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2019 MID-YEAR REPORT

For the period from January 1 to June 30, 2019

Section 57.1.23 of the *Charter of Ville
de Montréal, metropolis of Québec*

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The mandate of the Office of Inspector General of Ville de Montréal is to oversee contracting processes and the carrying out of contracts by Ville de Montréal or by a legal person related to the City, in order to prevent breaches of integrity and foster compliance with the applicable legal provisions and the City's requirements for the award and performance of contracts.

Mayor Valérie Plante, Members of the City Council and the Agglomeration Council, and citizens of Montréal,



Ms. Brigitte Bishop
Inspector General

I am proud to submit to you the mid-year report of the Office of Inspector General for the period from January 1 to June 30, 2019, pursuant to the provisions of section 57.1.23 of the *Charter of Ville de Montréal, metropolis of Québec*. It reflects the efforts made by all members of the Office of Inspector General to carry out our mandate, which is to ensure the integrity of the award and performance of contracts by Ville de Montréal and related entities.

This report provides an opportunity to report on the upstream interventions taken by the Office of Inspector General during the tendering period. These provide the City with the opportunity to rectify the situation, if necessary, without cancelling the contract award process or incurring delays, additional costs or legal proceedings. A selection of these files is presented, dealing with clauses related to experience, those that would limit access to public procurement for smaller contractors, and those that require equipment that is not common in the industry.

The period covered by this report was also marked by the coming into effect of the complaint processing mechanism provided for in the *Act respecting the Autorité des marchés publics*. Having been entrusted with the application of this mechanism with respect to contracts to be awarded by Ville de Montréal and other related entities, the Office of Inspector General must now combine two laws with respect to contracting processes. Both the preparations for the entry into effect of this mandate and the training provided in this regard are outlined in the following pages.

It is also important to remember that all the powers and duties of the Office of Inspector General set out in the *Charter of Ville de Montréal, metropolis of Québec* and extending beyond the scope of the *Act respecting the Autorité des marchés public*, particularly the aspect relating to the performance of contracts, remain in effect.

Lastly, this report will focus on the in-depth investigation of the management of contaminated soils under the City’s contracts. Given the main finding that management by municipal stakeholders is generally rigorous, this report is intended to be preventive by exposing some of the breaches noted and other latent risks observed, such as attempts by organized crime to infiltrate the industry and the availability of uncontrolled land ready to receive illegal dumping.

I would also like to acknowledge the cooperation of the fifty or so stakeholders representing each of the boroughs and four central services of the City during a meeting held at the end of the investigation. These discussions, which combined their field realities and their own expertise with the findings of the investigation, have led to the emergence of practical and realistic solutions.

The Inspector General,
Ms. Brigitte Bishop

ORIGINAL SIGNED

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Cautionary statement

Pursuant to section 57.1.8 of the *Charter of Ville de Montréal, metropolis of Québec* (CQLR c. C-11.4), the Inspector General's mandate is to oversee contracting processes and the carrying out of contracts by the City or by a legal person related to the City.

The Inspector General does not conduct criminal investigations, but investigations of an administrative nature. In this report, each time the term “investigation” is used, this refers to an administrative investigation and should in no way be interpreted as referring to a criminal investigation.

Applicable standard of evidence

The Inspector General strives to deliver quality reports that are timely, objective, accurate and presented in a way that will ensure that the people and agencies under her authority are able to act in accordance with the information provided.

In support of her opinions, reports and recommendations, the Inspector General imposes upon herself the burden of proof of the civil standard of the balance of probabilities¹.

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

Upstream interventions

Anyone, including citizens, City employees or related legal persons, co-contracting parties or even elected officials can contact the Inspector General to provide her with any information they deem relevant to the Inspector General's legal mandate. The Inspector General would like to point out that it is through the integrity, fairness and courage of these individuals that investigations can be initiated.

The Office of Inspector General frequently receives various types of denunciations about calls for tenders that are still in their early stages. In light of the facts that have been gathered, Office representatives may, if they deem it necessary, intervene with the persons responsible for the contracting process at Ville de Montréal.

The latter can then decide on the actions needed to rectify any irregularities found, adjust a requirement or address any other issues. Conversely, it is possible that the Office of Inspector General may conclude that the information is unfounded or not supported by sufficient evidence, or that the City has acted in accordance with the law.

In any case, processing denunciations quickly while the call for tenders is still in its early stages enables the client to rectify the situation if necessary, and ensures the call for tenders will follow its course and deadlines will be met. Moreover, this enables to broaden the pool of potential bidders, protect the integrity of the contracting process and ensure sound management of public funds.

A selection of the cases thus processed upstream are presented below. They are grouped around certain recurrent themes, namely clauses relating to the bidders' experience, those that have the effect of limiting access to public contracts for smaller contractors or those requiring unusual and specific equipment.

CLAUSES RELATED TO BIDDERS' EXPERIENCE

Call for tenders for minor sidewalk reconstruction in a borough

A denunciator contacted the Office of Inspector General to report that the lowest bidder responding to the call for tenders was non-compliant because it did not meet the requirements for past experience.

In this regard, the technical specifications indicated that the contractor had to include with its bid information regarding two (2) contracts in which the work was comparable in nature to that covered by the call for tenders, either performed during the past five (5) years or in process, and involved a value similar in costs of work performed as of the date of opening of the bids. However, verification of the documents submitted by the lowest bidder showed that the two (2) proposed projects had a value representing half that of the control estimate for the current call for tenders.

Despite this finding, a person responsible for this file at the borough felt unable to declare the lowest bidder non-compliant, because the specifications in the call for tenders did not specifically state that failure to meet this requirement would automatically cause the bid to be rejected. However, in response to the questions raised by the Office of Inspector General, the borough official requested a legal opinion from the Legal Department.

Ultimately, on the basis of the legal opinion, the borough declared that the lowest bidder did not satisfy the experience clause, and the contract was awarded to the second-lowest bidder, who was compliant.

Call for tenders 211804: Underground infrastructure renovation and road work on Bel-Air Street

A denunciation was received regarding a call for tenders published by a borough for underground infrastructure renovation work. According to this denunciation, the requirements regarding bidders' past experience were excessive and closed the market.

Verifications revealed that the bidders had to have performed two (2) contracts of a similar nature with a value of \$6,000,000 each. But when the Office of Inspector General contacted the borough, the estimated value of the project actually turned out to be approximately \$2,000,000. The borough realized its error, which was due to its having used a City template, and immediately published an addendum to lower the past-experience requirement to the same amount as the estimate.

Call for tenders 19-16779: Acquisition, leasing and maintenance of multifunction equipment for Ville de Montréal and SPVM

Ville de Montréal published a call for tenders comprising two (2) lots: one for the acquisition, leasing and maintenance of multifunction equipment, and the other for the maintenance of similar equipment that the City already had in service. According to a denunciation received by the Office of Inspector General, by requiring companies to submit bids for these two (2) lots, the City was favouring the bidder that had been awarded the preceding contract. That bidder's knowledge both of the equipment that it had already supplied and of the current condition of the machines would give it a competitive advantage in terms of its bid price. In addition, a competitor would not be able to maintain and honour the warranty on another manufacturer's equipment.

When the Office of Inspector General contacted the City department responsible for the call for tenders, this department immediately admitted having itself found that this requirement was proving constraining for the market. An addendum had already been published to correct the entire matter, by allowing bidders to submit bids on only one (1) of the two (2) lots.

The Office of Inspector General's verifications also revealed another issue, this one related to the experience requirement for the winning bidder. The specifications stated that the supplier had to have performed at least three (3) projects similar to the one described in the call for tenders. In light of the volume of equipment involved—over one thousand two hundred (1,200) machines distributed across more than six hundred (600) buildings throughout Montreal Island—there was a high risk that such a requirement would restrict the market.

After discussion, the department concerned published an addendum lowering the requirement to a threshold that would better reconcile its need for an experienced winning bidder with the need to ensure healthy competition for the call for tenders.

CLAUSES RESTRICTING THE MARKET TO LARGE COMPETITORS

Call for tenders 10301: Work to replace lead water service lines

With regard to a call for tenders for work related to water service lines, the Office of Inspector General received a denunciation alleging that the size of the two (2) lots defined in the specifications (about \$5,500,000 and \$6,000,000) limited the number of companies that would be able to bid. According to the denunciation, only three (3) or four (4) companies had the required capacity to perform work of this scope, therefore leaving the field free for them to submit unduly high bids.

Verifications showed that the call for tenders published for the same type of work in 2018 also was divided into two (2) lots of a size similar to those in the current call for tenders. In 2018, two (2) bids had been submitted on the smaller of the two lots, and only one (1) bid on the larger one. Consequently, the Office of Inspector General contacted the City department responsible for the call for tenders to inform it of the potentially limiting impact of its procurement strategy.

Initially, the department's position was that it would not divide the lots into smaller ones, for operational reasons. However, an addendum was subsequently issued that divided the smaller lot into two lots, while leaving the larger lot in its original form. Ultimately, three (3) bids were submitted on the smallest lot, and two (2) bids on each of the two other lots, and all of the contracts awarded were priced 12% to 28% lower than the control estimate.

Call for tenders 19-17687: Supply and transportation by containers for six (6) ecocentres

After Mèlimax Transport inc. was added to the *Register of enterprises ineligible for public contracts (RENA)*, Ville de Montréal had to issue a new call for tenders for supply and transportation by containers for six (6) ecocentres. The Office of Inspector General received a denunciation alleging that the City had doubled the amount of the required performance guarantee, specifically to protect itself against the problems experienced when the insurance company attempted to recover Melimax's contract performance. However, the denunciator believed that this limited competition to large companies that would be able to bear the financial cost associated with the increased performance guarantee.

After verification, it was found that the amount of the performance guarantee had indeed been set at 20% of the total amount of the bid, rather than at 10%, as had previously been the case. When this issue was raised with the person in charge of the call for tenders, that person decided to publish an addendum shortly afterward, returning the requirement to its original level.

SPECIFICATIONS RELATED TO EQUIPMENT

Call for tenders by invitation 19-508: Supply of chemicals used in swimming-pool water treatment

A call for tenders for the supply of chemicals for treating swimming-pool water required the chemicals in question to be certified to the NSF/ANSI-50 standard. According to the denunciation received by the Office of Inspector General, the lowest bidder did not have such accreditation, but the City was preparing to award it the contract anyway. The denunciator also asserted that, had it not been for the certification requirement, they could have submitted a bid at a lower price.

After verification, it was found that the lowest bidder was non-compliant. When contacted by the Office of Inspector General, the person responsible for the call for tenders indicated that the requirement had been included for purposes of public health.

However, during the tender period, some bidders advised this stakeholder that the certification was not mandatory and that it would have been sufficient to require products approved by Health Canada. The stakeholder's further research yielded ambiguous results. Some contracting authorities in Quebec and other provinces required the standard, while others did not. Because only one (1) of the three (3) bids received had the required certification for all of the chemicals, the person responsible for the call for tenders wondered how the demands of public health could be satisfied without limiting the market.

Following the Office of Inspector General's intervention, the business unit decided to cancel the call for tenders and review its needs.

Call for tenders 19-17650: Towing services for snow-removal operations for various boroughs

In its latest annual report², the Office of Inspector General had reported on a issue related to the equipment required by a borough in a call for tenders for towing services for its snow-removal operations. The equipment in question, an "eagle claw tow truck", was expensive and only held by one bidder. As a result, although the borough deemed this equipment to be especially effective, requiring it in the call for tenders had had the effect of restricting the market.

In connection with call for tenders 19-17650, it was brought to the attention of the Office of Inspector General that another borough now wanted to impose these relatively uncommon "eagle claw tow trucks" on bidders. The borough in question stated that it had been satisfied with the effectiveness of this equipment in past winters and wanted to continue the experience. Even before the Office of Inspector General had been able to contact the people involved in this matter, the Procurement Department had brought the Office of Inspector General's 2018 Annual Report to the borough's attention, and the borough had opted to include two (2) types of equipment—the more common, traditional kind and the less common "eagle claw tow truck"—in the call for tenders, to make the market as open as possible.

It should also be noted that the verifications done by the Office of Inspector General have shown that the various actors in the market have begun to make the transition to "eagle claw tow trucks". Indeed, unlike the year before, several bidders stated that some of their tow trucks had this equipment, and one of these bidders stated that it wanted to furnish all of their tow trucks with this equipment in the near future. Considering the high price of this equipment, another borough increased the number of years for the contract resulting from call for tenders 19-17650 to amortize the purchase of the "eagle claw tow trucks" over a long-term contract, and thus encourage the future winning bidder to make the transition.

In short, it appears that the market has observed the City's changing needs and has begun to make the shift toward acquiring this equipment to be able to meet them.

Call for tenders for the supply of parts for Ville de Montréal water-supply system

In a public call for tenders for the supply of parts for its water-supply system, Ville de Montréal required that the parts in question be of a certain type in order to meet an applicable standard in this field.

The denunciator, who turned out also to be the winning bidder for the contract, criticized two aspects of the specifications. First, the denunciator indicated that the purpose of the specific requirements for certain types of parts was to favour the denunciator's competitor (hereinafter "Competitor #1"), who had previously been winning most of the other similar contracts.

The City's contract records was examined to verify this allegation. This research showed that it was not Competitor #1 mentioned in the denunciation, but rather another company that had won the lion's share of the past contracts. This allegation therefore proved to be unfounded.

The second aspect of the denunciation dealt with the City's refusal to authorize the replacement of said parts indicated in the specifications with another that the denunciator considered equivalent and available at lower cost. The denunciator explained that Competitor #1 refused to sell them the part required by the contract, forcing them to source it from the United States. The denunciator said that purchasing the part in a foreign country would cause them to incur prohibitive costs and force them to perform the contract at a loss.

This second aspect of the denunciation also proved to be unfounded. First of all, it was explicitly mentioned in the tender documents that one type of parts was required to do the work. Second, it is apparent that it was the winning bidder itself that voluntarily bid at a lower price than its competitors and the control estimate in order to win the contract.

The decision summary indicates that the City contacted the winning bidder before awarding the contract, to make sure that this company clearly understood the contract requirements and that it would be able to meet the specifications' requirements while charging the price that it had bid. In addition, the winning bidder apparently explained that it had knowingly bid below-market prices in order to make itself known to the City. It is thus evident that the City was rigorous in the awarding of the contract.

Given these findings, the Office of Inspector General closed the file.

2. Ref. Call for tenders 18-16995, under "Closing of the market" p. 24 of the 2018 Annual Report of the Office of Inspector General.

Investigation files

Call for tenders for exclusive towing services for broken down, accident- and offence-related vehicles

In 2017, the Office of Inspector General issued a report on the towing industry. This report revealed, in particular, the infiltration of organized crime in this industry, as well as acts of intimidation and violence in the market for towing accident-related vehicles. This report also noted the lack of contractual oversight by the City. Responding to the Office of Inspector General's call to get this industry back under control, the Montreal Police Department (*Service de police de la Ville de Montréal (SPVM)*) implemented a comprehensive action plan that included publishing public calls for tenders to award exclusive contracts for towing services in predefined territories.

Although the call for tender process has been discussed in previous annual reports, it should nevertheless be noted once again that this process required the bidders to submit evidence of their ability to carry out the contract, in terms both of their equipment and of financial guarantees. The winning bidders would then be drawn by lot but had to successfully pass a security screening investigation before being awarded a contract. As part of the key measures called for in the Office of Inspector General's report, these security screening investigations of the winning bidders had the effect of frustrating those bidders who did not succeed in qualifying.

It was in this context that, some time after the opening of the bids from the call for tenders and the start of the security screening investigations, the Office of Inspector General received a video showing a meeting between two (2) bidders and another individual associated with organized crime. According to the denunciator, this video illustrated the ties that one of the bidders maintained with organized crime. Frustrated at having itself been eliminated from the call for tenders at the security-investigation stage, the denunciator indicated that they were not the only one that did not have "clean hands".

From the investigation conducted, it emerged that the meeting in question had taken place three (3) years earlier and had lasted about two (2) hours. But the video that was appended to the denunciation showed only excerpts from this meeting. These excerpts lasted only about five (5) minutes in total and, moreover, were not in sequence, which showed that they had been edited together. In order to determine the allegations' reliability and representativeness, the Office of Inspector General asked to see the entire video recording, but received only eleven (11) portions, still not in sequence, totalling close to thirty-four (34) minutes.

In light of all the facts gathered in the course of the investigation, it appears that the denunciation was made in order to discredit the competitor, the new contract-awarding process as a whole, and the security screening investigations in particular. As regards

the bidder who was the target of the denunciation, although the investigation did clarify the context of the meeting and situate the actors involved, the success of the security-screening process nevertheless requires that each of the winning bidders be beyond suspicion.

In light of these findings, the relevant information was sent to the SPVM as the unit responsible for the call for tenders.

In addition, the Inspector General is concerned about the delays experienced to date in the call for tenders' process, since as long as exclusive towing contracts have not been awarded, status quo is maintained, which favours contractors with dubious reputation. This matter demonstrates the particular and ongoing vigilance that must be exercised with regard to the towing industry to ensure that it remains free of any influence by organized crime.

Call for tenders 18-17347: Professional court bailiff services

The Office of Inspector General received a denunciation alleging that a court bailiff firm that had previously been the subject of two (2) entries on the City's *list of firms with unsatisfactory performance* was nevertheless preparing to receive a new contract following a public call for tenders.

Verifications revealed that the firm in question had never been entered on this list. Rather, the City had entered into a contract by mutual agreement with four (4) court bailiff firms in 2015, including the one that was the subject of the denunciation. Although the City had rescinded this firm's contract in 2017, citing "various actions that had resulted in growing dissatisfaction with the services rendered and a breakdown in the relationship of trust with respect to the firm" [translation], the contract did not contain any performance evaluation clause.

Because of this fact, when public call for tenders 18-17347 was published, despite the earlier rescinding of the 2015 contract with the firm, this firm did not appear on the *list of firms with unsatisfactory performance*. Consequently, the City did not have the discretion to reject its bid for this reason.

Nevertheless, it should be stressed that the contract resulting from call for tenders 18-17347 does contain a performance-evaluation clause and that the decision summary submitted to the Agglomeration Council states that "*strict, documented monitoring shall be carried out during the performance of the contracts, and a firm that fails to provide satisfactory service may eventually be placed on the list of firms with unsatisfactory performance*" [translation].

Call for tenders for road work in a borough

Following the closure of a call for tenders for road work on its territory, a borough performed an analysis of the four (4) bids submitted to study their compliance and noted that the prices were very close to each other, as well as to the control estimate. In the interest of vigilance, a decision was made to report the situation to the Office of Inspector General.

An analysis of the bids received showed that the difference between the lowest bidder and the control estimate was -0.06%, while the difference between the lowest bidder and the second-lowest bidder was 2.58%. For a contract of approximately \$10,000,000, this is a marginal difference.

However, a more detailed verification revealed that this work is of a recurrent nature throughout the City and that the bidders in question are familiar with this contract. Their knowledge of the environment and this type of work enables them to better assess the costs to be incurred, thereby facilitating the setting of a competitive bid price. In this case, this finding seems to best explain the proximity of the prices resulting from the call for tenders.

This type of denunciation enables the Office of Inspector General to conduct a quick and accurate analysis, which lowers the risk of collusion. It also enables it to collect additional and relevant information, which, by cross-checking with other active files, emerging trends or redundancies of the companies involved, can make it possible to initiate in-depth investigations and, if necessary, to uncover whether there is real collusion among the players in the field.

We also note that municipal employees who have taken the training offered by the Office of Inspector General, such as in this case, are better able to make specific and detailed denunciations.

In this sense, the contribution of information received through denunciation is crucial; hence the importance of inviting the various municipal stakeholders to share their observations and concerns regarding the award of public contracts.

Call for tenders for security services

A business unit of Ville de Montréal published a call for tenders to hire security services for physical facilities. The Office of Inspector General received information that a member of the selection committee set up to evaluate the bids had sought to favour one of the bidders. This would have resulted in high scores being given to that person's preferred company, and low scores being given to a competing company in order to prevent it from achieving the 70% pass mark.

The verifications conducted showed that only one (1) bidder obtained a score allowing it to qualify for the second stage of bid evaluation, that one (1) other company obtained an overall score just below the pass mark and that two (2) firms were awarded a point total well below the required 70% threshold. Overall, there was a consensus among the three (3) members of the selection committee on the evaluations of the first, third and fourth bidder.

The only discrepancy was with the second bidder. The investigation revealed that two of the three members of the selection committee gave it scores of about 75%, while the score given by the member against whom the information was disclosed was just under 60%. The evidence gathered by the Office of Inspector General indicates that the latter member of the selection committee remained firm on his position and did not diverge from it, despite the arguments put forth by the other members that this second firm deserved to move to the second stage of bid evaluation.

However, it appeared from the interview with this member of the selection committee that he based his scores solely on the merit of the submissions sent to him by the secretary of the selection committee. This approach being in line with the applicable standard framework in this matter, and in the absence of evidence of an oblique motive that influenced the decision-making of this member of the selection committee, the Office of Inspector General closed the file.

Entry into force of the complaint processing component of the *Act respecting the Autorité des marchés publics*

PREPARATIONS PRIOR TO ITS COMING INTO FORCE

The *Act respecting the Autorité des marchés publics* (hereinafter the “AAMP”) was sanctioned on December 1, 2017. In addition to creating the Autorité des marchés publics (“AMP”) as such, the Act provides for the progressive entry into force of its various sections. The first components entered into force on July 25, 2018, and January 25, 2019, while the last section of the AAMP, the tender complaint processing mechanism, was to apply as of May 25, 2019.

This mechanism enables individuals or businesses who are interested in performing a public contract to file a complaint with the public body or the AMP if the tender documents or contract award process do not comply with the normative framework, provide conditions that do not ensure honest or equitable treatment of competitors or do not allow competitors to take part even though they are qualified to meet the expressed needs. In this respect, the AMP’s jurisdiction extends to a large number of provincial public bodies and nearly all municipalities throughout Québec.

There is, however, one notable exception. Indeed, recognizing the Office of Inspector General’s effectiveness and the work it has done, the legislator has entrusted it with this additional role regarding Ville de Montréal and certain related entities. Thus, the Inspector General substitutes for the AMP and fulfils its duties and powers, in particular for any complaint filed in accordance with the AAMP regarding calls for tenders published by Ville de Montréal.

With the entry into force of the complaint processing mechanism set for May 25, 2019, a working committee was established. The committee includes the Comptroller General, an entity designated by Ville de Montréal to ensure first-level processing of complaints concerning all its calls for tenders.

New internal processes have been established for processing denunciations received under the *Charter of Ville de Montréal, metropolis of Québec* and complaints pursuant to the AAMP. To ensure efficient communications with complainants and denunciators, new complaint forms have been created and changes made to the Office of Inspector General’s Internet site. These are intended to simplify the process by providing users with a decision tree containing questions and answers that will guide them to the right form.

If denunciators or complainants are uncertain of how to proceed, we invite them to contact us directly by telephone or email to guide them through the process.

Personnel affected by these new processes have received training to familiarize them with the new legal obligations. The complaint processing mechanism provided for in the AAMP is directly in line with the approach to settling issues involving current calls for tender at an early stage implemented since 2017 by the Analysis and Preliminary Investigations Division. It was thus entirely natural that the responsibility for administering the AAMP be entrusted to this division within the Office of Inspector General.

In short, on May 25, 2019, everything was in place at the Office of Inspector General for it to take on these new responsibilities, while pursuing its broader core mission to monitor contract award processes and contract performance by the City or related legal persons.

TRAINING

Section 57.1.8 of the *Charter of Ville de Montréal, metropolis of Québec* mandates the Office of Inspector General to train council members, public officers, and employees to recognize and prevent breaches of the rules applying to the award of contracts.

Given the significant impact that the complaint receipt and processing mechanism may have on the City’s procurement process, the Office of Inspector General deemed that training would need to be developed to ensure compliance with the new *AAMP* rules relating to the award of contracts.

Thus, as previously announced in its 2018 Annual Report, the Office of Inspector General invited any individual involved in the public tendering process of the City or a related body to attend the training course entitled “The Inspector General and the Act respecting the Autorité des marchés publics”.

This enabled the participants to learn more about the possible types of complaints, those who can file them, the filing and response deadlines, as well as the possible consequences of complaints on calls for tenders.

Offered since May 9, 2019 with the participation of the Comptroller General, the 3.5-hour course was given on eighteen (18) occasions, and as of June 30, 769 people have attended it to familiarize themselves with the new rules that entered into force on May 25.

TRAINING PARTICIPANTS “L’INSPECTEUR GÉNÉRAL ET LA LOI SUR L’AUTORITÉ DES MARCHÉS PUBLICS”

Total	Ville de Montréal			Others	
	Managers	Professionals	White-collar workers	Para-municipal workers	External participants
769	180	389	140	56	4

In-depth investigation: Contaminated soil management

In addition to files involving current calls for tenders discussed previously, this report covers one in-depth investigation file. It sets out the results of the investigation led by the Office of Inspector General on contaminated soil management under contracts awarded by the City.

As with the cases covered in the 2018 Biannual Report concerning the sidewalk industry and road work monitoring, this kind of investigation relies on a detailed document review relating to, among other things, specifications and design briefs, decision-making summaries and other documents presented to City authorities. Individual meetings may be held with anyone involved in the target industry, including City employees, City co-contractors, and their employees and suppliers. Site visits or monitoring operations may be conducted if necessary.

Falling under the monitoring mandate of both the award and performance of contracts entrusted to the Office of Inspector General, such investigations are conducted to detect any elements that may hinder healthy competition in public procurement and affect the integrity of contract award and performance. They do not necessarily result in the cancellation of calls for tenders or the rescinding of contracts, but they may report on certain problem situations and, if applicable, make recommendations.

These investigations also provide significant subsidiary benefits, such as enhancing awareness of the Office of Inspector General's role with various industry actors and promoting trusting relationships with them. When witnesses are interviewed, they are informed of the guarantees of protection from reprisal provided to denunciators in the *Charter of Ville de Montréal, metropolis of Québec*, and it is not uncommon to see them make contact again about other files.

SCOPE OF INVESTIGATION

PURPOSE OF INVESTIGATION

The contaminated soil industry in Montréal and Quebec has received a significant amount of media and legal attention in recent years. The many public and private projects currently underway in the Greater Montréal area have created significant pressure on industry stakeholders to meet the ever-increasing demand. Furthermore, the Office of Inspector General received a denunciation regarding this matter and undertook an in-depth investigation of the sector before drafting a status report regarding the contracts awarded by Ville de Montréal.

The investigation was intended to monitor the contractual planning and execution processes to ensure the integrity of contaminated soil work. The Office of Inspector General also sought to ascertain whether there was illegal dumping of contaminated soil under Ville de Montréal contracts and whether organized crime was present within the industry. The findings cover a period of twenty-eight (28) months, from January 2017 to April 2019.

Investigating officers from the Office of Inspector General analyzed every contaminated soil management phase conducted by Ville de Montréal. The results of the investigation will be presented through five (5) stages of analysis that illustrate the various work-related phases involved, including work design, work supervision, work performance, contaminated soil transportation and contaminated soil disposal.

For this purpose, the Office of Inspector General's investigating officers:

- Conducted over one hundred and nine (109) site visits across sixty-five (65) different projects;
- Met with eighty-six (86) witnesses;
- Conducted sixty-nine (69) monitoring operations; and
- Analyzed contaminated soil management contracts worth approximately eight hundred million dollars (\$800,000,000).

The investigation used criteria predetermined by the Office of Inspector General to target sites that fall under the sole responsibility of various Montréal authorities, namely central services, boroughs and para-municipal organizations. The Inspector General points out that the observations contained in this report refer only to contracts awarded by Ville de Montréal, not private sites operating on its territory, like condominium tower and real estate development project.

MEETINGS WITH VILLE DE MONTRÉAL STAKEHOLDERS

At the end of the investigation, two meetings were held with Ville de Montréal stakeholders whose tasks include contaminated soil management. During these meetings, the Office of Inspector General's investigating officers presented their findings and observations.

The first meeting was held with twelve (12) Ville de Montréal stakeholders, exclusively from central services, with cutting-edge expertise in this sector. A subsequent meeting was held with fifty-one (51) stakeholders from twenty-one (21) Ville de Montréal departments and boroughs.

The purpose of these meetings was to discuss the stakeholders' professional realities and investigate possible avenues that could ensure the sound management of contaminated soil under Ville de Montréal contracts. The quality and commitment of these stakeholders proved very helpful when developing the solutions included in this report.

REMARKS ON CONTAMINATED SOIL MANAGEMENT

Before addressing the investigation's actual findings, a few remarks must be added to facilitate the reader's understanding of contaminated soil management.

APPLICABLE NORMATIVE FRAMEWORK

The normative framework applicable to the management of contaminated soil in Quebec falls under provincial jurisdiction; the laws and regulations can be found in the *Environment Quality Act* (hereafter the "EQA") and related regulations. The Ministère de l'Environnement et de la Lutte Contre les Changements Climatiques (hereafter the "MELCC") is in charge of enforcing this framework.

Ville de Montréal must comply with the standards contained in the MELCC's laws and regulations when managing contaminated soil. To this end, the City Executive Committee adopted in 2012 guidelines containing the required obligations and measures.

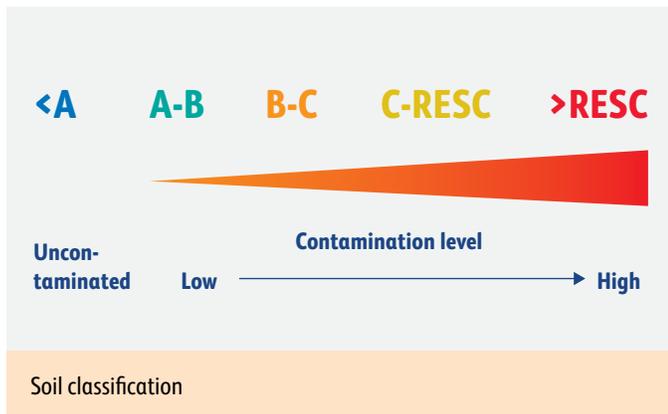
For the purpose of this report, the term "disposal" will be used when referring to the burial, remediation and treatment of contaminated soil.

CONTAMINATED SOIL CLASSIFICATION

Standards and obligations regarding the disposal of contaminated soil vary according to the level of contamination involved. Contaminated soil is classified according to criteria A, B, C and RESC³. These criteria refer to specific concentrations of each contaminant found in the soil.

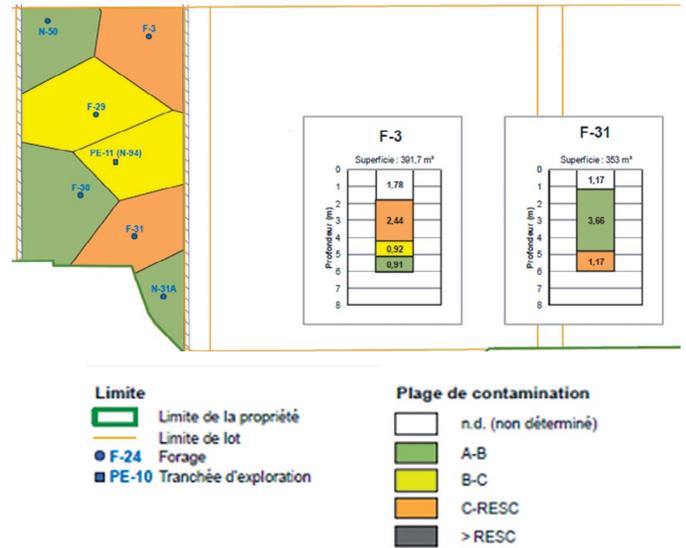
A given soil's contamination level is defined according to its concentration range. Thus, A-B soil contains a concentration below criterion B, but above criterion A. Soil classified as A-B is considered slightly contaminated, while >RESC soil is so contaminated that it must be treated to reduce its contamination content prior to disposal.

The image below summarizes the classification of soil according to its level of contamination:



A property's level of contamination is established through surveys that collect samples taken at various depths. The samples are then analyzed in a laboratory and the concentrations obtained are compared to those prescribed by criteria A, B, C and RESC. If every test result is below criterion A, the soil is deemed uncontaminated, or clean. Otherwise, the soil is classified within its corresponding contamination range of A-B, B-C, C-RESC or >RESC, according to its contaminant levels.

The soil characterization report contains survey results and sample analyses, along with a plan detailing the contamination's spatial distribution, typically known as a polygon plan or a rehabilitation plan. A polygon plan illustrates the division of land according to the soil contamination levels. The image below provides an example.



Example of a contamination polygon plan involving a contract not covered by the investigation

It illustrates the sampling points (identified by the letters F- and PE-), the colour contamination polygons, along with the legend's associated level of contamination. The contamination's depth distribution is also shown in tables F-3 and F-31.

Contaminated soil is classified to determine a property's potential use during development projects. For obvious reasons, more stringent standards are used for residential properties or playgrounds, as compared to industrial sites. For example, land that contains A-B soil allows for the construction of houses, yards and vegetable gardens.

3. Contaminated soil is classified under various nomenclatures. Criteria A, B and C have been in use since 1988. Criteria B and C have been enshrined in the *Règlement sur la protection des sols et de la réhabilitation des terrains* (RPRT). The RESC criterion refers to the regulation regarding the burial of contaminated soil. It is sometimes referred to as criterion D. Criterion A does not refer to any regulation; its criteria can be found in the MELCC's action guide.

The following table summarizes the acceptable levels of contamination based on land use.

ACCEPTABLE CONTAMINATION LEVELS BASED ON LAND USE					
	Contamination level				
	<A	A-B	B-C	C-RESC	>RESC
Agriculture ¹	●				
Residential	●	●			No land use authorized for these soils
Sensitive institutional ²	●	●			
Commercial or industrial	●	●	●		

1. MELCC recommends level <A for any soil used in agriculture.
 2. Sensitive institutional use refers to elementary or secondary schools, daycare centres, hospitals, retirement homes and long-term care centres, rehabilitation centres, child and youth protection centres and detention facilities.

In all cases, soils that contain different contamination levels may not be mixed during the work. Such “soil mixing”, or dilution, is prohibited by the *Regulation respecting contaminated soil storage and contaminated soil transfer stations*⁴, as well as the MELCC action guide⁵.

Excavated soil must be transported to a disposal site, unless reused on a work or rehabilitation site. The disposal site must hold a certificate of authorization issued by the MELCC, allowing it to receive soil according to its specific level of contamination. There are three disposal site categories:

- **Technical Landfill Sites** (hereafter “TLS”): These sites are authorized to receive A-B or B-C soil used in waste recovery;
- **Contaminated Soil Landfill Sites** (hereafter “CSLS”): These sites are authorized to receive A-B, B-C and C-RESC contaminated soil;
- **Contaminated Soil Treatment Centres**: These sites are authorized to receive contaminated soil for treatment purposes intended to reduce contamination levels. Only treatment centres are permitted to receive >RESC soil.

The characterization study is conducted during the project’s design phase, before work begins. The results of the study, including the polygon plan, must be included in the tender documents. The quantity of contaminated soil requiring excavation and off-site transportation is estimated according to the characterization results and configuration of the work involved. Quantity assessment is based on point data extrapolated to an entire polygon. The nature of the soil may vary between two sampling points and, consequently, actual quantities may differ from the estimates. Such a risk factor is inherent to contaminated soil management.

CONTAMINATED SOIL DISPOSAL

The constraints and costs associated with contaminated soil disposal increases according to its level of contamination. While A-B and B-C soil can be reclaimed via landfill sites, untreated C-RESC soil must be buried on a maximum security site. >RESC soil must be treated prior to disposal.

When developing land that contains contaminated soil, Ville de Montréal implements control measures to ensure compliance with soil disposal regulations. These include on-site environmental supervisors, for example, along with compiled evidence regarding disposal. The environmental supervisor must ensure that soil excavation activities are conducted according to the polygon plan and disposal activities are held at the appropriate sites, in accordance with the applicable standards.

CONTAMINATED SOIL MANAGEMENT FRAMEWORK

Disposal site	Approved material			
	A-B soil	B-C soil	C-RESC soil	>RESC soil
Rehabilitation site – Private property without a MELCC certificate of authorization	●			
Technical Landfill Site (TLS)	●	●		
Contaminated Soil Landfill Site (CSLS)	●	●	●	
Contaminated Soil Treatment Centre	●	●	●	●

4. *Regulation respecting contaminated soil storage and contaminated soil transfer stations*, CQLR, c. Q-2, r. 46, art. 5.

5. BEAULIEU, Michel. 2019. *Guide d'intervention – Protection des sols et réhabilitation des terrains contaminés*. Québec, Ministère de l'Environnement et de la Lutte contre les changements climatiques.

For each shipment of contaminated soil entering a certified site, the driver receives a weigh ticket containing the following information: the type and quantity of soil, its level of contamination, its origin and the name of the carrier who unloads the soil at the disposal site. The information contained on weigh tickets is important to clients like Ville de Montréal as it helps site supervisors ensure the use of MELCC authorized disposal sites. Each site must maintain an incoming soil log that contains information from the weigh ticket, in accordance with regulations.

INDUSTRY MONITORING AT VILLE DE MONTRÉAL

To illustrate the complexity involved in excavation work, the following image presents a contaminated soil management infrastructure project that demonstrates the work-related constraints. Here, workers must install a sewer line through various levels of contaminated soil while protecting utilities, such as natural gas lines.

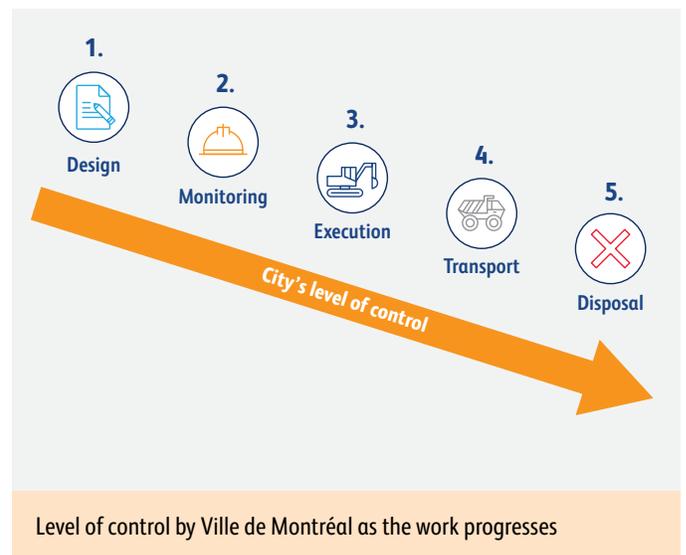


Infrastructure project overview

In general, the Inspector General points out that Ville de Montréal's contaminated soil management is adequate and complies with the normative framework. However, some quality- and work-related breaches and inconsistencies were observed during the investigation. This report will therefore discuss the good practices that were noted by the Office of Inspector General, along with examples of the breaches and risk factors identified for each of the five (5) management phases regarding the contaminated soil under study.

It should be noted that the City's power steadily decreases from one management phase to the next. The City and its employees prepare the specifications and establish the required contractual procedures; as such, they all but fully control the work design process. The investigation shows that the City's power gradually decreases until the excavated soil is received at the disposal sites, at which time the MELCC assumes operational control.

PHASES OF ANALYSIS



PHASE ONE: DESIGN

Work design helps gather the information required to ensure a smooth work flow and, as such, represents a key step in any given project. As discussed in greater detail below, incomplete or erroneous information will often create problems during the performance of the work.

Ville de Montréal's nineteen (19) boroughs, along with part of its central services, conduct projects involving management of contaminated soil. Each borough is responsible for drafting tender documents in their entirety. For this purpose, central services have produced standardized technical specifications applicable to all types of projects, such as park development and street infrastructure, for example. These specifications define the work-related requirements regarding the management of contaminated soil.

In addition to these standard specifications, tender documents must contain information specific to the work involved, including a tender form and the soil characterization results mentioned in the previous section. The tender form is used to record the quantities of contaminated soil to be managed during the project (indicated in tonnes).

The quantities indicated in the tender documents will have a direct impact on submitted prices and budget compliance. In general, the prices submitted are inversely proportional to the anticipated quantities. For large quantities, unit prices will generally be more advantageous for the City; conversely, prices will often rise above market value for smaller quantities. For example, a contractor might offer a higher price for 50 tonnes of contaminated soil than it would for 1,000 tonnes, where a unit price would be more competitive. Consequently, the quantities recorded in the price schedule must reflect reality as accurately as possible to provide the City with the fairest price.

Excavated contaminated soil is generally payable at a per-tonne unit rate based on actual disposal quantities. When the quantities indicated in the schedule are exceeded during the work, soil management costs will increase, sometimes substantially, and may even jeopardize the site's administration. In such cases, the client will assume the financial consequences. Quantities must therefore be estimated as accurately as possible to minimize the risk of budget overruns.

A-B soil management provides an exception, as this type of management is not systematically payable by actual tonnage. Contaminated soil in Ville de Montréal contracts is generally payable at unit rates, but this is not necessarily the case for A-B soils. The price for A-B soil disposal in street infrastructure work, for example, must be included in the contractor's overall tender price. This transfers the risk from the City to the contractor, as the latter may not adjust its price if the excavated quantity of A-B soil exceeds what was initially planned.

1.1 GOOD PRACTICES

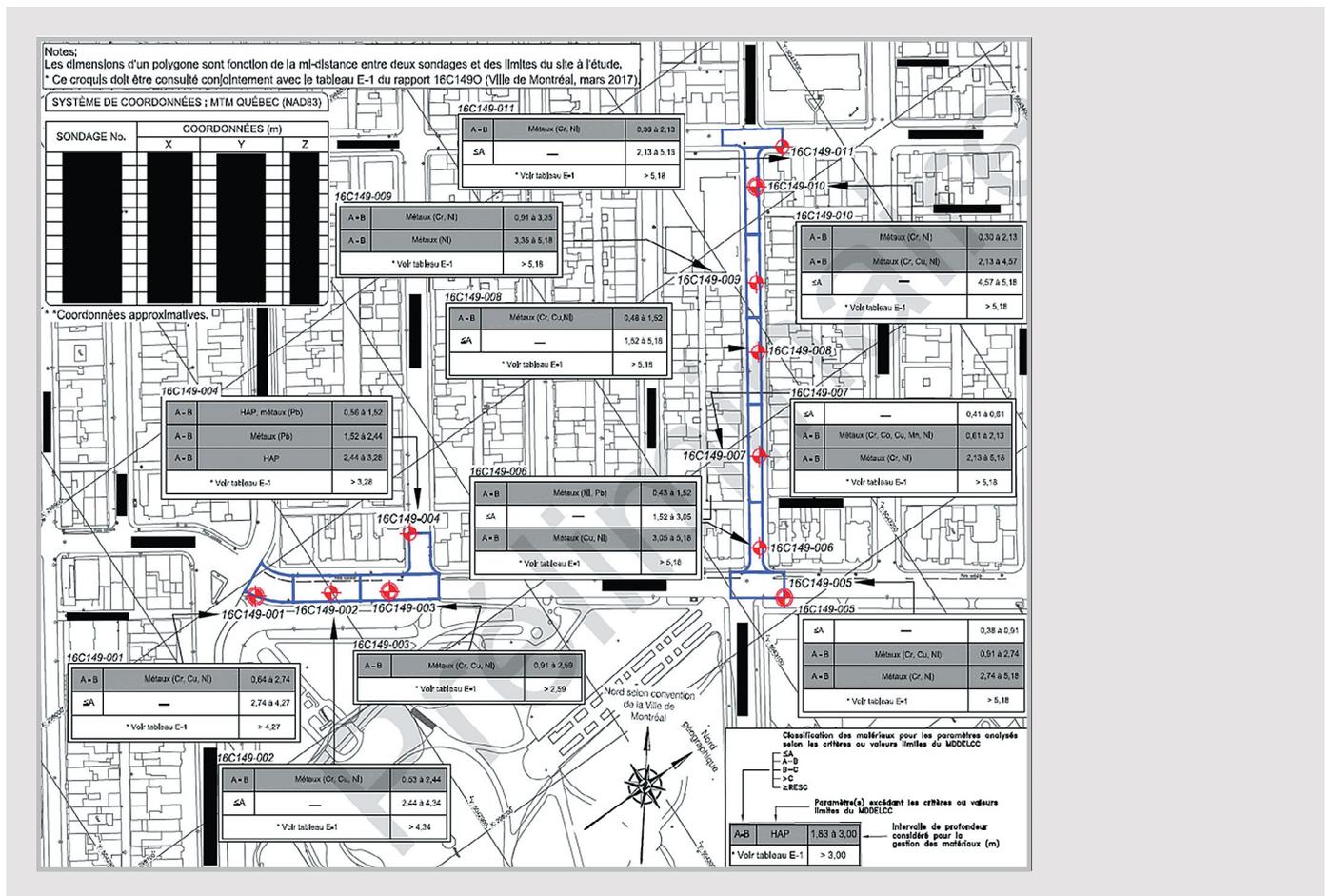
The investigation found that most of the call for tenders that were monitored contained complete and detailed data regarding the extent of land contamination. Generally speaking, tender documents included characterization results and polygon plans. As explained above, this data provides bidders with the most accurate information possible when tendering.

For example, the image below shows an appropriate way to present results. Boreholes are shown in red and contaminated soil polygons appear in blue, while the eleven (11) rectangular boxes contain tables that reveal the depth distribution of contaminants:

1.2 BREACHES AND RISKS

Among the breaches observed during the work design phase, the Office of Inspector General detected occasional errors in the estimates regarding the quantities of contaminated soil intended for removal.

Contaminated soil quantity estimates must be accurate to prevent time and cost overruns at a given site. For example, the Office of Inspector General noted that the quantity of B-C soil recorded in a tender form involving a road project north of Montréal had been significantly underestimated. While the tender form indicated four hundred (400) tonnes for B-C soil management, the actual value represented one thousand four hundred (1,400) tonnes.



The witnesses and stakeholders that were interviewed explained it as a design error; bad faith did not appear to have been a part of the miscalculation. Nonetheless, the site experienced delays and the budget allocated to B-C soil was significantly exceeded.

In a few cases only, the contamination data contained in the tender documents was incomplete, or missing altogether. In the case of a \$32 million demolition and construction project for a new building, the tender documents referred to a number of previous characterization studies totalling more than three thousand (3,000) pages. The tender provided no summary of the existing field data and the specifications indicated that a new characterization of the site could be conducted by the successful bidder if needed before the start of the work. This situation poses a risk since the budget allocated to soil management can be substantially modified based on the results of the new characterization, which could substantially increase the costs involved.

1.3 MEETINGS WITH CITY STAKEHOLDERS

After presenting the investigation's findings regarding work design, stakeholders at Ville de Montréal produced their own observations and recommendations in an effort to improve their practices. Most highlighted the technical and operational difficulty of providing comprehensive data regarding land contamination levels due to a variety of factors that are often beyond their control.

The stakeholders also criticized Ville de Montréal's lack of expertise in the field of contaminated soil. According to them, only two central services employ specialized professionals and experts in the field.

To partly address the issue, they recommended the creation of a good practices guide for contaminated soil management. Unlike the standard technical specifications, which contain work procedures, a guide on good practices would explain the steps prior to execution, that is, the preliminary studies, along with the required plans, specifications and monitoring procedures. Such a guide would help all business units use appropriate and consistent work methods in their projects. This proposal received the strongest support among stakeholders.

1.4 FINDINGS AND RECOMMENDATIONS: DESIGN PHASE

The Inspector General indicated that a guide on good practices for the management of contaminated soil would be a useful tool for Ville de Montréal. Not all services and boroughs employ experts in the field; a guide on good practices could be used to partially fill this gap.

The City's leading experts in contaminated soil should be involved in developing such a guide. To ensure the initiative's success, the guide would be distributed to every Ville de Montréal business unit and boroughs via training sessions. To ensure continuity, the guide would be distributed and updated on an ongoing basis in response to legislative changes and staff turnover.

PHASE TWO: ENVIRONMENTAL MONITORING OF WORK

As with other contracts in Québec, both public or private, Ville de Montréal is responsible for ensuring that excavated soil during work is deposited in areas authorized for this purpose⁸. Even if the work is done by a contractor, the client may be held responsible and receive a notice of violation from MELCC if any contaminated soil is disposed of in areas that do not comply with regulations. Close monitoring of contaminated soil management is therefore crucial.

In this respect, specialized external firms generally carry out environmental monitoring, except for work sites where there is no contaminated soil above level A-B. In the latter case, there is generally no full-time environmental supervisor at the work site. Soil disposal control is then conducted by compiling weigh tickets and approving the disposal sites. This is due to the large quantity of A-B soils generated by the City's work. These quantities of slightly contaminated soil are such that existing resources, both at the City and monitoring companies, are not sufficient for monitoring their disposal on a full-time basis.

The environmental supervisors' roles include ensuring coordination, rehabilitation work monitoring, and enforcement of the laws and regulations in effect during the work.

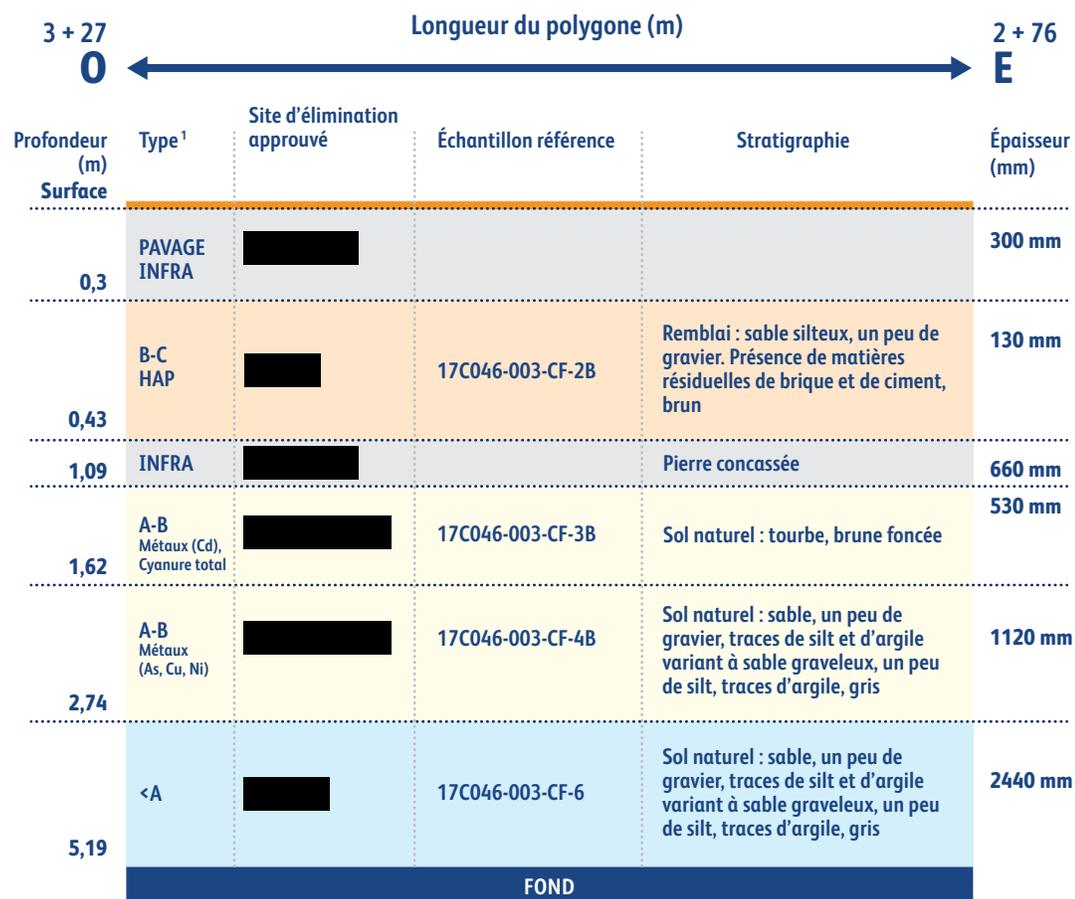
2.1 GOOD PRACTICES

At most of the work sites visited by the Office of Inspector General, an environmental supervisor was on site when there was work involving the excavation and transport of contaminated soil.

In addition, at some work site visits, a cross-section of the materials to be excavated was used by the supervisor and contractor. This type of diagram details the data related to a polygon. Their use makes monitoring more efficient and minimizes the risk of errors at the work site. The table on page 17 shows an example of a schematic cross-section of soil to be excavated.

This table shows the different layers, along with a description of the soil, the level of contamination and the disposal site associated with each layer. Although producing a similar diagram requires time, having it on hand at a work site makes everyone's work easier. In fact, on a single sheet, the diagram shows all the data from the specifications found in the various tender documents.

SONDAGE: 17C046-003



LÉGENDE	
	Sols <A
	Sols A-B
	Sols B-C
	Sols C-RESC
	Sols >RESC
	< ou > RMD

Références :

1. Critères génériques du *Guide d'intervention – Protection des sols des terrains contaminés du ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques* (MODELCC) (2018).

Règlement sur l'enfouissement des sols contaminés c.Q-2, r.18 (RESC) du MODELCC.

Règlement sur les matières dangereuses c.Q-2, r.32 (RMD) du MODELCC.

Cross section

2.2 BREACHES AND RISKS

During the investigation, it was noted that some supervisors did not have sufficient knowledge of the applicable contaminated soil management regulations or that they were at times unable to have the contractor comply with them. In addition, some supervisors in charge of overseeing contaminated soil management admitted to investigating officers that they have no experience in the field or are not familiar with the specifications of the work they are monitoring.

For instance, the Inspector General observed the case of a road infrastructure work site where the contractor had conducted a new soil characterization at its own expense, whereas the tender documents already included a comprehensive study. At no time did the contractor request or receive a formal notice from the supervisor to carry out such a new characterization study. Although nothing prohibits a company from spending its money as it wishes, the City's specifications prohibited considering this type of study for materials management:

[Translation] "The analysis results obtained by the Contractor, at their own initiative, will not be considered for determining the method of materials management⁷."

A new characterization may prove beneficial for the contractor if the results are favourable. For instance, reclassifying A-B soils into B-C soils would enable a contractor to charge the City for the disposal of the soil, which cannot be done with A-B soil, which is not paid at a unit rate. Modifying quantities with a new characterization may cause the City to lose control of its soil management budget for the project.

In the present case, the environmental supervisor was present during the new soil sampling conducted by the contractor, without ever telling the contractor that the results would not be considered at the time of disposal. At a meeting with Office of Inspector General investigating officers, the supervisor made statements that showed he was unaware that the results in the tender documents took precedence over those of the contractor. Section 3.2 below will cover the impact of this initiative on the contractor's part.

2.3 MEETINGS WITH CITY STAKEHOLDERS

When meeting with Ville de Montréal stakeholders, the latter were virtually unanimous in stating that, not infrequently, supervisors are replaced at a work site. The new supervisors are unaware of the specific characteristics of the work site they are brought to. The lack of experience and knowledge of the regulations was also brought up by the representatives that were met. All of these factors contribute to making supervisors vulnerable to seasoned contractors.

2.4 FINDINGS AND RECOMMENDATIONS: ENVIRONMENTAL MONITORING PHASE

The Office of Inspector General's investigation and the observations by City stakeholders led to the same conclusion, namely that there is a lack of resources with experience in environmental monitoring. Unfortunately, there appear to be few solutions for rectifying the issue over the short term, of which Ville de Montréal departments are already well aware of.

In an effort to remedy the problem, some units apply penalties if any changes are made to the environmental monitoring team. However, this does not completely resolve the issue and few solutions appear to be available over the short term. In fact, it appears that, at this time, professional services are not sufficient for meeting the strong industry demand in the Montréal area.

7. Service de l'environnement, Division du soutien technique, infrastructures, CESM, *Devis technique normalisé*, Fascicule 02-120, Réhabilitation environnementale (Environmental Department, Technical Support Division, CESM, *Standardized Technical Specifications*, Publication 02-120, Environmental Rehabilitation), April 2017, sect. 3.1 al 2.

PHASE THREE: WORK EXECUTION

The Office of Inspector General also looked at the contractor's work performance to determine whether they were complying with their contractual obligations. In addition to the work site visits, several meetings were held with management and employees from various companies to better identify and understand their work methods.

Note that failure on a supervisor's part to identify a fault in the performance of the work does not decrease the contractor's liability for said fault. As co-contracting parties in good faith, contractors are required to comply with their contractual obligations and act in the best interests of their client.

3.1 GOOD PRACTICES

The work site visits conducted by the Office of Inspector General revealed that, in most cases, contractors carry out excavations in accordance with the contractual requirements.

For instance, to ensure that contaminated soil management complied with the levels of contamination identified, the polygon boundaries had been clearly marked at the site and the soil layer depths were indicated on the excavation walls. Lastly, the disposal sites for A-B soil were identified and compliant at nearly 80% of the work sites monitored by the Office of Inspector General.



Example of a work site where the boundary of two polygons and soil classification are identified.

3.2 BREACHES AND RISKS

The investigation showed that some contractors do not perform selective excavations based on the level of contamination and therefore mix soil together. This practice is beneficial for the contractor, since it allows them to excavate soil without worrying about the regulatory requirements associated with the level of soil contamination. This practice is contrary to the contractual and legal obligations contractors agree to when bidding on various Ville de Montréal contracts. In fact, the excerpt from the relevant regulation is clear:

Unless required for an authorized treatment, at no time may contaminated soils be mixed with clean soils or with soils or materials having a different contaminant concentration so that the overall contamination level would change and permit disposal of the soils in a less restrictive manner or, because of the mixing of soils having different contamination levels or different structures, decontamination would be made more difficult⁸.

Excavation work is clearly more complicated when there are layers of contaminated soil at different levels. Mass excavations, which can be done at clean sites, are not possible on contaminated land where the depths and surface areas to be excavated are determined by the levels of contamination and not for the specific needs of construction. However, as the documentation comprising calls for tenders address this situation, contractors thus submit their bids with full knowledge of the situation.

To justify mixing soil, as shown in the following examples, some contractors state that it is sometimes difficult for them to comply with obligations in this respect, while others show a lack of knowledge or regard for the regulation.

For instance, at a work site where different levels of contaminated soil had to be excavated and disposed of separately, the president of the company that had been awarded the contract stated to Office of Inspector General investigating officers that he did not understand why the supervisor required that soil be excavated based on the level of contamination. In his opinion, doing so would take too much time, whereas excavating "A-B" and "B-C" soils without regard to their level of contamination would save Ville de Montréal a lot of money: [Translation] "I say, excavate everything in one shot, even if it's A-B or B-C, it will save you time."

8. Regulation respecting contaminated soil storage and contaminated soil transfer stations, CQLR, c. Q-2, r. 46, sect. 5.

This statement clearly shows the contractor's lack of knowledge of the environmental regulations, which can naturally lead to conflict with the supervisor. Note that selective excavation avoids mixing contaminated soil at disposal, in accordance with MELCC standards. Although the excavation work does in fact make operations more complex, this is not a valid excuse for mixing different levels of contaminants.

At another work site, the contractor who had been awarded the contract received three notices of non-compliance⁹ for having mixed soil from different levels of contamination. In one of these notices of non-compliance, the supervisor noted that the contractor had mixed B-C and C-RESC soils together in the same truck. The two types of soil were then disposed of together at a site authorized to receive highly contaminated soil. In this example, had the supervisor not intervened, the City would have paid for the disposal of mixed soil at the price of highly contaminated soil, i.e. the higher price for the two types of soil.

When interviewed by Office of Inspector General investigating officers, the contractor's project manager admitted having mixed B-C and C-RESC soils because, in his opinion, the layers were too thin for selective excavation, which would make the work to be done more complicated. The project manager did, in fact, admit that the company was aware of the information at the time of submitting its bid and could therefore not claim to be surprised when performing the work.



Photograph of an excavation where the mixing of different layers of soil can be seen.

A case was mentioned in point 2.2 above where a contractor conducted their own soil characterization before starting the project, despite the fact that a study had already been done by the City. Note that nothing prohibits the contractor from conducting their own characterization study, but the latter cannot be used without the City's approval to justify subsequent soil management. All the more so as, in this particular case, it was only after the Office of Inspector General intervened that the contractor sent the results of their study to the City.

As a result, while the characterization study provided by the City in the tender documents showed that most of the soil to be excavated was A-B soil, the new results obtained by the contractor instead showed that the soil was mostly below criterion A, which is non-contaminated soil. This thus made it easier to dispose of the soil and reduced the contractor's costs, since there are no restrictions for the disposal of clean soil. Furthermore, the investigation revealed that the new characterization study was used by the contractor to justify dumping soil at a site located in an agricultural area (hereafter, "site #1").

However, it appears that this contractor received a notice of violation in 2016 from MELCC for having dumped contaminated soil at site #1. To remedy the situation, the contractor made a commitment to MELCC to rehabilitate the site and fill it with clean soil. The results of the new characterization conducted by the contractor at the Montréal work site were therefore all the more favourable for the contractor, as the latter would then have a sufficient quantity of non-contaminated soil to meet its commitments to MELCC following its 2016 notice of violation.

After realizing that the contractor was using the results of their own characterization for soil management, the Office of Inspector General immediately intervened. Having first made sure through physical monitoring that the soil brought by the contractor to site #1 originated from the City's work site, investigating officers proceeded to take samples of the soil brought to site #1 and perform a chemical analysis. This confirmed that the soil transported to site #1 was in fact A-B soil, despite the contractor's claims that it consisted of soil below A. The Office of Inspector General notified the City representative, the contractor and MELCC of the situation. After performing its own checks, MELCC issued a notice of violation to the contractor, who was once again required to remove the contaminated soil it had spread on site #1 at their own expense, for the second time.

9. A notice of non-compliance is a written notice given to the contractor notifying it of a breach in its contractual obligations and stating that the contractor must make the necessary corrections to comply with their obligations. Failing to make appropriate corrections may result in the refusal of payment or in work being done by the City at the contractor's expense.

3.3 MEETINGS WITH CITY STAKEHOLDERS

At the meetings, City stakeholders informed investigating officers of a problem that had been previously noted by the Office of Inspector General and that was occurring here as well, namely the intimidation of environmental supervisors, who reported being subjected to verbal intimidation by some contractors on work sites. As previously mentioned, the role of a supervisor is to ensure that work is performed by the contractor in keeping with current regulations. Therefore, there are times when the contractor is unhappy with the supervisor's decisions and this leads to conflict at the work site. Such decisions are needed to ensure compliance with environmental regulations, and supervisors must exert their authority to do their job.

3.4 DETERMINATIONS AND RECOMMENDATIONS: WORK EXECUTION PHASE

The investigation showed that some contractors attempt to reduce their expenses by not complying with contractual clauses on contaminated soil. This results, for instance, in soil with different levels of contamination being mixed together, a practice that reduces work time or inflates the quantities of soil for which the cost of disposal is more beneficial for the contractor.

As these real risks have an impact on project costs and environmental protection, they must be taken into account by both the City's professionals in their contract management process and professionals assigned to work site monitoring.

The Inspector General decries any form of intimidation and reiterates that it is important for all Ville de Montréal departments and boroughs to support supervisors in carrying out their duties and not to tolerate any undue pressure or intimidation at work sites. All supervisors who are victims or witnesses of intimidation are asked to report such incidents to the Office of Inspector General, and timely action will be taken in each case.

Moreover, an electronic truck tracing pilot project has also been set up by Ville de Montréal as part of a municipal lot rehabilitation project. Developed by a non-profit organization, the system tracks trucks by GPS from their loading at the work site to the disposal sites. The application records information about sites in real time in the same electronic file. All stakeholders, namely the City (as the land owner), supervisor, truck driver and disposal site, are called on to take part in the process. While an assessment of this pilot project has yet to be completed at the time of this report, over 2,500 trucks disposing of nearly 80,000 tonnes of soil have been recorded and monitored by the application to date.

It is still too early to determine whether such an electronic system could be implemented on a large scale, but the Inspector General underscores the innovative nature of this City initiative. Indeed, the MELCC has since proposed that an electronic tracing system be implemented throughout the province with its draft *Regulation respecting traceability of excavated contaminated soils in Québec*¹¹.

4.2 RISKS

The meetings with the truckers revealed that several of them are not concerned with the content of the loads they carry or the dump locations. They explained that they dump the soil where they are told to; no matter whether it is a field or farm land, that is where they dump it. This nonchalance is not industry-wide and has been criticized by the trucking associations and independent truckers. They have expressed their concerns about illegal dumping and breaches of integrity in this industry, which has experienced difficulties in recent years.

Moreover, industry stakeholders also say that individuals tied to organized crime have been trying to infiltrate the sector for several years. Indeed, nearly all those from the private sector interviewed by the Office of Inspector General indicated that some businesses are associated with individuals tied to organized crime in Québec. Specifically, these indirect ties manifest in these companies' financing or the hiring of individuals tied to organized crime.

The testimonies indicate that organized crime is attracted to transportation and disposal activities within the contaminated soil industry. They reveal that while transportation is well suited to money laundering, huge profits can be made by illegally dumping contaminated soils and avoiding all the related disposal costs.

To date, however, none of the meetings with these witnesses have provided sufficient evidence of breaches of integrity in performing Ville de Montréal contracts that would call for intervention by the Inspector General. Nevertheless, the presence of organized crime in any industry has negative consequences on government contracting and free competition. The Inspector General does not take these testimonies lightly and will keep a watchful eye on these contracts at Ville de Montréal.

4.3 MEETINGS WITH CITY STAKEHOLDERS

In order to minimize the likelihood of illegal dumping, the solution that has received the most support from City stakeholders is to implement an electronic truck tracing system throughout the City. While the system's application as part of a pilot project has shown promise, an assessment has yet to be completed. It is therefore still too early to conclude whether this technology can be deployed on a large scale at the City.

On April 24, 2019, the MELCC proposed in a draft regulation¹² the requirement to use an electronic tracing system for the transportation of contaminated soil in Québec. The draft is still under study and the City will be required to comply with it if it is adopted.

4.4 FINDINGS AND RECOMMENDATIONS: TRANSPORTATION PHASE

At the moment, careful upkeep of the transport log and the systematic compilation of weigh tickets remain the simplest and most effective control methods for minimizing the likelihood of illegal dumping. However, this system is not perfect. The Inspector General therefore asks anyone who witnesses fraudulent tactics or attempts to evade the law to communicate the facts to her immediately, so that an investigation can be conducted in a timely manner.

11. Projet de règlement, *Règlement concernant la traçabilité des sols contaminés excavés*, art.17, Gazette officielle du Québec, Partie 2, 151^e année, n° 17 (Draft, *Regulation respecting traceability of excavated contaminated soils*, Sec. 17, Gazette officielle du Québec, Part 2, 151st year, n° 17), April 24, 2019, p. 1,322.

12. See Note 11.

PHASE FIVE: DISPOSAL

Following excavation and transportation to accredited disposal sites, contaminated soil must be disposed of in accordance with the law. These sites thus represent the last step in the disposal of contaminated soil. Here, as with other clients, Ville de Montréal does not control operations, as disposal sites are the property of private companies. The City's control consists in ensuring that the site conforms to the applicable standards and that the soil has been properly transported using the transport log and weigh tickets.

EXCAVATED MATERIALS MANAGEMENT

All materials that must be managed off site must be transported to disposal, treatment and storage sites for reclamation, or to soil transfer stations, in accordance with applicable laws, regulations, guides and policies¹³.

It should be pointed out that A-B soils can be disposed of at a much lower cost on private land that has not been accredited by the MELCC. However, ensuring compliant disposal means ensuring as closely as possible that the soil does not contaminate the land receiving it. Conducting such verification means first knowing precisely the contamination level of the land where the excavated soil will be disposed of. The results of excavated soil analyses must then be compared, polygon by polygon, to the results for the receiving soil, in order not to contaminate it further. This makes the approval of disposal sites other than accredited sites particularly difficult.

5.1 GOOD PRACTICES

In the course of their site observation or truck monitoring operations, Office of Inspector General investigating officers found no illegal dumping of contaminated soils from Ville de Montréal work sites. This finding is representative of testimony from various industry stakeholders, according to whom the control mechanisms imposed by the City help prevent illegal soil disposal.

The main factors that might explain this positive finding are the presence of an environmental supervisor, the compilation of weigh tickets when trucks are loaded, and the fact that the City approves disposal sites in advance. These practices minimize the likelihood that soil will be transported to sites that are unauthorized to receive them. They are set out in the tender documents and must be rigorously maintained to ensure that soil is disposed of at MELCC-approved sites.

Furthermore, the City has framework agreements with soil disposal sites where soil from various boroughs and central services are transported. These framework agreements are renewed through public calls for tenders and apply to soil stored temporarily while awaiting determination of its contamination level or projects with low volumes of contaminated soil. Thanks to these framework agreements, soil management for these projects features a lower risk of breaches, since the disposal sites are imposed and the disposal costs are paid directly by the City, not by the contractor.

13. Service de l'environnement, Division du soutien technique, infrastructures, CESM, *Devis technique normalisé*, Fascicule 02-120, Réhabilitation environnementale (Environmental Department, Technical Support Division, CESM, *Standardized Technical Specifications*, Publication 02-120, Environmental Rehabilitation), April 2017, sect. 3.4.

5.2 RISKS

The Office of Inspector General's investigation did not reveal any illegal dumping from Ville de Montréal sites. Nevertheless, there are avenues available for contractors who wish to dispose of soil at a much lower cost without conforming to regulations. Information obtained during the investigation led to the identification of eighteen (18) sites in the Greater Montréal Area where soil has recently been dumped without any controls. No trucks coming from Ville de Montréal sites were observed at these sites. However, the MELCC was informed of their existence at the time of their discovery.

In order to avoid using accredited sites, contractors can call on soil brokers, commonly called "dump guys," who offer uncontrolled sites that are ready to receive soil. These brokers are often unscrupulous, and the risks they incur are negligible, since they do not own the land where they have the soil dumped. According to the investigation, there are many soil brokers, and some of them have limited soil management knowledge. Using such uncontrolled sites is possible when the client does not require the contractor to provide a list of the disposal sites they plan to use.

The other avenue available to businesses is to simply check soil disposal site ads on the Web to find ones that do not appear subject to environmental controls. For example, the following photo shows a social media ad for A-B soil:

The image is a screenshot of a Facebook page for a user named "Spotted: Dépot de terre Gratuit". The page header shows the Facebook logo, the user's name, a search bar, and a profile picture of a yellow excavator. Below the header, there are buttons for "J'aime", "Suivre", "Partager", and a menu icon. The main content area shows a post from the user, which is a text-based advertisement. The text of the post reads: "Bonjour rechercher une place pour aller porter 120 voyages de terre ab environ dans le coin de montreal soit sur la rive sud ou la rive nord doit pas prendre plus de 30 mins de Montréal merci pour demain". Below the post, there are buttons for "J'aime", "Commenter", and "Partager". The comment section shows one comment: "jai une dompe dans vadreuil soulange appel moi". The page also has a navigation menu on the left with options like "Accueil", "À propos", "Photos", "Communauté", "Avis", "Publications", and "Infos et publicités".

Identifying information in this image has been redacted.

Also, roadside signs, like the following one, advertise land where soil can be dumped:



Identifying information in this image has been redacted.

Another sign states “FREE – Excavated soil for landfill” [translation] along with a telephone number to reach the advertiser, who stated over the phone that he needed an address where he could come dump the soil when he had some.

In light of this information, a high degree of vigilance is required on the part of Ville de Montréal stakeholders, as the risk of unauthorized soil dumping remains a real, non-negligible possibility.

5.3 MEETINGS WITH CITY STAKEHOLDERS

The stakeholders whom the investigating officers met with indicated that A-B soil is an important issue for the City. They maintain that it is costly to dispose of A-B soil and that current regulations are highly restrictive when it comes to the reuse of soil elsewhere than on the original land.

Faced with these findings, some stakeholders feel it would be better if the City promoted the reuse of these soils by operating one or more temporary storage stations for lightly contaminated soil.

5.4 FINDINGS AND RECOMMENDATIONS: DISPOSAL PHASE

The Inspector General finds that the risk of breaches in contractual integrity is greater in cases of lightly contaminated soils. As explained in section 2.2, there are usually no full-time environmental supervisors on hand at sites with A-B soil only. The risk of illegal dumping is greater in such cases, even when documentary controls are made.

Moreover, this soil can be legally disposed of on private land other than the MELCC-accredited sites, provided the soil does not further contaminate the receiving land. Not only is the approval of these sites tedious and done on a case-by-case basis, it is hard for the City to ensure that soil is disposed of properly on private land.

Given the tens of thousands of tons of A-B soil excavated annually during municipal work, the city must consider a specific solution for this soil. This solution would be for the City to take over the disposal of lightly contaminated soils.

The investigation shows that the likelihood of illegal dumping is considerably reduced when the contractor is not responsible for soil disposal. There are two options to consider: City operation of one or more temporary storage stations for lightly contaminated soils from its work sites, and the use of framework agreements with disposal sites.

The implementation by the City of one or more temporary storage stations for lightly contaminated soils is a medium-term solution. Nevertheless, the City should look into this matter now and conduct a study to confirm this proposal's viability from an operational, technical and economic viewpoint.

Finally, the current use of framework agreements is also a solution to the illegal dumping of soil, regardless of its level of contamination. However, the volume of soil that can be disposed of under these agreements is limited by the sites' operational capacity. As a result, the City should consider a new procurement strategy that would enable it to enter into framework agreements with several disposal sites in the Greater Montréal area with the goal of implementing this best practice on a greater scale.

Conclusion

In recent years, the contaminated soil industry has received considerable media and legal attention in Québec, and this report from the Office of Inspector General aims to provide an overview of the situation regarding the carrying out of contracts awarded by Ville de Montréal. Overall, the Inspector General notes that the work is planned and carried out properly, and that the control mechanisms put in place by the City hinder illegal dumping of contaminated soil. Nevertheless, there are possible solutions for improving certain practices, and thus preventing potential breaches.

It is important to remember that this investigation's findings relate only to contracts awarded by the City and not to private contracts operating on the territory of Ville de Montréal. Considering the many construction sites on the territory of the island of Montreal, it must be noted that it is difficult to distinguish visually sites under the City's responsibility from private ones. Consequently, the Inspector General considers that it would be appropriate to identify the sites according to whether they pertain to the City or the private sector.

The analysis of the work's five phases demonstrated how the City gradually loses control of its soil as work progresses, without reducing its legal responsibilities with respect to disposal.

First, the investigation showed that thorough and precise work design remains the best tool to ensure that the work is carried out properly, obtain the best possible price for tenders and ensure compliance with the standard framework. Given that cutting-edge expertise in this field is not uniformly distributed across the City's many departments and boroughs, developing a guide to good practices would be beneficial to disseminate knowledge to all stakeholders who design and monitor contaminated soil excavation work.

The investigation also found that environmental monitoring and contractor performance is generally done properly. Overall, both contractors and supervisors are fulfilling their responsibilities well, and soils are being moved to sites with the required authorizations.

However, site visits, as well as numerous meetings with company managers or employees, indicated that some contractors fail to comply with the standard framework, particularly by mixing soils during the work. This practice cannot be tolerated by environmental supervisors, who must remain vigilant in this regard during soil excavation. The presence of a supervisor does not exempt the contractor from meeting its contractual obligations.

During the transit of contaminated soil, visual monitoring of each truck becomes impossible. For this reason, keeping a transport log and checking weighing tickets are essential, since these are the best control tools available to the City's stakeholders at this stage.

The Inspector General notes the many allegations that organized crime is attempting to infiltrate the market and has shared some of the facts of this case with the Anti-Corruption Commissioner. For this purpose, the Office of Inspector General will maintain its monitoring role in work execution and will remain on the lookout for any new information on this subject. It should be noted that the anonymity and confidentiality of denunciators, whether they work in the public or private sector, is guaranteed when they communicate with the Office of Inspector General.

Although no illegal dumping was observed during the investigation, the presence of many unauthorized sites in the Greater Montréal area shows that the risk remains very real. In addition, the investigation showed that A-B soils are more at risk of being disposed of in unauthorized locations than more heavily contaminated soils. Thus, the City should examine the possibility of establishing and operating one or more temporary storage sites for lightly contaminated soils. Along the same line, the City would benefit from developing a procurement strategy to enter into framework agreements with several disposal sites. These two solutions would enable the City to significantly reduce the risk of illegal dumping of soil from its construction sites.

The Inspector General warns Ville de Montréal stakeholders and contractors against easing the measures in place to prevent illegal dumping of contaminated soil. It is thanks to the mobilization and commitment of boroughs and business units' personnel, who rigorously apply good practices, that contractual integrity can be maintained in contaminated soil management contracts.

Closing remarks

Contractual integrity is not just another item to check off on a list. Rather, it requires constant attention and care at all stages of the process, from drafting and designing specifications to completing the work and following up with the post-mortem.

By virtue of its mandate, the Office of Inspector General must be involved in each of these phases. As such, this report has demonstrated all the available levers of action that have been used to ensure the integrity of the contractual processes of Ville de Montréal and related entities.

First of all, as explained above, many upstream interventions were carried out to avoid issues pertaining to the calls for tenders. In addition to the benefits inherent to greater market openness, these adjustments along the way, where appropriate, enable the City to maintain a relationship of trust with potential bidders by providing tangible evidence of its commitment to ensuring fair competition.

Such is also the purpose of the training provided by the Office of Inspector General, which is designed to be practical and subsequently applicable by participants in their daily tasks. Given that their reflexes have been sharpened in this way, it is not uncommon to see that these individuals then become champion of contractual integrity in their respective environments.

In the same vein as the in-depth investigations on the sidewalk industry and monitoring operations reported in the 2018 Biannual Report, the one on contaminated soil management presents a careful analysis of each facet of this industry. During subsequent meetings with City stakeholders, expertise was pooled with an eye on continuous improvement in their respective fields. This will result in more informed, effective and efficient risk management for future contracting processes.

In short, the Office of Inspector General is constantly looking to innovate in order to maximize the impact of its efforts in the service of contractual integrity and Montréal taxpayers.

Anyone, whether a citizen, supplier, contractor or employee of Ville de Montréal, can use our denunciation line to inform us of their observations or irregularities they have noticed, or to report a situation concerning the specifications of a call for tenders, the contract award process or the carrying out of a contract. The law guarantees confidentiality for those making denunciations, and the Office of Inspector General fully commits to complying with this obligation.

To file a denunciation
or complaint:

Online form:

bigmtl.ca/denunciation-or-complaint/

Email:

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Telephone:

514 280-2800

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