



JANUARY 1  
TO JUNE 30,  
2022



2022

# Mid-Year Report

Filed with the City Council and the Agglomeration Council

For the year ended June 30, 2022

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

Trust.

Integrity.

Transparency.

Anyone can submit a complaint about a call for tenders  
or contract issued by Ville de Montréal by:

Online form:

[www.bigmtl.ca/en/denunciation/](http://www.bigmtl.ca/en/denunciation/)

Email: [big@bigmtl.ca](mailto:big@bigmtl.ca)

Telephone: 514 280-2800

Fax: 514 280-2877

Mail:

1550 Metcalfe Street

Suite 1200, 12th floor

Montréal, Québec

H3A 1X6

For more information, please visit our website at [www.bigmtl.ca](http://www.bigmtl.ca)

The mandate of the Office of Inspector General of Ville de Montréal is to oversee the contracting process and the performance of the contracts of Ville de Montréal or a legal person related to it in order to prevent breaches of integrity and promote compliance with the legal provisions and requirements related to contract award and performance.

# Message from the Inspector General

---

## Madame la mairesse Valérie Plante, membres du conseil municipal et du conseil d'agglomération et citoyennes et citoyens de la Ville de Montréal,



L'inspectrice générale,  
M<sup>e</sup> Brigitte Bishop

Je vous sou mets aujourd'hui le rapport de mi-année 2022 du Bureau de l'inspecteur général. Ce rapport illustre bien les différentes facettes de notre rôle dans l'exercice de notre mandat de préserver l'intégrité contractuelle. Tantôt préventives, éducatives ou correctives, nos interventions sont toujours animées par le souci de rassurer quant à notre présence et notre engagement.

Hormis nos enquêtes à la suite de dénonciations, ce rapport de mi-année met l'accent sur l'impact positif qu'ont eu nos efforts proactifs de vigie. Nous avons ainsi déployé nos ressources afin de détecter des situations problématiques eu égard au respect du cadre normatif, et ce, au stade de l'appel d'offres, nous permettant d'intervenir promptement et efficacement, bien souvent avant même l'adjudication du contrat. Nous constatons que certaines unités d'affaires tombent encore dans le piège de l'emploi systématique du devis descriptif ou que les exigences dans ces appels d'offres sont parfois trop nombreuses.

Notre dossier de fond porte sur le recours aux ententes-cadres par un des services de la Ville. De telles ententes s'avèrent très utiles en ce qu'elles offrent une certaine souplesse dans la planification à court ou moyen terme des besoins en approvisionnement de biens ou de services d'un organisme public. Bien qu'aucun manquement contractuel n'ait été observé en l'espèce, nous avons néanmoins remarqué certains éléments qui méritent d'être portés à l'attention du conseil municipal afin de s'assurer de maintenir les hauts standards exigés par et pour les fonctionnaires de la Ville de Montréal. Nos recommandations ont donc pour objet d'optimiser la gestion contractuelle et, bien sûr, de réduire le risque de survenance de futurs manquements.

En conclusion, je tiens à remercier tous les membres du Bureau de l'inspecteur général ainsi que nos partenaires et collaborateurs pour leur engagement et leur dévouement dans la lutte pour l'intégrité.

L'inspectrice générale,

M<sup>e</sup> Brigitte Bishop

ORIGINAL SIGNÉ

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



The Inspector General,  
Brigitte Bishop

Today, I would like to submit to you the 2022 Mid-Year Report of the Office of Inspector General. This report clearly illustrates the various facets of our role in fulfilling our mandate to preserve contractual integrity. Our preventive, educational and corrective interventions are always driven by our desire to reassure of our presence and commitment.

In addition to our investigations following denunciations, this mid-year report focuses on the positive impact of our proactive monitoring efforts. We have deployed our resources to identify problematic situations with regard to compliance with the normative framework at the tendering stage, thereby enabling us to intervene quickly and effectively, often before the contract is awarded. We note that some business units are still systematically using descriptive specifications in their calls for tenders or that these sometimes feature too many requirements.

Our feature article deals with the use of framework agreements by one of the City's departments. Such agreements are very useful in that they provide flexibility in the short- to medium-term planning of a public organization's procurement needs for goods or services. Although we observed no contractual breaches in this case, we nevertheless noted specific items that deserve to be brought to the City Council's attention to ensure that the high standards required by and for Ville de Montréal officials are maintained. Our recommendations therefore intend to optimize contract management and, of course, reduce the risk of future breaches.

In closing, I would like to thank all members of the Office of Inspector General, along with our partners and collaborators, for their commitment and dedication to upholding integrity.

The Inspector General,

Ms. Brigitte Bishop

ORIGINAL SIGNED

# Table des matières

## Performance

### specifications

01

The pitfalls of using descriptive specifications in a call for tenders	9
Requirements targeting a specific brand	10
A quote in favour of a company?	10
Exemplary approaches	11

## Upstream

### interventions

02

Setting the record straight	14
Numerous restrictive requirements	14
Out-of-date specification	15

## Best

### practices

03

To conduct an exemplary contracting process	17
A. Properly quantifying the expenditure versus the contract amount	17
B. Maintaining compliance throughout the contractual cycle	19
C. Mandatory visits: facilitate rather than restrict	19
D. Complying with the normative framework, even if it has a higher cost	20

# Recommendation report: Framework agreements of Ville de Montréal's urban planning department

04

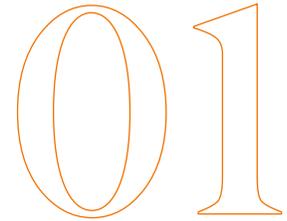
Summary	23
Preliminary remarks	23
Context of the investigation	24
Framework agreement operating principle	24
Call for Tenders 17-16443	25
Call for Tenders 19-17364	25
Conflict of interest	25
Findings of the investigation	26
Envelopes of the first framework agreement not used up	26
Selection based on the firms' expertise	27
Paying professional fees and checking invoices	29
Conclusion	31

# Performance specifications

- The pitfalls of using descriptive specifications in a call for tenders
  - . Requirements targeting a specific brand
  - . A quote in favour of a company?
  - . Exemplary approaches



# Performance specifications



## THE PITFALLS OF USING DESCRIPTIVE SPECIFICATIONS IN A CALL FOR TENDERS

Four years after its adoption, Bill 155 has not yet been fully implemented among the business units of Ville de Montréal and para-municipal organizations. As the cases reported in these pages show, descriptive requirements, trademarks and models are still being used at the tendering phase. However, since the adoption of Bill 155, the use of descriptive specifications has only been authorized in exceptional circumstances. In this respect, it should be preceded by “careful and documented research and analysis that makes it possible to justify and explain the use of these types of characteristics. Since descriptive specifications are the exception, this research will be used to justify their use.”<sup>1</sup>

In fact, some Ville de Montréal business units continue to include descriptive specifications in their calls for tender, without having first shown that it was not possible to use performance specifications. Potential bidders have complained to the Office of the Inspector General about the

use of descriptive specifications. In their view, this procedure, which favours certain brands, products and, in some cases, suppliers, excludes them from the contract process even though they have equipment, products or services that can meet the project owner’s needs.

Our analysis of complaints received since the beginning of the year shows that this use of descriptive specifications can be explained by business units trying to save time by using existing specifications for the same type of tender that were drafted before Bill 155 was adopted. Short lead times for conducting a market study or documented research, a lack of knowledge of relevant legislation and a lack of expertise may also explain the preference for descriptive specifications.

The use of performance specifications is the norm and has a number of benefits, such as expanding the market and opening the door to new products at competitive prices.

<sup>1</sup> Performance specifications, Inspector General of Ville de Montréal 2021 mid-year report, page 14.

## REQUIREMENTS TARGETING A SPECIFIC BRAND

Following a denunciation, the Office of Inspector General investigated a call for tenders for the purchase of more than 200 bicycles. The complainant alleged that the municipal department had set forth very specific technical requirements instead of performance specifications, which led to only one company abiding by these specifications.

Upon analysis, on the one hand, it appears that potential bidders had the opportunity to list equivalent products in their bid. On the other hand, procurement issues may have lessened interest in the call for tenders. Although the project owner had notified three potential suppliers of the call for tenders' publication, they chose not to

participate, fearing that they would not be able to procure and deliver the bicycles within the prescribed timeframe due to the pandemic. As a result, the sole bidder, who had won a similar call for tenders a few years before, was awarded the contract.

In this situation, a market study done before issuing the call for tenders would have made it possible to rewrite descriptive characteristics as performance or functional requirements. The process would also have enabled the service to identify procurement challenges that potential bidders face and to amend the relevant contract terms and conditions to encourage their participation.

## A QUOTE IN FAVOUR OF A COMPANY?

In another case, a whistleblower alleged that a call for tenders for the purchase of maintenance and cleaning products favoured specific brands and quantities. In addition, the winning bidder had to be able to provide all of the approximately 300 items on the price schedule, some of which were exclusive to the contractor who had won the previous contract.

Analysis conducted by the Office of Inspector General shows that the City had issued several addenda that relaxed some product requirements. Nonetheless, the technical specifications still contained several descriptive characteristics and products exclusive to a single supplier, which constrained the market.

This situation occurred despite the fact that the service had carried out an internal market study, set up a committee of experts and divided its item list into five lots prior to preparing its call for tenders. This happened because all of these approaches were based on City staff's experience with products already in use. In doing so, the City failed to explore products on the market, identify market exclusivities

and assess the impact of specifying specific formats, such as 750 ml. Furthermore, no additional market opening was created by dividing products into several lots, since there was only one bidder who could supply these products. In short, the approach taken remained focused on specific products rather than defining service needs in terms of what those products could do.

Following discussions with the Office of Inspector General on the possibility of converting their requirements into performance specifications, the service decided to cancel its call for tenders, explore possible ways to bring its specifications in line with the normative framework and allow interested companies to find products that meet the service's needs in any formats available on the market. In addition, the service intends to form a committee to assess requests for equivalencies.

## WHY THE EQUIVALENCY PROCESS MATTERS

In a call for tenders where the municipal organization has shown that “there is no other sufficiently specific or intelligible means of doing so, it can describe its needs in terms of descriptive characteristics”<sup>2</sup> and, in such cases, must set up a fair and objective process for assessing equivalencies for bidders. The project owner could also set a submission deadline and issue an addendum for acceptable products before the call for tenders’ closing date. This procedure drives competition and would enable all potential bidders to include the equivalent product(s) in their bid. In addition, it would keep companies and suppliers from being advantaged or disadvantaged and stop a given supplier from cornering the market. It would also prevent possible cost increases.

## EXEMPLARY APPROACHES



All municipal bodies should first conduct a rigorous needs assessment in order to establish performance criteria for the specifications. Ideally, the assessment should also be documented to demonstrate its seriousness and be able to provide a copy as part of an audit by the Office of Inspector General. This was the case for the following two complaints regarding the use of descriptive specifications received in the first half of the year.

The first complainant criticized the project owner for setting technical requirements that benefited one specific manufacturer. The call for tenders was for the purchase of emergency vehicles with touchscreens in the dashboards. The complainant wanted the municipal body to expand the market by accepting an equivalent product on a dashboard stand. He argued that this product was an equivalency that met the municipal service’s needs.

Upon review of this complaint, the project owner demonstrated through a documented study that these emergency vehicles indeed required a screen integrated into the dashboard. This configuration provides effective ergonomics and higher levels of comfort, efficiency and safety. His choice was also consistent with the standards of the *Act Respecting Occupational Health and Safety*. The file was closed.

In the second case, the complainant criticized a business unit for setting overly restrictive requirements in a call for tenders for eco-friendly filler for a synthetic turf baseball field with two specific plant products that were only available from one supplier.

Before requiring these products, the service first conducted a review of scientific literature and then invested in laboratory tests to evaluate the various eco-friendly fillers available on

<sup>2</sup> Bulletin Muni-Express, No. 3, February 26, 2021.

the market. These two steps enabled the service to exclude products that did not meet desired strength and durability requirements. The Inspector General found this process to be exemplary: the project owner had invested time and money to identify eco-friendly fillers so that the new baseball field

could be operated under the best conditions and for as long as possible without excessive maintenance and labour costs. In addition, two compliant bids were received, which showed that the specifications were not directed to a single firm.

### PERFORMANCE SPECIFICATION TRAINING NOW AVAILABLE

The Office of Inspector General and the Comptroller General of Ville de Montréal developed a three-hour training course on performance specifications that combines theory and real-life examples from the Office of Inspector General. This new training has been available since September 2022 to any public organization that requests it. Learn more at [formation@bigmtl.ca](mailto:formation@bigmtl.ca).

# Upstream interventions

- Setting the record straight
  - . Numerous restrictive requirements
  - . Out-of-date specification

02

# Upstream interventions



## SETTING THE RECORD STRAIGHT

The Office of Inspector General frequently receives disclosures concerning calls for tenders from Ville de Montréal. Based on the facts gathered, Office representatives may meet with those responsible for the contracting process to assess whether the complaint has merit. If so, they discuss ways to correct any irregularities found. The Office of Inspector General might not intervene if the complaint is unfounded or not supported by sufficient evidence. In all cases, interventions of the Office of Inspector General at this stage enable project owners to rectify the situation as needed, and calls for tenders to proceed without delaying the awarding of the contract.

Of the complaints received since the beginning of 2022, the Office of Inspector General has dealt with two that criticized Ville de Montréal project owners for restricting competition in their calls for tenders, either based on technical specifications directed at a single product, which is against the law, or by

setting requirements that cannot be met within the required timeframe. Problematic situations were resolved at the pre-inquiry stage thanks to quick action and the ability of project owners to revise their contracting process based on Ville de Montréal best practices.

## NUMEROUS RESTRICTIVE REQUIREMENTS

The Office of Inspector General received a denunciation regarding a call for tenders involving the purchase of about 180 different products. The project owner specified the manufacturer and product code for each product. The whistleblower criticized the project owner for setting very strict, if not unrealistic, conditions on equivalent products:

If a BIDDER suggests equivalent products, they must include the following documents for each product with their bid:

- *Product data sheet*
- *Product drawing showing all dimensions*
- *Product test report from an independent North American or European laboratory*
- *Manufacturer's warranty program*

If a bidder wanted to supply equivalent products, they had to carry out lab tests on 180 different products to get them certified. However, this requirement was impossible to meet since the tests had to be authorized by the manufacturer who owned the rights to the products and who was, moreover, the only one to have access to data sheets and manufacturing processes. A distributor interested in the call for tenders did not have that right. Besides, an independent laboratory could not certify that a given product was equivalent to another product.

As a result, the Office of Inspector General contacted the project owners behind the call for tenders to better understand the requirement for these lab tests. The rationale given was related to the safety of the vehicles, as well as the risk of fire or serious engine failure. However, the stakeholders were unable to state whether all previous incidents were caused by original manufacturer-supplied parts or equivalent parts supplied by the distributor. And in the latter case, was failure caused by a manufacturing defect in one single part or a systemic problem with this part model?

In addition, no study was done to justify the requirement for lab certificates for equivalent parts. This could also limit the pool of bidders, since no potential supplier of equivalent products could have obtained these documents before the call for tenders' end date. This requirement was tantamount to the refusal of all equivalent products, which was not the objective of those responsible for the contract.

As a result of discussions with the Office of Inspector General, those responsible for the contract replaced this lab test requirement with another requirement: certification prepared by an engineer working for the manufacturer or an independent engineer confirming the equivalence of the product submitted to the requested product. This amendment enabled manufacturers to participate in the call for tenders using equivalent products, thus opening the market to competition.

## OUT-OF-DATE SPECIFICATION



Following a denunciation regarding a call for tenders for the procurement of self-cleaning toilets, the Office of Inspector General checked with the project owner to ensure that the specifications included in the call for tenders were performance specifications, i.e., they were written with the intention of opening the market to competition without favouring a specific product.

The denunciation stated that the specifications were almost identical to ones submitted in a 2016 call for tenders issued by another borough two years before performance specification legislation came into force. The specifications in the denounced call for tenders described specifications for the requested products in detail over dozens of pages. There were even photos of a self-cleaning toilet along with its data sheet, taken from a supplier's website. Details on the

outside walls of the washrooms, such as colour and patterns, were also provided. This detailed description also extended to things like floors, equipment, decoration, even electrical and plumbing fixtures.

The person responsible for the call for tenders confirmed that the 2016 specifications were used in this version. Only minor modifications were made after site visits to assess the aesthetic and functional suitability of the toilets.

The investigator from the Office of Inspector General reminded him of requirements that have been in place since 2018 to use performance specifications in calls for tenders. For example, a faucet can be automatic and a light can be motion-sensitive regardless of make, model, size or colour, as long as it meets a need. He suggested that the project owner compare his specifications to performance specifications published in 2020 by another borough for the purchase of self-cleaning toilets. These specifications were based on the project owner's needs, not on a detailed description of the product sought.

As a result of these discussions, the borough issued an addendum that removed all technical details associated with a brand, thereby reducing the specifications by 80%. This adjustment enabled other suppliers of self-cleaning toilets to participate in the call for tenders.

# Best practices

- To conduct an exemplary contracting process
  - A. Properly quantifying the expenditure versus the contract amount
  - B. Maintaining compliance throughout the contractual cycle
  - C. Mandatory visits: facilitate rather than restrict
  - D. Complying with the normative framework, even if it has a higher cost



# Best practices



## TO CONDUCT AN EXEMPLARY CONTRACTING PROCESS

This section focuses on winning interventions to complete a contract cycle, from the call for tenders to the completion of a municipal contract, in accordance with the laws that govern each step.

### A. PROPERLY QUANTIFYING THE EXPENDITURE VERSUS THE CONTRACT AMOUNT

At the beginning of the year, the Office of Inspector General dealt with two files concerning the expenditure amount. Project owners must thoroughly understand this concept and calculate it before awarding the contract, as it has an impact on the requirement for the bidder to have authorization from the Autorité des marchés publics (public procurement authority) (AMP). It also has an impact on the method of awarding the contract, the obligation to make a prior estimate, the timeframe for receiving bids and the limitation of their territory of origin, as well as on whether or not to publish on the electronic tendering system (SEAO).

#### Calculating the expense amount

##### 1. Net taxes

In a recent decision<sup>3</sup>, the Court of Appeal of Quebec confirmed that the value of a public contract differs from the expense incurred by the municipality, and that it is the actual expense related to that contract that determines its normative framework. A municipality can therefore subtract

any tax refund to which it is entitled in order to keep only the net taxes in its calculation to determine the actual expenditure of the public contract.

##### 2. Renewal options

Renewal options must also be included in the calculation of the expenditure amount at the time of the awarding the contract in order to determine its normative framework. In the first file processed by the Office of Inspector General, a bidder complained that their bid was rejected because they did not have the AMP's authorization to contract, alleging that the contract expenditure amount awarded was below the threshold. The City justified its decision on the basis that the contract authorization threshold was met when renewal options in the contract were included. This was justified because the *Act respecting contracting by public bodies*<sup>4</sup> specifies that the expenditure arising from any renewal option in the contract must be included to determine whether or not authorization to contract is required for that contract.

<sup>3</sup> MPECO Inc. MPECO c. Ville de Sainte-Agathe-des-Monts., 2022 QCCA 916.

<sup>4</sup> *Act respecting contracting by public bodies* ch. C-65.1, s. 21.27.

### 3. Calculating the expenditure resulting from a call for tenders

Quebec municipalities may issue a call for tenders containing several lots that will lead to the signing of several separate contracts for each lot. The second file handled by the Office of Inspector General dealt with this type of call for tenders for the awarding of 10 lots for various boroughs. Individual bid bonds were required for each lot. The same

bidder was awarded several lots, each with a value of less than \$1M, but that added up to a total value in excess of \$1M. This raised questions about whether or not the bidder would require authorization from the AMP. In this case, authorization was not required, since there were several separate contracts awarded by separate project owners, and the expenditure amount for each contract was below the established threshold.

## GOOD TO KNOW

The amount of the expenditure must (1) include the value of any option under the contract; and (2) omit tax refunds to the municipality so only net taxes are calculated.

### Impact on the awarding of multiple public contracts

#### Contract award method

A public contract's expenditure amount will affect how it is awarded. For example, any contract with an expenditure of less than \$25,000 may be awarded by mutual agreement, while a contract of \$25,000 to \$105,700 must be awarded following an invitation to tender or by mutual agreement, in accordance with rules in Ville de Montréal's contract management by-laws that encourage co-contractor rotation. Finally, any contract involving an actual expenditure of more than \$105,700 must be awarded by public tender, subject to certain exceptions provided for in the Act. Note that for Ville de Montréal, the administrative framework C-RM-DG-D-13-001 calls for public tenders to be issued when the estimated contract cost, including all taxes, is \$85,000 or more.

#### Preliminary estimate

For any contract containing an expenditure of \$100,000 or more, section 477.4 of the *Cities and Towns Act* requires municipalities to produce an estimate of the contract price. This estimate must be completed prior to opening bids or awarding the contract if no tender has been solicited. It must take renewal options into account.

#### Requirement to publish on SEAO

Under section 477.5 of the *Cities and Towns Act*, municipalities must publish a list of contracts they enter into that involve an expenditure of at least \$25,000 on the Government of Quebec's electronic tendering system (SEAO). When a contract includes renewal options, the total expenditure amount must take all of these options into account.

#### Bid submission deadline and limitation of territory from which bids originate

The minimum timeframe for bid submissions and the possibility of limiting the territory from which they originate vary depending on the expenditure amount. These rules are explained in the *Regulation ordering the expenditure threshold for a contract that may be awarded only after a public call for tenders, the minimum time for the receipt of tenders and the expenditure ceiling allowing the territory from which tenders originate to be limited* (RLRQ v. C-19, r.5).

## TOOLBOX

Given the many pitfalls associated with the expenditure amount, it must be properly assessed when drafting the call for tenders. Any breach at this stage may result in a delay in the contracting process, or even a complaint to the Office of Inspector General or a legal challenge. To learn more about the topic, register for the Office of Inspector General's *Collusion and estimates* training, which is part of its training program: [formation@bigmtl.ca](mailto:formation@bigmtl.ca)

## B. MAINTAINING COMPLIANCE THROUGHOUT THE CONTRACTUAL CYCLE

During the call for tenders, the project owner is responsible for ensuring that bids meet the requirements set out in the specifications. For example, when tenders involve vehicles or mechanical equipment, an on-site inspection may be required to certify bid compliance. This inspection would also be carried out when performing the contract to ensure that the equipment on work sites is the same as the equipment that was inspected and deemed compliant at the call for tenders stage. If the service or borough finds that a requirement has not been met, it may demand that the winning bidder comply with that requirement and, if necessary, impose a penalty.

Since the beginning of 2022, the Office of Inspector General has dealt with two complaints for which project owners had performed field audits. In the first case, the complainant wanted to have a bid declared non-compliant because, in their opinion, the bidder did not have the equipment required in the specifications. The Office of Inspector General contacted the project owner who confirmed that he met with the bidder at his place of business. During this visit, they checked available and spare equipment to be used

for the contract work. The bidder provided data sheets for machines that were being repaired or were to be purchased soon. This audit visit enabled the project owner to validate bid compliance and award the contract to this bidder. The complaint was therefore judged to be unfounded.

In the second case, the municipal department conducted audits at the company that was going to win the contract to ensure compliance with the functional requirements of the vehicles to be used for future work. Everything was found to be compliant at that time and the bidder got the contract. However, according to the person who filed a complaint with the Office of Inspector General, the winning bidder used vehicles other than those required in the call for tenders. Since compliance with equipment requirements does not stop at contract award but must be maintained throughout the performance of the contract, the project owner was notified of the situation in order to ensure that the winning bidder still met contractual requirements.

## C. MANDATORY VISITS: FACILITATE RATHER THAN RESTRICT

Mandatory visits ensure that potential bidders have a good understanding of the conditions under which they will be working. These visits are important, and failure to participate in them usually results in automatic bid rejection. Two complaints handled by the Office this year concerned project owners refusing to add visit dates to their calls for tenders. They then changed their minds and allowed more bidders to submit eligible bids.

The first complaint concerned a call for tenders to award a contract to carry out drinking water pipe cladding rehabilitation work. A bidder asked the project owner to

add a third method for cladding. The request was accepted and an addendum was issued. For this call for tenders, the project owner had set aside a date for bidders to attend mandatory site visits. However, at the time the addendum was issued, it was already too late for the mandatory visit. The bidder who had requested the addition of a third cladding method also requested a new visit date. This request was first denied and then accepted after his complaint was filed. The municipal department also extended the bid opening date. These two interventions by the City enabled the companies that could offer the method, which was the subject of an addendum, to carry out the mandatory visit and thus qualify.



In the second case, the complainant wanted to participate in a call for tenders for which they were unable to attend the mandatory visit because they were out of the country. They therefore asked the project owner to extend the timeline to visit the work site. This request was denied. Following discussions with the Office of Inspector General regarding the possibility of adding new dates, the service agreed and extended the tender closing date. In addition to being able to complete a mandatory step to be eligible to bid, this intervention enabled the complainant and two other companies to assess the level of operational complexity of the services to be provided in the performance of the contract.

These two records show that, where possible, it is in the project owner's interest to add mandatory visit dates, even if it means extending the opening bid date. By being cooperative, the project owner enables potential bidders wishing to participate in a call for tenders but who could not make the visit to carry out this mandatory step in order to qualify.

#### D. COMPLYING WITH THE NORMATIVE FRAMEWORK, EVEN IF IT HAS A HIGHER COST

A business unit employee contacted the Office of Inspector General to bring to its attention the rejection of the lowest bid by his department for non-compliance. According to the complainant, this decision would have resulted in the selection of the second-lowest bidder, leading to an increase in the amount to be assigned to the contract. He complained that his department rejected the first bid for the sole reason

that the bidder had provided its own price schedule. Using a document other than the ones included in the bid package violated a requirement of the call for tenders. The business unit complied with this requirement. Rejection of the bid for non-compliance was therefore justified, even if it resulted in a higher cost. The complaint was therefore dismissed.

# Recommendation report

# Framework agreements of Ville de Montréal's urban planning department

- Summary
- Preliminary remarks
- Context of the investigation
- Findings of the investigation
- Conclusion



# Framework agreements of Ville de Montréal's urban planning department



## SUMMARY

The Office of Inspector General investigated framework agreements of Ville de Montréal's urban planning department involving the awarding of contracts to professional services firms. The investigation was initiated following a denunciation of a possible conflict of interest between the winning bidders and real estate developers. The Office's investigation found no conflicts of interest or breaches of the regulatory framework in relation to the framework agreements involved. However, some internal practices need to be improved in order to broaden the competitive market and allow for documented estimates and rigorous accountability.

## PRELIMINARY REMARKS

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.

### Standards and applicable evidence

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.<sup>5</sup>

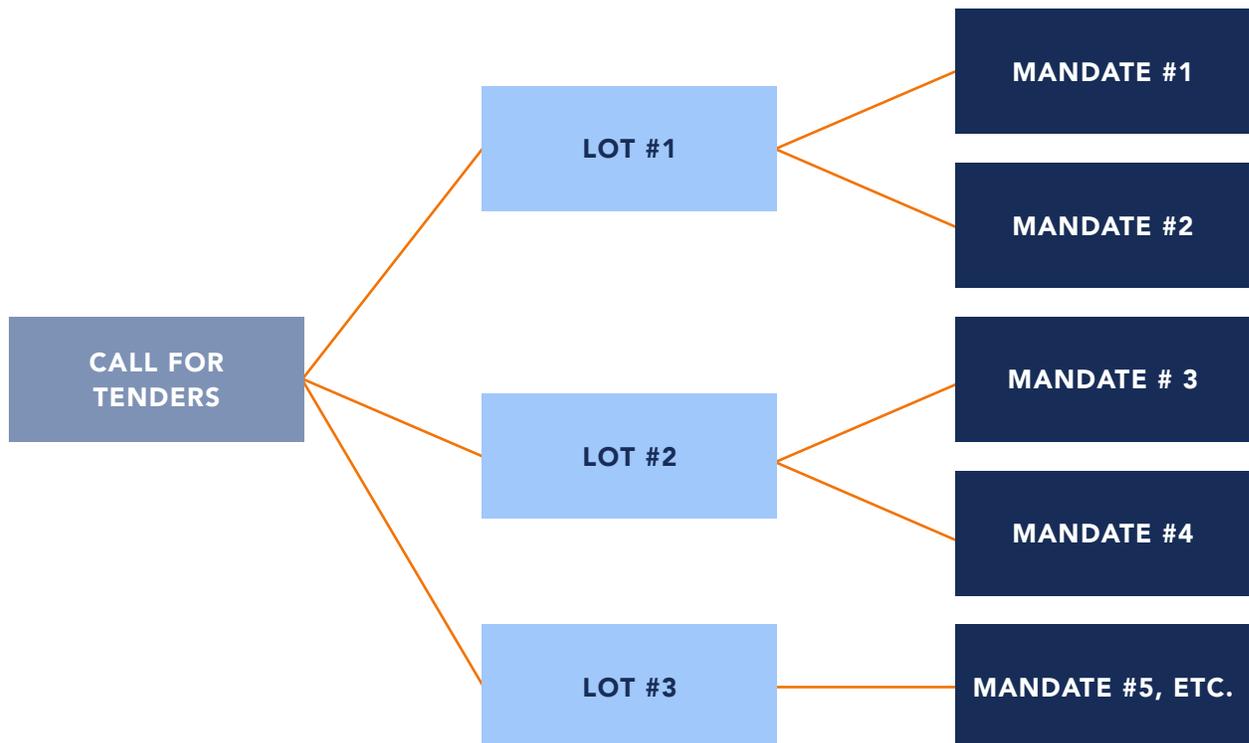
<sup>5</sup> Evidence is sufficient if it renders the existence of a fact more probable than its non-existence (see Article 2804 of the *Civil Code of Québec*).

## CONTEXT OF THE INVESTIGATION

The Office of Inspector General conducted a contract management investigation of two framework agreements, each resulting from a call for tenders issued by the Direction de l'urbanisme de la Ville de Montréal (urban planning department; hereinafter "DU"). The purpose of the two calls for tenders was to retain the services of three urban planning firms in order to award them various urban development mandates, as set out in the framework agreements.

## FRAMEWORK AGREEMENT OPERATING PRINCIPLE

A framework agreement is a contract resulting from a public call for tenders whereby Ville de Montréal secures a certain quantity of goods or hours of professional services that will be acquired or used at an undetermined time after the contract award. This type of contract is useful when a public body does not know exactly when it will need professional goods or services in the short or medium term. Each of the calls for tenders being investigated contained three lots to be awarded, each involving a different estimated number of hours. During the term of the contract, mandates are awarded to the winning bidders of each lot until the amounts awarded to each lot are used up.



## CALL FOR TENDERS 17-16443

On November 20, 2017, Ville de Montréal issued Call for Tenders 17-16443 “Services professionnels multidisciplinaires en aménagement urbain pour la Direction de l’urbanisme” (hereinafter “the First Framework Agreement”) for the acquisition of professional services in urban planning for the DU, as well as for the boroughs and other Ville de Montréal services, for a period of 36 months. The call for tenders contained three separate lots to be awarded for various professional services, such as land use planning, urban planning, urban design or heritage. The contract was signed on March 29, 2018, and the three lots were awarded to three firms for varying amounts depending on the lots awarded to each one:

- Lot #1, Firm A: \$1,837,070.55
- Lot #2, Firm B: \$1,543,900.40
- Lot #3, Firm C: \$571,237.19

During the performance of the contract, the DU realized that the envelopes were being used up more quickly than anticipated, so it decided to issue a new call for tenders to prevent there being no valid framework agreement to meet its needs. At the time Call for Tenders 19-17364 was awarded, the envelopes were used up as follows: 88% for Lot #1, Firm A; 62% for Lot #2, Firm B; and 100% for Firm C.

## CALL FOR TENDERS 19-17364

On June 22, 2019, Ville de Montréal issued Call for Tenders 19-17364, “Services professionnels en aménagement urbain pour la Direction de l’urbanisme” (the “Second Framework Agreement”) to enter into three framework agreements with three different winning bidders. This call for tenders was a continuation of the First Framework Agreement and attempted to open up the market by including a fourth lot that could not be awarded, since two of the five bidders were found to be non-compliant. The three lots for this call for tenders were awarded on a “two-envelope basis,” i.e., based on a combination of bid quality and tendered price<sup>6</sup>.

The three lots were awarded to the same three firms as with Call for Tenders 17-16443 for the following amounts:

- Lot #1 to Firm B: \$1,788,022.22
- Lot #2 to Firm C: \$1,464,147.99
- Lot #3 to Firm A: \$1,221,028.75

There is no difference in the purpose of the services to be provided among the three lots awarded following the call for tenders. The difference between the lots is in the number of hours of professional services to be delivered annually during the term of the contract: 6,580 hours for lot #1, 5,210 hours for lot #2 and 4,090 hours for lot #3.

## CONFLICT OF INTEREST

The initial denunciation received by the Office of Inspector General alleged a potential conflict of interest by the winning bidders who were awarded the contracts resulting from the framework agreements. This potential conflict would arise from their presumed business relationships with real estate developers. In other words, it was alleged that the bidders that were awarded the framework agreements could, in the performance of the contracts, promote the interests of other private clients at the expense of those of Ville de Montréal or have access to information that could subsequently serve the interests of those same clients.

The investigation was launched following this denunciation in order to determine whether there were any situations where

the winning bidders violated section 5 of City Council’s by-law on contract management regulating conflicts of interest. However, the investigation did not establish any conflicts of interest between the winning bidders and Ville de Montréal.

As a result of meetings with various witnesses, DU employees became aware that certain mandates may contain information that could be of interest to private companies operating in Montréal and create the appearance of a conflict of interest. Witnesses stated having conducted a verification themselves before a mandate was issued, even though there are no formal verification procedures. According to said witnesses, if there was a conflict of interest for a specific mandate, they would award it to another firm in the framework agreement or

<sup>6</sup> Section 573.1.0.1.1 CTA.

award a mutual agreement contract to a firm that was not part of any of the lots in the framework agreement. One witness explained that on one occasion, a mutual agreement contract was awarded to another firm to prevent any appearance of conflict of interest for the mandate in question.

Although the investigation did not reveal any conflicts of interest in the mandates awarded to the winning bidders, this is a real issue for DU employees. The Inspector General therefore believes that the latter must continue to be vigilant before awarding any mandates in order to protect Ville de Montréal's interests.

## FINDINGS OF THE INVESTIGATION

The Office of Inspector General's investigation did not reveal any breaches of the regulatory framework in the management of contracts resulting from Call for Tenders 19-17634. However, the Inspector General considers that

certain findings should be brought to the urban planning department's attention to correct and improve some practices currently used in the performance of mandates arising from the framework agreements.

### ENVELOPES OF THE FIRST FRAMEWORK AGREEMENT NOT USED UP

As mentioned in section 2.2, two of the three envelopes for the call for tenders were not entirely used up prior to the transfer to Call for Tenders 19-17634. However, the DU could have used up the remaining two envelopes, since the professional services to be delivered and the price schedules

were identical for the two calls for tenders. Furthermore, by proceeding in this way, the DU did not take advantage of the lower hourly rates in Call for Tenders 17-16443 compared to Call for Tenders 19-17634.

PRICE SCHEDULE EXCERPT			
	Call for Tenders 17-16443: Lot #1 – Year 3 – Fixed hourly rate	Call for Tenders 17-16443: Lot #2 – Year 3 – Fixed hourly rate	Call for Tenders 19-17634: Lot #1 – Year 1 – Fixed hourly rate
Project Manager	\$97	<b>\$135.90</b>	\$112
Project lead (mandate)	\$97	<b>\$121.30</b>	\$110
Professional (10+ years)	\$87	\$99.30	\$100
Professional (5-10 years)	\$72	<b>\$81.60</b>	\$80
Professional (less than 5 years)	\$62	\$68	\$65
Engineer (10+ years)	\$93	<b>\$109.80</b>	\$104
Engineer (5 to 10 years)	\$75	\$83.60	\$85
Engineer (less than 5 years)	\$58	<b>\$68</b>	\$64
Estimator (10+ years)	\$122	\$83.60	\$130
Estimator (5-10 years)	\$75	\$62.80	\$90
Estimator (less than 5 years)	\$58	\$52.20	\$64
Technical personnel (10+ years)	\$62	<b>\$73</b>	\$57
Technical personnel (5-10 years)	\$56	\$57.50	\$59
Technical personnel (less than 5 years)	\$49	\$36.60	\$52
Administrative support staff	\$40	\$31.40	\$50

*Excerpt of the two price schedules comparing the hourly rates for each position.*

As shown in the table above, the hourly rates submitted for the third year for Lot #1 of the contract resulting from Call for Tenders 17-16443 are almost all below the rate submitted for the same positions in the contract resulting from Call for Tenders 19-17634, with the exception of “Technical personnel (10+ years).” There is less of a difference between Lot #2 in the first framework agreement and Lot #1 in the second framework agreement, but the fact remains that several positions on the price schedule stated a lower hourly rate for the professional services to be delivered by the winning bidder.

The Office of Inspector General believes that in the case under review, the envelopes for the framework agreements should have been fully used up before transferring to a new contract since the same services were required in both contracts. Ville de Montréal may thus have benefited from lower hourly rates in a contract that had been signed a few years earlier than in a new contract that was logically supposed to take inflation into account.

## SELECTION BASED ON THE FIRMS’ EXPERTISE

### 1. Diversity of sought-after professional services

First, the Office of Inspector General has noted that the purpose of both calls for tenders was to obtain a wide range of professional services in order to carry out very diverse mandates. The technical specifications state that the winning bidders must provide professional services in four disciplines: architecture, landscape architecture, urban design and urban planning. They may also be asked to provide professional services in 10 other fields, such as industrial design, urban forestry, economics, engineering and public consultation<sup>7</sup>.

Mandates may include assessment services such as market research, the development of a preliminary vision such as a heritage conservation and enhancement strategy, development assumptions such as a technical and financial feasibility study, or detailed design services such as a project cost estimate.

### 2. Selection based on the firms’ expertise

The investigation revealed that Ville de Montréal professionals chose firms for mandates based on their perception of each firm’s expertise according to the mandate being awarded. However, this contract award method is at odds with the purpose of the call for tenders itself, which does not contain any qualitative differences between the lots.

A number of witnesses explained that professional services mandates are awarded based on the expertise of the three winning bidders or their specialized subcontractor. For example, one witness explained that, in his opinion, one of the firms was preferred for public development mandates,

while another had expertise in real estate development or urban design. This practice, although understandable in some respects, is not consistent with the aim of the call for tenders, which does not discriminate between lots in the fields covered by the mandates to be performed.

Neither the technical specifications nor the evaluation criteria require special or specific expertise or qualifications for each lot. Each one seeks to obtain the same types of professional services for all the mandates to be awarded. Although each winning bidder may have its own expertise in some of the targeted areas, it was not the objective of the call for tenders to distinguish them based on their specialty.

As mentioned earlier, the difference between the three lots in Call for Tenders 19-17634 is the estimated number of hours for each one. For instance, a bidder with the lowest hourly rate for its professional staff is awarded the lot with the greatest number of hours to be used. There is no qualitative difference between the services sought for each lot. Therefore, there is no distinction between the expertise of each firm that is awarded a lot. The selection method being used is therefore at odds with the purpose of the call for tenders, which is to put different firms in competition for the largest number of hours to be allocated based on an hourly rate. It would therefore make sense for the mandates to be awarded to the bidder who submitted the lowest rates and was awarded Lot #1, and then to move on to the winning bidder of Lot #2, followed by the winning bidder of Lot #3.

<sup>7</sup> Technical Specifications, Section 4.2, Type of required professional services, page 9.

### 3. Defining needs prior to publishing the framework agreement calls for tenders

The wide range of services and mandates required in the calls for tenders leads the Inspector General to question the impact that requiring such diversification has on the competition. Indeed, the fact that the winning bidders must be able to perform such different mandates excludes the small urban planning firms that could carry out mandates in a specific field.

It may therefore be useful to determine the possibility of grouping the mandates by field in order to publish a specific call for tenders for each field identified. In this way, smaller urban planning or engineering firms could bid on the sought-after specialty, thus driving competition.

At the very least, it may be useful to identify the least used fields, which could reduce the number of areas of expertise required in the same call for tenders. Indeed, the lack of competition for these calls for tenders warrants monitoring in the coming years, especially since only three of the four lots were awarded for Call for Tenders 19-17634. However, the Inspector General highlights the fact that the DU attempted to open up the market with the second call for tenders by including a fourth lot that ultimately could not be awarded for lack of a compliant bidder. However, other initiatives will be needed to diversify and increase the number of firms interested in participating in future calls for tenders, as the case may be.

### 4. Defining needs and estimating costs for the mandates awarded during the performance of the framework agreements

The DU set up an internal procedure for the use of the framework agreements. It provides that, once authorized to use the framework agreement, the employee in charge of the mandate may send a request for proposals to the head of the selected firm. This request for professional services has been standardized and must be used. The firm then has a minimum of ten working days to submit a written services proposal.

The procedure stipulates that prior to awarding a mandate, "the amount of the required professional fees must be assessed at the fair price."<sup>8</sup> However, the investigation has shown that the estimate is not made before each mandate is awarded and that there is a lack of consistency among DU

professionals in the way estimates are made. For example, the expected percentage for contingencies can vary from 10% to 30%, depending on the estimate, and estimates are often poorly documented.

In addition, the service proposals received from professional firms are often accepted without any discussion, despite a proposed price equal to the DU's estimate that includes contingencies, rather than an estimate solely for the performance of the mandate. In these cases, when a service proposal exceeded the estimate, Ville de Montréal could not properly assess and, if necessary, question the content of the proposal, since the estimate was not very detailed or documented.

A witness also mentioned that, in some cases, the budgeted amount to carry out the mandate, including contingencies, was disclosed to the firm, which then submitted a service proposal that corresponded to that envelope.

When there are no clear guidelines on the estimates, company proposals are often accepted without any discussion, or deliverables are withdrawn from the mandate to meet the budget, rather than have discussions based on a solid estimate that would allow for serious negotiations and an adequate price to be set to carry out the mandates.

It is true that the nature of professional services mandates in urban planning can be difficult to define and may change. Nonetheless, the project owner must define each mandate's deliverables. In fact, the definition of the deliverables and the cost estimate are closely linked. The fact of converting the work to be done for the mandate into hours allows the deliverables to be defined and to have a good idea of the associated costs. As a result, the project owner is better able to assess the fairness of the professional services proposal, question its content if necessary, and obtain a fair price for the mandate to be carried out.

The Inspector General noted that although there is an internal procedure in place for the use of the framework agreements, which has been adopted by the DU, the employees in charge of the mandates do not regularly follow this procedure. The Inspector General noted the importance of the DU of applying its own internal rules since they are intended to make better use of the professional services resulting from the framework agreements.

<sup>8</sup> Procedure for using framework agreements 2.0 Multi-disciplinary urban planning services for the Direction de l'urbanisme, Service de l'urbanisme et de la mobilité, Direction de l'urbanisme, October 15, 2019, page 4.

## PAYING PROFESSIONAL FEES AND CHECKING INVOICES

The investigation revealed that, during the course of using the framework agreements, the mandates awarded to the three winning bidders are mostly paid on a fixed-price rather than an hourly basis.

### 1. Per-unit price versus fixed rate

The prices were submitted by the firms in response to the two calls for tenders being investigated based on the unit-price hourly rate method for the various professionals requested in the price schedule. The per-unit payment method “is an overall price for a particular item that may vary in terms of the total price depending on the quantity required for that item.”<sup>9</sup> As shown in the Price Schedule Excerpt, each bidder must submit an hourly rate for each professional listed on the price schedule. This rate is multiplied by the number of scheduled hours to determine the total amount of each bid.

However, the technical specifications state that, as part of the mandates awarded to the winning bidders of the lots in the framework agreements, Ville de Montréal may choose to pay their fees on an hourly or fixed-price basis<sup>10</sup>. If the fixed-price method is chosen, “the package is negotiated between Ville de Montréal’s representatives and assessed on the basis of the estimate of the number of hours required to carry out the mandate, based on the rates stated in the price schedule. The agreed-upon packages are fixed and no price revisions may be requested by the winning bidder or Ville de Montréal. The professional fees are to be paid according to the terms and conditions set out in the work plan accepted by Ville de Montréal.”<sup>11</sup> Where the fixed-price method is used, the estimate provides that firms must submit a monthly progress report with their invoicing that shows the work that was done along with a breakdown based on that work. Where the hourly method is used, the professional fees are capped at the amount of the work plan budget envelope approved by Ville de Montréal and are paid monthly upon presentation of a properly documented invoice.

### 2. Lack of accountability

The witnesses that were met during the investigation stated that accountability documents, such as monthly progress reports and timesheets, are never requested with the firms’

invoices. These documents are essential to ensure that professional services are provided according to Ville de Montréal’s needs and requirements in its calls for tenders. Moreover, accountability is even more important in a context where the majority of the mandates are carried out on a fixed-price basis.

When the fixed-price method is used, the estimate must be drawn up based on the number of required hours and the hourly rates of the professionals assigned to the mandate.

In the two calls for tenders investigated by the Office of Inspector General, a key element is the experience and qualifications of the professionals who will be performing the work. The price schedule for the two calls for tenders requires three levels of experience for professionals, engineers and estimators: less than 5 years, 5 to 10 years, and 10 years and over. Such experience criteria are common in calls for tenders and reflect Ville de Montréal’s needs, namely that they are carried out in part by professionals with greater experience.

For example, by not verifying who is performing the mandates, Ville de Montréal is unable to determine whether the work was performed by a professional with 10 or more years of experience or one with less than 5 years of experience. However, each bidder’s price is determined on the basis of the hourly rates submitted in the price schedule according to the experience of each professional that was requested. In addition, the qualifications and experience of the project manager and of the personnel assigned to the mandate represent 50% of the points allocated in the bid assessment:

- Proposal’s presentation and clarity: 5 points
- Understanding of mandate and issue: 10 points
- Proposed methodology: 15 points
- Firm’s experience and expertise in similar work: 20 points
- Qualifications and experience of the project manager and their replacements: 20 points
- Qualifications and experience of personnel assigned to the mandate: 30 points

<sup>9</sup> Langlois, 3rd edition, page 74.

<sup>10</sup> Technical Specifications, Section 9.1.

<sup>11</sup> Ibid.

These elements clearly show to the Inspector General that one of the objectives of the calls for tenders is to ensure a standard of quality for the services by requiring firms to

use, at least in part, experienced professionals in mandates similar to those granted under the framework agreements.

**Objet :** Facture : 20- [REDACTED]  
**Projet :** [REDACTED]  
**No mandat de la ville :** 2019- [REDACTED]  
**No du bon de commande :** [REDACTED]

Veuillez trouver ci-après les honoraires pour le projet mentionné en rubrique tel que stipulé dans notre offre de services :

Honoraires				
Livrable 1	10%	@	82 577,50 \$	8 257,75 \$
<b>TOTAL DES HONORAIRES</b>				<b>8 257,75 \$</b>
TPS				412,89 \$
TVQ				823,71 \$
<b>TOTAL DE LA FACTURE</b>				<b>9 494,35 \$</b>

Détail du livrable

- Livrable 1 : Analyse et parti d'aménagement

*Excerpt from an invoice submitted for a mandate*

The payment of an invoice such as the one shown above is not consistent with the aim of the calls for tenders, since there is no way to verify who performed the deliverable. Strict accountability would also allow DU employees to develop expertise on the value and work required to perform the mandates. A detailed invoice that includes timesheets would enable them to better evaluate the work, as they would be able to compare invoices for similar mandates and dispute them, if necessary.

It is also important to reiterate that since the contracts resulting from the calls for tenders were awarded on a unit-

price basis, the mandates resulting from those contracts must comply with the nature of the calls for tenders. In this respect, rigorous accounting of the mandates — that includes the hourly rates and the hours worked for each professional in the price schedule — is essential to avoid a change in the nature of the contracts. This is why the Office of Inspector General intends to monitor the management of future DU framework agreements, including those resulting from the currently posted call for tenders, with respect to accountability for the mandates carried out by the winning bidders.

## CONCLUSION

The Office of Inspector General's investigation into the management of professional services framework agreements by the DU did not reveal any contractual breaches by the winning bidders or by Ville de Montréal. However, the Inspector General believes that the findings of the investigation should be brought to the DU attention, as some practices can be improved to optimize contract management and align the objectives of the calls for tenders with the resulting contract management.

Among the findings, the low level of competition for calls for tenders for professional services is a key issue that the DU will face in future calls for tenders. Although the second call for tenders involved an attempt to open up the market by adding a fourth lot, this did not have the effect of obtaining the services of a firm other than the three firms to whom the first two calls for tenders had been awarded. New measures will therefore need to be taken in the future to align the DU's need for professional services with market conditions. Lastly, the Inspector General believes that the DU must carry out a documented estimate, followed by rigorous accounting of the mandates granted to the winning bidders, to ensure that the services are delivered by professionals with the experience specified in the call for tenders and in accordance with the estimate.

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

Photo credits :  
Cover, Shutterstock

Page 11, Istockphoto  
Page 15, Ville-Marie borough  
Page 20, Ville de Montréal

Graphic Design :  
Bivouac Studio  
info@bivouacstudio.com

## To file a denunciation or complaint:

Online form:  
[www.bigmtl.ca/en/denunciation/](http://www.bigmtl.ca/en/denunciation/)

By email: [big@bigmtl.ca](mailto:big@bigmtl.ca)

By phone: 514 280-2800  
By fax: 514 280-2877

In person :  
1550 Metcalfe Street  
Suite 1200, 12th floor  
Montréal, Québec H3A 1X6

For more information, please visit our website at  
[bigmtl.ca](http://bigmtl.ca)

