed \$25,000 in each case, it was acceptable to rent equipment when it was required due to events not resulting from the City's decisions. The Legal Affairs Department provided the example of renting a backhoe to repair unrelated water system breaks at various locations.

This information was provided to all borough management teams at the beginning of 2010 by way of a memorandum.

### **1.6 Changes made by the Rolling stock and workshops Service to the management of the list of suppliers**

The boroughs and the *Rolling stock and workshops Service* now had the obligation to exercise control over the assignment of work to service providers to ensure that requests made via equipment vouchers did not represent a net expense of more than \$25,000 per supplier and per order.

The *Rolling stock and workshops Service* was responsible for ensuring that applicants, i.e., borough forepersons, did not divide the contracts. Consequently, to comply with the *Cities and Towns Act* (CQRL c. C-19) (hereinafter the "CTA"), borough forepersons had to more efficiently plan and estimate the cost of work and their requests to the *Rolling*

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<sup>1</sup> Section 573.3.0.3 of the *Cities and Towns Act* (CQRL c. C-19).



*stock and workshops Service*. If the required work represented a foreseeable expense of more than \$25,000, the boroughs could no longer proceed by way of equipment vouchers since the system could no longer be used for purposes other than awarding contracts by mutual agreement.

The *Rolling stock and workshops Service*'s management sent out several emails, namely to the Ville-Marie borough, to inform the boroughs of the changes made following the memorandum issued by the Legal Affairs Department in 2010. Several public works managers in the Ville-Marie borough were instructed to no longer use the equipment voucher procedure for equipment rentals representing an expense of more than \$25,000.

The forepersons had never before had such a responsibility. The *Rolling stock and workshops Service* and the borough forepersons could no longer resort to a method and culture well established for more than 50 years.

### **1.7 Specific case of Excavation R. Lécuyer & Fils Inc. with respect to the changes made by the *Rolling stock and workshops Service***

The person in charge of the *Rolling stock and workshops Service* explains to the OIG that the repeated use of Excavation R. Lécuyer & Fils Inc.'s services was an issue. The *Rolling stock and workshops Service* was forced to repeatedly urge the borough to comply with the rules reiterated by the Legal Affairs Department. The forepersons of the Ville-Marie borough were resistant to the fact that the *Rolling stock and workshops Service* was trying to assign the company to another borough to put an end to its almost systematic hiring by the Ville-Marie borough through the equipment voucher system.

Furthermore, the uniqueness of the hydraulic excavator owned by Excavation R. Lécuyer & Fils Inc., as invoked by the borough to justify its decision to continue assigning work to this company, in some way forced the *Rolling stock and workshops Service* to reassess having this excavator on the list of suppliers and having it be subject to the equipment voucher system. The *Rolling stock and workshops Service* no longer intended to rent this equipment via equipment vouchers unless it managed to find an equivalent product on the market so as to abide by its policy of alternating between suppliers on a mutual agreement basis.

Unable to find an equivalent supplier, on November 25, 2011, the *Rolling stock and workshops Service* decided to invalidate the hydraulic excavator of Excavation R. Lécuyer & Fils Inc. that had been entered at the time (TB175) and remove it from its list of suppliers. The borough was formally notified that this equipment could no longer be rented through the equipment voucher system, and that they should instead proceed via calls for tenders or contracts awarded by mutual agreement.

The OIG obtained from the borough certain invoices and equipment vouchers concerning Excavation R. Lécuyer & Fils Inc. Its analysis confirms that the last assignment issued to the company for the rental of its hydraulic excavator via the equipment voucher system dates back to November 24, 2011.

Excavation R. Lécuyer & Fils Inc. nevertheless continued to carry out work in the borough under contracts awarded by mutual agreement that, in principle, were not to exceed \$25,000 or be divided.

### **1.8 Call for tenders 12-12184 for the rental of a hydraulic excavator with operator for water supply system work**

On May 16, 2012, the Ville-Marie borough launches and posts call for tenders 12-12184 via the Quebec government's electronic tendering system (SEAO). This is the borough's first call for tenders in this area. The call for tenders is for the three-year rental of a hydraulic excavator including operator, maintenance and accessories for the purpose of carrying out water supply system work in the Ville-Marie borough. A total of 3,500 hours of use are scheduled per year for a grand total of 10,500 hours of work over three years.

On June 4, 2012, the bids are opened and three bidders have presented proposals. These three bids are summarized in the following table:

<b>Bidder</b>	<b>Hourly rate submitted</b>
Les Entreprises Johnny enr.	\$77.00
Excavation R. Lécuyer & Fils Inc.	\$100.00
Entreprise Vaillant (1994)	\$124.25

In accordance with decision-making summary number 1125382005 endorsed by the Head of Division on June 8, 2012, the following contract is awarded:

*[TRANSLATION] To award to Les Entreprises Johnny enr. a contract for the rental of a hydraulic excavator including operator, maintenance and accessories for a period of three (3) years for the purpose of carrying out water supply system work in the Ville-Marie borough, in exchange for an hourly rate of \$77.00, plus taxes, for a maximum expense of \$1,069,008.80, including taxes (public call for tenders AO 12-12184).*

On June 26, 2012, the Ville-Marie Borough Council awards the contract in accordance with resolution CA12 240414.

### **1.9 Conduct of the borough managers after the bids are opened and the contract is awarded to Les Entreprises Johnny enr.**

One of the borough's Head of Section who participated in the drafting of the technical specifications admits to the OIG that he met with the successful bidder, Les Entreprises Johnny enr., along with a Head of Division to try to convince him to withdraw from the contract.

Both Heads of Section and Division were convinced that the successful bidder's proposal was ridiculously low, that he would lose money if awarded the contract, and that his financial situation was precarious.



By the Head of Section's own admission, they offered him the possibility of "finding" a basis of non-compliance to enable him to withdraw from the contracting process without losing his initial deposit. As for the Head of Division, he only admits to the OIG that he offered the successful bidder the possibility of withdrawing from the contract.

The successful bidder, Les Entreprises Johnny enr., confirms, in part, the version of the facts provided by the borough's Head of Section. He adds that the Head of Division pointed out to him that [TRANSLATION] "the City's attorneys and accountants" had evaluated his bid rate of \$77 per hour and concluded that it would be impossible, in their opinion, for him to make a profit on the contract. The contractor claims to have told the Head of Division to [TRANSLATION] "mind his own business."

He points out to the OIG that he set his hourly rate at \$77 based on the rate he charged at the time the equipment voucher system was in place (\$79 per hour). For this reason alone, he does not consider that his hourly rate of \$77 was unreasonably low.

The owner of Excavation R. Lécuyer & Fils Inc., having ranked second in the call for tenders, claims to the OIG that Les Entreprises Johnny enr. was "undercutting the market" by bidding too low—a practice that he considers dishonest. Moreover, he points out to the OIG that even the borough's employees were disappointed and considered the practice dishonest. After a dozen years of continued service for the Ville-Marie borough, Excavation R. Lécuyer & Fils Inc. must now look for work elsewhere.

### ***1.10 Return of Excavation R. Lécuyer & Fils Inc. to the Ville-Marie borough despite the contract being awarded to Les Entreprises Johnny enr.***

The investigation conducted by the OIG shows that Excavation R. Lécuyer & Fils Inc. did not operate its hydraulic excavator in the Ville-Marie borough between August 8, 2012 (which coincides with the date Les Entreprises Johnny enr. began performing its contract) and November 4, 2012. Upon its return in November 2012, the company performed excavation work under contracts awarded by mutual agreement up until it won a call for tenders to which no other company submitted a bid in February 2014.

During the interview conducted with Yvon Lécuyer, the latter informs the OIG that he was contacted by the Ville-Marie borough's Head of Division after leaving the borough. The Head of Division asked him to return to the borough to repair a sewer break that Les Entreprises Johnny enr. was unable to repair because his excavator could not dig deep enough.

Mr. Lécuyer claims that his company was not interested in returning to the borough for a short-term assignment because it risked losing private contracts that it had been awarded after losing the June 2012 call for tenders. He therefore discussed with the borough's Head of Division the possibility of returning to perform larger-scale work. The Head of Division was questioned in regard to this matter by the OIG and claims that, without making any promises to Mr. Lécuyer, he told him that borough investments in the water supply system would allow him to call upon his services for more substantial work. Indeed, this coincides with increased investments in the water supply system.



As of 2012, the Ville-Marie borough ceased the use of the equipment voucher system (in compliance with the *Rolling stock and workshops Service's* instructions) and began using a purchase order system to retain the services of Excavation R. Lécuyer & Fils Inc. by awarding contracts by mutual agreement. In 2012, twenty-five (25) purchase orders were issued to the company beginning in June, representing a total amount of \$49,186.25. In 2013, forty-one (41) purchase orders totalling \$230,935 were issued, and in 2014, fifty-two (52) purchase orders were issued for a total of \$90,273.75.

The following table summarizes the value of the contracts awarded to Excavation R. Lécuyer & Fils Inc. by the Ville-Marie borough for years 2011 to 2014 via the equipment voucher or purchase order systems:

Year	Total amount via equipment vouchers	Total amount invoiced (purchase orders)	Total amount without calls for tenders
2011	\$35,810.70		\$35,810.70
2012	\$0.00	\$49,186.25	\$49,186.25
2013	0,00 \$	\$230,935.00	\$230,935.00
2014 (excluding the current contract)	\$0.00	\$90,273.75	\$90,273.75
<b>Total</b>	<b>\$35,810.70</b>	<b>\$370,395.00</b>	<b>\$406,205.70</b>

When questioned by the OIG regarding the fact that purchase orders were used to retain the company's services up until April 2014, the borough's managers stated that each assignment to repair a water main constituted a separate contract.

Without commenting on the validity of this practice, the OIG considers that the borough took risks by entering into contracts awarded by mutual agreement with Excavation R. Lécuyer & Fils Inc. on a repeated and ongoing basis. A competitor could have questioned the borough as to the administrative soundness of this way of operating, especially when the work is performed in parallel by another contractor under a contract awarded following a call for tenders, and at a lower hourly rate.

This practice opens itself to criticism, and be it solely for reasons of healthy competition and obtaining the lowest possible prices, the OIG does not recommend maintaining this practice. In any event, it appears that the borough began using the appropriate contracting process, in the Inspector General's opinion, i.e., the public call for tenders, at the beginning of 2014.

## 2. Call for tenders 14-13430 for the rental of a hydraulic excavator

### 2.1 Technical specifications of the call for tenders

As previously mentioned, call for tenders 14-13430 was launched on February 10, 2014, via the Quebec government's electronic tendering system with an opening date of February 26, 2014. According to the information contained in the decision-making summary, twelve (12) requests were made to obtain the specifications but Excavation R. Lécuyer & Fils Inc. was the only company to actually file a bid.

The technical specifications were prepared by borough personnel, approved by the Head of Division and then sent to the Procurement Service.

The following excerpt of the technical specifications indicates the makes and models provided as reference:

[TRANSLATION]

#### *DESCRIPTION:*

- 1.1 Hydraulic excavator (...) with a minimum power of 95 hp (71 kilowatts)
- 1.2 Reference makes and models:

**TAKEUCHI TB1140 Series 2**  
KOBELCO SK140SRL  
NEW HOLLAND E160C BR  
JOHN DEER 135D  
KOMATSU PC138USLC-8

*With the characteristics and equipment required under these specifications.*

(...)

### 3. TECHNICAL CHARACTERISTICS

3.1 The hydraulic excavator must be equipped with a **telescopic boom** measuring 1.22 m (4 ft.) in length to provide a minimum digging depth of 6.53 m (**21 ft. 5 in.**)

3.2 If the manufacturer of the hydraulic excavator does not provide such a telescopic boom, the contractor shall be required to obtain one from a specialized external firm. In that case, the successful bidder shall be required to provide, before the beginning of the contract, a signed and stamped certificate from an engineer member of the Quebec's Order of Engineers certifying the compliance of said telescopic boom.

The investigation by the OIG shows that the requirement of the four-foot telescopic boom enabling a combined excavation depth of 21 feet 5 inches with the required excavator was determined, according to the Roads Department's Head of Division, after consultations with the water system forepersons, the technical office of the Water Department (Service de l'eau) and the borough's technical agents. Given that pipe depths can vary between 9 and 25 feet, the borough opted for a combined depth of 21 feet 5 inches.

## ***2.2 Companies that requested to obtain the specifications of call for tenders 14-13430 and reasons for their lack of interest***

The OIG contacted several of the companies that had requested to obtain the specifications to inquire as to the real reasons they decided not to bid on call for tenders 14-13430.

Among the twelve (12) companies that requested to obtain the specifications, five (5) of the companies stated that they do not own the necessary equipment to meet the required specifications.

In another case, the company did not bid because its equipment was already scheduled to be used on a major worksite. According to this company, the equipment required in the City's call for tenders is big for the environment in which the work would be carried out.

According to another contractor, the required equipment was too specific, leading him to believe that the call for tenders was directed.

Another company made the same remark, i.e., to the effect that this call for tenders was directed. In its opinion, the required machinery was so specialized that the borough was seeking to award the contract to a specific contractor. Furthermore, the required machinery was too big for the type of work involved.

Did the borough's needs justify the equipment described in the technical specifications of the call for tenders? What was the intention behind this requirement that had never been set in the past? Was the borough seeking to undercut the market or favour a particular contractor by requiring specific equipment? These are questions that an attentive observer could certainly raise. The OIG does not deem it necessary to decide on such matters seeing as the irregularities described in the following sections of this report are major and amply justify the decision to rescind the contract awarded to Excavation R. Lécuyer & Fils Inc.

First, it will be demonstrated that Excavation R. Lécuyer & Fils Inc. performed a contract using a hydraulic excavator that did not meet the main criteria described in the technical specifications.

What is most alarming in this investigation is the finding that Excavation R. Lécuyer & Fils Inc. resorted to fraudulent tactics to obtain a contract of quite substantial value. The company led the borough to believe that it owned one of the required pieces of equipment described in the call for tenders and even falsified a document detailing the equipment's specifications. Lastly, the Ville-Marie borough approved this equipment following a compliance verification, even though the company did not meet the requirements.

### **2.3 Performance of a contract by Excavation R. Lécuyer & Fils Inc. using equipment that did not meet the requirements of the call for tenders**

The OIG visited the worksite on January 23, 2015, and on March 20, 2015. During these two visits, it was observed that Excavation R. Lécuyer & Fils Inc. was operating a TAKEUCHI **TB285** hydraulic excavator equipped with a telescopic boom.

The following is a photo of the hydraulic excavator used, taken by the OIG during the site visit conducted on March 30, 2015:



The equipment used on the site is not the one described in the bid. In its bid, Excavation R. Lécuyer & Fils Inc. proposes to use a TAKEUCHI **TB1140** hydraulic excavator.

During the visit of the site, conducted on January 23, 2015, the company's president and operator of the hydraulic excavator, Yvon Lécuyer, confirmed to the OIG that a telescopic boom was installed on the equipment. During the second visit, on March 30, 2015, **he added that he does not own a TAKEUCHI TB1140 excavator.**

The OIG conducted a comparative analysis of the hydraulic excavator described in the bid documents for call for tenders 14-13430, i.e., a TAKEUCHI TB1140 Series 2 excavator, and the excavator actually operated on the site by Excavation R. Lécuyer & Fils Inc., i.e., a TAKEUCHI TB285 excavator.

The following table compares the TB1140 Series 2 and TB285 excavators based on the excavators' data sheets and the required specifications:

Specifications	Required	TB1140 Series 2 <sup>2</sup>	TB285 <sup>3</sup>
1.1 Power	≥ 95 hp	103.3 hp	69.2 hp
4.3 Fuel tank capacity	≥ 134 L	233 L	128 L
4.4 Width of the excavator	≥ 8 feet	8 feet 6 inches	7 feet 7 inches
4.5 Length of the excavator	≥ 24 feet	25 feet 8 inches	21 feet 10 inches

As shown in the above table, the TAKEUCHI TB285 excavator does not meet several required specifications, namely specification 1.1, the most important technical clause: engine power. The specifications require a minimum power of 95 hp but the TAKEUCHI TB285 excavator has a maximum power of 69.2 hp. Consequently, the two excavator models (TB1140 Series 2 and TB285) **cannot be considered as equivalent**.

Section 2.1 of the technical specifications reads as follows [TRANSLATION]: “*Excavators of other makes and models [...] may be considered; however, they must meet the specified requirements and shall be compared to the specified models.*” Despite this provision, the TAKEUCHI TB285 excavator does not meet the required specifications.

According to the document titled Rental rate of heavy machinery (*Taux de location de machinerie lourde*<sup>4</sup>) prepared by the Quebec government and used to determine equivalencies between machinery of various makes and models, the TAKEUCHI TB285 and TB1140 excavators cannot be considered equivalent. These two excavators of the same make belong to two very distinct hydraulic excavator equivalency groups. A TAKEUCHI TB1140 excavator cannot, therefore, be compared to a TAKEUCHI TB285 excavator.

The company’s president, Mr. Yvon Lécuyer, confirmed to the OIG that he had not modified his TAKEUCHI TB285 excavator in any way apart from installing a telescopic boom on it, which will be discussed in the following section.

## 2.4 Non-compliance with the requirement concerning the telescopic boom

As mentioned above, the Ville-Marie borough decided to ask in the technical specifications for a minimum digging depth of 21 feet 5 inches for the purposes of its operations:

<sup>2</sup> According to the data sheet of the TB1140 Series 2 dated June 2015 as posted on the manufacturer’s website: [http://www.takeuchi-us.com/downloads/Takeuchi\\_TB1140Series2\\_SpecSheet\\_Jun\\_2015.pdf](http://www.takeuchi-us.com/downloads/Takeuchi_TB1140Series2_SpecSheet_Jun_2015.pdf)

<sup>3</sup> According to the data sheet of the TB285 dated January 2013 as posted on the manufacturer’s website: [http://www.takeuchi-us.com/downloads/Takeuchi\\_TB285\\_SpecSheet\\_Jan\\_2013\\_v4.pdf](http://www.takeuchi-us.com/downloads/Takeuchi_TB285_SpecSheet_Jan_2013_v4.pdf)

<sup>4</sup> GOVERNMENT OF QUEBEC, *Rental rate of heavy machinery*, effective April 1, 2013.

[TRANSLATION]

### 3. TECHNICAL CHARACTERISTICS

3.1 *The hydraulic excavator must be equipped with a telescopic boom measuring 1.22 m (4 ft.) to provide a minimum digging depth of 6.53 m (21 ft. 5 in.).*

3.2 *If the manufacturer of the hydraulic excavator does not provide such a telescopic boom, the contractor shall be required to obtain one from a specialized external firm. In that case, the successful bidder shall be required to provide, before the beginning of the contract, a signed and stamped certificate from an engineer member of the Quebec's Order of Engineers certifying the compliance of said telescopic boom.*

The following table indicates the maximum digging depth of models TB1140 and TB285 according to the data sheets and required criteria in the specifications:

	<b>TB1140 Series 2</b>	<b>TB285</b>
According to the data sheets, the maximum digging depth is:	18 feet	15 feet
Section 3.1 A four-foot extension required in the technical specifications	+4 feet	+4 feet
Section 3.1 The required digging depth is specified at 21 feet 5 inches	22 feet	19 feet
	Compliant	Non-compliant

**The excavator operated by Excavation R. Lécuyer & Fils Inc., i.e., the TAKEUCHI TB285, despite being equipped with a four-foot extension, does not meet the required specifications.**

Furthermore, the OIG inspected the equipment on May 27, 2015, at the company's garage located in the Ville-Marie borough. During this inspection, it was noted that the telescopic boom measured 3 feet 8 inches in length. The actual digging depth of the excavator used on the site therefore totals 18 feet 8 inches. **In short, the minimum digging depth of 21 feet 5 inches required under section 3.1 of the specifications is not met.**

Moreover, upon verification with TAKEUCHI, the manufacturer of the hydraulic excavator, it was revealed that it does not manufacture telescopic booms for its excavators:

*"Our standard configuration on our TB1140 is designed to have the maximum digging depth of 18 ft. It is equipped with a long arm and we do not offer an extension for the arm on any of our excavators."<sup>5</sup>*

<sup>5</sup> Information from emails exchanged between the OIG and Takeuchi on January 20, 2015.

The investigation shows that the person responsible for the technical compliance of this call for tenders on behalf of the Ville-Marie borough did not require the certificate of compliance for the telescopic boom before the start of the contract, as required under section 3.2, as mentioned above.

The only document obtained by the Ville-Marie borough in March 2015 (the day before the person responsible for technical compliance was interviewed at the request of the OIG) does not comply with the required specifications. In this document, one can read that the [TRANSLATION] *TB-175 telescopic boom was installed on the TB-285 excavator*. The certificate is neither signed nor stamped by an engineer, and moreover confirms that the excavator used is in fact the TB285.

In short, there is no doubt in the Inspector General's mind that Excavation R. Lécuyer & Fils Inc. is carrying out the contract for the rental of a hydraulic excavator in violation of several requirements set out in call for tenders 14-13430.

The requirements that are not met are major, as admitted by the Heads of Section and Division themselves when questioned on this matter by the OIG.

The hydraulic excavator model used does not meet the requirements. The TAKEUCHI TB285 excavator used by Excavation R. Lécuyer & Fils Inc. does not generate the power required under section 1.1 of the technical specifications (69.2 hp vs. 95 hp) and its digging capacity does not meet the requirements set by the borough and stipulated in section 3.1 of the specifications (18 feet 8 inches vs. 21 feet 5 inches) despite the use of a telescopic boom.

## ***2.5 Bid filed by Excavation R. Lécuyer & Fils Inc.: false information provided during the contracting process***

Excavation R. Lécuyer & Fils Inc., the sole tenderer, submitted a bid in which it specifies that it intends to carry out the work using a TAKEUCHI **TB1140** excavator for the three years of the contract, i.e., 2014, 2015 and 2016. The bidder proposes an hourly rate of \$100 for each of the three years of the contract.

In its bid, Excavation R. Lécuyer & Fils Inc. **declares that its equipment complies** with the majority of the technical specifications, which themselves correspond to the **specifications** of a TAKEUCHI **TB1140** hydraulic excavator. It also declares that it complies with the requirement stipulating that the hydraulic excavator must be equipped with a four-foot telescopic boom to provide a minimum digging depth of 21 feet 5 inches.

The following excerpts are from the bid filed by Excavation R. Lécuyer & Fils Inc.:

Nous, soussignés EXCAVATION R. LÉCUYER & FILS INC.  
 Nom du soumissionnaire tel qu'inscrit au Registre des entreprises du Québec, si applicable.

Adresse commerciale aux fins du présent contrat, ville, province et code postal.

ayant soigneusement étudié les conditions et prescriptions du document d'appels d'offres et, si tel est le cas, des addenda le modifiant ou le complétant et, en comprenant parfaitement l'esprit et la lettre, offrons de fournir à la Ville de Montréal les biens et services décrits au bordereau ci-joint, et nous engageons, en cas d'adjudication à fournir, en bon état, aux prix soumis et aux conditions énoncées dans l'ensemble des documents de l'appel d'offres, les biens et services faisant l'objet du présent appel d'offres.

Nom et titre du responsable (en majuscules) :  <u>YVON LÉCUYER PRÉSIDENT</u>	Téléphone :	
	Télocopieur	
	Courriel	
Signature: [Redacted]	Jour <u>25</u>	Mois <u>02</u> Année <u>2014</u>

Note : Le défaut de se conformer strictement à chacune des conditions de l'appel d'offres pourra entraîner le rejet de la soumission. Seuls les renseignements consignés à ce sommaire seront rendus publics.

		Devis	Date	Page
		Location pelle hydraulique avec opérateur	2014-02-03	3 de 6
Spécifications de la Ville		Fournir les renseignements demandés et indiquer tout écart aux spécifications		
1.	<b>DESCRIPTION</b>			
1.1.	Pelle hydraulique avec chenille d'acier et segment de caoutchouc d'une puissance minimale 95 hp (71 kilowatts).	<u>CONFORME</u>		
1.2.	Marques et modèles de référence : TAKEUCHI TB1140 Série 2 KOBELCO SK140SRL NEW HOLLAND E160C BR JOHN DEER 135D KOMATSU PC138USLC-8  avec les caractéristiques et l'équipement exigé au présent devis.	Marque : <u>TAKEUCHI</u> Modèle : <u>TB1140</u>		
1.3.	Usage : coupe d'asphalte, béton, excavation, remblai, etc. pour l'entretien et la réparation de conduite d'aqueduc ou d'égout dans l'arrondissement Ville-Marie.	<u>CONFORME</u>		
2.	<b>GÉNÉRALITÉS</b>			
2.1.	D'autres marques et modèles de pelles que ceux indiqués à l'article 1.2 pourront être considérés, cependant ils devront se conformer aux exigences du devis, les modèles spécifiés serviront de base comparative.	<u>CONFORME</u>		
2.2.	La pelle hydraulique et les équipements seront de conception courante.	<u>CONFORME</u>		
3.	<b>CARACTÉRISTIQUES TECHNIQUES</b>			
3.1.	La pelle hydraulique doit être munie d'une extension télescopique d'une longueur de 1,22 m (4 pieds) permettant d'obtenir une profondeur minimale de creusage de 6,53 m (21 pieds 5 pouces).	<u>CONFORME</u>		
3.2.	Si le manufacturier de la pelle hydraulique ne fabrique pas une telle extension télescopique, l'entrepreneur devra l'obtenir chez une firme externe spécialisée. Dans ce cas, l'adjudicataire devra fournir, avant le début du contrat, un certificat signé et scellé par un ingénieur membre de l'Ordre des ingénieurs du Québec, attestant de la fiabilité technique de cette extension télescopique.	<u>CONFORME</u>		

	Devis	Date	Page
	Location pelle hydraulique avec opérateur	2014-02-03	5 de 6
Spécifications de la Ville		Fournir les renseignements demandés et indiquer tout écart aux spécifications	
4.	<b>GRUPE MOTEUR ET DIMENSIONS</b>		
4.1.	L'appareil doit être doté d'un moteur diesel, turbocompresseur et refroidi au liquide. La puissance minimale nette, selon SAE J1349, doit être ≥ 95 HP (71 kilowatts).		_____ kW <u>98</u> HP @ <u>2400</u> tr/min

As already amply set out above, this company does not use the equipment stipulated in its bid. It instead operates a much less powerful and smaller excavator, whose digging capacity does not meet the required specifications. How did this company manage to obtain the contract despite these major non-compliances?

The investigation of the OIG shows that the borough managers responsible for the call for tenders led a shoddy technical compliance study and that the contractor modified the data sheet of the equipment that it planned to use for this contract to make it appear compliant.

## 2.6 Verifications of the compliance of Excavation R. Lécuyer & Fils Inc.'s hydraulic excavator by the Ville-Marie borough: shoddy work

After the opening of the sole bid received, i.e., that of Excavation R. Lécuyer & Fils Inc., the City's Procurement Service verified its administrative compliance, and one of the borough's Head of Section verified the technical compliance of the equipment.

The technical compliance of the hydraulic excavator was verified in person, according to the interviews conducted by the OIG with the persons involved.

Following this verification, the Head of Section produced a technical non-compliance report. He deemed that certain aspects did not comply with the specifications and made certain comments related to certain sections of the specifications.

Here are some excerpts from the technical non-compliance report:

[TRANSLATION]

*Section 3.4 – [...] equipped with a quick-coupling device [...] **Minor non-compliance accepted.***

*Section 3.10 – A lifting ring [...] **Non-compliance accepted if the document provided under section 3.10.2 takes into account the entire assembly.***

*Section 3.10.1 – [...] lift capacity [...] **The document must be provided before the bid can be accepted.***

*Section 3.10.2 – [...] lift capacity [...] **The document must be provided before the bid can be accepted.***

Section 10.3 – [...] ring's lift capacity [...] **Must be indicated for the bid to be deemed compliant.**

Section 5.1 – [...] slow-moving triangle [...] **Must be corrected for the bid to be deemed compliant.**

The identified non-compliances are minor and can be corrected upon presentation of the appropriate documents.

It is what this report does not contain that is surprising. One would have expected that the person acting on behalf of the borough would have noticed that an incorrect hydraulic excavator model was being used given the major differences between the model required and declared by the company in its bid (a TAKEUCHI **TB1140**) and the model actually operated on the site (a TAKEUCHI **TB285**).

A layperson would quickly notice the difference, from a strictly visual standpoint, as illustrated in the following photos.

The following photo illustrates a TAKEUCHI **TB1140 Series 2**<sup>6</sup>:



<sup>6</sup> Photo taken from the equipment's data sheet posted on the manufacturer's website:  
[http://www.takeuchi-us.com/downloads/Takeuchi\\_TB1140Series2\\_SpecSheet\\_Jun\\_2015.pdf](http://www.takeuchi-us.com/downloads/Takeuchi_TB1140Series2_SpecSheet_Jun_2015.pdf)

Whereas the following photo illustrates a TAKEUCHI TB285<sup>7</sup>:



The Head of Section responsible for technical compliance cannot claim not to have noticed these striking differences. From 1990 to 2010, he worked for the *Rolling stock* Branch (Direction du matériel roulant) as an equipment analyst, purchasing specifications officer, research officer and machine shop foreman.

Mr. Yvon Lécuyer explained to the OIG that during the technical compliance inspection, the Head of Section simply asked him to move his excavator around in all directions. According to Mr. Lécuyer, the Head of Section simply had him add a weight chart to determine the excavator's lift capacity and two diamond-shaped signalization stickers at the back of his excavator.

When questioned by the OIG, the Head of Section admitted to having seriously failed in his inspection. He explained that he walked around the excavation site to verify the

<sup>7</sup> Photo taken from the equipment's data sheet posted on the manufacturer's website: [http://www.takeuchi-us.com/downloads/Takeuchi\\_TB285\\_SpecSheet\\_Jan\\_2013\\_v4.pdf](http://www.takeuchi-us.com/downloads/Takeuchi_TB285_SpecSheet_Jan_2013_v4.pdf)



registrations and make sure all of the required components were there. He conducted the inspection quickly and assumed that everything was fine.

**The investigation of the OIG shows that the technical compliance study conducted for this contract was botched.**

## **2.7 Production of a modified document by the contractor**

On March 11, 2014, the representative of the Procurement Service received an email from Excavation R. Lécuyer & Fils Inc. with two attached documents: a certificate signed by an engineer dated June 10, 2009, certifying the compliance of the hook and a data sheet for a TAKEUCHI hydraulic excavator whose model is not specified. Both documents are emailed that same day to the borough representative, who is asked to rule on the compliance of the bid.

On March 13, 2014, the borough representative replies to the Procurement Service representative with the following email message: [TRANSLATION] *“For the hook certificate, that’s fine. (...) All necessary data to calculate the lift capacity are provided in the chart submitted by Mr. Lécuyer, however, I cannot compromise myself and approve it.”* He concludes his message as follows: *“You can call me for more information.”*

On March 25, 2014, the borough’s representative sent an email to the representative of the Procurement Service to inform him that he spoke with with Mr. Lécuyer and the distributor of TAKEUCHI excavators. He states that the information provided on March 11, 2014 is the only information available for this excavator model and concludes by saying that the excavator described in the bid filed by Excavation R. Lécuyer & Fils Inc. can therefore be considered compliant.

According to an analysis by the OIG, the data sheet provided by Excavation R. Lécuyer & Fils Inc. on March 11, 2014, to demonstrate the compliance of the hydraulic excavator did not come from TAKEUCHI. Rather, it was a modified version of the TAKEUCHI TB285 data sheet, likely meant to falsely establish the compliance of the excavator model used.

This is the first page of the TB285 data sheet distributed by TAKEUCHI<sup>8</sup>:

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<sup>8</sup> Equipment data sheet posted on the manufacturer’s website: [http://www.takeuchi-us.com/downloads/Takeuchi\\_TB285\\_SpecSheet\\_Jan\\_2013\\_v4.pdf](http://www.takeuchi-us.com/downloads/Takeuchi_TB285_SpecSheet_Jan_2013_v4.pdf)

## TB285 - Hydraulic Excavator

**TAKEUCHI**  
Those in the know, know Takeuchi

### OPERATING PERFORMANCE

Operating Weight	Cab Rubber 18,780 lbs (8,518 kg)
	Cab Steel 19,604 lbs (8,892 kg)
Maximum Digging Depth	15 ft 0 in (4,570 mm)
Maximum Dump Height	17 ft 3 in (5,270 mm)
Maximum Reach	24 ft 5 in (7,435 mm)
Maximum Bucket Digging Force	16,565 lbs (7,514 kg)
Maximum Arm Digging Force	8,138 lbs (3,691 kg)
Arm Length	7 ft 0 in (2,130 mm)
Slew Speed	10.3 rpm
Traction Force	19,783 lbs (8,973 kg)

### ENGINE

Make / Model	Yanmar / 4TNV98 - Turbo
Tier Rating	EPA Interim Tier 4
Cylinders / Displacement	4 / 202 cu in (3.3 L)
Horsepower Gross (SAE J1995)	69.2 hp (51.6 Kw)
Horsepower Net (SAE 1349)	66.5 hp (49.6 Kw)
Rated Engine Speed	2,000 rpm
Maximum Torque	223 ft-lb @ 1,475 rpm (302 Nm)
Engine Lubrication	10.8 qt (10.2 L)
Cooling System	14.8 qt (14.0 L)
Fuel Tank Capacity	33.8 gal (128.0 L)
Fuel Consumption (65% of full load)	2.6 gal / hr (9.9 L / hr)
Electrical System	12 volts / 80 amps

### UNDERCARRIAGE

Traction Drive Type	Planetary Reduction and Auto Shift Down
Parking Brake	Spring Applied, Hydraulically Released, Multiple Wet Friction Disc
Track Roller Type	Permanently Sealed, Triple Flanged Rollers
Track Rollers (per side)	5 per side
Track Width	Rubber 17.7 in (450 mm)
	Steel 21.7 in (550 mm)
Track Ground Contact Length	7 ft 3 in (2,210 mm)
Ground Pressure	Rubber 5.5 psi (37.9 kPa)
	Steel 4.8 psi (33.1 kPa)
Maximum Travel Speed	
Low Range	1.6 mph (2.6 km / hr)
High Range	3.1 mph (5.0 km / hr)

### HYDRAULIC

Pump Type	Load Sensing Piston Pump
Total Hydraulic Flow	62.5 gal / min (236.6 L / min)
Primary Auxiliary Hydraulic Flow	26.4 gal / min (100.0 L / min)
Secondary Auxiliary Hydraulic Flow	14.5 gal / min (55.0 L / min)
System Operating Pressure	3,990 psi (27.5 MPa)
Hydraulic Reservoir Capacity	19.3 gal (73.0 L)
Hydraulic System Capacity	37.0 gal (140.0 L)

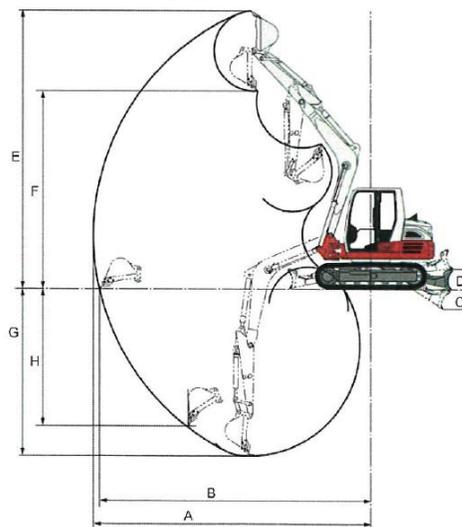
### LIFT CAPACITIES

	9 ft 10 in (3.0 m) Radius	
	Over Front, Blade Down	Over Side
+6.6 ft (2.0 m)	7,709 lbs (3,497 kg)	5,858 lbs (2,657 kg)
Ground Level	8,615 lbs (3,908 kg)	5,109 lbs (2,317 kg)
-3.3 ft (1.0 m)	10,798 lbs (4,898 kg)	5,078 lbs (2,303 kg)



### WORKING DIMENSIONS

A. Maximum Reach	24 ft 5 in (7,435 mm)
B. Maximum Reach Ground Level	23 ft 11 in (7,290 mm)
C. Blade Maximum Lower	1 ft 7 in (490 mm)
D. Blade Maximum Lift	1 ft 8 in (520 mm)
E. Maximum Dig Height	24 ft 0 in (7,305 mm)
F. Maximum Dump Height	17 ft 3 in (5,270 mm)
G. Maximum Dig Depth	15 ft 0 in (4,570 mm)
H. Maximum Vertical Dig Depth	12 ft 6 in (3,805 mm)



Using this data sheet as a template, the company produced another data sheet and deliberately removed the model number (TB285) as well as the specifications regarding the model's operating performance and engine (upper left-hand column). This was done, presumably, to avoid attracting the reader's attention to the lower power of this excavator

(69.2 hp) compared to the power requirements set out in the specifications (95 hp). Lastly, the company removed all engine and operating performance specifications from the document and left only those provided under “Undercarriage,” “Hydraulic” and “Lift capacities.”

Here is the original version of the document provided by Excavation R. Lécuyer & Fils Inc. and received by the Procurement Service on March 11, 2014, at 11:29 a.m.:

<b>UNDERCARRIAGE</b>		
Traction Drive Type	Planetary Reduction and Auto Shift Down	
Parking Brakes	Spring Applied, Hydraulically Released, Multiple Wet Friction Disc	
Track Roller Type	Permanently Sealed, Triple Flanged Rollers	
Track Rollers (per side)	5 per side	
Track Width	Rubber	17.7 in (450 mm)
	Steel	21.7 in (550 mm)
Track Ground Contact Length	7 ft 3 in (2,210 mm)	
Track Pressure	Rubber	5.5 psi (37.3 kPa)
	Steel	4.8 psi (33.1 kPa)
<b>Maximum Travel Speed</b>		
Low Range	1.6 mph (2.6 km / hr)	
High Range	3.1 mph (5.0 km / hr)	
<b>HYDRAULIC</b>		
Pump Type	Load Sensing Piston Pump	
Total Hydraulic Flow	62.5 gal / min (236.6 L / min)	
Primary Auxiliary Hydraulic Flow	26.4 gal / min (100.0 L / min)	
Secondary Auxiliary Hydraulic Flow	14.5 gal / min (55.0 L / min)	
System Operating Pressure	3,990 psi (27.5 MPa)	
Hydraulic Reservoir Capacity	19.3 gal (73.0 L)	
Hydraulic System Capacity	37.0 gal (140.0 L)	
<b>LIFT CAPACITIES</b>		
	9 ft 10 in (3.0 m) Radius	
	Over Front, Blade Down	Over Side
+6.6 ft (2.0 m)	7,709 lbs (3,497 kg)	5,858 lbs (2,657 kg)
Ground Level	8,515 lbs (3,908 kg)	5,109 lbs (2,317 kg)
-3.3 ft (1.0 m)	10,798 lbs (4,898 kg)	5,076 lbs (2,303 kg)

**WORKING DIMENSIONS**

A. Maximum Reach	24 ft 5 in (7,435 mm)
B. Maximum Reach Ground Level	23 ft 11 in (7,290 mm)
C. Blade Maximum Lower	1 ft 7 in (490 mm)
D. Blade Maximum Lift	1 ft 8 in (520 mm)
E. Maximum Dig Height	24 ft 0 in (7,305 mm)
F. Maximum Dump Height	17 ft 3 in (5,270 mm)
G. Maximum Dig Depth	15 ft 0 in (4,570 mm)
H. Maximum Vertical Dig Depth	12 ft 6 in (3,805 mm)

Based on the evidence gathered, the representative of the Ville-Marie borough had the wool pulled over his eyes. It is only at the time he was met by the OIG and presented with an altered document that he realized what the company had done. This points to a lack of rigour in the analysis of the bid's compliance.

### 3. Analysis

The Inspector General's power to intervene is provided under section 57.1.10 of the Charter, which reads as follows:

**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;**

**2° is of the opinion that the seriousness of the breach observed justifies the cancellation, rescinding or suspension.**

(...)

The conditions giving the Inspector General the right to intervene are cumulative. First, the Inspector General must find that any of the requirements specified in the documents of a call for tenders or a contract has not been met or that the information provided by the bidder is false. It is only once one of these cases is established that the Inspector General must decide on the seriousness of the breaches.

There is no doubt, in the Inspector General's opinion, that Excavation R. Lécuyer & Fils Inc. is carrying out the contract in breach of several of the requirements set out in call for tenders 14-13430.

The non-compliances are major, as admitted by the Heads of Section and Division when questioned on this matter.

The TAKEUCHI TB285 excavator used by Excavation R. Lécuyer & Fils Inc. is much less powerful than the model required under section 1.1 of the technical specifications (69.2 hp vs. 95 hp) and its digging capacity does not meet the requirements set by the borough in section 3.1 of said specifications (18 feet 8 inches vs. 21 feet 5 inches) despite the installation of a telescopic boom. The Inspector General must therefore conclude that certain *requirements specified in the call for tenders were not met* under section 57.1.10 of the Charter.

Furthermore, the company's president signed a false declaration at the time he filed his bid, to the effect that he would use a TAKEUCHI TB1140 excavator in the performance of the contract. Given the absence of any promise to purchase a TAKEUCHI TB1140 excavator attached to the bid, this company led the borough to believe that it already owned one. In addition to the facts observed by the OIG to the effect that the company used a TAKEUCHI TB285 excavator to perform its contract, the simple fact that the company's president declared during the investigation that the company never had in its possession a TAKEUCHI TB1140 excavator is sufficient evidence to conclude that *the information provided in the contracting process was false* under section 57.1.10 mentioned above.



What's more, the investigation shows that the document received by the Procurement Service was without a doubt a falsified document coming from Excavation R. Lécuyer & Fils Inc. The deliberate removal of the model number (TB285), operating performance and engine specifications from the data sheet, to make it appear as though the model actually used was compliant with the specifications so as to be awarded a public contract, constitutes fraudulent tactic in the Inspector General's opinion.

It is the Inspector General's opinion that the scheme used to mislead the person responsible for verifying the compliance constitutes a serious breach that justifies the cancellation of the contract in accordance with paragraph 2 of section 57.1.10 of the Charter.

Moreover, the declaration made by the company's president at the time he filed his bid, to the effect that he intended to perform the contract using an excavator that fully complied with the technical specifications, while he clearly had no intention of acquiring such an excavator, also constitutes a serious breach under the same section. Had the bidder specified the actual excavator used in his bid, he would have never been issued a notice of compliance or awarded this contract valued at \$1,327,961.25.

Furthermore, the fraudulent tactics used by Excavation R. Lécuyer & Fils Inc. not only prejudiced the borough but also undermined a fundamental principle underlying the rules governing the contracting process, that of equal opportunity. It was impossible for the other companies that requested the specifications to foresee that a competitor would make a false declaration, especially with regards to such a fundamental aspect of the call for tenders.

In sum, the use of a TAKEUCHI TB285 excavator to perform the contract, whereas said excavator does not meet several of the requirements stipulated by the borough in the technical specifications—namely with respect to the class of excavator required, engine power and digging depth—also constitutes a serious breach that justifies the rescinding of the contract.

#### **4. *Conclusions and decision***

It is therefore the Inspector General's opinion that the conditions provided under section 57.1.10 of Montréal's City Charter have been established. Given the seriousness of the contractor's breaches, there is no other choice but to rescind the contract awarded following call for tenders 14-13430.

#### **FOR THESE REASONS,**

The Inspector General

**RESCINDS** the contract for the rental of a hydraulic excavator including operator, maintenance and accessories for the purpose of water supply system



work awarded at an hourly rate of \$100 for years 2014, 2015 and 2016 to Excavation R. Lécuyer & Fils Inc. (public call for tenders 14-13430) and adopted by the Ville-Marie Borough Council on April 8, 2014 (resolution CA14 240157);

**SENDS**, in accordance with section 57.1.10 of Montréal's City Charter, a copy of this decision to the mayor of the City as well as to the clerk, who shall in turn send it to the city council concerned, i.e., the Ville-Marie Borough Council.

The Inspector General,

Denis Gallant, Ad. E.