



[This is an English version of the decision originally submitted in French to councils concerned]

Decision
Rescinding and recommendations
concerning various contracts awarded by
boroughs for the rental of tow trucks with
operators during snow removal operations

(section 57.1.10 of Montréal's City Charter)

September 26, 2016

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SUMMARY

The Office of Inspector General conducted an investigation of several contracts regarding the rental of tow trucks with operators awarded to private contractors for the towing of vehicles during snow removal operations performed by the boroughs.

The investigation revealed that three (3) contractors used, over the past few years, different schemes of a collusive nature regarding several call for tenders. These contractors are: Jean-Marc Lelièvre, president of Remorquage Taz inc. (9147-1953 Québec inc.), Steve Lenfesty, president of Remorquage Mobile (9273-5893 Québec inc.) and Réal Tourigny, president of Auto Cam 2000 (9096-1681 Québec inc.).

The investigation shows that these contractors submitted bids that were determined by collusion and that they made arrangement with competitors regarding the decision to submit a bid or not, at what price they should bid at, and the number of tow trucks they should include in their bids. Sometimes, these contractors divided the contracts put out to tender in a particular borough and committed themselves to not submit a bid in certain sectors that they considered belonging to others. This was done with the objective of ensuring that they won some contracts. As well, the investigation allowed the Inspector General to observe that these contractors communicated with each other and other competitors with the goal of exchanging information and to be informed of their intentions regarding certain calls for tenders.

The schemes described were used, in particular, by these three (3) contractors during the course of the following calls for tenders: 15-14685 (Plateau-Mont-Royal borough and Rivière-des-Prairies–Pointe-aux-Trembles borough), 15-14616 (Verdun borough), 14-13814 (Verdun borough), 13-13147 (Verdun borough), 15-14538 (Villeray–Saint-Michel–Parc-Extension borough) and 14-14050 (Ville-Marie borough).

The evidence collected by the Inspector General is comprised of clear and unequivocal admissions by Jean-Marc Lelièvre, Steve Lenfesty and Réal Tourigny, and was corroborated by the testimony of other contractors and by the analysis of the contractual data.

The cumulative criteria found in section 57.1.10 of Montréal's City Charter have been met. The bids submitted by Remorquage Taz inc., Remorquage Mobile and Auto Cam 2000 contain false statements by the signatory and violate the call for tenders documents, more precisely, with respect to provisions of Montréal's Contract Management Policy relating to measures seeking to combat collusion.

In the opinion of the Inspector General, these facts are serious and justify the rescinding of the contracts awarded following a tendering process tainted by collusion and fraudulent tactics, in order to prevent companies that practice these kinds of tactics from executing contracts. In effect, these schemes deprive the City and the boroughs of the possibility of obtaining the best service at the best price, which constitutes an obstacle to the principle of free competition and circumvents the call for tenders process which should take place.

However, certain contracts targeted by the investigation were executed in their totality and new calls for tenders are to be launched in the coming weeks for the next winter season. The Inspector General, as well as rescinding the contracts still being executed at the time of this decision, recommends to the City that it exclude Remorquage Taz inc. (9147-1953 Québec inc.), Remorquage Mobile (9273-5893 Québec inc.), Auto Cam 2000 (9096-1681 Québec inc.), Jean-Marc Lelièvre, Steve Lenfesty, Réal Tourigny, as well as any person associated with these bidders, from all calls for tenders, from all subcontracts, and from the possibility of signing contracts by mutual agreement with the City for a period of five (5) years, beginning on the date of this decision, in accordance with the provisions of the new version of Montréal's Contract Management Policy, adopted by Montréal's City Council and Montréal's Agglomeration Council, respectively on August 23rd and August 25th, 2016.



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1. Scope of the Investigation

1.1 *Warning*

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

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

1.2 *Applicable Standard of Proof*

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

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

While exercising his jurisdictional functions as is the case here,² the Inspector General will, *a fortiori*, apply this norm.

2. Context of the Investigation

On November 23, 2015, the Inspector General filed the *Report on Snow Removal and its Practices in Montréal* with the City Council. The investigation allowed the Inspector General to obtain sufficient information to observe that several collusion and market

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

² Use of the powers set out in s. 57.1.10 of Montréal's City Charter.



control schemes are established in the snow removal industry in Montréal. The investigation targeted mainly “turnkey” and snow transportation contracts.³

The present decision is the culmination of an investigation of several contracts regarding the rental of tow trucks with operators awarded to private contractors for the towing of vehicles during snow removal operations performed internally (by the borough’s blue collar workers).

These contractors work in the towing industry and not in the snow removal sector; they were therefore not the subjects targeted by the Office of Inspector General’s investigation which led to the filing of the *Report on Snow Removal and its Practices in Montréal* on November 23, 2015.

3. Facts Uncovered by the Inspector General’s Investigation

The in-depth investigation of the Office of Inspector General revealed that the following three (3) contractors carried out schemes of a collusive nature during several call for tenders processes which sought to award contracts for the rental of tow trucks with operators incidental to snow removal operations in different boroughs:

- Jean-Marc Lelièvre, the president of Remorquage Taz inc. (9147-1953 Québec inc.) and signatory of the bids submitted by the company;
- Steve Lenfesty, the president and treasurer of Remorquage Mobile (9273-5893 Québec inc.) and signatory of the bids submitted by the company; and
- Réal Tourigny, the president, secretary, and treasurer of Auto Cam 2000 (9096-1681 Québec inc.) and signatory of the bids submitted by the company.

The evidence obtained is comprised of clear and unequivocal admissions by each of the three (3) contractors and expressed by them when interviewed by the Office of Inspector General. These admissions are, in addition, corroborated by the statements of other contractors and by the analysis of the contractual data to which the Office of Inspector General had access.

³ So-called “turnkey” snow removal contracts are awarded to private contractors that agree to handle snow removal for a sector, including scraping, pushing snow to the curb into piles for removal, blowing snow, carrying snow to the snow disposal sites and sometimes even the spreading of ice-melters and abrasives. As for snow transportation contracts, they are awarded to private contractors solely for transporting snow to the snow disposal sites, whereas the snow is removed from the roads and sidewalks by the borough’s blue collar workers.

3.1 Notice to an Interested Party

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

On September 1, 2016, the contractors Jean-Marc Lelièvre (Remorquage Taz inc.), Réal Tourigny (Auto Cam 2000) and Steve Lenfesty (Remorquage Mobile) received a copy of the Notice which indicated the relevant facts obtained during the course of the Inspector General's investigation so that they could be apprised of these facts and give in writing their comments and representations to the Office of Inspector General.

On September 6, 2016, Jean-Marc Lelièvre communicated with the Office of Inspector General by telephone in order to discuss, verbally, the Notice that had been sent to him. He then transmitted a written response on September 8, 2016. Steve Lenfesty, for his part, sent a written response to the Inspector General on September 7, 2016. The facts and arguments submitted by these two (2) contractors were considered by the Inspector General and will be discussed on the present decision.

As for Réal Tourigny, he did not submit a response to the Office of Inspector General.

3.2 Evidence Gathered During the Investigation

The investigation conducted by the Inspector General permitted to conclude that Réal Tourigny (Auto Cam 2000) and Steve Lenfesty (Remorquage Mobile) share certain contracts for the rental of tow trucks with operators aimed at towing vehicles during snow removal operations.

Jean-Marc Lelièvre and Réal Tourigny both confirmed to the Office of Inspector General that they discuss together, and with Steve Lenfesty, before and during the period set out for the publication of the calls for tenders, in order to exchange information pertaining to the price as well as the number of tow trucks they intend on proposing in their bids, but also in order to be informed of their intentions regarding the contracts they want to bid on.

Réal Tourigny adds that he has, in the past, come to an agreement with Jean-Marc Lelièvre for each one not to submit a bid against the other regarding certain contracts put out to tender.

When interviewed by the Office of Inspector General, Steve Lenfesty confides that there exists a "mutual respect" between Remorquage Mobile, Remorquage Taz inc. and Auto Cam 2000. Said another way, by "respect", these contractors withhold bidding on contracts that they consider "belonging" to one of them. Moreover, it is worth mentioning that the Inspector General has already discussed this notion of "mutual respect" in the *Report on*



Snow Removal and its Practices in Montréal from November 23, 2015, a report that dealt with the snow removal industry.⁴

In a more general manner, Réal Tourigny states that, in this industry, everyone respects each other. Jean-Marc Lelièvre, for his part, explains that, in the industry [TRANSLATION] “everyone talks to each other” and that the saying [TRANSLATION] “don’t come to my place, and I won’t go to yours” summarizes the way in which the contractors approach contracts. Moreover, Jean-Marc Lelièvre is an individual that some of the other contractors interviewed by the Office of Inspector General describe as being someone who approaches his competitors in order to find out the price of their bids and their intentions regarding the contract in the call for tenders.

On top of the general admissions, the investigation allowed the Inspector General to obtain, more precisely, evidence of collusion and attempts at collusion during the course of some specific contract awarding processes.

The following table regroups the contracts for which the Inspector General possesses evidence, on the balance of probabilities, to the effect that the call for tenders processes they result from are tainted by fraudulent tactics and collusive schemes.

| Call for Tenders | Boroughs and sectors targeted (as the case may be) | Winter season concerned |
|------------------|--|--|
| 15-14685 | Plateau-Mont-Royal, T-53 | 2015-2016 |
| | Plateau-Mont-Royal, T-54 | Renewal option (2016-2017 and 2017-2018) |
| | Plateau-Mont-Royal, T-55 | |
| | Rivière-des-Prairies – Pointe-aux-Trembles | 2015-2020 |
| 15-14616 | Verdun | 2015-2016 |
| 14-13814 | | Renewal option (2016-2017) |
| 13-13147 | | 2014-2015 |
| 15-14538 | Villeray – Saint-Michel – Parc-Extension | 2013-2014 |
| 14-14050 | Ville-Marie | 2015-2016 |
| | | Renewal option (2016-2017) |
| | | 2014-2016 |
| | | Renewal option (2016-2017 and 2017-2018) |

The evidence of collusion or attempts at collusion obtained by the Inspector General for each of these contracts will be discussed in the following sections of this decision.

In order to facilitate the readers’ comprehension, the Inspector General would like to specify that for several of the calls for tenders which will be discussed, the boroughs were

⁴ See Report on *Snow Removal and its Practices in Montréal* filed with Montréal’s City Council on November 23, 2015, p. 10-11.

looking to rent several tow trucks with operators and that there was more than one (1) winning bidder for each of the call for tenders. The contracts were therefore awarded to the bidding companies in relation to the price bid, but also in regards to the number of tow trucks they were able to provide.

3.2.1 Call for Tenders 15-14685

Call for tenders 15-14685, launched on September 2, 2015, concerns the awarding of several contracts for the rental of tow trucks with operators for towing in several boroughs, such as the Plateau-Mont-Royal and the Rivière-des-Prairies–Pointe-aux-Trembles boroughs.

The following table regroups the relevant information concerning the contracts awarded following call for tenders 15-14685 in these two (2) boroughs:

| Call for tenders | Boroughs and sectors targeted (as the case may be) | Winter season concerned | Number of bidders | Winning bidder(s) | Unit rates and number of tow trucks |
|------------------|--|---|-------------------|---------------------|-------------------------------------|
| 15-14685 | Plateau-Mont-Royal, T-53 | 2015-2016 Renewal option (2016-2017 and 2017-2018) | 1 | Not awarded | |
| | Plateau-Mont-Royal, T-54 | | 1 | Auto Cam 2000 | \$75/h 3 tow trucks |
| | Plateau-Mont-Royal, T-55 | | 1 | Remorquage Taz inc. | \$75/h 3 tow trucks |
| | Rivière-des-Prairies – Pointe-aux-Trembles | 2015-2020 | 1 | Remorquage Taz inc. | \$80/h 3 tow trucks |

The analysis of the bids received reveals that the companies Remorquage Mobile, Remorquage Taz inc. and Auto Cam 2000 did not bid one against the other for all of the boroughs and sectors targeted by call for tenders 15-14685.

Three (3) sectors of the Plateau-Mont-Royal borough were targeted by call for tenders 15-14685: the sectors T-53, T-54 and T-55. For each of these sectors, three (3) tow trucks with operators were necessary.

The Office of Inspector General met with Jean-Marc Lelièvre, Réal Tourigny, and Steve Lenfesty, the presidents of, in order, Remorquage Taz inc., Auto Cam 2000, and Remorquage Mobile. All three (3) confirmed having agreed to share the three (3) sectors of the Plateau-Mont-Royal borough.

According to the agreement, Remorquage Mobile was supposed to bid on the sector T-53, Auto Cam 2000 on sector T-54, and Remorquage Taz inc. on sector T-55. The three (3) contractors also agreed to not bid one against the other as well, in the sectors that were not attributed to each of them.



For each of the three (3) sectors of the Plateau-Mont-Royal borough, only one (1) bid was received by the City. The result of the opening of the bids is compatible with the agreement between Jean-Marc Lelièvre, Réal Tourigny, and Steve Lenfesty: only Remorquage Mobile bid on the contract in sector T-53, only Auto Cam 2000 bid on the contract in sector T-54 and only Remorquage Taz inc. bid on the contract in sector T-55.

However, the contract for sector T-53 was not awarded following the call for tenders process because the amount of Remorquage Mobile's bid was superior to the accepted 20% markup limit regarding the estimate (bid at \$135 per hour for three (3) tow trucks).⁵ The borough therefore launched a new call for tenders (15-14924) which was a call for tenders by invitation. Remorquage Mobile and Auto Cam 2000 were two (2) of the firms which were invited to submit a bid. The contract for sector T-53 was finally awarded Remorquage Mobile who submitted the lowest bid, that is, \$85 an hour for two (2) tow trucks and \$88 an hour for the third tow truck.

The three (3) contracts awarded following calls for tenders 15-14685 and 15-14924 were executed during the previous winter season (2015-2016). Two (2) renewal options of one (1) year were foreseen for the 2016-2017 and 2017-2018 winter seasons. The City decided, however, not to exercise its option for renewal and instead decided to launch a new call for tenders process (call for tenders 16-15460) on August 22, 2016.

Call for tenders 15-14685 also sought to award one (1) contract for the rental of tow trucks with operators for towing in the Rivière-des-Prairies–Pointe-aux-Trembles borough. Once again, three (3) tow trucks were necessary and only one (1) bid was received, that of Remorquage Taz inc.

The investigation of the Inspector General revealed that Jean-Marc Lelièvre (president of Remorquage Taz inc.) contacted several competitors, at least three (3), in order to find out their intentions regarding this contract. It is important to note that this contract is presently being executed and ends in 2020.

First of all, Jean-Marc Lelièvre admits to asking Réal Tourigny (Auto Cam 2000) if he intended to bid on this contract, to which Réal Tourigny replied that he was not interested by this contract. Interviewed by the Office of Inspector General, Réal Tourigny confirms these facts but specifies that he made a commitment to Jean-Marc Lelièvre to not bid in the Rivière-des-Prairies–Pointe-aux-Trembles borough.

Also in connection with this borough, Steve Lenfesty (Remorquage Mobile) states to the Office of Inspector General that he informed Jean-Marc Lelièvre, when contacted by him by telephone, of his intention not to bid on this contract.

Finally, Jean-Marc Lelièvre admits to having approached a third contractor in the same vein. This contractor confirmed to him that he would not submit a bid. When interviewed by the Office of Inspector General, this contractor explained that he decided not to bid due to the number of tow trucks required in the call for tenders

⁵ Decision-making summary 1156858028.

3.2.2 Calls for Tenders 15-14616, 14-13814 and 13-13147

Calls for tenders 15-14616, 14-13814 and 13-13147, launched respectively on July 22, 2015, August 20, 2014, and August 14, 2013, sought to award contracts for the rental of tow trucks with operators for the towing of vehicles in the Verdun borough, for the 2015-2016, 2014-2015 and 2013-2014 winter seasons. For each winter season, six (6) tow trucks were necessary, with the possibility of proposing an extra flatbed tow truck.

The following table regroups the relevant information relating to the contracts awarded following these three (3) calls for tenders in the Verdun borough:

| Call for tenders | Boroughs and sectors targeted (as the case may be) | Winter season concerned | Number of bidders | Winning Bidders | Unit rate and number of tow trucks |
|------------------|--|--|-------------------|-------------------|------------------------------------|
| 15-14616 | Verdun | 2015-2016 Renewal option (2016-2017) | 3 | Auto Cam 2000 | \$150/h 2 tow trucks |
| | | | | Remorquage Mobile | \$150/h 1 tow truck |
| | | | | Ludos Autos inc. | \$85/h 4 tow trucks |
| 14-13814 | | 2014-2015 | 3 | Auto Cam 2000 | \$125/h 2 tow trucks |
| | | | | Remorquage Mobile | \$125/h 2 tow trucks |
| | | | | Ludos Autos inc. | \$70/h 2 tow trucks |
| 13-13147 | | 2013-2014 | 3 | Auto Cam 2000 | \$125/h 4 tow trucks |
| | | | | Remorquage Mobile | \$125/h 2 tow trucks |

The analysis of the contractual data allowed the Inspector General to observe that Remorquage Mobile and Auto Cam 2000 bid, since 2013, at the same hourly rate per unit and sometimes go as far as to propose the same amount of tow trucks.

When interviewed on this subject by the Office of Inspector General, Steve Lenfesty (Remorquage Mobile) and Réal Tourigny (Auto Cam 2000) both affirm that they agreed to bid at the same price since 2013. They explain to the Office that each time a call for tenders is launched for the Verdun borough, it is Steve Lenfesty who gets in contact with Réal Tourigny. They indicate that they inquire on each other's intentions to bid or not, and then exchange information regarding the price and the number of tow trucks that they will propose in their bid.



The two (2) contractors admit that they are aware of the fact that, in the eventuality that two (2) equal bids (in terms of the price proposed) are received by the City at the end of the call for tenders process, a random draw will be performed in order to determine the winner of the contract. Moreover, during the course of calls for tenders 15-14616 and 14-13814, a random draw between the bidders Auto Cam 2000 and Remorquage Mobile was performed in order to determine which of these firms would have precedence over the other seeing as the hourly rates submitted were the same.⁶

As can be seen from the data in the above mentioned table regarding the hourly rates per unit proposed by each of the winning bidders, in 2014 and 2015, there were three (3) winning bidders for towing services with an operator: Remorquage Mobile, Auto Cam 2000, and Ludos Auto inc. By agreeing on the price of their bid, Remorquage Mobile and Auto Cam 2000 circumvented the rules which guarantee free and healthy competition amongst contractors interested in submitting a bid.

In 2014 (call for tenders 14-13814), the two (2) contractors agreed to bid at \$125 per hour for each tow truck, whereas the other winning tenderer bid at a price of \$70 per hour for each tow truck: Remorquage Mobile and Auto Cam 2000 were therefore awarded contracts at a price that was 78.57% higher.

In 2015 (call for tenders 15-14616), the two (2) bidders agreed to bid at a price of \$150 per hour for each tow truck, whereas the other winning tenderer bid at a price of \$85 per hour for each tow truck: Remorquage Mobile and Auto Cam 2000 were therefore awarded the contracts at a price that was 76.47% higher.

Call for tenders 15-14616 had a renewal option of the contract for the 2016-2017 season. The Verdun borough originally decided to exercise the option for all three (3) of the winning bidders, but following the refusal of Ludos Auto inc. to accept the renewal, the borough decided to launch a new call for tenders for towing services and sent an email on September 7, 2016, to Remorquage Mobile and Auto Cam 2000 confirming that their contract would not be renewed. The new call for tenders process (16-15615) was therefore launched by the Verdun borough, as it appears in the confirmation sent by the borough to the Office of Inspector General on September 13, 2016.

3.2.3 Call for Tenders 15-14538

Launched on July 6, 2015, call for tenders 15-14538 sought to award contracts for the rental of tow trucks with operators for the towing of vehicles during snow removal operations in the Villeray–Saint-Michel–Parc-Extension borough. In total, six (6) tow trucks were necessary.

The following table regroups the relevant information regarding the contracts awarded following call for tenders 15-14538 in the Villeray–Saint-Michel–Parc-Extension borough:

⁶ See decision-making summaries 1152198008 and 1141061003.

| Call for tenders | Borough and sectors targeted (as the case may be) | Winter seasons concerned | Number of bidders | Winning Bidders | Unit rate and number of tow trucks |
|------------------|---|--|-------------------|----------------------|------------------------------------|
| 15-14538 | Villeray – Saint-Michel – Parc-Extension | 2015-2016 Renewal Option (2016-2017) | 3 | Remorquage Taz inc. | \$69/h 4 tow trucks |
| | | | | Sciage Montréal inc. | \$64,90/h 2 tow trucks |

The Office of Inspector General interviewed Jean-Marc Lelièvre (Remorquage Taz inc.) regarding call for tenders 15-14538. Jean-Marc Lelièvre stated that he contacted the representative of a competitor by telephone in order to know what price he was placing on his bid, the number of tow trucks he was proposing, and the competitor's intentions regarding the contract in the call for tenders.

Jean-Marc Lelièvre remembers that the competitor told him that he was going to bid with two (2) tow trucks, but he could not remember the price that his competitor had mentioned.

The contract awarded to Remorquage Taz inc. for the 2015-2016 winter season was renewed for one (1) additional year, that is, 2016-2017. At the present time, the contract is still active.

3.2.4 Call for Tenders 14-14050

Call for tenders 14-14050, launched on October 29, 2014, sought to award contracts for the rental of tow trucks with operators for the towing of vehicles during snow removal operations in the Ville-Marie borough. In total, eight (8) tow trucks were necessary.

Valid for the 2014-2015 and 2015-2016 winter seasons, the contracts of each of the winning bidders were subject to possible renewals until 2018. On August 31, 2016, the Ville-Marie borough informed the Office of Inspector General of its intention to renew the contracts awarded in 2014 for the 2016-2017 winter season.

The following table regroups the relevant information relating to the contracts awarded following the call for tenders 14-14050 for the Ville-Marie borough:

| Call for tenders | Borough and sector targeted (as the case may be) | Winter season concerned | Number of Bidders | Winning Bidders | Unit Rate and number of tow trucks |
|------------------|--|---|-------------------|---------------------|------------------------------------|
| 14-14050 | Ville-Marie | 2014-2016 Renewal Option (2016- 2017 and 2017-2018) | 4 | M.J. Contach enr. | \$69/h 2 tow trucks |
| | | | | Remorquage Taz inc. | \$75/h 6 tow trucks |



Interviewed by the Office of Inspector General, Jean-Marc Lelièvre (Remorquage Taz inc.) admits to having communicated with the representative of one of his competitors in order to know the competitor's intentions regarding call for tenders 14-14050.

Jean-Marc Lelièvre states that he asked his competitor the price he intended to submit in his bid as well as the number of tow trucks he intended to propose. Jean-Marc Lelièvre remembers that his competitor stated that he was going to bid with one tow truck but does not remember the price mentioned by his competitor.

4. Analysis

4.1 *Analysis of the Evidence Obtained*

The investigation conducted by the Office of Inspector General shows schemes of a collusive nature were used by Jean-Marc Lelièvre (Remorquage Taz inc.), Réal Tourigny (Auto Cam 2000) and Steve Lenfesty (Remorquage Mobile) during several calls for tenders seeking to award contracts for the rental of tow trucks with operators for towing services during snow removal operations in different boroughs.

First, Remorquage Taz inc., Auto Cam 2000 and Remorquage Mobile submitted bids established with collusion during call for tenders 15-14685, according to the following schemes:

- For sectors T-53, T-54, and T-55 of the Plateau-Mont-Royal borough, Jean-Marc Lelièvre (Remorquage Taz inc.), Réal Tourigny (Auto Cam 2000), and Steve Lenfesty (Remorquage Mobile) agreed on an arrangement regarding the decision to submit a bid or not, in a way to ensure that each one obtained one (1) contract. The sectors of the borough were separated between the three (3) contractors and each contractor agreed to not submit a bid in the sectors belonging to the others.
- For the contract in the Rivière-des-Prairies–Pointe-aux-Trembles borough, the investigation reveals that Jean-Marc Lelièvre (Remorquage Taz inc.) communicated with several competitors in order to know the intentions of his competitors regarding their decision to present a bid or not. What is more, Jean-Marc Lelièvre came to an agreement with one of these competitors (Réal Tourigny, Auto Cam 2000), to not present a bid in this borough.

Next, Auto Cam 2000 and Remorquage Mobile submitted bids established with collusion in calls for tenders 15-14616, 14-13814, and 13-13147. These calls for tenders sought towing services in the Verdun borough. These two (2) competitors communicated together and came to an agreement regarding the price of their bids, that is, to bid at the same price for the contracts. It is worth a reminder that the price of the bid agreed upon by Auto Cam 2000 and Remorquage Mobile was 76,47% to 78,57% higher than the hourly rate per unit proposed by the third winning bidder in the borough, and therefore probably had the effect of allowing the companies that agreed on the price to win contracts at a higher rate than if free competition had played between the two.

Finally, with regards to calls for tenders 15-14538 and 14-14050, seeking towing service in the Villeray–Saint-Michel–Parc-Extension et the Ville-Marie boroughs respectively, Remorquage Taz inc. submitted a bid when its president, Jean-Marie Lelièvre, had communicated with some competitors regarding their decision to submit a bid or not and at what price they intended to bid.

All of these findings ensue from the admissions expressed by the contractors. What is more, is that the version of the events given by each of the contractors match and are, with the exception of a few details, the same.

During a telephone conversation Jean-Marc Lelièvre initiated with the Office of Inspector General on September 6, 2016, Jean-Marc Lelièvre mentioned, in response to the Notice to an interested party he received, that he didn't really participate in collusion, that he did not want to "dirty anyone's reputation" and that if he talked to his competitors, it was to buy peace. He adds that it was curiosity which led him to call his competitors and not with the goal of "hurting anyone" or of intimidating anyone.

In his written response to the Notice to an interested party, Jean-Marc Lelièvre admits that he talked to his competitors, but reiterates that it was done out of curiosity, "to know how it was going for them". He also admits that there is "too much of a war for the control of the territory".

What is most notable to the Inspector General in the present investigative file is that it is obvious that contractors still do not grasp what constitutes collusion, whereas several of the Inspector General's reports have been published regarding this subject, in particular the *Report on Snow Removal and its Practices in Montréal* filed on November 23, 2015. During both their interviews with the investigators of the Office as well as in their response to the Notice to an Interested party, the contractors do not seem to understand that the acts that they admitted having committed, and described in detail, correspond to the definition of collusion.

The schemes used during calls for tenders 15-14685, 15-14616, 14-13814, 13-13147, 15-14538 and 14-14050 are considered to be fraudulent tactics because they deprive the City and the boroughs of the possibility of obtaining the best service at the best price. Indeed, these tactics have the objective of circumventing the call for tenders process and they unduly prevent and reduce healthy competition, whereas that is exactly what this process covets.

Some of the contracts identified by the Inspector General during the course of his investigation are presently being executed and some of the other contracts are completed. The following table shows the status of the contracts awarded to Remorquage Taz inc., Remorquage Mobile and Auto Cam 2000, in which the contract awarding process was tainted by fraudulent tactics:



| Winning Bidders | Call for tenders | Boroughs and sectors targeted (as the case may be) | Status of the contract |
|---------------------|---|--|--|
| Remorquage Taz inc. | 15-14685 | Le Plateau-Mont-Royal, T-55 | Contract completed |
| | | Rivière-des-Prairies – Pointe-aux-Trembles | Contract ongoing until 2020 |
| | 15-14538 | Villeray – Saint-Michel – Parc-Extension | Contract ongoing until 2017 |
| | 14-14050 | Ville-Marie | Borough has intention of renewing contract |
| Remorquage Mobile | 15-14924 (follows call for tenders 15-14685) | Le Plateau-Mont-Royal, T-53 | Contract completed |
| | 15-14616 | Verdun | Contract completed |
| | 14-13814 | Verdun | Contract completed |
| | 13-13147 | Verdun | Contract completed |
| Auto Cam 2000 | 15-14685 | Le Plateau-Mont-Royal, T-54 | Contract completed |
| | 15-14616 | Verdun | Contract completed |
| | 14-13814 | Verdun | Contract completed |
| | 13-13147 | Verdun | Contract completed |

4.2 Violation of the Requirements in the Call for Tenders Documents

When submitting a bid, all contractors undertake to respect Montréal's Contract Management Policy (Politique de gestion contractuelle de la Ville de Montréal). This policy is part of the call for tenders documents and is found appended to the General Administrative clauses.

In each of the call for tenders documents examined in the present decision, Montréal's Contract Management Policy was written as follows in the chapter on collusion⁷:

⁷ This version of the policy was adopted by Montréal's City Council and Montréal's Agglomeration Council respectively on June 17 and June 20, 2013. A new version of Montréal's Contract Management Policy was adopted by Montréal's City Council and Montréal's Agglomeration Council respectively on August 23 and 25, 2016.

[TRANSLATION]

4.3 Non-collusion

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

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

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

[...]

Article 4.3 of the policy, included in the call for tenders documents of the contracts which are the subject of the present decision, required that the signatory of the bid solemnly declare that, to his personal knowledge and after a serious verification, the bidder, one of his employees, or a person associated with him, established the bid without collusion and without communication or agreement with a competitor regarding the price or regarding the decision to present a bid or not.

Steve Lenfesty (Remorquage Mobile), Jean-Marc Lelièvre (Remorquage Taz inc.) and Réal Tourigny (Auto Cam 2000) admitted to the Office of Inspector General that they had agreements of a collusive nature with their competitors. They also admitted that they communicated with their competitors with the objective of discussing their intentions to submit a bid or not in the calls for tenders, the price they intended to submit in their bids, and the number of tow trucks they were going to propose in their offers.

Yet, for the totality of the contracts examined in the present decision, these same individuals are the respective signatories of the bids submitted by the companies. They cannot therefore claim that they did not know that the bids submitted were established with collusion or after having communicated or made an agreement with a competitor.

The acts committed violate article 4.3 of the version of the policy in force when the contracts were awarded, and which was part of the call for tenders documents. The bids submitted by Remorquage Taz inc., Remorquage Mobile and Auto Cam 2000 do not respect Montréal's Contract Management Policy and, therefore, by that very fact, does not



respect one of the requirements of the call for tenders documents, because the policy is an integral part of these documents.

Moreover, via article 27.1 of the Instructions to bidders of the calls for tenders examined, the bids contain solemn declarations of their signatory which prove to be untrue and contain false information. Indeed, article 27.1 states the following:

[TRANSLATION]

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

5. Intervention of the Inspector General

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

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

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

[...]

In accordance with this section of Montréal's City Charter, in order to rescind a contract, the Inspector General must be in the presence of non-compliance regarding one of the requirements in the call for tenders documents or the contract, or in the presence of false information given during the contract awarding process. The Inspector General must also be of the opinion that the observed breaches are sufficiently serious to justify rescinding the contracts.

As was previously demonstrated, the Inspector General concluded from the evidence gathered that the bids submitted by Remorquage Mobile, Remorquage Taz inc. and Auto Cam 2000 in calls for tenders 15-14685, 15-14538, 14-14050, 15-14616, 14-13814 and 13-13147 violate Montréal's Contract Management Policy which was in force at that time, do not respect the requirements of the calls for tenders documents and contain false information within the meaning of section 57.1.10 of Montréal's City Charter.

The Inspector General considers that the facts uncovered during the investigation are serious and show in a flagrant manner the collusive schemes used by Jean-Marc Lelièvre (Remorquage Taz inc.), Steve Lenfesty (Remorquage Mobile) and Réal Tourigny (Auto Cam 2000) within the framework of the numerous contracts put out to tender, in particular contract sharing, arranged bids, as well as attempts at collusion.

The acts taken are a real obstacle to a free market and deviate the call for tenders process from its primary objective, which is to generate greater competition in order for the client to obtain the best service at the best price.⁸ To this effect, it should be reminded that in the Verdun borough, differences of 76,47% to 78,57% were observed between the bid prices submitted by the contractors who had agreed on the price (Steve Lenfesty, Remorquage Mobile and Réal Tourigny, Auto Cam 2000) and the price submitted by the other winning bidder.⁹

In the Inspector General's opinion, the facts justify rescinding the contracts still in progress which were awarded following tendering processes tainted by fraudulent tactics. The objective here is to avoid that a company which participates in collusive tactics be allowed to execute or continue executing contracts obtained thanks to these maneuvers.

In their written response to the Notice to an interested party, dated September 8, 2016, Jean-Marc Lelièvre (Remorquage Taz inc.) states that if the Inspector General [TRANSLATION] "removes" his [TRANSLATION] "little contracts" from him, it will not [TRANSLATION] "be very profitable at \$75 an hour".

This element is not relevant to the Inspector General's decision regarding whether there was a violation of the call for tenders documents.

The Inspector General therefore rescinds the contracts presently in progress, that is, the three (3) contracts awarded to Remorquage Taz inc. following calls for tenders 15-14685, 15-14538 and 14-14050, for towing services in the Rivière-des-Prairies–Pointe-aux-Trembles, the Villeray–Saint-Michel–Parc-Extension, and the Ville-Marie boroughs.¹⁰

⁸ Me Pierre Giroux et Me Denis Lemieux, *Contrats des organismes publics québécois*, éd. Wolters Kluwer (pages 809-2); *R.P.M. Tech inc. c. Gaspé (Ville)*, REJB 2004-60675 (C.A.), par. 25; *Drummondville (Ville de) c. Construction Yvan Boisvert inc.*, 2004 CanLII 73066 (C.A.), par.1; *Groupe Morin Roy, s.e.n.c. c. Blainville (Ville)*, REJB 2003-43965 (C.S.), par. 24; *Archevêque & Rivest ltée c. Beaucage*, EYB 1983-118139 (C.A.), par. 52.

⁹ Calls for tenders 15-14616 and 14-13814.

¹⁰In the eventuality that the contract in the Ville-Marie borough is renewed for the 2016-2017 winter season, in accordance with the intent that the borough expressed to the Office of Inspector General.



As for the contracts for which the awarding processes were tainted by collusion,¹¹ the Inspector General cannot rescind them because the period set out for their execution is completed. The Inspector General does, however, have enough evidence to conclude that the presidents and signatories of the bids from Remorquage Taz inc., Remorquage Mobile, and Auto Cam 2000 violated Montréal's Contract Management Policy.

In addition to rescinding the contracts in progress, the Inspector General underlines that an important review of the policy was recently performed. Montréal's City Council and Montréal's Agglomeration Council adopted a new version of the policy respectively on August 23 and August 26, 2016.¹²

In its transitional measures, this new version of Montréal's Contract Management Policy carries an additional consequence for the subjects concerned by the investigation of the Office of Inspector General:

[TRANSLATION]

39. [...]

The commission of an act contrary to the present policy during the same 5 year period [5 years prior to August 23, 2016], in the context of a call for tenders launched by the city, a contract or a subcontract, allows the latter, at its sole discretion, to exclude the bidder, as well as a person referred to in article 35, from all calls for tenders, from all subcontracts, or from the possibility to agree to a contract by mutual agreement with the City during the same period set out in articles 31 to 35 regarding such an act.

This consequence is applicable with respect to contracts in progress, but also with respect to contracts which are completed, as long as the act in violation of the policy was committed after August 23, 2011, in the case of contracts under the jurisdiction of the City council.

In the chapter on collusion and fraudulent tactics, the new version of Montréal's Contract Management Policy, as adopted by the City Council and the Agglomeration Council, respectively on August 23 and August 25, 2016, states the following:

¹¹ Contracts awarded to Remorquage Taz inc. following call for tenders 15-14685 (Plateau-Mont-Royal, sector T-55); contracts awarded to Remorquage Mobile following calls for tenders 15-14924 (Plateau Mont Royal, sector T-53), 15-14616 (Verdun), 14-13814 (Verdun) and 13-13147 (Verdun); contracts awarded to Auto Cam 2000 following calls for tenders 15-14685 (Le Plateau-Mont-Royal, sector T-54), 15-14616 (Verdun), 14-13814 (Verdun) and 13-13147 (Verdun).

¹² City Council Resolution CM16 0963 et Agglomeration Council Resolution CG16 0507.

[TRANSLATION]

17. No one may, directly or indirectly, in the context of preparing or presenting a bid or a contract by mutual agreement, participate or attempt to participate in collusion, corruption, or in a fraudulent tactic, or participate or attempt to participate in another illegal act of the same nature which is susceptible to compromise the integrity of the call for tenders process or the choice of a co-contractor by mutual agreement, or the management of the resultant contract.

In submitting a bid or agreeing to a contract by mutual agreement with the City, the signatory solemnly declares that the bidder or the co-contractor by mutual agreement, did not violate, directly or indirectly, the first paragraph.

In his response to the Notice to an interested party, dated September 7, 2016, Steve Lenfesty writes that Remorquage Mobile has worked in this industry for more than twenty (20) years, including several years in Montréal. He adds that the work is well executed and that the company has an excellent reputation with the City. Steve Lenfesty emphasizes that in the sector of operation of Remorquage Mobile, very few of the players are able to meet the requirements of the City and to provide the necessary equipment, and therefore the same bidders are solicited regularly.

Steve Lenfesty repeats that the statements he made to the Office of Inspector General were made in good faith and were forthright. He underlines that Remorquage Mobile is honest in its business dealings. In concluding, Steve Lenfesty reiterates his profound desire to continue to offer his towing services to the City and commits to fulfilling all the conditions and requirements of the Office of Inspector General.

Jean-Marc Lelièvre, for his part, states that there isn't really any competition, that he bided on contracts that no one wanted and that [TRANSLATION] "no one wants to invest in the industry for the little that it pays". He concludes by indicating that if the Inspector General excludes him from bidding, it will be [TRANSLATION] "his thanks for having well served the City for 14 years", because he [TRANSLATION] "took the headaches of the towing industry".

These arguments cannot be retained because the Inspector General's decision is based on the flagrant and serious violations of the provisions of Montréal's Contract Management Policy regarding measures against collusion, measures that affect the integrity and the objective of the call for tenders process. Moreover, in his response to the Notice, Steve Lenfesty himself admits the seriousness of the facts alleged and admits to [TRANSLATION] "having casual discussions" which he qualifies as "insignificant".

The Inspector General recommends, in accordance with the new provisions of Montréal's Contract Management Policy, that the following persons be excluded from all calls for tenders, all subcontracts, and from the possibility to agree to contracts by mutual agreement with the City for a period of five (5) years, beginning on the date of the present decision:



- The bidders Remorquage Taz inc. (9147-1953 Québec inc.), Remorquage Mobile (9273-5893 Québec inc.) and Auto Cam 2000 (9096-1681 Québec inc.);
- Jean-Marc Lelièvre, Réal Tourigny and Steve Lenfesty; and
- Any person associated with the bidders, as defined in Montréal's Contract Management Policy.¹³

FOR THESE REASONS,

The Inspector General

RESCINDS the contract awarded to **Remorquage Taz inc.** following call for tenders **15-14685** for the towing of vehicles in the **Rivière-des-Prairies–Pointe aux Trembles** borough.

RESCINDS the contract awarded to **Remorquage Taz inc.** following call for tenders **15-14538** for the towing of vehicles in the **Villeray–Saint-Michel–Parc Extension** borough.

RESCINDS the contract awarded to **Remorquage Taz inc.** following call for tenders **14-14050** for the towing of vehicles in the **Ville-Marie** borough, **if the contract is renewed for the 2016-2017 winter season** in accordance with the intent expressed by the borough.

INFORMS the City of the commission of acts in violation of Montréal's Contract Management Policy, by **Jean-Marc Lelièvre (Remorquage Taz inc.)**, **Steve Lenfesty (Remorquage Mobile)** and **Réal Tourigny (Auto Cam 2000)**, during calls for tenders **15-14685, 15-14616, 14-13814, 13-13147, 15-14538 and 14-14050**.

RECOMMENDS that, in accordance with the new provisions of Montréal's Contract Management Policy, **Remorquage Taz inc. (9147-1953 Québec inc.)**, **Remorquage Mobile (9273-5893 Québec inc.)**, **Auto Cam 2000 (9096-1681 Québec inc.)**, **Jean-Marc Lelièvre**, **Réal Tourigny**, **Steve**

¹³ Article 1(5) of the Contract Management Policy defines "associated person" as follows: when it is a legal person, one of its administrators or one of its officers, as well as a person holding shares carrying more than 10% of the voting rights attached to the shares of the capital stock of the legal person that may be exercised under any circumstances, and when it is a general partnership, a limited partnership or a joint venture, one of the associates or administrators.



Lenfesty and any person associated with these companies be excluded from all calls for tenders, from all subcontracts, and from the possibility to conclude contracts by mutual agreement with the City for a period of five (5) years, beginning on the date of the present decision.

TRANSMITS, in accordance with section 57.1.10 of Montréal's City Charter, a copy of this decision to the **mayor of the City**, and to the **clerk** to be sent by the latter to the city councils involved, in this instance **Montréal's City Council** and the **Ville-Marie, Villeray–Saint-Michel–Parc-Extension et Rivière-des-Prairies–Pointe-aux-Trembles borough councils**.

The Inspector General,

Denis Gallant, Ad. E.

ORIGINAL COPY SIGNED