



[This is an English version of the report originally submitted in French to Montréal's City Council on November 23, 2015]

Report on Snow Removal and Its Practices in Montréal

(section 57.1.23 par. 2, Montréal's City Charter)

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SUMMARY

In his 2013 annual report, the auditor general of Montréal drew the attention of the city's Directorate General (Direction générale) and the boroughs to several indications of collusion in the snow removal industry. The transmission of this report to the Office of Inspector General (OIG), together with various other reports of collusion received by the OIG, prompted the Office of Inspector Général to open an administrative investigation. The present report gives an overview of the situation, presents the observations revealed in this context as well as the subsequent recommendations.

The investigation conducted by the Office of the Inspector General, using a deliberately comprehensive approach, confirms the signs of collusion revealed by the auditor general: various schemes of a collusion-like nature and the existence of attempts to control the market in certain sectors of the snow removal industry in Montréal. The schemes used, which will be discussed in detail in this report, and were reported by a large majority of contractors, demonstrate that the market is under the influence of a limited group of contractors who intervene in order to coordinate the assigning of contracts between contractors, when these contractors are neither the assignee nor the assignor. After denouncing the situation to the Permanent Anti-corruption Unit (Unité permanente anticorruption (UPAC)), the Inspector General also reported it to the Commissioner of Competition (Competition Bureau of Canada).

This report also demonstrates that certain practices or clauses in the boroughs' specifications, particularly with respect to the period during which calls for tenders are issued or the ability to transfer a contract, objectively favour the development of schemes by the contractors. The illegal recourse to sub-contracting, admitted by several contractors, also favours the development of bargaining.

Moreover, certain disparities with respect to the technical requirements, as well as the highly variable size of the snow removal sectors, defined without any apparent justification, limit competition.

As a result, the Inspector General recommends that the Montréal's City Council, having full jurisdiction with respect to snow removal activity, complete the snow removal policy that it recently adopted, by centralizing, in particular, the establishment of obligatory technical requirements common to all of the boroughs in the specifications, elaborating and drafting specifications specifically intended for snow removal activities, and define the terms for issuing a single call for tenders applicable to all of the sectors whose contracts are set to expire.



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1. Scope of the Work

1.1. Warning

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

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

1.2. Applicable Standard of Proof

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

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

1.3. Approach Adopted by the Office of Inspector General

In the case at hand, the Office of Inspector General adopted an investigative approach that is deliberately comprehensive in order to present a report on the situation of the contracts awarded for snow removal activities. As a result, the Office of Inspector General did not study one particular contract and will not, at this stage, take action with respect to certain specific contracts since this was not the goal of the investigation.

The principal objectives of the investigation conducted by the Office of Inspector General were to determine whether collusion practices exist within the snow removal industry in Montréal and, as the case may be, assess their scope. Other principle objectives of the Office of Inspector General were to identify the schemes and unfair practices as well as any other problem that could hamper free competition among the contractors.

The purpose of this report is to inform the authorities concerned, the elected officials and the population of the high-risk situations that many of the witnesses interviewed discussed. By means of this report, the main concern of the Office of Inspector General is to formulate recommendations to ensure that certain measures are adopted quickly so as to reduce

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



the risk of collusion and market control in certain sectors and ensure the healthy solicitation of the market through calls for tenders in the field of snow removal.

This approach is within the framework of the power of the Office of Inspector General to submit a report at any time on findings or recommendations that should be brought to the attention of the Montréal's City Council, as provided in section 57.1.23, par. 2, of the Charter.

It is also essential to mention that this investigation was conducted as part of a long term process that has a broader scope than simply submitting a report with recommendations. The investigation provided the Office of Inspector General with enough information to conclude that several collusion and market-control schemes are in use in the snow removal industry. With this information in hand, the OIG can, as of now, exercise an increased supervision over the awarding and carrying out of contracts through inspections and visits while snow removal operations are underway. This vigilance will enable the Inspector General to take action with respect to specific contracts, by making decisions as needed, if he notes fraudulent manoeuvres and serious failings, as provided in section 57.1.10 of the Charter.²

In this report, inasmuch as possible and without this affecting the intelligibility of the account, the identities of the contractors have been deliberately hidden. This is a measure taken by the Inspector General in order to ensure the anonymity of the cooperating witnesses who gave the OIG information relevant to the investigation. Indeed, section 57.1.14 of the Charter requires that such actions be taken:

*The inspector general **must take all necessary measures to protect the identity of persons** who have communicated with him or her. Within the scope of his or her mandate, the inspector general may nonetheless communicate the identity of such persons to the police service of the city or to the Anti-Corruption Commissioner.*

Indeed, if, in the account of the facts revealed during the course of the investigation, only the identities of the cooperating contractors were hidden, it would be easy to identify them. Hiding the identity of all of the contractors is therefore a measure that serves to ensure

² Section 57.1.10 of the Charter authorizes the inspector general to cancel any contracting process or rescind or suspend the carrying out of a contract:

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

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

The inspector general's decision must include reasons and be sent immediately to the clerk and the mayor of the city. If the decision concerns the contract of a legal person referred to in the first paragraph, it must be sent immediately to the secretary of the legal person.

that the Inspector General satisfies the requirements imposed on him by the enabling legislation in terms of protecting the anonymity of informants.

But there is more. Following his verifications and investigation, the Inspector General is of the opinion that violations of a federal law concerning collusion, namely the *Competition Act* (R.S.C. (1985) ch. C-34), may have been committed by certain contractors. In conformity with its enabling legislation, the Inspector General denounced these violations to the Permanent Anti-Corruption Unit (hereinafter: UPAC).

Indeed, section 57.1.18 of the Charter states:

If, in the opinion of the inspector general, a federal or Québec law or a by-law or regulation made under such a law may have been contravened, and if the contravention pertains to corruption, malfeasance, collusion, fraud or influence peddling in, for example, the making or carrying out of contracts, the inspector general must, without delay, disclose the wrongdoing to the Anti-Corruption Commissioner.

After discussion with UPAC, it was agreed that the Inspector General would denounce these situations directly to the Commissioner of Competition (Competition Bureau of Canada), which is responsible for criminal investigations concerning conspiracies among competitors and bid-rigging.

With this in mind, the Inspector General is of the opinion that the identities of the contractors must be hidden so as not to hamper a criminal investigation that may potentially be initiated by the Competition Bureau, but also taking into consideration the objective of his own investigation which was not to take action with respect to a specific contract but rather to prepare a portrait that would enable him to monitor the situation starting as of the next snow removal season.

2. Context of the Investigation

The annual report submitted by the auditor general of Montréal to the Montréal's City Council and the Montréal's Agglomeration Council for 2013 is one of the elements that provided a basis for this investigation.

In that report, the auditor general addressed contracts awarded by the boroughs, between 2005 and 2013, for snow removal activities. The objective was twofold: to ensure that open competition existed between the contractors so as to enable the city to obtain the best prices and to make sure that the contracts were awarded in keeping with the rules and processes in effect.³

³ Report of the auditor general of the Ville de Montréal to the City Council and the Urban Agglomeration Council for the year ended December 31, 2013 (version amended September 2014), p. 488-489.



The auditor general identified a series of indicators that he brought to the attention of the boroughs and the Montréal's Directorate general (Direction générale), and that led him to suspect the presence of collusion among contractors that submitted bids or irregularities in the contract awarding process:

- the number of companies that obtained the call for tenders documents relative to the number that actually submitted tenders;
- the existence of companies that submitted tenders without ever being awarded contracts;
- the frequency with which the same company or small group of companies, which submitted the lowest offers, were awarded contracts over time;
- the fact that contracts were awarded to a bidder that was not the lowest compliant bidder;
- the presence of a single company that was awarded contracts for numerous years within a borough;
- the case of a unique bidder;
- an excessive difference between the prices of the first and second bidders (greater than 15%);
- the existence of particular clauses or specifications (for example, clauses concerning the equipment required) in the call for tenders documents, favouring certain companies;
- the existence of complaints from bidders concerning calls for tenders;
- the fact that a limited number of contractors were constantly and continuously awarded the contracts;
- the fact that certain boroughs awarded their contracts exclusively to a single contractor;
- the fact that certain companies that were awarded contracts were related.⁴

The auditor general informed the boroughs and the city's Directorate general (Direction générale) of the importance of monitoring the distribution of contracts over the territory, of developing common indicators for comparing prices among the boroughs, as well as

⁴ Report of the auditor general of the Ville de Montréal to the City Council and the Urban Agglomeration Council for the year ended December 31, 2013 (version amended September 2014), p. 488, 489 and 528.



providing sufficient grounds in the decision-making summaries and documenting certain types of information so that they can be presented to the authorities for making decisions.⁵

At the time the auditor general's report was submitted, the Inspector General of Montréal had been appointed by the Montréal's City Council, but the law stipulating his powers and responsibilities had not yet come into effect. One of the recommendations made by the auditor general was that his report should be transmitted to the Inspector General, once the enacting law was adopted, to allow him to confirm or set aside his concerns with respect to the existence of collusive agreements.⁶ As a result, on May 6, 2014, the auditor general's report was transmitted to the Office of Inspector General.⁷

It is important to highlight the contribution and cooperation of the Office of the Auditor General with respect to the investigation conducted by the Office of Inspector General. The objective of the current report was not to re-do his analysis but to serve as a complementary tool for the decision-making authorities based on an investigation conducted with a different mandate and different tools.

The process used in the matter demonstrates that the Office of Inspector General does not act in a vacuum. The Office of the Auditor General is another independent monitoring organization, invested with complementary powers that the Office of Inspector General considers as a partner.

In addition to the auditor general's report, the investigation conducted by the Office of Inspector General was based on several reports received concerning the management of snow removal contracts.

With this information in hand, the Bureau conducted its investigation. During the course of the investigation, approximately 100 witnesses were interviewed, namely Montréal's employees responsible for oversight or involved in the contracting process, as well as about sixty (60) snow removal contractors. Requests for documents were also issued and the Office of Inspector General monitored snow removal operations.

Finally, the comprehensive investigation approach adopted by the Office of Inspector General in this case also resulted in close supervision of certain calls for tenders in progress during the investigation.

⁵ Report of the auditor general of the Ville de Montréal to the City Council and the Urban Agglomeration Council for the year ended December 31, 2013 (version amended September 2014), p. 525 and 527-529.

⁶ Report of the auditor general of the Ville de Montréal to the City Council and the Urban Agglomeration Council for the year ended December 31, 2013 (version amended September 2014), p. 524.

⁷ Report of the auditor general of the Ville de Montréal to the City Council and the Urban Agglomeration Council for the year ended December 31, 2013 (version amended September 2014), p. 524.



3. The Snow removal Industry

Before discussing the schemes identified during the course of the investigation conducted by the Office of Inspector General, it is useful to describe the snow removal industry in Montréal to provide a better understanding of the environment in which the practices develop.

For the purpose of awarding contracts, each borough is divided into sectors. The boroughs determine the number of sectors and their respective sizes.

In terms of figures, the auditor general of Montréal determined during his audit that, between 2005 and 2013, the boroughs granted 545 snow removal contracts to 167 companies, for a total expense of \$528 million.⁸

Four types of snow removal contracts are used in Montréal:

- so-called “turnkey” snow removal contracts, awarded to private contractors that agree to handle snow removal for a sector, including scraping, pushing snow to the curb into piles for removal, blowing snow and carrying snow to the snow disposal sites. This type of contract may also include the spreading of ice-melters and abrasives;
- snow transportation contracts, awarded to private contractors solely for transporting snow to the snow disposal sites, whereas the snow is removed from the roads and sidewalks by the borough’s blue collar workers;
- contracts for leasing equipment to be used for the snow disposal site operations; and
- contracts for leasing equipment, with or without operators, to be used for snow removal operations, handled by the borough’s blue collar workers when the borough does not have enough equipment to remove the snow.

The “turnkey” contracts and the snow transportation contracts are the two types of contracts that represent the largest expenses for the boroughs.⁹ The investigation conducted by the Office of Inspector General focused primarily on these two categories of contracts, but not to the exclusion of the others.

⁸ Report of the auditor general of the Ville de Montréal to the City Council and the Urban Agglomeration Council for the year ended December 31, 2013 (version amended September 2014), p. 498.

⁹ According to the report of the auditor general of Montréal, between 2005 and 2013, the contracts awarded for snow removal operations represented a total cost of \$528,000,000, including \$326,298,000 (62%) for snow removal contracts and \$103,276,000 (20%) for transporting snow. See the Report of the auditor general of the Ville de Montréal to the City Council and the Urban Agglomeration Council for the year ended December 31, 2013 (version amended September 2014), p. 498.

Several factors influence the cost of the contracts. They are related, in particular, to the reality of the territory where the snow is to be removed, such as the size of the sector, the distance between the sectors and the snow disposal sites and the frequency imposed for snow removal.¹⁰ Pedestrian or automobile traffic, the topography of the sector (presence of hills) and the narrowness of the roads are also elements that can have an impact of the cost of the contracts for a given sector.

4. Snow removal Jurisdiction in Montréal

Since August 17, 2015, the Montréal declared that it has jurisdiction with respect to snow removal for the local road network. In fact, this is a borough jurisdiction,¹¹ but, based on a recommendation of the Montréal's Executive Committee,¹² Montréal's City Council declared that it has jurisdiction for a period of two (2) years, under section 85.5 of the Charter.¹³ Thereafter, the Montréal's Executive Committee adopted a new snow removal policy that provides the minimal operating standards that apply to each of the operations pertaining to snow removal on municipal public roads on the city's territory.

This policy was integrated in the *Montréal City Council bylaw concerning the delegation of certain powers concerning the road network to the borough councils (Règlement du conseil de la Ville sur la délégation de certains pouvoirs relatifs au réseau de voirie artérielle aux conseils d'arrondissement)*¹⁴ following the Montréal City Council meeting of September 21, 2015. The snow removal policy imposed minimal operating standards to the boroughs with respect to the local and arterial network.

All the contracts studied and analyzed as part of the current investigation were awarded by the boroughs, and all of the snow removal operations covered by the investigation were planned and organized by the boroughs. Since 2012, Montréal's Procurement Service (Service de l'approvisionnement de la Ville de Montréal) has been responsible for soliciting the market and coordinating the call for tenders,¹⁵ but the specifications included in the calls for tenders are prepared by the boroughs.

By declaring itself to have jurisdiction with respect to snow removal on local roads for a period of two (2) years, the City made an initial gesture which serves, in the opinion of the Office of Inspector General, to regain control in this area. However, this act is not enough, on its own, to combat the schemes described by the witnesses. Despite this change in the level of jurisdiction, the findings presented in this report remain timely and current. With

¹⁰ Report of the auditor general of the Ville de Montréal to the City Council and the Urban Agglomeration Council for the year ended December 31, 2013 (version amended September 2014), p. 523.

¹¹ *Montréal's City Charter*, C.Q.L.R. c. C-11.4, section 130 (7).

¹² CE15 1559.

¹³ CM15 1002; Decision-making summary 1155266001.

¹⁴ 08-055, Appendix C.

¹⁵ The Politique d'approvisionnement de la Ville de Montréal [TRANSLATION: Procurement policy] is available at:

http://ville.Montréal.qc.ca/pls/portal/docs/page/librairie_fr/documents/politique_approvisionnement.pdf (consulted September 22, 2015).



this in mind, the additional measures recommended by the Inspector General should be taken in order to ensure healthy competition in the solicitation of the market through the call for tenders process and to enable the city to obtain the best price.

5. Schemes Identified During the Investigation

The investigation conducted by the Office of Inspector General brought to light various schemes of a collusion-like nature and attempts to control the market in certain sectors. By presenting these various schemes, the Inspector General will address findings with the purpose of formulating certain recommendations.

5.1. The Notion of Protecting a Territory

Through interviews with the various witnesses, in particular the contractors, a first finding appears clear for the Office of Inspector General: the notion of protecting a territory is deeply rooted in the manner in which the contractors approach contracts.

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

The idea that everyone has their own territory is even reflected by the presence of “orphan territories,” a term used in the snow removal industry to refer to territories that are available for tenders. “Orphan territories” are sectors that do not belong to any contractor, such as the case, for example, of sectors for which snow removal has always been handled internally by blue collar workers and for which calls for tenders are issued for the first time.

Recourse to public calls for tenders is essentially intended, for a client, namely Montréal and its boroughs in this case, to [TRANSLATION] **“simultaneously reach all interested parties** who have the capacity to conclude contracts, the expertise and the competency required to carry out the contract **so as to generate the greatest amount of competition.**”¹⁶

The contractors’ vision of contracts hampers this objective and goes against the fundamental principles, which have been reaffirmed by the courts many times,¹⁷ that

¹⁶ Me Pierre Giroux and Me Denis Lemieux, *Contrats des organismes publics québécois*, ed. Wolters Kluwer (p. 809-2).

¹⁷ *R.P.M. Tech inc. c. Gaspé (Ville)*, April 14, 2004, Cour d’appel, REJB 2004-60675 (par. 25); *Drummondville (Ville de) c. Construction Yvan Boisvert inc.*, 2004 CanLII 73066 (QC CA) (par. 1); *Groupe Morin Roy, s.e.n.c. c. Blainville (Ville)*, June 19, 2003, Cour supérieure, REJB 2003-43965 (par. 24); *Archevêque & Rivest Itée c. Beaucage*, August 22, 1983, Cour d’appel, EYB

provide a foundation for the rules governing the awarding of public contracts and which exist to ensure:

1. that the best product is obtained for the best price, for the benefit of the client;
2. free competition;
3. equal opportunities to access public contracts so that each party has the opportunity to submit an offer and get a contract.

5.2. Collusion Among Contractors

In his annual report for 2013, the auditor general of Montréal concluded, based on an audit, that there are indicators that allowed him to suspect the presence of collusion concerning snow removal operations.¹⁸

The investigation undertaken by the Office of Inspector General confirmed these suspicions. According to the statements of the many witnesses interviewed during the investigation, there exists collusion schemes between certain contractors with respect to both “turnkey” contracts, snow transportation contracts and equipment leasing contracts.

Various forms of collusion schemes, more or less official, are created precisely around this notion of protecting a territory.

Before discussing the various forms of collusion present, the following list highlights certain examples of comments made among contractors and reported by the witnesses:

- being asked by a contractor not to bid against him and being told [TRANSLATION] “I never touched you so don’t touch me!”;
- being asked what you are doing in the sector by the contractor who has been obtaining contracts there for a long time;
- being asked by a contractor not to bid against him in his territory;
- being told by a contractor that it’s [TRANSLATION] “his territory”;
- being told by a contractor that he was the one in that sector and to go somewhere else;
- being told that you have no business bidding or working in the sector;
- being told by a contractor that he is not happy that you bid against him in a sector;

1983-118139 (par. 52). See also the jurisprudence cited in Me Pierre Giroux and Me Denis Lemieux, *Contrats des organismes publics québécois*, ed. Wolters Kluwer (p. 814-5).

¹⁸ Report of the auditor general of the Ville de Montréal to the City Council and the Urban Agglomeration Council for the year ended December 31, 2013 (version amended September 2014), p. 529.



- having been awarded the contract, being told by a contractor, a few hours after the opening of the tenders, that it is [TRANSLATION] “his company” that had the contract before and having that contractor offer to buy back the contract and pay the penalties;
- being told that you’re [TRANSLATION] “going to screw everything up” by bidding in a specific borough;
- being asked what contract you’re going to bid on and then, after answering, being told that it is OK;
- being asked by a contractor, when several contracts are up for bids in a borough, to [TRANSLATION] “let them pass on one contract and to leave them one.”

According to the Office of Inspector General, all of these comments reveal that certain contractors control the market.

5.2.1. Mutual “Respect”

First and foremost, protecting a territory translates into mutual “respect”¹⁹ among the contractors. This is a form of collusion in its most simple and implicit form.

Several contractors explained to the Office of Inspector General that, out of “respect,” they do not bid against certain competitors with whom they have a business relationship (supplier-client for equipment, sub-contractor), a friendship, or a kinship so as not to harm them. The Office of Inspector General verified the information provided by these witnesses with respect to the contractors they said they did not bid against. It examined eighteen (18) calls for tenders, including “turnkey” snow removal contracts that are currently in effect in various boroughs. Cross-referencing the data confirmed the witnesses’ comments.

Certain contractors also said that they did not bid in certain sectors for fear of reprisal.²⁰ Mutual “respect” therefore, is established on the following logic: when a contractor obtains a contract in a given sector for several years, the others avoid making bids for fear of being “attacked” in turn by that contractor and losing “their” contract. “Respect” for the territory of others is viewed as a means for protecting their own territory. This, however, goes against the principle of free competition in an open market.

In this regard, one contractor informed the Office of Inspector General that he let a competitor know that he was angry with him for bidding against him on a call for tenders, even though that contractor was not awarded the contract. The contractor added that his competitor had no reason to disturb him with respect to “his contracts” from the borough since he had not himself bid in his competitor’s sector.

¹⁹ Expression used by several contractors.

²⁰ The range of reprisals that the witnesses reported to the Office of Inspector General will be covered in section 5.3 of the report.

One witness even told the OIG that he had once been contacted by a competitor and asked to purchase equipment from a company on the verge of bankruptcy and that he had, to some extent, been forced to buy it since, after his initial refusal, his competitor had made it clear that if he did not buy the machinery, he would bid against him in a given borough.

The authority of certain contractors forces their competitors to “respect” their territories. This is specifically the case of a limited group of contractors that was described repeatedly by several of the witnesses as contractors no one dares to bid against.

The authority of certain contractors may also stem from information disseminated in the industry about their connection to individuals affiliated with organized crime. Several contractors informed the Office of Inspector General that certain contractors had links to organized crime. When questioned by the OIG, some of them admitted that they knew individuals connected to organized crime.

5.2.2. Non-aggression Pacts

In a more official form, the mutual “respect” between the contractors can become an actual pact of non-aggression. Such pacts of non-aggression are intended to ensure that contractors keep the contracts in a given sector year after year.

Several contractors informed the Office of Inspector General that certain contractors have agreed amongst themselves not to bid against one another. In this respect, one contractor stated that he had agreed with a competitor to mutually “protect” one another by submitting high-priced bids for calls for tenders covering sectors that historically belonged to one or the other in two (2) boroughs. This contractor informed the Office of Inspector General that they acted in this manner in order to show that is an open market while making sure that they would not bid against one another. However, it is interesting to note that this agreement between the two contractors did not work for the calls for tenders in a third borough since there was a disagreement with respect to the distribution of the contracts.

Certain contractors refused to admit that there are pacts or agreements between the contractors. However, what their language reveals is just as significant. When questioned by the Office of Inspector General, these contractors said that “everyone decides to stay in their corner” and admitted telling their competitors “you stay in your area and I’ll stay in mine.”

One contractor the OIG interviewed admitted having previously asked others not to bid against him in a borough. He summarized his reasoning as follows when he explained why few companies bid against him in that borough: “Be respectful and I’ll be respectful. I won’t go to your place, so don’t you come to mine.”

Another competitor told the OIG that, with respect to both snow removal and snow transportation contracts, when a contractor keeps to “his” sector and does not bid on other territories, he might find himself as the sole bidder in “his” sector since no one would



“attack him.” In the same manner, a contractor would have no difficulty bidding on a so-called “orphan” contract since it does not “belong” to anyone.

Whether a contractor decides not to bid as a result of mutual “respect” or by means of a pact of non-aggression, the result is the same: competition is limited and the boroughs cannot obtain the best price.

5.2.3. Sharing the Territory

The investigation conducted by the Office of Inspector General permits the OIG to conclude that, in the field of snow removal, the territory is divided between contractors for both “turnkey” and snow transportation contracts. One contractor, who admitted that he had already been involved in collusion, stated that the snow removal contractors discuss amongst themselves to determine who is going to bid, in which sector, and for how much they will bid.

About 20 contractors were identified, to varying degrees and by many of the witnesses, as taking part in activities of a collusion-like nature.

The Office of Inspector General analyzed the number of bidders for the “turnkey” contracts to which it had access through its verifications. These are contracts for which part or all of the contract period was between 2005 and 2015. This exercise served to corroborate the comments made by the witnesses with respect to the sharing of the territory. In fact, it is possible to note that in several boroughs, year after year, contractors obtain “turnkey” snow removal contracts in the same sector (or in certain cases, several same sectors). This is the case of the following boroughs in particular:

- Ahuntsic-Cartierville;
- Anjou;
- Côte-des-Neiges-Notre-Dame-de-Grâce;
- Mercier-Hochelaga-Maisonneuve;
- Outremont;
- Pierrefonds-Roxboro;
- Plateau-Mont-Royal;
- Rivière-des-Prairies-Pointe-aux-Trembles;
- Rosemont-La Petite-Patrie;
- Saint-Laurent; and
- Saint-Léonard.

With respect to contracts for snow transportation, one contractor admitted to the Office of Inspector General that he had been involved in sharing territories. He explained that a group of three (3) to five (5) contractors would meet in restaurants or would call one another in order to determine which sectors they would bid on. He summarized the manner in which the contracts were divided up as follows: “one goes there, the other goes there”; “some like that sector, others like it less”; “I was [name of a sector], another went elsewhere, that’s how it is.”

In the case of both the “turnkey” contracts and the snow transportation contracts, the distribution of different territories by the contractors can be done at meetings in a restaurant. The Office of Inspector General was given this information by several contractors during the course of its investigation. Some of the contractors admitted to taking part in meetings in restaurants. The name of a restaurant in an outlying region was even mentioned more than once, by different contractors.

The contractors also use the telephone to contact competitors in order to get organized or to determine their competitor’s interest in bidding on calls for tenders and then convince them not to bid. Certain contractors mentioned that they received telephone calls from competitors who were defending the interests of another contractor. In certain cases, meetings are held in person and certain contractors go to the offices of their competitors or turn up during snow loading operations.

One contractor explained to the OIG that, when he is interested in a call for tenders, he will visit his competitors to gauge their interest in bidding on the call for tenders. He will even go to their garage to visit them. If they are interested, he tries to convince them not to bid against him by telling them that if they do, he will bid against them in their sectors.

Several contractors informed the Office of Inspector General that they had been called by other contractors during the call for tenders period, right after picking up the specifications. One contractor admitted to the OIG that he had, in the past, asked the boroughs for a list of those who had picked up the specifications.

One witness the OIG interviewed explained that, after picking up the specifications, he had received a call from a competitor, who seemed irritated by the fact that he intended to bid on the call for tenders. The competitor told the witness that he was going to [TRANSLATION] “screw everything up” if he bid in the borough covered by the call for tenders.

Finally, some stated that they were questioned about their interest in a contract during the opening of tenders (namely the last day for submitting bids). One contractor admitted that he had waited for competitors in the parking lot of the city’s offices on the day when the bids were being opened in order to find out whether they were going to bid against him. Another witness interviewed by the OIG stated he had been approached by a competitor in the parking lot of the borough’s offices on the day when the bids were being opened in order to find out which contract he was bidding on and had been told [TRANSLATION] “that’s OK” when he indicated the contract he was interested in. This type of approach



indicates a certain market control since the contractors tell their competitors whether it is “OK” or not to bid on certain sectors.

Since the *Commission of inquiry into the granting and administration of government contracts in the construction industry* (hereafter CEIC), contractors have apparently been more vigilant and meetings no longer take place by telephone, email or at the restaurant, but rather on a street corner or in a vehicle, so as not to attract attention. Moreover, the meetings of the Quebec Association of contractors in the snow removal industry (Association des entrepreneurs en déneigement du Québec) have been identified by certain witnesses, to a lesser extent, as a venue where contractors involved in collusion meet. The annual general meeting of the association’s board of directors would, to a certain extent, provide an opportunity for meeting under official cover.

5.2.4. Schemes Identified

During the course of the investigation, several of the witnesses interviewed by the Office of Inspector General identified schemes that allowed the contractors to coordinate or organize tenders or even thwart the applicable rules. Witnesses mentioned the use of the following mechanisms:

- Cover bidding, with or without financial compensation;
- offer of financial compensation in exchange for not submitting a tender;
- withdrawal of a tender;
- multiple price envelopes; and
- the use of a front company to submit a tender.

Cover bidding are the result of agreements made between contractors to submit a bid at a given price. This is a way of controlling who gets the contract while maintaining the appearance of an open market.

One contractor told the Office of Inspector General that he had recently made an arrangement with a competitor to make sure that each obtained a snow removal sector covered by the same call for tenders. They worked together to determine the price they would bid for the call for tenders, while increasing their respective profit margins. The two contractors had obtained the contracts for these sectors during the previous call for tenders. The purpose of the agreement was to make sure each party kept their sector. In the end, the call for tenders was cancelled, but a verification by the OIG of the Electronic tenders system (Système électronique d’appels d’offres) (hereinafter: S.É.A.O.) confirmed that these contractors were the lowest bidders in their respective sectors and that neither submitted a bid for his competitor’s call for tenders.

Another contractor explained that he had already agreed not to compete with one of his competitors by bidding on the calls for tenders of a given borough at higher prices and that, in exchange, his competitors had agreed not to bid against him on “his” contracts.

During the course of the investigation, the Office of Inspector General analyzed certain calls for tenders and minutes taken during the opening of tenders. An examination of one of these files revealed that, within a period of two months, one contractor bid on two (2) calls for tenders covering the operation of snow disposal sites, and the difference between the two prices does not seem justified.

The following table summarizes the tenders submitted for each of the calls for tenders in question, which are still being carried out:

Business	Price per cubic metre	
	Site A (5 years)	Site B (6-year option)
	\$0.777	X
	\$1.04	\$0.79
	X	\$0.73
	X	\$0.77
	X	\$0.89

The company that bid on the call for tenders concerning snow disposal site B at \$0.79 per cubic metre submitted a price that was 32% higher on the call for tenders covering site A (\$1.04 per cubic metre), which placed him in the rank of the second lowest bidder. A witness interviewed by the Office of Inspector General explained that the two sites were more or less equivalent and that the value of the contract for site A was not high enough to justify the difference between the two bids. Moreover, the price tendered per cubic metre by the lowest bidder for site A is equivalent to the price tendered by the bidders for site B. And, what is more, the company that submitted a tender for the two sites had been awarded the contract covering site B for several years and, as a result, was in a position to be able to adequately estimate the value of the work. If the tender for the price of \$1.04 per cubic metre had not been submitted for the call for tenders covering site A, there would have been only one bidder.

According to one of the contractors who admitted to having taken part in collusion, cover bidding can be accompanied by financial compensation. He indicated that this compensation can vary between \$20,000 and \$50,000 per contract or between \$1 and \$3 per linear metre.

Financial compensation may also be offered to a competitor so that he does not bid on a call for tenders. Several contractors confirmed the existence of this practice. One contractor stated that he had once been offered \$150,000 by a competitor for this purpose but that he had refused the offer.

Occasionally, even snow removal sectors are offered in exchange for a promise not to bid. These contracts are generally offered by means of an assignment of contracts between



contractors. This will be discussed in more detail in the section pertaining to this mechanism.

Another type of agreement that contractors reported to the Office of Inspector General concerns the withdrawal of tenders. For example, one contractor mentioned that his company was the lowest bidder for a sector and that he had been contacted by a competitor (the second lowest bidder for the call for tenders) even before the contract was awarded, and asked to withdraw his tender. The competitor wanted to be awarded the contract at a higher price. In exchange, he hired him as a sub-contractor to do 50% of the snow transportation covered by the contract. He also proposed to pay a higher amount to cover the cost of the penalty associated with the withdrawal of the tender. The contractor, however, decided to refuse the offer. This account was corroborated by another employee of the company. A similar example was reported by another witness as part of an equipment leasing contract.

This type of agreement not only deprives the city and the boroughs of the possibility of obtaining the best prices but is also intended to increase the contractors' profits.

Some of the contractors also informed the Office of Inspector General of strategies they adopted in order to circumvent the rules governing the call for tenders process. The first involves preparing multiple price envelopes to be submitted depending on the contractors that show up to submit their bids. More than one contractor admitted to having used this tactic and preparing two (2) or three (3) price envelopes that they kept to the last minute on the day on which tenders were to be submitted.

The second strategy involved using another company operating in the snow removal field as a "front" in order to bid on a call for tenders and get around the requirement to be certified by the Financial Markets Regulatory Authority (Autorité des marchés financiers). One contractor informed the Office of Inspector General that he had been called by a competitor for this purpose since his company had a greater chance of obtaining the required certification than the competitor did. The agreement was that if the contract was obtained, the work would be done by the competitor's equipment and employees. However, the contractor refused to take part in such an agreement.

5.2.5. Difficulty Contractors have Qualifying a Situation as Collusion

What is surprising, however, is that, despite all of the situations presented above, few contractors qualify these situations as collusion. Of the approximately 20 contractors identified, to varying degrees and by the many witnesses interviewed, as participating in activities of a collusion-like nature, only three (3) of them responded affirmatively to the question "Have you ever taken part in collusion?" asked directly by the investigators of the Office of Inspector General.

Several other contractors nevertheless admitted to the Office of Inspector General that certain actions had been taken on their part, without admitting that these actions constituted collusion or unfair practices. The Office of Inspector General still considers

these actions to be collusion. In the opinion of the Inspector General, these actions were attempts to rig bids, which succeeded or failed, whereby contractors coordinated their offers by agreeing, either explicitly or implicitly, to not to submit a bid, to withdraw their bid or to present a bid that is the result of an agreement. These practices undeniably hinder competition.

During the investigation, the OIG thus encountered a real difficulty concerning the contractors' understanding of collusion.

Was such a situation observed as a result of fear of incriminating themselves or a lack of understanding of the phenomenon of collusion? The Office of Inspector General is of the opinion that, in all of the cases, it is essential that the city and the boroughs be made aware of this reality since it has an impact on certain measures they may decide to implement.

5.3. Reprisals

The investigation conducted by the Office of Inspector General demonstrated that the contractors who do not respect their competitors' territories expose themselves to reprisals. This fact was corroborated by many of the witnesses interviewed.

5.3.1. Submissions below Market Price

As already mentioned, some contractors avoid submitting bids in a given sector when a contractor has had the contract there for several years, out of fear of being "attacked" in turn by that contractor and losing "their" contract in "their" sector.

Several witnesses confirmed that a contractor who has lost one of "his" contracts may decide to take revenge on the contractor that got the contract by bidding below the market price on another contract for which the competitor bids. In the snow removal sector, this practice is referred to as: "taper sur un contrat" ([TRANSLATION] "hitting" on a contract).

Contractors are thus prepared to not make any profit on the contract. These contractors would not have bid on these calls for tenders if they had not intended to take revenge on the competitors and send a clear message to protect "their" territory.

In this case, a notable difference in terms of the prices for which certain contracts are awarded over the years could be an indicator that a price below the market value is being submitted and that the contract is being "hit." Verifications made by the Office of Inspector General indicate that some snow removal contracts were granted at prices clearly lower than in the past, with an observed difference that occasionally reached almost 50%. For example, the Office of Inspector General questions the reasons justifying the large difference in price of a particular snow removal contract awarded between 2006 and 2011. While the contract was awarded for \$28.95 per linear metre in 2006, it was awarded for \$16.35 per linear metre in 2011. It is therefore important for the boroughs to be vigilant when this type of situation occurs and no reasons exist to justify such a difference.



When questioned by the Office of Inspector General, one contractor explained that, in recent years, he had knowingly targeted a snow removal sector in order to “hit” the contract covering it. He explained that [TRANSLATION] “he did not like [the contractor who had been awarded the contract during previous calls for tenders] because one of its directors was bidding everywhere on the island, even when a snow removal sector was far from its garage” and that he had wanted to give his competitor [TRANSLATION] “a taste of his own medicine.” Finally, as a result of an administrative error, the contractor did not bid on this sector but managed to get the contract when the contractor that won it transferred it to him.

Another means used to send a clear message to competitors is to post publicly on the S.É.A.O. when taking possession of the call for tenders documents, so that other contractors know who is targeting the contract. Indeed, the S.É.A.O allows contractors to consult the list of those who pick up the specifications and agree to post publicly.

One contractor explained that, after purchasing a snow removal contract in progress from a competitor, he wanted to win that sector again during the subsequent call for tenders. Although he was the lowest bidder, the borough rejected all of the bids submitted after opening them. When the new call for tenders was issued, the same contractor still intended to win the contract for the sector and did not change his price. However, a competitor submitted a lower bid and was awarded the contract. The first contractor, who wanted to be awarded the contract, admitted that he was angry with his competitor for not informing him that he would be bidding against him. In retaliation, he wanted to “get his contract back” during the following call for tenders and decided to post publicly in the S.É.A.O as having picked up the specifications in order to send his competitor a message.

5.3.2. Threats and Intimidation

Many witnesses informed the Office of Inspector General that they were aware of acts of intimidation between contractors, acts intended to convince them not to bid or to withdraw their bid.

Here are some examples of threats against contractors who wanted to bid on certain contracts:

- Being threatened with being hit on the head with a hammer for not buying the contracts of a company that had gone bankrupt from a surety;
- Being threatened with “se faire brasser en ostie” ([TRANSLATION] being fucking beat up) for not buying a snow removal contract from another contractor;
- Being threatened with having his legs broken for bidding on a contract.

In another example presented to the OIG, the threats involved no longer being given contracts from a third party, that is, no longer getting work from that third party. As a result

of these threats, one contractor withdrew his bid for a call for tenders after being declared the lowest bidder.

In this example, the lowest bidder was called by a competitor when the competitor learned that the former had been awarded a snow removal contract that the competitor considered his own. In the following days, that same competitor went to see the lowest bidder at his office along with another contractor who allegedly threatened him. The lowest bidder was told that he would no longer hire him to transport certain materials and that he would no longer get a transportation contract if he kept the snow removal contract awarded to him. The purpose of the visit was to convince the lowest bidder to withdraw his bid.

This meeting had a direct impact on the contractor that had been awarded the contract. He agreed to withdraw his bid despite the penalties imposed and the city's stated intention to sue him. All in all, the withdrawal of the bid resulted in a substantial financial loss: his guarantees were confiscated and cashed by the city and he was sued for payment of the difference between the amount of his bid and that of the other bidder, with the lawsuit finally being settled out of court.

5.3.3. Vandalism

Finally, some contractors informed the Office of Inspector General of incidents of vandalism in connection with the equipment leasing contracts for the snow disposal sites. Objects that could damage the equipment were found in the unloaded snow (iron rods, concrete block, steel plate, a mattress). These contractors are convinced that they were the victim of an attempt at vandalism since only blown snow containing no objects was authorized on the disposal sites in question.

In fact, one of these contractors informed the OIG about a troubling situation in which acts of vandalism against his equipment occurred. He indicated that, after being awarded a contract, he received an anonymous, threatening call, asking him what he was doing in Montréal, advising him to withdraw his bid if he didn't want to know what working in Montréal meant, and informing him that he would be better off losing his deposit by withdrawing his bid than carrying out the contract. After evaluating the consequences of withdrawing his bid, the contractor decided not to withdraw, considering the penalties that would be imposed. In order to prevent potential acts of vandalism, he made his employees bring the equipment back to their offices after each snow loading operation. This, however, did not prevent the vandalism attempt observed on the snow disposal site.

5.4. Assignment of Contracts

In his report, the auditor general of Montréal stated, with respect to the assignment of contracts, that "this mode of contract acquisition increases the risk of favouring tacit



understandings between companies seeking to exchange contracts.”²¹ The Office of Inspector General examined this mechanism which, in its opinion, creates problematic situations that could place the city and the boroughs at risk. Indeed, contract assignment seems to be used by certain contractors as a tool to facilitate collusion and to enable them to control the market despite the contract awarding procedure in place.

Before discussing what the investigation uncovered in this respect, it must be noted that contract assignments between contractors are frequent. Of all of the contracts that were active in the 2014–2015 winter, nine (9) “turnkey” snow removal contracts and one (1) snow transportation contract were assigned.²²

It is important to note that a penalty is often imposed when a contract is assigned to another contractor. The accepting contractors (assignee) are, however, prepared to pay the penalties and admitted that they even make profits despite the fees involved.

The contractors gave many reasons for the assignment of contracts among contractors. Some provided practical reasons, such as exchanging contracts because the sectors are closer to their garage or because they won other contracts and did not have the capacity to carry them all out.

The contractors interviewed by the Office of Inspector General indicated that occasionally the contracts are sold to competitors: in this case the contract assignment is accompanied by a sum of money. In addition to paying the penalty imposed by the city, the purchasing contractors are thus also prepared to pay large sums to take over contracts, either before they start or once they are underway. One contractor said that a five (5)-year “turnkey” snow removal contract can be sold for between \$300,000 and \$400,000. Another contractor gave the OIG copies of cheques confirming that he had paid the sum of \$140,000 in addition to penalties of \$5,000 and taxes amounting to close to \$19,000 to purchase a five (5)-year snow transportation contract. He also admitted that, despite everything, he made a profit of \$25,000 per year, namely \$125,000 for the duration of the contract.

However, what is more problematic is the discovery that contract assignment or contract sales between contractors can be undertaken in order to control a territory: contracts are assigned or sold to ensure that a competitor will not bid against you in another sector. As a result, in the opinion of the Office of Inspector General, contract assignments and selling contracts between contractors can be used as tools for promoting collusion or controlling the market.

During his meeting with the Office of Inspector General, one contractor explained that he had once purchased the three (3) remaining years of a “turnkey” snow removal contract from a company that was stopping its activities. He did not want another contractor near

²¹ Report of the auditor general of the Ville de Montréal to the City Council and the Urban Agglomeration Council for the year ended December 31, 2013 (version amended September 2014), p. 528.

²² Although these contracts were active for the 2014–2015 winter, the exchanges took place over the last five (5) years.



a snow removal sector in which he had previously obtained the contract through an assignment.

As part of its close monitoring of certain calls for tenders in progress, the Office of Inspector General learned that one contractor had been contacted by a competitor and asked not to bid against him. He told him that that borough's contracts belonged to him and that he had no business bidding against him. The competitor in question even admitted to the Bureau that he told the contractor who wanted to bid on the contract that he would lower the prices if he bid, which would not be good for anyone. In return, he offered him another snow removal sector whose contract had been awarded to another contractor and told him that if he was interested, [TRANSLATION] "we can arrange for you to get it." This competitor explained to him that he had made arrangements with the other parties that had picked up the specifications and that he had visited all of the contractors to make sure they did not bid against him. One of the contractors that picked up the specifications confirmed, moreover, that he had been contacted to see whether he was interested.

Also as part of the close monitoring of the calls for tenders, one contractor told the Office of Inspector General that he had been contacted by a competitor who had offered to sell him the three (3) remaining years of one of his snow removal contracts currently underway in a borough for \$100,000. This offer was made so that his competitor would [TRANSLATION] "not screw everything up" by bidding against the other contractors on the calls for tenders of another borough.

Several witnesses interviewed by the Bureau mentioned situations in which certain contractors coordinated contract assignments when they were neither the assignor nor the assignee. These witnesses often referred to the limited group of contractors already mentioned in this report (section 5.2.1), who themselves admitted that they had been involved in various contract assignments that did not concern them.

One of them explained to the Office of Inspector General that he had recently organized the assignment of a contract in order to replace a competitor in "his" territory since he was starting to expand his activities by bidding elsewhere and cutting into his profit margin. He therefore informed him that another contractor would be prepared to transfer him a contract in what he considered "his" borough. The "organizer" of the assignment informed the OIG that, in this way, his competitor would not come and attack him in "his" snow removal sectors in the future. It is interesting to note that the "organizer" of the assignment had just offered to the party assigning the contract to become his sub-contractor for carrying out another contract.

In another case, two (2) contracts belonging to a company in financial difficulty were assigned to two (2) different contractors with, as organizers, two (2) other contractors who were afraid of their competitors bidding against them on contracts in "their" territory. One of the assignee contractors explained to the Office of Inspector General that when the four (4) contractors involved met, he was offered the possibility of obtaining one of the contracts and that he was informed that the second would be assigned to the other contractor. The two "organizers" admitted that they had acted in order to make sure that the assignees would not bid against them in certain specific boroughs. One of the assignees added that



he had given a verbal guarantee that in exchange for the contract that had been assigned to him he would not bid against one of the “organizers” in one of those boroughs.

Financial compensation may also be added as an incentive when taking over a snow removal sector assigned by a competitor. One witness explained that, in this case, a third party with a certain degree of authority will intervene to place a contractor in a territory in replacement of another and will then compensate the replacement contractor. Other contractors are then asked to contribute to the compensation. This scheme also serves to exercise a certain amount of control over the market and the territories.

One witness stated that a contractor had offered to take back a “turnkey” contract from another competitor for him. Since he felt that the contract was not profitable and estimated his annual losses at \$150,000, he was offered \$150,000 per year to make up for his losses. He refused the offer, however. Following this, he learned that the contract had been assigned to another contractor. He informed the Office of Inspector General that he was approached by the same contractor who had offered to take back the contract, and was asked this time to give him \$25,000 to \$30,000 per year in order to compensate for the losses of the contractor to whom the contract was finally assigned. He was told that other contractors had agreed to contribute the same amount of money, but he refused anyway.

The Office of Inspector General is of the opinion that such contract assignments between contractors become problematic to the extent that they place the boroughs at risk of collusion. This is all the more likely since the assignments between contractors are not always documented in the decision-making record management system (GDD).

This is also a situation that results in a loss of control by the borough with respect to the contractor carrying out the contract. For example, the Office of Inspector General wonders if the new “assignee” contractor who takes over the execution of the contract, despite the fact that he is bound by the terms of the call for tenders, is inspected by the borough, as stipulated in the call for tenders documents with respect to the initial contractor. If this is not the case, these assignments could become tools that the contractors could use not only to control the distribution of the sectors amongst themselves but also to bypass certain requirements in the call for tenders and avoid being declared non-compliant by avoiding equipment inspections.

5.5. Subcontracting

Several of the witnesses explained that they had been hired as sub-contractors by some of their competitors, despite the fact that the contracts prohibited this.

Sub-contracting is viewed, in particular, as related to the solidarity that exists among certain contractors. They make mutual agreements as sub-contractors or lease their equipment to help each other out, particularly when a contractor loses one of his sectors. One witness indicated that by becoming a sub-contractor for another contractor’s contract, it would allow him to compensate for his losses

The problem associated with sub-contracting is that it is generally prohibited in the call for tenders documents concerning “turnkey” snow removal contracts, except in the case of certain specific activities. An analysis conducted by the Office of Inspector General of seventeen (17) calls for tenders, for which the contracts are currently in effect in various boroughs, shows that in the case of fourteen (14) of them, sub-contracting is prohibited except for the transportation of snow, towing and the use of equipment other than that required by the specifications.²³ Only three (3) calls for tenders authorize sub-contracting for other activities.²⁴

Contractors that sub-contract can, as a result, be in violation of the call for tenders documents. The Office of Inspector General has questions with respect to certain situations reported by contractors and the supervision exercised by the boroughs in this respect.

One contractor informed the Office of Inspector General that he had, in recent years, sub-contracted one of his snow removal contracts to a competitor because he did not have the operating capacity to handle the snow removal, having won more contracts than expected. The sub-contractor explained to the OIG that his equipment was used for snow removal, that he was responsible for snow removal in the sector and that he received the entire amount paid by the borough. He stated that when the borough wanted to communicate with someone about the daily management of the sector, it contacted him directly. The borough was therefore aware of the situation.

The Inspector General wishes to draw the attention of the boroughs to the need of closely supervising the snow removal operations when they are being performed. Two (2) situations identified by contractors concern contracts currently in progress. These contractors stated that, during the last snow removal season, they either worked as sub-contractors or sub-contracted out themselves.

In the first situation, both the party awarded the contract and the sub-contractor acknowledged that, according to the agreement reached, all of the equipment used for the contract belonged to the sub-contractor and the sub-contractor also paid the employees. For his part, the party awarded the contract kept 6% to 6.5% of the value of the contract since he provides the contract bond and the insurance. Yet the specific administrative clauses of the call for tenders specifically prohibit such sub-contracting:

[TRANSLATION] The contractor is not authorized to sub-contract the operations provided for in these specifications, with the exception of the transportation of snow, the towing of vehicles and the use of equipment in

²³ Ahuntsic-Cartierville (15-14553 et 12-12312), Anjou (14-13610 and 15-14336), Côte-des-Neiges-Notre-Dame-de-Grâce (13-13002 option A / for option B, sub-contracting for loading is also permitted), Mercier-Hochelaga-Maisonneuve (MHM 2011-066), Pierrefonds-Roxboro (14-13859), Plateau-Mont-Royal (TP54-11-32), Rivière-des-Prairies-Pointe-aux-Trembles (15-14551), Rosemont-La Petite-Patrie (12-12086), Saint-Léonard (13-12914), Sud-Ouest (211118), Ville-Marie (VMP 11-015) and Villeray-Saint-Michel (TP-11-03).

²⁴ Lachine (LAC-PUB-1135), Montréal-Nord (13-13152) and Outremont (12-12091).



addition to the equipment mentioned in sections 11.2 and 11.3 of the technical specifications.

The second case of prohibited sub-contracting brought to the attention of the Office of Inspector General concerns a snow removal contract in another borough. The sub-contractor acknowledged the situation whereas the party awarded the contract claimed that he had leased part of the equipment while continuing to serve as the foreman for carrying out the contract. It is important to note that this offer serves as compensation for not having submitted a bid for the call for tenders. The specific administrative clauses of the call for tenders limit sub-contracting to specific situations:

[TRANSLATION] The contractor who was awarded the contract is not authorized to sub-contract the operations provided in these specifications, with the exception of the transportation of snow, the towing of vehicles and the use of equipment in addition to the equipment mentioned in section 11.1 of the technical specifications.

In fact, the Office of Inspector General obtained an invoice, addressed to the successful bidder, for the lease of equipment with operators for this contract. The issue is, therefore, to determine whether the equipment leased to the contractor is equipment in addition to that required in the technical specifications.

As in the case with the mechanism for assigning a contract, sub-contracting is likely to place the city and the boroughs at risk by allowing the contractors to exchange sectors and territories among themselves despite the contract adjudication process that took place, which could be viewed as a scheme for collusion or market control. In addition, we need to ask whether the boroughs supervise the equipment used and monitor compliance with the restrictions contained in the section on sub-contracting in the call for tenders.

6. Elements under the Control of the Boroughs that Limit Competition

The Office of Inspector General had access to numerous documents concerning the one hundred and sixty-six (166) “turnkey” snow removal contracts. The analysis of the files reveals that eleven (11) contracts were awarded in situations where there was only one bidder.

In certain boroughs, such as Lachine, Outremont, Pierrefonds-Roxboro, Plateau-Mont-Royal and Rosemont-La Petite-Patrie, the average number of bidders over the years is low (below 2.6 on average).

Finally, as already mentioned, in certain boroughs the same contractors win the contracts for the same sectors year after year.²⁵

Based on this information, the Office of Inspector General attempted to determine whether elements under the control of the boroughs could influence the reduction in competition for a specific call for tenders.

Comparing the number of tenders or the cost of contracts between boroughs is not a simple task. It is important not to exclude certain key factors from the equation, such as:

- the number of contracts awarded in the same period, for example, when the calls for tenders are issued while the principal contractors (those with the greatest operating capacity) already have a number of contracts corresponding to their capacity;
- the reality of the snow removal sector (topography, traffic, narrowness of roadways, number of residents);
- the distance between the snow removal sectors and the snow disposal sites;
- the distance between certain sectors and the contractors' garages; and
- the frequency of snow removal and the timeframes required by a borough (12-hour vs. 24-hour periods, night teams).

Furthermore, a contractor that obtains a contract in a sector one year may make a more accurate estimate of the cost of the work, compared with his competitors, which could explain certain cases in which the same contractor regularly obtains the contracts in a given borough.

The indications of collusion identified in the auditor general's report must be considered in the context of the call for tenders and the snow removal sector concerned. That said, it is still important for the city and the boroughs to monitor regularly the distribution of the contracts among the contractors well as the distribution of the contractors across the territory.

In the opinion of the Office of Inspector General, several elements under the control of the boroughs limit competition and the ability to obtain the best price, specifically certain clauses in the technical specifications. In a context where there is collusion among the contractors, these elements are likely to create high-risk situations.

6.1. Requirements in the Technical Specifications Limiting Competition

Several witnesses informed the Office of Inspector General that certain calls for tenders seemed directed. What the investigation uncovered in this matter is that several elements

²⁵ Ahuntsic-Cartierville, Anjou, Côte-des-Neiges-Notre-Dame-de-Grâce, Mercier-Hochelaga-Maisonneuve, Outremont, Pierrefonds-Roxboro, Plateau-Mont-Royal, Rivière-des-Prairies-Pointe-aux-Trembles, Rosemont-La Petite-Patrie, Saint-Laurent, Saint-Léonard.



can give the impression that a call for tenders might be directed and that one contractor is favoured to the detriment of the others.

The technical specifications are prepared, and therefore the information they contain, are controlled by the boroughs. The boroughs must pay particular attention when they include certain clauses that limit the market to which the call for tenders is addressed. When a call for tenders is prepared, the needs must be identified so that the clauses concerning the frequency of snow removal, the time limit set in the event of a storm, the quantity of equipment required, the technical specifications imposed for certain types of equipment and the age of the machinery used are justified.

Requirements that are too demanding may, if they are not necessary to ensure that the work is done properly, reduce the number of bidders that bid on the call for tenders and increase the cost of the contract by not generating sufficient competition. As a result, these requirements lead to the situations identified by the auditor general in his 2013 annual report:

- contractors that pick up the call for tenders documents but do not submit bids;
- calls for tenders for which there is only one bidder; and
- contractors that obtain contracts in a given borough year after year.

6.1.1. Lack of Clarity in the Specifications

A lack of clarity in technical specifications can give bidders, or the people who pick up the specifications, the impression that the call for tenders favours one contractor.

A lack of clarity in a call for tenders document can also affect the number of bidders and the cost of the contract since it becomes difficult to evaluate the work required.

One witness mentioned that, occasionally, a considerable difference between the lowest and the second lowest bidder is an indication that may reveal a lack of clarity or information in the specifications and the inability of certain contractors to submit a competitive bid.

The analysis conducted by the Office of Inspector General also reveals what seem to be flagrant contradictions between the various call for tenders documents. In reality, this results from the use of standardized specifications which are modified by specific clauses and that are adapted to the needs of the snow removal industry, which may also vary from one borough to another.

For example, while the clauses specific to the snow removal industry generally limit sub-contracting to very specific activities (transportation of snow, towing and use of additional equipment to what is required in the technical specifications), in almost all of the cases analyzed, we found section 16 in the instructions to the bidders contained in the standardized sections, which has the contrary meaning and reads as follows:

[TRANSLATION] **16.1** *The city accepts the use of subcontractors by the bidders. Nevertheless, the offers submitted must respect the following conditions:*

a) in the case of bids submitted by invitation, the invited firm must serve as lead contractor in regards to the city;

b) in the case of public calls for tenders, the firm that picked up the specifications must serve as lead contractor in regards to the city;

16.2 *In Item 4 of the section for complementary information in the bid, item entitled “Sub-contractors”, the bidder must indicate the names of the subcontractors that will take part in carrying out the contract, along with their contribution.*

16.3 *After the contract is awarded, the bidder must notify the Director and obtain his approval for any modifications made to the information indicated in Item 4 “Sub-contractors” of the section for complementary information in his bid.*

16.4 *Modifying this information does not modify the contract nor does it create any contractual bond between the city and the sub-contractors, nor relieve the bidder of the responsibilities resulting from the contract.*

16.5 *The contractor is responsible for ensuring the competency and solvency of each of his sub-contractors.*

16.6 *The contractor is entirely responsible to the city for the performance of the contract and is entirely responsible for coordinating the work done by the sub-contractors. It is the responsibility of the bidder to inform the sub-contractors concerned of the contents of the contract in order to make sure that they respect all of the provisions of the contract concerning them.*

16.7 *The Director may, at any time, require the contractor to replace a sub-contractor who does not respect the requirements of this call for tenders; such replacement does not create a contractual bond between the city and the sub-contractor and cannot in any manner increase the city’s obligations under the contract.*

16.8 *The contractor must provide, at all times, at the Director’s request, any additional information or documents concerning his subcontractors.*

16.9 *The tender must be signed by a single bidder.*

The special clauses that prohibit sub-contracting take precedence over the instructions to the bidders. However, a major revision is required with respect to the call for tenders documents so as to ensure, on the one hand, that the contractors have a good understanding of the rules which they are committed to respect and, on the other hand, that the boroughs can ensure the application of the rules in question.



6.1.2. Requirements Concerning the Engine Power of the Equipment to be Provided

Some contractors mentioned that certain calls for tenders contained particular technical specifications in terms of the machinery required that were not necessary for performing the work required. This is the case, in particular, of the engine power required for the blowers.

The Office of Inspector General also analyzed the requirements concerning the blowers to be provided as part of the “turnkey” snow removal contracts. Of the eighteen (18) calls for tenders for which contracts are currently in effect in various boroughs, only three (3) required the provision of blowers with a minimal engine power of 300 HP, whereas the fifteen (15) others imposed a minimum engine power of only 220 HP or 250 HP. The first of these three (3) calls for tenders covered three (3) sectors that were almost identical in size (in the vicinity of 38 km) in the Ville-Marie borough,²⁶ whereas the two (2) other calls for tenders covered sectors in the Anjou borough.²⁷

As for graders, once again three (3) boroughs stand out. While all of the others required an engine power of 125 HP, the Outremont borough, in call for tenders 12-12091, required minimal engine power of 140 HP and the Saint-Léonard borough, in call for tenders 13-12914, required 180 HP. With respect to Anjou borough, it required a minimum engine power of 155 HP (call for tenders 14-13610) and 160 HP (call for tenders 15-14336).

Certain factors may account for the need to require equipment with more powerful engines. However, the Office of Inspector General wonders if such requirements are always justified in certain sectors.

6.1.3. Requirement to Use Recent Equipment

Several boroughs require the machinery used under the “turnkey” snow removal contracts to be manufactured after a specific year. On the one hand, this ensures a certain level of quality since the more recent machines are less likely to break down. However, considering the hours during which the machinery is used for snow removal operations, the general condition and maintenance done on the machinery are probably more important than its age.

Once again, several of the witnesses interviewed by the Office of Inspector General explained that such a condition concerning the age of the machinery favours the largest contractors, which have the financial capacity to renew their equipment on a regular basis.

After examining certain technical specifications, the Office of Inspector General found that, of the eighteen (18) calls for tenders for which “turnkey” contracts are currently in effect in various boroughs, only four (4) required equipment more recent than a specific year. The

²⁶ Call for tenders VMP-11-015.

²⁷ Calls for tenders 14-13610 and 15-14336

maximum age of the machinery required in these four (4) calls for tenders varied between nine (9) and fifteen (15) years.²⁸

It is important for those involved in preparing the call for tenders to be aware that such a requirement affects the price of the tenders (the contractors have a larger investment to amortize if their machinery is newer) and that this could also reduce the number of potential bidders.

6.2. Size of the Sector Covered by the Call for Tenders

The Office of Inspector General found that there is a significant variation in the sizes of certain “turnkey” snow removal sectors awarded to private contractors. The sizes are determined by the boroughs.

A comparative analysis of several calls for tenders, issued in various boroughs, indicated that of the fifty-six (56) sectors covered by eighteen (18) calls for tenders, for which “turnkey” contracts are currently in effect in various boroughs, the size ranges from 13 to 68 km. Of these, nineteen (19) sectors are larger than 40 km.

This considerable disparity in the size of the sectors makes it difficult to compare the cost of the various sectors. This is also an element that could restrict the market and, as a result, limit competition. One witness in fact felt that only contractors with a superior operating capacity, namely the “largest,” could bid on large contracts.

In this respect, it would be pertinent to re-evaluate the size of the snow removal sectors so as to make them more homogeneous.

6.3. Time Between the Awarding of the Contract and the Contract Start Date

Despite the fact that the boroughs currently issue their calls for tenders at different times, all of the “turnkey” snow removal contracts analyzed start between November 1 and November 15.

Once the contracts are awarded, the contractors must have enough time to prepare their snow removal plan and their teams, as well as to procure the equipment required in the specifications. As a matter of fact, the calls for tenders generally require the contractor to own the equipment used for snow removal.²⁹

²⁸ Outremont (12-12091), Pierrefonds-Roxboro (14-13859), Rosemont-La Petite-Patrie (12-12086) and Saint-Laurent (14-13815).

²⁹ Two types of clauses to this effect were found:

- in certain calls for tenders, the bidder is not required to own the equipment when submitting his bid, but the bid must contain a promise to buy or lease the equipment;
- in other cases, the call for tenders requires the contractor to provide proof that he owns the equipment within a timeframe ranging from 10 to 30 days after the contract is awarded.



For its part, the borough must have time to inspect the machinery in keeping with the call for tenders documents, as well as to verify whether the corrections requested have been made by the contractors in such a manner that they can be declared compliant with the requirements, as applicable.

The Office of Inspector General compared the time between the date on which the contract was awarded and the start of snow removal activities for eighteen (18) calls for tenders for which “turnkey” contracts are currently in effect in various boroughs. The following table ranks the calls for tenders in decreasing order with respect to the time between the date on which the contract was awarded and the start of work and indicates the date on which the bids were opened for each:

Call for Tenders	Borough	Date tenders opened	Date contract awarded	Date contract started	Time between awarding of the contract and start of the contract
12-12091	Outremont	April 18, 2012	June 4, 2012	November 15, 2012	5.4 months
12-12086	Rosemont-La Petite-Patrie	April 16, 2012	June 4, 2012	November 1, 2012	4.9 months
15-14551	Rivière-des-Prairies-Pointe-aux-Trembles	July 8, 2015	September 1, 2015	November 15, 2015	2.5 months
TP-54-11-32	Plateau-Mont-Royal	August 23, 2011	September 6, 2011	November 15, 2011	2.3 months
VMP-11-015	Ville-Marie	August 8, 2011	September 12, 2011	November 15, 2011	2.1 months
15-14553	Ahuntsic-Cartierville	June 22, 2015	September 14, 2015	November 15, 2015	2 months
13-12914	Saint-Léonard	June 17, 2013	September 3, 2013	November 1, 2013	1.9 months
12-12312	Ahuntsic-Cartierville	August 8, 2012	September 19, 2012	November 15, 2012	1.9 months
LAC-PUB-1135	Lachine	August 24, 2011	September 12, 2011	November 1, 2011	1.6 months
13-13002	Côte-des-Neiges-Notre-Dame-de-Grâce	August 19, 2013	September 30, 2013	November 15, 2013	1.5 months

TP-11-03	Villeray-Saint-Michel-Parc-Extension	September 26, 2011	October 04, 2011	November 15, 2011	1.4 months
13-13152	Montréal-Nord	September 4, 2013	October 1, 2013	November 8, 2013	1.3 months
MHM 2011-066	Mercier-Hochelaga-Maisonneuve	September 9, 2011	October 6, 2011	November 15, 2011	1.3 months
15-14336	Anjou	June 29, 2015	October 6, 2015	November 1, 2015	0.9 months
211118	Sud-Ouest	August 30, 2011	October 20, 2011	November 15, 2011	0.9 months
14-13859	Pierrefonds-Roxboro	September 3, 2014	October 6, 2014	November 1, 2014	0.9 months
14-13815	Saint-Laurent	August 25, 2014	October 7, 2014	November 1, 2014	0.8 months
14-13610	Anjou	October 6, 2014	October 24, 2014	November 1, 2014	0.3 months

The time between the date on which the contract was awarded and the start of snow removal activities is extremely variable, ranging from more than five (5) months to less than one (1) month. The average for the eighteen (18) calls for tenders analyzed is 1.8 months, which, in the opinion of the Office of Inspector General, is too short. The Inspector General believes that this situation needs to be reflected upon so as to determine the amount of time required for a contractor, who has never handled snow removal operations in a sector, to plan and organize his operations. This delay should serve to determine the minimum amount of time to be granted between the date on which a contract is awarded and the start of activities.

7. Other Problems that Come Under the Boroughs' Jurisdiction

7.1. The Fact that the Calls for Tenders Are Issued During Different Periods

The fact that the calls for tenders are issued by the boroughs at different times is an element which could increase the price of the tenders.

Indeed, when the calls for tenders are issued at different times of the year, it is easier for contractors to evaluate which competitors are likely to bid on a given sector, by identifying the contractors who have reached their operating capacity and are not interested in obtaining another contract.

One witness explained that, before the boroughs were created, the “turnkey” snow removal contracts for the various sectors were covered by calls for tenders that were issued at the same time and that it was more difficult to identify the potential bidders.



7.2. The Duration of the Contracts

The majority of contracts for snow removal operations are awarded for 3 to 7 years. The Office of Inspector General prefers calls for tenders that compare different terms (1 year, 3 years and 5 years) in order to retain a maximum number of alternatives when awarding a contract.

During the investigation, the analysis conducted by the Office of Inspector General revealed that the Outremont borough awarded a “turnkey” snow removal contract in 2012 for a term of one (1) year with the possibility of a renewal for four (4) additional years (call for tenders 12-12091).

According to the Office of Inspector General, for the borough, granting a one (1)-year contract with the possibility of renewals for additional years may increase the price of the tenders and reduce the number of tenders received. Indeed, since it is uncertain that the contract will be renewed, contractors may be less inclined to bid on a one (1)-year contract and, if they ultimately decide to do so, they are likely to increase the price of the bid so as to ensure that the cost of their machinery will be amortized. If, following that, the borough decides unilaterally to implement the renewal option it may not pay the fair price since the amount of the tenders submitted will have been determined by the contractors based on a single year.

It is possible that certain city managers prefer to award contracts containing renewal options on an annual basis to give themselves the option of ending a contract if the contractor does not handle the snow removal operations in a satisfactory manner. However, the borough is already protected in such cases by the clauses provided in the call for tenders documents.

The Office of Inspector General is of the opinion that awarding a contract for one (1) year with renewals for additional years may reduce the number of potential bidders and increase the cost of the contract.

7.3. The Lack or Absence of Justification on the Part of the Boroughs at the Decision-making Level

In his 2013 annual report, the auditor general of Montréal expressed the opinion that certain boroughs did not justify their decisions sufficiently when a particular situation arose, particularly when contracts are awarded to a bidder that is not the lowest bidder or when bids are declared non-compliant.³⁰ He observed that, in several boroughs, there were “several potential sources for improving the information that should be included in the

³⁰ Report of the auditor general of the Ville de Montréal to the City Council and the Urban Agglomeration Council for the year ended December 31, 2013 (version amended September 2014), p. 528.

decision-making summaries presented to the authorities to help them arrive at a decision.”³¹

The investigation conducted by the Office of Inspector General produced the same findings. Here are some examples, although this list is not exhaustive, of what the Bureau considers as equivalent to a lack or an absence of justification in the decision-making summary:

- [TRANSLATION] “All of the bids received for contract Y07-13 are non-compliant and therefore rejected”;³²
- [TRANSLATION] “Considering the fact that the city’s needs have changed since the public call for tenders 12-12229 was issued, the bids received as part of that call for tenders are to be rejected and a new call for tenders that better reflects these needs are to be issued”;³³
- [TRANSLATION] “Upon examination, on the recommendation of the Procurement Directorate and with the approval of the managers of the Direction for Pubic Works, it was decided to cancel the call for tenders in question and issue a second call for tenders.”³⁴

In the opinion of the Office of Inspector General, when a borough fails to provide justification in its decision-making summaries, this can create the impression, justified or not, that certain calls for tenders are directed or manipulated or that one contractor is favoured over others. This situation can also favour the development of schemes that involve collusion or corruption since, with no information provided in the file, the authorities in question cannot make informed decisions or identify indications of irregularities. Beyond these considerations, indicating justifications in the files is an important way to preserve information and ensure transparency in order to always keep a record of the reasons for making decisions.

Not only do the situations reported by the auditor general³⁵ have to be justified in the decision-making summaries, but the Office of Inspector General is of the opinion that the

³¹ Report of the auditor general of the Ville de Montréal to the City Council and the Urban Agglomeration Council for the year ended December 31, 2013 (version amended September 2014), p. 529.

³² Decision-making summary 1071596004, contract T07-13, Ahuntsic-Cartierville borough.

³³ Decision-making summary 1121596005, call for tenders 12-12229, Montréal-Nord borough.

³⁴ Decision-making summary 1130139009, call for tenders 13-12996, Montréal-Nord borough.

³⁵ - non-negligible price differences (greater than 15%) noted between the first and the second lowest compliant bid;
- the choice of the contractor retained when he is the only contractor to have made a compliant bid, whereas several companies (or a limited number of companies) had picked up the call for tenders documents;
- the choice of the contractor retained when a limited number of companies (two to three) had submitted bids;
- reason for the non-compliance of the bids received;
- choice of a contractor who did not submit the lowest bid;



reasons leading to the cancellation of a call for tenders and the rejection of all the bids should be indicated in the file, along with the reasons justifying the calculation method to select a bid when more than one contract period option is proposed in the call for tenders.

More generally, the OIG noted a lack of uniformity in the amount of information contained in the decision-making summaries. All files should include the list of those who picked up the specifications, the list of bidders, a table comparing prices and a decision-making summary containing enough information to make a decision possible.

Indeed, the decision-making summaries are intended to inform the elected representatives so that they can make informed decisions. These are also public documents that must reveal a concern for transparency.

7.3.1. Justification of the Selection Method Chosen when More than One Duration Option is Offered

The investigation conducted by the Office of Inspector General revealed one situation in which a borough did not explain or justify its selection method. In 2009, the Anjou borough issued a call for tenders covering two (2) “turnkey” snow removal contracts.³⁶ This call for tenders included three (3) term options: awarding contracts for one (1) year, three (3) years or five (5) years. The two contracts were finally awarded to the same contractor for one (1) year. In order to be able to compare the prices of the various bids, the borough should have indicated the calculation method used to determine that a one (1)-year option was actually the most favourable option financially. Yet there is nothing in the decision-making file to explain the method used; all that is indicated is that the contractor selected was the lowest compliant bidder.

7.3.2. Justification of the Reasons that Led to the Cancellation of a Call for Tenders or the Rejection of all the Tenders

Another finding resulting from the investigation is that there is little information in the file justifying the cancellation of calls for tenders. Two situations may occur: either the call for tenders is cancelled before the bids are opened, or all of the bids are rejected once the bids have been opened.

During its investigation, the Office of Inspector General learned that, when a call for tenders is cancelled before the bids are opened or after the bids are opened (rejection of all of the bids), the procedure does not require the preparation of a decision-making summary specific to that call for tenders. The OIG was told that, in this case, no decision-

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- names of the companies that withdrew the call for tenders documents;
 - the fact that related companies bid on calls for tenders simultaneously;
 - data analyzed such as the total cost with or without taxes, the annual cost without or without taxes, the unit cost per linear metre, cubic metre or metric tonne.

³⁶ Contracts nos. 2009-06 and 2009-07.

making authority had to authorize the cancellation. As a result, the reasons for cancelling the call for tenders are not reported.

Occasionally, the decision-making summaries for the subsequent call for tenders mention the circumstances that resulted in the cancellation of the first call for tenders, but this is not a systematic practice. For example, in 2015, the Ahuntsic-Cartierville borough issued call for tenders 15-14286, which was cancelled before the bids were opened and replaced by call for tenders 15-14553. A witness interviewed by the Office of Inspector General explained why the call for tenders 15-14286 was cancelled, but none of the official documents consulted mentions the reason.

What is more problematic is the lack or absence of justification in the file when all of the bids are rejected after the bids are opened. Such a situation gives cause for criticism. For example, the verifications made by the Office of Inspector General revealed that call for tenders 14-13788 covering snow removal on the Champ de Mars esplanade was issued in August 2014, and the bids were rejected in September 2014 after they were opened. According to the S.É.A.O., the project was cancelled. However, there is no mention of the reasons for rejecting the bids, and no decision-making summary or resolution rejecting the bids could be found. In a similar manner, call for tenders 13-12996 for the Montréal-North borough was cancelled after the bids were opened, and no document or resolution was found to explain the situation. The only mention of the rejection of the bids appears in the decision-making summary when the call for tenders was re-issued, which reads [TRANSLATION] “as recommended by those in charge of the Direction of the Procurement service (direction de l’approvisionnement) and with the approval of the managers [...] it was decided to cancel the call for tenders in question.”³⁷

The Office of Inspector General is of the opinion that the reasons for any decision to cancel a call for tenders or reject all of the bids should systematically be documented in a detailed manner. The fact that the reasons contain confidential information should not preclude the need for documenting them.

7.3.3. Justification of Reasons for Declaring a Bid Non-compliant

The lack or absence of justification was observed with respect to another key point: non-compliance. Despite the fact that the auditor general intervened and specifically drew attention to the fact that the “summary did not always sufficiently document,”³⁸ it must be noted that certain situations are still not adequately justified today.

For example, as part of a call for tenders issued in 2015 concerning the lease of equipment with operators by the Saint-Laurent borough, a table comparing the prices tendered, appended to the decision-making summary, revealed that the bid by one contractor for the lease of three graders was rejected, although he was the lowest bidder. All that appears

³⁷ Decision-making summary 1130139009, call for tenders 13-13152.

³⁸ Report of the auditor general of the Ville de Montréal to the City Council and the Urban Agglomeration Council for the year ended December 31, 2013 (version amended September 2014), p. 528.



in the table is a comment indicating “not technically compliant” next to the bid. Upon reading the decision-making summary, there is no mention of the fact that this contractor was declared non-compliant.

The concerns of the Office of Inspector General are two-fold: the lack of justification when a bid is declared non-compliant and the fact that certain contractors are not informed that their bid is rejected as a result of non-compliance when, after the bids are publicly opened and the prices are revealed, they know that they are the lowest bidder and reasonably expect to be awarded the contract.

The snow transportation contract awarded in 2007 for the T-13, T-14 and T-16 sectors in the Ahuntsic-Cartierville borough is one example. A first call for tenders was issued in 2007 and the contractor that won the contracts for these sectors for the two (2) previous calls for tenders was the lowest bidder.³⁹ However, the call for tenders was cancelled⁴⁰ and a second call for tenders issued a few weeks later, in fall 2007.⁴¹ Once again, the same contractor appears as the lowest bidder.⁴² However, his bid was declared non-compliant although he was not notified and there is no justification in the file.

The lowest bidder informed the Office of Inspector General that the contracts for the three (3) sectors were finally awarded to him by mutual agreement for the 2007–2008 season. It is troubling to note that there is nothing to document the progress of the file. If we rely solely on the decision-making summaries, the information is confusing: a first resolution adopted by the borough council⁴³ awards the snow transportation contracts for two (2) sectors for 2007–2010 to two (2) different contractors and rejects all of the bids for the third sector, and a subsequent resolution awards the contracts for the three (3) sectors for 2008–2011 to another contractor.⁴⁴ There is nothing in the file to explain what actually happened between the 2007 call for tenders and that of 2008. No document mentions the awarding of a mutual agreement for the 2007–2008 winter season or the cancellation of the 2007 call for tenders. Moreover, if we refer to the resolutions adopted by the borough council, the contracts’ timeframes overlap.

A second example illustrating these problems is the call for tenders concerning the contract for operating the Ray-Lawson snow disposal site in the Anjou borough in 2011.⁴⁵ The bid from the lowest bidder was declared non-compliant. The Office of Inspector General contacted the lowest bidder to find out whether he had been informed why his bid was declared non-compliant. He replied in the negative.

In the decision-making summary, the following reason is given to justify the non-compliance: [TRANSLATION] “lack of equipment and condition of the equipment inspected,” “an inspection and analysis of the equipment confirmed that the state of some

³⁹ GDD 1071596002.

⁴⁰ CA07 090260.

⁴¹ Tender S2007-030.

⁴² GDD 1071596004.

⁴³ CA07 090336.

⁴⁴ CA08 090292.

⁴⁵ Contract no. 2011-03.

of the equipment is such that it cannot be used for the case at hand.” Yet, the Office of Inspector General obtained a copy of the report for the inspection which took place on June 16, 2011, and which concludes that the equipment is in good condition and in a satisfactory state, as indicated in the following extract from the inspection report:

Les souffleurs sont en état de marche et en bonne condition.

J'ai fait la vérification de quatre chargeurs sur pneus de marque Caterpillar modèle 980F, deux étaient en réparations, un dans la cour et l'autre au travail dans une carrière, l'état des chargeurs est satisfaisant. Ils possèdent des lames à neige de 23 pieds rabattable hydraulique.

J'ai fait la vérification des deux béliers mécanique (bulldozer) de marque Caterpillar, modèle D8N et un D8R. Le D8N était au travail dans une carrière et il est en bonne condition. Pour le D8R il était dans la cour, il est en condition satisfaisante sauf pour les roues d'entraînement (sprocket) et les chenilles qui doivent être remplacés.

Pour les chargeurs de remplacement de marque Caterpillar modèle 824B ils sont tous équipés de lame à neige avec côté rabattable hydraulique. Leur état est satisfaisant.

[TRANSLATION]:

The blowers are in working order and in good condition.

I inspected the four Caterpillar Model 980 F loaders on tires; two were being repaired, one was in the yard and the other was working in a quarry. The loaders were in satisfactory condition. They are equipped with 23-foot, hydraulic folding snow blades.

I inspected the two Caterpillar model D8N and D8R bulldozers. The D8N was working in a quarry and is in good condition. The D8R was in the yard and is in satisfactory condition except for the sprockets and the caterpillar tracks, which must be replaced.

The spare Caterpillar Model 824B loaders are all equipped with snow blades with one side that folds up hydraulically. They are in satisfactory condition.

As part of its investigation, the Bureau learned that the Anjou Borough asked for a legal opinion as to whether the bid could be rejected since the engine power required in the call for tenders was not respected (700 HP versus 800 HP) and since the owner of the equipment was not the contractor but the major shareholder.

Although a failure to respect the conditions of the call for tenders is a reason for non-compliance justifying the rejection of the tender, the manner in which the matter was handled concerns the Office of Inspector General since the justification given in the decision-making summary is not sufficiently clear and does not reflect the real reason for declaring the lowest bidder non-compliant, namely the failure to respect the requirements concerning engine power and the ownership of the blowers. The “lack of equipment and the condition of the equipment inspected” invoked in the decision-making summary to



justify the non-compliance contradicts the inspection report, which states that the equipment inspected was in good and satisfactory condition.

In the opinion of the Office of Inspector General, the fact that the contractors are not informed that their bid is declared non-compliant and that certain decision-making summaries do not indicate the exact reasons justifying the non-compliance is problematic.

For information purposes, in the same case, the Anjou borough could not locate the copy of the inspection report concerning the contractor when the OIG requested it.

7.4. Verification of Compliance, Inspection of the Equipment and Supervision of the Snow Removal Activities

Supervision concerning snow removal contracts is undertaken at various times and from different perspectives. First, the Office of Inspector General is of the opinion that, even before the contract is awarded, verifications must be made by the Procurement service in terms of the compliance of the tender with the call for tenders documents. Then, once the contract is awarded, the contractor's equipment must be inspected by the borough to certify that it corresponds to the tender and satisfies the requirements of the call for tenders. Finally, in the opinion of the OIG, when the contract is carried out, the borough must make sure that the snow removal is done in a satisfactory manner and that the equipment used is the equipment the contractor declared that he intended to use.

As already mentioned, with respect to verifying the compliance of the tender, what is more troubling is the lack or absence of justification in the file, as well as the fact that the contractors are not informed when their tender is declared non-compliant.

With respect to the inspection of the equipment, the investigation conducted by the Office of Inspector General revealed that inspections were not always done and that a written inspection report is not always placed in the file. For example, one of the contractors interviewed informed the OIG that, although the call for tenders he was awarded required equipment that was less than ten (10) years old, his equipment was never inspected.

The inspection should also make sure that, when a contractor gets more than one contract, he has all of the equipment required to carry out the contracts. In other words, the inspection must be done so as to make sure that a contractor cannot have the same equipment inspected when he has more than one contract and then use different equipment during the snow removal.

But there is more: several calls for tenders in several boroughs⁴⁶ contain a clause that gives the Director of Public Works of that borough discretionary power to refuse equipment

⁴⁶ Article 11.7 of the technical specifications for calls for tenders 15-14336, 14-13936 and 14-13610, Anjou; Article 11.6 of the technical specifications for calls for tenders 12-12312 and 15-14553, Ahuntsic-Cartierville; Article 12.2.4 of the technical specifications for call for tenders 13-13002, Côte-des-Neiges-Notre-Dame-de-Grâce; Article 14.2.4 of the technical specifications of call for tenders 13-13152, Montréal-Nord; Article 11.7 of the technical specifications for call for

that he deems is not appropriate, even if it corresponds to the technical specifications, as well as to accept equipment that does not correspond to certain specifications. The clauses are generally worded as follows:

[TRANSLATION] The Director can refuse any piece of equipment that he deems inappropriate for carrying out the work, even if it corresponds to the above-mentioned specifications.

At the same time, the Director can, as he sees fit, accept equipment that does not respect the specifications of Article 11.2 of this section of the specifications but is appropriate for carrying out the work.

Despite the fact that a certain degree of flexibility must be demonstrated with respect to certain minor non-compliances and a tender should not be rejected without giving the contractor the opportunity to remedy the non-compliance, such a clause is problematic, particularly if it is not accompanied by supporting documents. Such a clause can be used in an arbitrary manner in a context in which a call for tenders might be directed or manipulated or favours one contractor.

Finally, the investigation conducted by the Office of Inspector General revealed insufficient monitoring during the performance of the contract. Once again, with adequate monitoring, the equipment used must correspond to the equipment declared by the contractor and to the equipment inspected and approved by the borough at the start of the season.

8. Conclusion

After investigating for several months and meeting with approximately 60 contractors, the inspector general can only conclude that various schemes of a collusion-like nature and efforts to control the market exist in certain sectors of the snow removal industry in Montréal. The schemes used, abundantly described in this report and reported by a large majority of the contractors, demonstrate that the market is under the influence of a limited group of contractors and that competition suffers as a result.

Moreover, mechanisms provided in the call for tenders documents, such as the assignment of contracts, allow the contractors to take control of the market and distribute the contracts amongst themselves, despite the call for tenders process that takes place.

The absence of supervision over the performance of snow removal operations, in particular with respect to the recourse to sub-contracting, admitted to by several

tenders 14-13859, Pierrefonds-Roxboro; Article 20.2.4 of the technical specifications of call for tenders TP54-11-32, Plateau-Mont-Royal; Article 11.7 of the technical specifications for call for tenders 15-14551, Rivières-des-Prairies-Pointe-aux-Trembles; Article 11.58 of the technical specifications for call for tenders 12-12086, Rosemont-La Petite-Patrie; Article 10.2.5 of the technical specifications for call for tenders 14-13815, St-Laurent; Article 20.2.4 of the technical specifications for call for tenders 211118, Sud-Ouest; Article 20.2.4 of the technical specifications for call for tenders VMP-11-015, Ville-Marie.



contractors, also promotes the development of forms of compensation among the contractors.

In several boroughs, certain requirements in the technical specifications as well as the highly variable size of the snow removal sectors can limit competition and increase the cost of the contracts such that the City cannot be assured of obtaining the best price. Moreover, the Inspector General notes the absence of homogeneity among the boroughs in several areas, without this necessarily being justified. Among other things, the technical requirements, the information provided in the decision-making summaries and the time between the awarding of the contract and the date on which snow removal operations start vary considerably from borough to borough.

Year after year, snow removal operations are repeated. The sums allocated for this work are large enough to justify preparing and drafting specifications just for this activity. At present, the municipal administration “assembles” standardized specifications by adding a section of special clauses in order to adapt these specifications to the needs of the industry. This approach generates confusion among the stakeholders in the industry and makes the call for tenders documents incoherent in certain respects. The call for tenders documents and the procedures used within the municipal administration must therefore be completely revised.

Numerous witnesses reported numerous situations which the Office of Inspector General believes are of a collusion-like nature and which hamper free competition. The verifications made by the OIG also corroborated these claims.

The Inspector General is of the opinion that certain contractors may have violated the *Competition Act*. After denouncing the situation to the UPAC, as required by law,⁴⁷ the Inspector General also reported it to the Commissioner of Competition (Competition Bureau Canada), which is responsible for criminal investigations concerning plots among competitors and bid-rigging, so that he can conduct an investigation using the tools at his disposal. The Office of Inspector General is, however, aware that a different burden of proof applies with respect to the Commissioner of Competition, that his mandate is different from the Inspector General's and that his investigation work is not the same. Nevertheless, in the opinion of the Inspector General and according to the information in his possession, the fact remains that the schemes identified during the course of the investigation are schemes of collusion and market control.

In the meantime, it would be appropriate for Montréal to regain control of the situation and, to a certain extent, start over from square one. The decision of Montréal's City Council to declare its jurisdiction over snow removal on the local road network and the adoption of

⁴⁷ Section 57.1.18 of the Montréal's City Charter stipulates that:

If, in the opinion of the inspector general, a federal or Québec law or a by-law or regulation made under such a law may have been contravened, and if the contravention pertains to corruption, malfeasance, collusion, fraud or influence peddling in, for example, the making or carrying out of contracts, the inspector general must, without delay, disclose the wrongdoing to the Anti-Corruption Commissioner.

the new snow removal policy are the first steps in the right direction, but such measures must not stop there.

9. Findings of the Investigation

Of all of the facts revealed during its verifications and investigation, the Office of Inspector General issues the following findings:

1. Findings concerning collusion in the snow removal sector

- 1.1. Certain sectors of the market are controlled by certain contractors.
- 1.2. Certain sectors are perceived as belonging historically to certain contractors.
- 1.3. Whether it is a contract that is in the field of “turnkey” snow removal, snow transportation or equipment lease contracts, notions of protecting a territory and of mutual “respect” dictate the manner in which several contractors bid on calls for tenders.
- 1.4. Out of “respect,” several contractors will not bid against some of their competitors, either because they have a business relationship, a friendship or a kinship with them or out of fear of reprisals.
- 1.5. Contractors avoid bidding on calls for tenders covering sectors that are viewed as belonging historically to some of their competitors for fear of being “attacked” in turn and losing “their” contract.
- 1.6. There are pacts of non-aggression between the contractors intended to ensure that contractors keep the contracts in a given sector year after year.
- 1.7. When a contractor decides not to submit a bid out of mutual “respect,” in order to protect a territory or as a result of a pact of non-aggression, competition is limited and the boroughs cannot obtain the best price.
- 1.8. Some contractors contact one another during the call for tenders period in order to determine their intentions with respect to the contracts they want to bid on. These contacts are also intended to dissuade certain contractors and to convince them not to bid in a given sector.
- 1.9. On the date when the bids are opened, certain contractors approach their competitors in order to find out which contract they bid on and modify their prices accordingly.
- 1.10. Various collusion schemes were observed:
 - recourse to cover bidding, with or without financial compensation;



- offer of financial compensation or other snow removal sectors in exchange for a promise not to bid;
 - withdrawal of a bid.
- 1.11. The fact that the calls for tenders are issued at different times by the boroughs makes it easier for contractors to assess the number of competitors likely to bid on a given sector and, as a result, modify their prices based on the competition expected.
- 1.12. Despite the fact that numerous witnesses revealed numerous situations which the Office of Inspector General considers as being collusion-like in nature, very few contractors qualified these situations as collusion. Yet, several of them admitted to having taken part in bid-rigging schemes, by coordinating their offers and agreeing not to submit a bid, to withdraw their bid or to submit a bid that is the result of an agreement.
- 1.13. Some contractors mentioned that certain reprisal measures (threats, intimidation or vandalism) have been used to dissuade competitors from bidding on a given call for tenders.
2. Findings concerning market control through the mechanisms of contract assignment and subcontracting
- 2.1. Contract assignments are used by certain contractors as a tool for controlling the market that enables them to exchange sectors and territories despite the contract awarding procedure that has taken place.
- 2.2. Certain contractors intervene to coordinate contract exchanges when they are neither the assignor nor the assignee.
- 2.3. Contract exchanges place the boroughs at risk and result in a loss of control to the benefit of the contractors.
- 2.4. There is an of supervision by the boroughs with respect to the recourse to sub-contracting, which is a mechanism used by certain contractors as part of the execution of their contracts even though most of the call for tenders documents limit sub-contracting to specific activities.
- 2.5. Sub-contracting is a measure used by certain contractors to control the market.
3. Findings concerning factors that can affect competition in a call for tenders

- 3.1. Comparing the number of bidders for a call for tenders or the cost of contracts among boroughs is not simple. Several factors must be considered, such as the reality of the snow removal sector, the distance between the snow removal sectors and the snow disposal sites, the distance between certain sectors and the contractor's garages and the snow removal frequency required.
 - 3.2. Several requirements in the technical specifications can limit competition, affect the cost of a contract and even give the impression that a call for tenders is directed, in particular, the lack of clarity and precision in the technical specifications, certain requirements concerning the equipment (engine power of the equipment, age of the equipment), the timeframe imposed for snow removal, the term of the contract and the size of the sector.
 - 3.3. The modification of the standardized clauses by specific clauses adapted to the needs of the industry is a source of confusion.
 - 3.4. The lack of consistency between the requirements of the various boroughs is occasionally flagrant without necessarily being justified.
 - 3.5. The time between the date on which the contract is awarded and the start of the work is generally insufficient to ensure adequate planning of snow removal activities for both the boroughs and the contractors.
4. Findings concerning the decision-making process and follow-up
- 4.1. Certain decision-making files lack rigour in that they do not always indicate the justification for certain situations that require the authorities concerned to make a decision (rejection of a bid as a result of non-compliance, cancellation of a call for tenders, rejection of all the bids, choice of the selection method when more than one contract duration option is offered).
 - 4.2. The information contained in the decision-making summaries is highly variable from one call for tenders to another and from one borough to another.
 - 4.3. Contractors are not systematically informed when their bid is rejected as a result of non-compliance.
 - 4.4. The equipment inspections are not thorough: they are not systematically performed and the inspection report is not always documented in the file.
 - 4.5. Supervision is insufficient when contracts are carried out.



10. Recommendations of the Office of Inspector General

Based on these findings, the Office of Inspector General is making the following recommendations:

1. Recommendations intended to fight collusion in the snow removal sector
 - 1.1. Combine the calls for tenders that expire in the same year into a single call for tenders, and this, for each category of snow removal contract. This measure will make it more difficult for the contractors to control the market and will generate more competition.⁴⁸
 - 1.2. Implement an electronic and anonymous bid submission system combined with the public opening of tenders.
 - 1.3. Include, in the call for tenders documents, a form that the contractors must complete and sign, declaring any contact with the other contractors concerning the call for tenders during the call for tenders period. This form should also provide explanations and certain examples of situations that may be considered collusion or unfair practices.
2. Recommendations intended to fight market control through the mechanisms of contract assignment and subcontracting
 - 2.1. Prohibit the contractors from assigning their contracts on their own.
 - 2.2. Exercise increased supervision to ensure the respect of the call for tenders documents regarding sub-contracting.
3. Recommendations concerning factors that can affect competition for a call for tenders
 - 3.1. Prepare and draft specifications intended specifically for snow removal by revising the instructions to the bidders, the general administrative clauses, the

⁴⁸ Nevertheless, it is important to avoid grouping all of the calls for tenders for a single category the same year. Instead, every year, one single call for tenders covering several contracts should be issued for each category of snow removal activities. In this way, a contractor that does not obtain a contract during a call for tenders will be able to bid again the following year, whereas in the contrary situation the measure would prevent certain contractors from maintaining their snow removal operations over the years.

special administrative clauses and the technical specifications. This will involve revamping the call for tenders documents, clarifying certain ambiguous or contradictory clauses and re-evaluating certain requirements that are too specific.

- 3.2. Harmonize and standardize the requirements and technical specifications concerning the equipment, unless the needs of a sector justify a specific requirement.
 - 3.3. Standardize and optimize the size of the snow removal sectors.
 - 3.4. Refrain from awarding contracts for short periods of time with an annual renewal option.
 - 3.5. Determine a minimum time required between the date on which the contract is awarded and the start of snow removal activities, so that enough time is allocated for planning and organizing the activities.
4. Recommendations intended to improve the decision-making process and follow-up
- 4.1. Inspect the equipment systematically.
 - 4.2. The inspections must be the subject of a written inspection report that provides sufficient documentation of any non-compliance and is placed in the file.
 - 4.3. The decision-making summaries must be standardized and completed using the same model so as to ensure that they contain all of the relevant information.
 - 4.4. Situations that require a decision on the part of the authorities concerned (rejection of a bid for non-compliance, cancellation of a call for tenders, rejection of all the bids) must be sufficiently justified and documented in the decision-making summary.
 - 4.5. Reinforce the supervision of the equipment used for a contract.

Consequently, in order to implement the recommendations stated above, the inspector general

RECOMMENDS that the Montréal's City Council, which has full jurisdiction with respect to snow removal:



- **Complete its snow removal policy by centralizing the establishment of obligatory technical requirements common to all boroughs in the specifications;**
- **Prepare and draft specifications specifically intended for this activity; and**
- **Determine the conditions for issuing a single call for tenders that applies to all of the sectors when the contracts expire.**

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Inspector General