



PUBLIC REPORT

2022

Recommendations Regarding Call for Tenders
17- 6146 Involving the Acquisition of a Cloud Solution
by Ville de Montréal

(Section 57.1.23 of the Charter of Ville de Montréal, metropolis
of Québec)

SUMMARY

The Office of Inspector General conducted an investigation after receiving a denunciation relating to Call for Tenders 17-16146 on the provision of professional services and the acquisition of a cloud-based email solution, collaborative tools and an office suite (“Prestation de services professionnels et acquisition d’une solution infonuagique de courrier électronique, d’outils de collaboration et de suite bureautique”). It was alleged that the call for tenders was directed to a company and that employees from Ville de Montréal’s IT Department were favouring a company for the call for tenders.

The facts revealed during the investigation show that the bid submitted by successful bidder Onix Networking Canada Inc. (hereinafter, “Onix”) should have been found non-compliant, since the company’s bid contained major irregularities on key elements of the call for tenders. The investigation also revealed that the bid assessment was not consistent with respect to all the bidders for a technical compliance requirement.

The call for tenders was for a period of four years, with three additional renewal options of two years each. The tender documents stipulated that the choice to exercise the renewal options and determine the price for the option years was at Ville de Montréal’s discretion. Specifically, the tender documents indicated that the price for the cloud solution licences could not be increased by a percentage higher than the Consumer Price Index for Ville de Montréal. However, Onix added a change to the tender documents with its bid by not committing to the option years since its price could be changed by the owner of the cloud solution proposed in the bid. The Inspector General believes that this constitutes a major irregularity and a unilateral change to the tender documents that resulted in Onix’s price being indeterminable for the three renewal options.

Moreover, the call for tenders included 57 technical compliance requirements that were specifically identified in the tender documents as a key component of the bids. Each of the 57 criteria thus had to be met and non-compliance with even one of them had to result in the bid being rejected. However, the facts revealed during the investigation show that the cloud solution proposed by Onix did not meet one of the 57 requirements. In spite of this, Onix was found to be in compliance with that requirement. Such a breach should have excluded Onix’s bid from the tendering process.

Lastly, the investigation revealed that the bid assessment was not consistent for all the bidders. It appears that the same thoroughness and severity in the assessment of a criterion were not consistently applied to all bidders, despite the fact that fair and ethical treatment of tenderers is a key element of public tenders and such a breach must be disclosed to prevent its recurrence in future calls for tenders.

Call for Tenders 17-16146 was the second call for tenders involving the acquisition of a cloud solution. It was posted for more than seven months and included 18 addenda, one of which was a complete overhaul of the tender documents. Given that the acquisition of a cloud solution requires a lot of preparation and that such a solution is essential to the proper functioning of Ville de Montréal, the Inspector General is recommending that Ville de Montréal draw up an action plan to terminate the contract and obtain an office suite as soon as possible without jeopardizing services to Ville de Montréal employees and residents.

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1. Scope and extent of work

1.1 Details

Under section 57.1.8 of the *Charter of Ville de Montréal, metropolis of Québec* (R.L.R.Q. c. C-11.4, hereinafter the “Charter of Ville de Montréal”), the Inspector General’s mandate consists in overseeing contracting processes and the performance of contracts by Ville de Montréal or a related legal person.

The Inspector General does not conduct criminal investigations. She conducts investigations of an administrative nature. Throughout this report, wherever the term “investigation” is used, it means an investigation of an administrative nature, and under no circumstances shall it be interpreted as referring to a criminal investigation.

1.2 Applicable standard of proof

The Inspector General has the duty to deliver quality reports that are timely, objective, accurate and presented in a manner that will ensure that the individuals and organizations under her authority are able to act in accordance with the information provided.

In support of her opinions, reports and recommendations, the Inspector General imposes upon herself the burden of proof of the civil standard of the balance of probabilities.¹

1.3 Notice to Interested Parties

Before making the results of her investigation public and, where applicable, using the powers conferred to her under section 57.1.23 of the *Charter of Ville de Montréal* in accordance with her duty of procedural fairness, the Inspector General sends a Notice to Interested Parties (hereinafter, the “Notice”) to the persons involved indicating the relevant facts gathered during the investigation.

Upon receiving the Notice, the persons concerned may submit in writing any comments, representations or observations they believe to be relevant.

Such a Notice was sent on November 18, 2021, to the attention of Onix Networking Canada Inc., Ville de Montréal’s IT Department, Google Cloud Canada Corporation, and the IT director and chief architect at Ville de Montréal’s IT Department at the time of the events. The initial deadline, which was on December 9, 2021, was extended by seven days for Onix Networking Canada Corporation Inc. at the request of its attorneys. The facts and arguments submitted were considered by the Inspector General and will be addressed in this report.

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

2. Background

2.1 Denunciation received

The Office of Inspector General conducted an investigation upon receiving a denunciation alleging that Call for Tenders 17-16146 was directed to a company and that employees in Ville de Montréal's IT Department (hereinafter "IT Department") were favouring a company. The Office of Inspector General's investigation intended to shed light on these allegations. It was during the investigation that investigating officers discovered breaches of the regulatory framework not part of the original denunciation.

2.2 Contract covered by the investigation

The investigation focused on the tendering process and contract award related to Call for Tenders 17-16146 for the acquisition of professional services and a cloud solution for email, collaborative tools and an office suite (hereinafter "Call for Tenders 17-16146"). The call for tenders was issued on September 6, 2017 and posted for more than seven months until April 17, 2018. During this time, 18 addenda were issued, one of which consisted of a complete overhaul of the tender documents.

Three companies submitted a bid, but only one was found to be compliant, namely that of the successful bidder, Onix Networking Canada Inc. (hereinafter "Onix"), for a total amount of \$15,911,288, which proposed Google's G-Suite as a cloud solution. The bids submitted by SIA Innovations Inc. and Les logiciels libres Linagora Inc. were rejected during the technical compliance assessment phase.

Call for Tenders 17-16146 specified that the contract was for an initial period of four years, with three additional renewal options of two years each, for a total contract amount of \$35,032,634.56. Onix was awarded the contract by the Ville de Montréal Agglomeration Council on September 20, 2018.

2.3 Call for Tenders 16-14690 (cancelled)

Call for Tenders 17-16146 consisted of Ville de Montréal's second attempt to acquire a cloud solution and collaborative tools. On March 23, 2016, Ville de Montréal did in fact issue Call for Tenders 16-14690 involving the acquisition of a cloud solution, but it had to be cancelled as neither of the two submitted bids was compliant.

Following the cancellation, the IT Department conducted a post-mortem and issued a Request for Information (RFI) on the legal, administrative and contractual issues for cloud solutions for the office of tomorrow. The objective was to determine the reasons for the failure of Call for Tenders 16-14690 in order to ensure the success of the second call for tenders. A team was also set up to review the contents of the tender documents to foster competition for the upcoming second call for tenders.

3. Findings and Analysis

The investigation was unable to conclude that Call for Tenders 17-16146 was directed to a given firm or to any favouritism on the part of IT Department employees for any particular product or firm. However, the evidence obtained during the investigation revealed breaches

of the regulatory framework during the assessment of Onix's bid with respect to the price of its bid for the option years of the contract, the assessment of the technical compliance requirements, and the consistent assessment of the bids. The impact of each of these points will be addressed in the sections below.

3.1. Price and renewal options

A public call for tenders is intended to replace negotiation through competition between potential bidders.² Bidders are therefore prohibited from adding any requirements or modifying the contract clauses in their bid. This rule is intended to ensure fairness among all potential bidders so that they can compete on a level playing field.

However, the Office of Inspector General's investigation revealed that Onix's bid contained a change to a key element of the contract, namely the price for the renewal years.

3.1.1. Contract clauses

As mentioned in section 2.2, the contract resulting from Call for Tenders 17-16146 was for an initial four-year period, with three additional renewal options of two years each, as specified in the tender documents:

[TRANSLATION] "25.1. The contract is effective for a period of four years starting from the date of the competent authority's resolution.

25.2. Upon written notice from Ville de Montréal to the successful bidder at least ninety (90) calendar days prior to the presumed contract end date, the Contract may be extended for three (3) additional periods of twenty-four (24) months.

25.3. Any extension of the Contract must comply with all the terms of the Contract, except for the prices applicable to the extension period, which must be determined in accordance with the following:

25.3.1. The prices on the bid form may be increased by a percentage that does not exceed the percentage increase of the Consumer Price Index published by Statistics Canada for the Montréal area for the calendar year preceding the year in which the increase is made.

25.3.2. The prices on the bid form shall reflect any reduction in prices at which the goods and services involved are generally provided by the successful bidder that has occurred since the Contract award;" [Underlining by the Inspector General]

As indicated in sections 25.3.1 and 25.3.2., the tender documents also state that the choice to exercise the renewal options and the maximum price that can be paid to the successful bidder for those option years are at Ville de Montréal's discretion. In fact, it states that if Ville de Montréal exercises a renewal option, the successful bidder's bid price may be increased by a percentage that does not exceed the Consumer Price Index published by Statistics Canada. This means that the licence price for the option years can be determined and there is no room for price negotiations after the first four years.

² *M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd.*, [1999] 1 SCR 619, par. 41.

In addition, a bid that would add extra conditions not provided for in the tender documents would be rejected by Ville de Montréal. Section 16.1d of the Instructions to Bidders stated the following:

[TRANSLATION] “16.1 A bid shall be deemed non-compliant and shall be automatically rejected if:

[...]

d) It contains additional terms and conditions that contravene the tender documents or add to Ville de Montréal’s obligations and which the bidder has not waived.”

3.1.2. Successful bidder’s bid

In the bid form it submitted on April 17, 2018, Onix added three notes on its pricing, including this one below regarding its price for the six option years that could be exercised by Ville de Montréal:

[TRANSLATION] “2. Google has agreed to maintain the prices of this special agreement for the first four years of the contract but cannot commit contractually to offer the same discounts for the next six optional years. Google’s licence prices will have to be re-assessed before the renewal dates.”

This note showed that the submitted price contained a discount for only the first four years of the agreement, but that Onix could not guarantee that the discount would be maintained for the option years. This was confirmed by Onix’s president who, at a meeting with Office of Inspector General investigating officers, confirmed that his bid price was not determined by the Consumer Price Index after four years and that his company could only guarantee his price for the first four years of the contract. He added that if Ville de Montréal wanted to use Onix for the option years it would have to negotiate, but if the Google price did not change, then Onix’s price would not change either.

The IT Technology Department director and chief architect, who held that position at the time of the events, confirmed to the Office of Inspector General’s investigating officers that he had seen a note from Onix regarding the price of its licences after the fourth year of the contract. He explained that he was not concerned about the uncertainty regarding the price of the licences for the option years since Ville de Montréal could still call new tenders after the first four years of the contract.

3.1.3. Response to the Notice to Interested Parties

In its response to the Notice to Interested Parties, Onix maintained that the note mentioned above did not constitute an additional term or condition that would be in breach of the tender documents. The company explained that a reassessment of the licence prices did not mean that it was putting its tendered price or the allowable increase for the option years into question. The note was rather a notice to Ville de Montréal that Google was not contractually bound to Onix for more than four years. These prices may need to be reassessed prior to Ville de Montréal potentially exercising its renewal options. Note 2 should not also be construed as a condition or other term that contravenes the tender documents imposed by Onix since nothing in the note refers to an increase that would be in breach of the tender documents. Lastly, Onix explained that its president’s assertion that his bid prices were not

determined by the CPI was technically and legally accurate since the firm was in no way required to increase its prices at the end of the four-year period.

3.1.4. Analysis

3.1.4.1. Bid price for the option years

The Inspector General concluded that Onix's bid contained a major irregularity in relation to the bid price for the six option years. By specifying that the price of the licences would not be maintained after four years and would depend on Google's price, the price of Onix's bid was not determined nor determinable for the option years.

The IT Director's comments in this respect showed that Ville de Montréal could not be unaware of this aspect when assessing the compliance of the bids. Although Ville de Montréal did have the right to exercise the option years, this does not justify disregarding the non-compliance. It was impossible to predict at that time what decision would be taken for the cloud suite four years later, and the director could not assume or know whether it would be in Ville de Montréal's interest to exercise all or part of the options.

In addition, since the call for tenders provided for option years in the contract as well as the method for determining the price, these clauses had to be observed and applied in the assessment of the bids.

3.1.4.2. Unilateral change to tender documents

The note included on the bid form also constituted a unilateral change in the terms and conditions of the call for tenders by the bidder, which is prohibited in a public tender. In fact, as the courts remind [TRANSLATION] "*a contractor cannot negotiate with the project owner at the Contract A stage, as this is contrary to the principle of equality among bidders.*"³

As stipulated by the Supreme Court of Canada, a public tender does not "invite negotiations over the terms of either Contract A or Contract B."⁴ A public tender is an invitation by a public body to enter into a contract under the terms set in the specifications and at the price specified by the contractor.⁵ In other words, a bidder has only two choices when responding to a public call for tenders: accept all the conditions and submit its price or refuse to bid.

With respect to Call for Tenders 17-16146, the terms for increasing the licence prices for the option years were specified in the tender documents and bidders could not depart from them by substituting a potential renegotiation at the time the options were exercised.

3.1.4.3. Onix's response to the Notice to Interested Parties

Lastly, Onix's response to the Notice to Interested Parties does not convince the Inspector General that the note does not constitute a unilateral change that contravenes the tender documents.

According to Onix, it simply added the note to notify Ville de Montréal that Google was not contractually bound to Onix to maintain its prices, but that the company was not putting the contract clauses into question. Why then go to the trouble to add the note if it was merely reiterating what was in the contract? As Onix stated in its response, Google was not a party

³ *Construction GCP inc. c. Ville de Saint-Jean-sur-Richelieu*, 2017 QCCQ 12279, par. 59 (appeal dismissed).

⁴ *M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd.*, previously cited, note 2, par. 38.

⁵ *Id.*, par. 37.

to the contract resulting from Call for Tenders 17-16146 and the discounts granted to Onix by Google had no impact on Onix's contract with Ville de Montréal. The purpose of section 25.3.1 is precisely to avoid having to reassess the licence prices by stipulating that prices could only be increased based on the CPI.

The comments made by Onix's president also showed that the note constituted a unilateral change to the tender documents. When Onix's president stated that the company's prices would not change if there was no change in Google's prices, it was implicit that Onix's prices would increase if Google increased the price of its licences. The Inspector General also believes that the comments made by Onix's president show that if Google increased its prices by a rate higher than the CPI, Ville de Montréal would have to negotiate with Onix based on such a price increase.

Lastly, the Inspector General noted that Onix indicated in its response that if Ville de Montréal exercised one or more renewal options, the price of the services would be the price allowed under sections 25.3.1 and 25.3.2. However, the mandate of the Office of Inspector General is to ensure the integrity of public tendering and compliance with the regulatory framework applicable to Ville de Montréal. This regulatory framework therefore requires that bid assessment be based on the information available at the time of the call for tenders prior to the contract award.

3.2. Assessment of the technical compliance requirements of the successful bidder's bid

In a public tender, public bodies are required to accept only bids that meet the requirements specified in the tender.⁶ Without this requirement, no company would choose to participate in a call for tenders if the public body was "allowed, in effect, to circumscribe this process and accept a non-compliant bid."⁷

Yet, the Office of Inspector General's investigation reveals that Ville de Montréal accepted Onix's bid despite the fact that it did not meet one of the requirements in the tender documents.

3.2.1. Requirement of the specifications

3.2.1.1. Technical compliance requirements

It is important to distinguish between technical compliance and administrative compliance. Administrative compliance generally applies to the company that is bidding and the documents it must include with its bid. For example, having an authorization to contract from the Autorité des marchés publics or the *Attestation de Revenu Québec* are documents that are often requested for administrative compliance.

A technical compliance requirement, for its part, pertains to the product involved in the call for tenders and not the company submitting a bid. These are minimum performance requirements that the proposed product must meet for the bid to be declared compliant.

Call for Tenders 17-16146 contained 57 technical compliance requirements listed in Appendix B1 of the tender documents. Each of these requirements was a performance

⁶ *Tapitec inc. c. Ville de Blainville*, 2017 QCCA 317, par. 13.

⁷ *Martel Building Ltd. v. Canada*, 2000 SCC 60, par. 88.

requirement that each bidder's cloud solution had to fulfill to meet Ville de Montréal's needs. For instance, the requirements included elements as diverse as email security filters, such as an anti-virus filter, word processing and presentation software, and the deployment of solution upgrades.

As stipulated in Section 5 of the technical specifications, the solution had to meet each of the 57 requirements, and failure to comply with a single one would result in the bid being rejected:

"5 Mandatory requirements

To be eligible to propose a solution, the bidder must comply with all the mandatory requirements listed in the detailed grid in Appendix B1. The bidder must demonstrate in its bid how its solution meets these requirements by completing the grid and including it in Appendix B of its bid.

- The bidder must meet all of the mandatory requirements of the sought-after solution set out in Appendix B1, failing which the bidder's **solution will be rejected.**"⁸*

The Inspector General noted that the text is clear and that failure to meet each of the 57 requirements should have resulted in the bid being rejected.

3.2.1.2. Requirement 48

Among the 57 requirements, Requirement 48 stated that the proposed solution should block users who were unable to access their employee account:

"The solution must deny access to any user after a set number of unsuccessful access attempts."

This is a known feature used in several IT solutions that blocks access to any employee who is unable to log in to their account. In such a case, the employee must contact an administrator or the IT Department to "unlock" their account and enable the employee to access it again. The objective of such a feature is system security by blocking access to someone not working for Ville de Montréal.

3.2.2. Successful bidder's bid

In its bid, Onix responded to Requirement 48 by including a web link to demonstrate G-Suite's compliance. The link led to a page that described the different authentication methods that could be used for user access.

3.2.3. Assessment of bid compliance

To assess the compliance of the bids that were received, a technical committee was set up composed of various Ville de Montréal IT employees. The committee was responsible for assessing each bid for each of the 57 requirements and determining if the proposed solution met the requirements of Appendix B1. As mentioned in section 3.2.1.1, failure to meet even one of the 57 requirements would result in the bid being rejected. After successfully

⁸ The text in bold appeared as such in the public tender documents.

completing this step, bids that were technically compliant would proceed to an assessment by a selection committee in order to determine the eventual lowest compliant bidder to whom would be awarded the contract.

The investigation revealed that technical committee members were unable to determine whether G-Suite met Requirement 48 in the specifications. During the assessment process, a question was sent to the Onix bidder to verify its solution's compliance with this requirement:

"Please confirm that the G-Suite solution does not provide the possibility of denying access to a user after a number of access attempts, but does include alternative access security mechanisms."

Below is Onix's response to this question:

"This is correct. Although it is not possible to define a specific number of access attempts before user access is blocked, Google uses artificial intelligence to identify malicious and questionable behaviour during login and account use. Two-factor authentication is another feature offered by G-Suite that secures login attempts." [Underlining by the Inspector General]

Onix thus stated in its response that its proposed solution does not block access to a user after a defined number of attempts. Instead, the G-Suite solution includes alternate mechanisms such as artificial intelligence, which analyzes data in real time to identify potential threats of unlawful intrusion into a user's account.

When meeting with the Office of Inspector General's investigating officers, all of the Technical Committee members agreed that the G-Suite solution did not block user access after a defined number of attempts. They explained that the number of unsuccessful login attempts before a user is blocked can vary depending on each situation after the threat is assessed using artificial intelligence.

Most of the committee members felt that this alternate mechanism was more secure and of higher quality than what was required under Requirement 48. For instance, one committee member explained to investigating officers that in his opinion, two-factor authentication may have reduced the number of calls to Ville de Montréal's IT Helpdesk, contrary to blocking determined after a specific number of login attempts. Another member explained that he felt the industry was moving towards the technology that Onix was proposing and that it would have been restrictive to limit Ville de Montréal to a set number of login attempts.

3.2.4. Response to the Notice to Interested Parties

In its response to the Notice to Interested Parties, Onix stated that the G-Suite solution fully complied with Requirement 48 in Appendix B1. According to Onix, blocking access after a defined number of attempts does not mean blocking access after a set number of attempts. The G-Suite solution met Requirement 48 since the number of attempts after which a user is blocked is determined based on an algorithm that uses artificial intelligence.

Onix also stated that the system's security performance was significantly better than blocking after a set number of attempts.

3.2.5. Analysis

The Inspector General has concluded that the bid submitted by Onix did not meet Requirement 48 in the specifications, which should have resulted in its bid being rejected.

First, Onix's response to the Technical Committee's question confirmed that G-Suite does not allow access to be denied after a certain number of access attempts.

Second, the fact that alternative security mechanisms are available or that the industry may be moving towards technology similar to what G-Suite is offering are not elements to consider when assessing technical compliance. The investigation did not reveal any bad faith on the part of the Technical Committee members in their assessment, and meetings with them instead showed that they did not fully understand the role of a technical committee. Said role is not to subsequently reassess the needs that were already defined by Ville de Montréal in its technical compliance criteria, but to determine whether the solutions proposed by bidders met the requirements as stated and based on the information contained in the bids.

It was the wording of the requirements that determined Ville de Montréal's needs and the onus was on the bidders to demonstrate that their solution met Requirement 48. The wording of Requirement 48 was clear: it was not asking for alternative mechanisms such as two-factor authentication or artificial intelligence, but for access to be blocked after a set number of unsuccessful login attempts. If Ville de Montréal had intended to allow the use of such alternate mechanisms or new technologies, it should have explicitly used wording to that effect⁹.

Since this was a failure to meet a designated essential requirement¹⁰ in the documents of Call for Tenders 17-16146, Onix's non-compliance with Requirement 48 constituted a major irregularity that should have resulted in its bid being rejected. At the time of the assessment of Onix's bid, members of the Technical Committee had the information needed to reach such a conclusion.

3.3. Inconsistent assessment of bidders' solutions

Public bodies such as Ville de Montréal have an obligation to assess [TRANSLATION] "bids in a fair and consistent manner to avoid any one bidder to be given preferential treatment over another."¹¹

This means they must apply the same rigour to all bidders throughout the bid assessment process, including when assessing technical compliance. A fair and consistent assessment of bids means that one bidder cannot be subjected to a strict and stringent assessment of a requirement while another competitor is given a flexible and permissive assessment.

The Office of Inspector General's investigation has revealed that bid assessment was not consistent for all the competitors in Call for Tenders 17-16146.

3.3.1. Requirement of the specifications

Among the 57 technical compliance requirements, Requirement 8 stipulated that the solution had to be compatible with various web browsers:

"The solution is compatible with the versions in the last 12 months of the Chrome, Internet Explorer, Safari and Firefox web browsers."

⁹ See, for example, *Steris Corporation c. Groupe d'approvisionnement en commun de l'Est du Québec*, 2021 QCCS 5347, par. 105-110.

¹⁰ *Tapitec inc. c. Ville de Blainville*, previously cited, note 5, par. 20.

¹¹ *Martel Building Ltd. v. Canada*, previously cited, note 6, par. 88; *Tapitec inc. c. Ville de Blainville*, previously cited, note 5, par. 13.

The proposed solution therefore had to be supported by these different browsers, even though they are designed by different companies.

3.3.2. Bid assessment

3.3.2.1. Assessment of a bidder

The solution proposed by another bidder was deemed non-compliant for Requirement 8 by the Technical Committee since its solution did not support the Internet Explorer and Safari browsers. This determination was shared by the three members of the Technical Committee, who entered comments in the bidder’s evaluation grid on the solution’s lack of compatibility with Safari and Internet Explorer. This solution was therefore deemed non-compliant on this point since it did not fully meet Requirement 8.

Bid Compliance Assessment Form – Appendix B1										
NAME OF BIDDER:										
Instructions: For each mandatory requirement listed here, the Technical Committee must indicate whether the requirement is compliant or not. If necessary, the Committee may include comments in support of its response.										
Seq.	Requirements	Compliant	Non-compliant	Add details, if needed	Compliant	Non-compliant	Add details, if needed	Compliant	Non-compliant	Add details, if needed
8	The solution is compatible with the versions in the last 12 months of the Chrome, Internet Explorer, Edge, Safari and Firefox web browsers.		X	Some applications are not available with Safari (Hubl.in)		X	According to tests that were carried out [sic] the other Committee members, Hubl.in is not compatible with Safari iOS.		X	Hubl.in not compatible with Safari and IE.

Excerpt from the assessment grid completed by Technical Committee members

3.3.2.2. Assessment of Onix

In its bid, Onix stated that its solution was compatible with the requested browsers, but noted that optimal compatibility is found with Google Chrome, Google’s browser, which owns G-Suite. However, the following question was sent to Onix regarding the compatibility of the solution with certain browsers:

“Please confirm that some features of the G-Suite solution do not work with some of the major browsers mentioned in the call for tenders.”

Onix responded by adding information that was not mentioned in its bid documents:

“Google supports all the major browsers mentioned in the call for tenders, especially the current version and the version preceding the current version. However, the offline access function is only available in Google Chrome. This feature is not available with the other major browsers.”

Onix’s response therefore indicates that a G-Suite feature is not compatible with all the browsers required in the call for tenders.

In their assessment, two members of the Technical Committee had entered comments indicating that G-Suite offered limited functionality with browsers other than Google Chrome.

Bid Compliance Assessment Form – Appendix B1							
NAME OF BIDDER:							
Instructions: For each mandatory requirement listed here, the Technical Committee must indicate whether the requirement is compliant or not. If necessary, the Committee may include comments in support of its response.							
Seq.	Requirements	Compliant	Non-compliant	Add details, if needed	Compliant	Non-compliant	Add details, if needed
8	The solution is compatible with the versions in the last 12 months of the Chrome, Internet Explorer, Edge, Safari and Firefox web browsers	X		Limited features with some browsers	X		Google Chrome is compatible with all G-Suite features. Some features are not supported by the other browsers.

Excerpt from the assessment grid completed by Technical Committee members

Unlike the other bidder’s bid, Onix’s bid was found to be compliant with respect to Requirement 8 despite the Committee’s findings and Onix’s response.

At a meeting with the Office of Inspector General’s investigating officers, two members of the Technical Committee stated that G-Suite was always fully functional with Google Chrome, but that some features were not supported by certain browsers. A Committee member wondered about the appropriateness of requiring that the solution be capable of being fully functional at all times with browsers that the bidders do not control¹² and where the version

¹² The browsers specified in Requirement 8 are owned by different companies that are responsible for their updating and development. For instance, Safari is owned by Apple, Google Chrome by Google, and Edge by Microsoft.

was frequently upgraded by the developers. The member added that requirements for suppliers should be realistic and that bidders cannot be excluded for aspects they do not control.

3.3.3. Response to the Notice to Interested Parties

In its response to the Notice to Interested Parties, Onix stated that the solution was compatible with the browsers mentioned in the call for tenders while providing a link to a Google web page. As indicated in its response to section 3.3.2.2., Onix explained that the offline access feature was only available on Google as it was only found on Google Chrome. The company added that Ville de Montréal had never experienced compatibility issues with the browsers after three years of use.

3.3.4. Analysis

Public bodies have an obligation to assess [TRANSLATION] “bids in a fair and consistent manner to avoid any one bidder to be given preferential treatment over another”.¹³ The Inspector General concluded that the assessment of the bidders by the Technical Committee was not consistent, since the same level of rigour and stringency was not applied to all the bidders for Requirement 8. The investigation revealed that the assessment was rigorous for another bidder’s solution, but that the same rigour was not applied to Onix’s proposed solution. Although two solutions presented problems with respect to Requirement 8, Onix’s solution was found to be compliant while another bidder’s solution was found to be non-compliant.

The fact that Ville de Montréal did not experience any problems in the past three years does not change this determination, since technical compliance must be assessed at the time of the contract award¹⁴. The role of the Office of Inspector General is not to determine the quality of the solution being proposed by Onix in its bid, which was not put into question during the investigation. Its role is to ensure the integrity of the contract award process and compliance with the regulatory framework applicable to Ville de Montréal.

4. Conclusion

The Inspector General concluded that Onix’s bid should have been rejected by Ville de Montréal as it contained major irregularities relating to price and non-compliance with a key condition of the tender documents. Ville de Montréal had sufficient information at the time of the bid assessment to conclude that these major irregularities had occurred and that it should therefore reject Onix’s bid. In addition, the Technical Committee’s assessment of Onix’s bid with respect to Requirement 48 was not as rigorous and stringent as for the other bidders, which was also a breach of the standard regulatory framework applicable to Call for Tenders 17-16146.

It is not up to the Inspector General to take a position on the 57 technical compliance requirements or to reassess Ville de Montréal’s needs. Nonetheless, such a high number of

¹³ *Tapitec inc. c. Ville de Blainville*, previously cited, note 5, par. 13.

¹⁴ *Steris Corporation c. Groupe d’approvisionnement en commun de l’Est du Québec*, previously cited, note 8, par. 111.

elimination criteria clearly increases the risk that bids will be rejected and therefore that there will only be one compliant bidder or none at all. Therefore, it would be advisable for Ville de Montréal to consider changing some of the technical compliance requirements to selection criteria in the future, or to review the wording of some of the requirements to bring its needs in line with what is available on the market.

5. Recommendations

Under section 57.1.23 of the *Charter of Ville de Montréal metropolis of Québec*, the Inspector General may, at any time, send a report presenting findings or recommendations which, in her opinion, warrant being brought to the attention of City Council. The Inspector General believes that the breaches determined during the investigation are serious and would justify a termination of the contract resulting from Call for Tenders 17-16146.

However, there is no question that an office suite is an essential tool for the proper functioning of Ville de Montréal in order to provide services to the public. In its response to the Notice to Interested Parties, the IT Department explained that the preparation, posting, award and migration of a new call for tenders to a cloud solution requires more than two years of preparation to ensure a seamless transition for Ville de Montréal employees. The IT Department also mentioned a number of technical and business issues that contribute to the success of such a large-scale initiative, such as the availability of IT Department resources and the other Ville de Montréal units, Ville de Montréal's dependence on its office suite, particularly in the context of telework, and the market's interest in responding to a complex call for tenders.

According to the relevant provisions of the *Charter of Ville de Montréal, metropolis of Québec*, a termination by the Inspector General would take effect 45 days after its submission to City Council. Under these circumstances, the Inspector General has concluded that it would not be appropriate to use the termination powers under section 57.1.10, since such a decision would have a major impact on Ville de Montréal's operations, which would not be in the public interest. Nonetheless, given the breaches revealed by the investigation and the importance of ensuring compliance with the applicable regulatory framework, the Inspector General is recommending that City Council terminate the contract as soon as possible. To this end, Ville de Montréal must draw up and implement an action plan to initiate, as soon as possible, the process required to replace the contract resulting from Call for Tenders 17-16146 and to deploy the future successful bidder's office suite. The Inspector General will monitor the plan to ensure that its deployment is overseen by the IT Department.

FOR THESE REASONS,

The Inspector General

RECOMMENDS that Ville de Montréal draw up an action plan to terminate the contract and obtain an office suite as soon as possible without jeopardizing services to Ville de Montréal employees and residents.

RECOMMENDS that Ville de Montréal terminate the contract as soon as possible in accordance with its action plan involving the acquisition of an office suite.

SENDS, pursuant to section 57.1.23 of the *Charter of Ville de Montréal, metropolis of Québec*, this report to the Mayor and the City Clerk so that it may be submitted to City Council after it is received.

The Inspector General,

Brigitte Bishop

SIGNED ORIGINAL

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