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Snowing and Towing in Montréal: The Inspector General's Fight against Collusion in Two Industries

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The Inspector General's Fight against Collusion in Two
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INTRODUCTION

Offices of Inspectors General (OIGs) provide a highly valuable service by fostering and promoting integrity, transparency, and accountability in government. These offices provide independent oversight and monitor governmental operations, acting as watchdogs for the people and helping to maintain or restore the public's confidence in their institutions.

The mandate of Montréal's OIG is to conduct administrative investigations and to oversee contracting processes and the implementation of contracts by the City of Montréal in order to prevent breaches of integrity and violations of rules. Created in 2014, Montréal's OIG has already had a meaningful impact on public procurement and management policies. In this publication, we describe the OIG's impact on two regulated industries: snow removal and towing, demonstrating in the process that an OIG can be critically important in the fight against collusion.

THE INVESTIGATIONS

Soon after the establishment of the OIG, the office started receiving complaints about contracts related to two industries regulated by the City: snow removal operations and towing activities.¹ While the complaints differed in their specifics, many were suggestive of collusion in the bidding processes. These complaints immediately caught the attention of the IG, particularly given how much taxpayer money is spent on snow removal.² Administrative investigations were launched, with two goals. First, the OIG was focused on gathering information that would allow the OIG to present recommendation reports to decision-making authorities.³ These reports help elected officials understand the problems and propose workable solutions to them.

The investigations into the snow removal and towing industries each lasted several months and resulted in interviews of more than 100 witnesses, including contractors and City employees involved in the contracting processes. The OIG analyzed documents pertaining to contracts, utilized investigators to physically monitor snow removal operations and towing activities, and also closely supervised some calls for tenders that were in progress at the time. The investigations uncovered systemic collusive schemes in both industries, which were designed to control the market and hamper free and healthy competition.

With respect to contracts granted by the City for snow removal operations, most of the contractors interviewed reported that the market was under the influence of a small group of contractors. Several snow removal sectors were perceived as historically "belonging" to certain contractors just because the contracts were awarded to them in the past. Some contractors acknowledged that they asked their putative competitors not to submit a bid when a contract for what they considered to be "their" territory came up, and that when the sector up for tender was not "theirs," they would act in a way that would ensure that they would not win the bid, either by not bidding at all, or bidding at a high rate, sometimes with explicit conversations about what the bid should be to make sure there were no mistakes in who would win the bid. Contractors described their fear of reprisal (threats, intimidation and vandalism of equipment) and of being "attacked" in turn in "their" sector if they bid on sectors "belonging" to others, but also repeatedly described it as a matter of "respect:" respecting others' territory so that their competitors would respect their territory.

The investigation into the towing industry exposed that the contracts awarded by the City for the rental of tow trucks intended for snow removal operations were subject to these same kinds of collusive schemes. A small group of contractors controlled the market, sharing the contracts that were up for tender. Pacts of non-aggression were used to ensure that contractors did not bid one against the other in certain sectors, the contractors colluded on their

bids, exchanging information and even sometimes agreeing on the price of their bids, thereby circumventing the rules that guarantee free and healthy competition.

Montréal's OIG also examined exclusive contracts awarded for the towing of cars involved in accidents. These contracts granted to the winning bidder the exclusive right to tow a car involved in an accident in a specific sector of the City, but the City had allowed many sectors to operate without these contracts in force. The IG quickly noticed that this lack of a contract for accident towing opened the door for contractors to collude with each other and share the sectors not covered by a contract, leading to many of the same problems identified with snow removal operations above. But even worse, the absence of contracts created the opportunity for criminal organizations, including the Mafia and the Hell's Angels, to take control of this market. This led to a significant increase in costs for consumers who paid for these towing services after an accident; indeed, the OIG investigation revealed that citizens paid 4-8 times more for towing when there was no contract in place in that sector – in other words, when the price was not set by contract but was determined by a towing company that controlled the territory through improper means.

RECOMMENDATIONS AND REPORTS

With the information gathered in the investigations, Montréal's IG turned to the question of how best to provide elected officials with recommendations regarding new procurement strategies to make the establishment of collusive schemes more difficult and the City less vulnerable to the market control schemes used by contractors. Driving out the criminal element in city contracting was also an important goal. The IG needed to recommend measures that would rid the city of improperly obtained contracts and generate more competition for contracts going forward.

First, in the report on contracts awarded for snow removal operations, the OIG noted with approval that the City Council had already decided to centralize snow removal activities, meaning calls for tenders would be issued by the City, instead of by the boroughs of the City.⁴ This centralization was an important step in ensuring consistency and oversight in the process. The IG further recommended combining all contracts that expire the same year into a single bidding procedure, which was intended to make it more difficult for contractors to use collusive tactics, because it makes it more difficult to determine which contractors had recently received contracts and were unlikely to be bidding on new ones. The IG also stressed that the City should not issue only one call for tenders covering all sectors of the City. The objective here was to open the market and ensure that a contractor who does not obtain a contract during a call for tenders one year would be able to bid again the following year on other sectors of the City. The City's response to the OIG report was positive. The City launched new contractual processes in the Spring of 2016, and has amended the municipal by-laws where appropriate, to bring the City's processes in line with the IG's recommendations.

In the OIG towing industry report, the recommendations regarding towing related to snow removal operations mirrored those of the report on snow removal itself, since the collusion schemes observed were very similar. As a result of the OIG investigation, calls for tenders expiring the same year will be combined into a single bidding procedure as described above in the Summer of 2018.

With respect to the OIG report on the towing of cars involved in accidents, Montréal's IG criticized the fact that there were numerous sectors of the City for which no contract had been awarded. In the IG's opinion, the lack of exclusive contracts and the resulting division of territories by contractors themselves placed the City at risk by allowing towing companies with ties to organized crime to infiltrate the market with impunity and to control this economic sector. This situation also drove up prices for the citizens of Montréal who had to pay for these services.

Thus, the IG recommended that exclusive contracts should be awarded on a regular basis, pursuant to a public tender process to cover the entirety of the City's territory.

To “clean up” the industry and eliminate its ties with organized crime, the IG further recommended that before being granted a contract, a company, its directors, managers, shareholders and employees should undergo a background investigation to be carried out by Montréal's Police Department. The IG also recommended that this background investigation should be repeated every time a change in the structure of the company occurs.

On May 30, 2017, an action plan was put in place to address the OIG's recommendations for the towing industry. This plan identified the City organization responsible for implementing the measures proposed in response to the OIG's report and also established the timetable applicable for each action. As of Summer 2017, contracts for the towing of cars involved in accidents will be awarded throughout the City's territory via a public call for tenders. By January 2018, background investigations will be conducted on all winning bidders and associated persons.

EXAMINATION OF INDIVIDUAL CONTRACTS

After submitting its recommendations to the City's elected officials, Montréal's OIG shifted its focus to conducting increased supervision over the awarding and carrying out of contracts. Specifically, in the second phase of its work, the OIG conducted investigations into specific contracts and contractual processes underway at the City. In doing so, the OIG benefitted from a strong network of contacts and whistleblowers developed throughout the previously-conducted global investigations. As will be shown below, this close monitoring of actual ongoing contracts – including some for which the bidding procedures had already been changed as a result of OIG's recommendations – was a very successful weapon in the fight against collusion.

To give an example, a whistleblower contacted the OIG to report a contractor's attempts at collusion during a call for tenders aimed at awarding 20 snow removal contracts across the City. The whistleblower provided the OIG with copies of audio recordings of conversations that took place between him and the director of operations of the offending contractor, which revealed a clear attempt at collusion – namely, a request that the whistleblower not bid against the contractor. When first confronted by investigators of the OIG, this individual (director of operations of the contractor) confirmed that he had contacted his competitor to convince him not to bid on some contracts that he considered as “belonging” to him.

The IG believed that the facts uncovered by the investigation were serious and justified the cancellation of the tendering process under way in order to prevent a company engaging in collusive tactics from obtaining contracts. However, the IG was faced with what seemed to be a legal dead-end: to be able to cancel the tendering process, the IG had to find that requirements of the call for tenders had not been met. This is because the Contract Management Policy (CMP) did not generally prohibit the use of collusive schemes, but only required the signatory of the tender to declare that, to his personal knowledge, the bid was established without collusion and without anyone associated with the company having communicated or agreed to an arrangement with a competitor. In the case at hand, the signatory of the tender (the company's owner) denied being aware of the contacts initiated by the director of operations of the company. Therefore, the IG could not conclude that the tender submitted by the company did not respect the requirements of the call for tenders.

The CMP was adopted by the City of Montréal in 2010 with the objective of reinforcing the principles of healthy competition, efficiency, ethics, transparency and equity. Applicable to all contracts awarded by the City, the CMP contained specific provisions to prevent tenders established with collusion. But, as the OIG's investigation revealed, the CMP's anti-collusion provisions were too easily circumvented. [The IG exposed these loopholes in a report](#)

[provided to elected officials on June 20, 2016](#). Considering the absurd consequences resulting from the application of the CMP in the case described above, the IG recommended that a review of the policy be conducted so that full effect be given to its objectives to fight collusion.

On August 23 and 25, 2016, Montréal’s City Council and Agglomeration Council adopted a new version of the CMP, addressing the recommendations of the OIG. Changes included a new provision that no one can, directly or indirectly, engage or attempt to engage in collusive or corruption schemes, or in any other fraudulent tactic that may compromise the integrity of the contractual or selection process. As a penalty, the new CMP provides that the tender will be automatically rejected or that, if already awarded, the contract could be rescinded at the discretion of the City. Moreover, the company, as well as any directors, managers, and shareholders who participated in the infringement, will be excluded from all calls for tenders and will not be able to conclude any contract with the City for a 5-year period.

EXCLUDING CONTRACTORS FROM CITY CONTRACTS

This new provision of the CMP has proved to be effective in the fight against collusion. In the specific case related above, Montréal’s IG recommended that the contractor who called his competitor to ask that the competitor not bid against him should be excluded for a 5-year period, and this recommendation was followed by the City Council.

The new version of the CMP also permitted the IG to intervene in a subsequent case involving an investigation into several contracts awarded by the City for the rental of tow trucks intended for snow removal operations. In that case, three contractors admitted to the OIG that they used schemes of a collusive nature. On September 26, 2016, Montréal’s IG rescinded the contracts that were still being executed and, as a first step to “clean up” the industry, recommended that the three companies, as well as their presidents, all of whom actively participated in the schemes, be excluded from all calls for tenders and from the possibility to conclude any contract with the City for five years. Accordingly, on November 21, 2016, the City excluded these individuals and all companies associated with them until September 25, 2021.⁵

UNMASKING FRAUDULENT TACTICS AND THE NEED FOR CONSTANT MONITORING

Even after the new procedures were put into place, attempts at collusion have continued. Montréal’s OIG observed during follow-up investigations that the three presidents of the companies sanctioned for being part of collusive schemes and excluded from City contracts tried to bypass the new measures implemented by using three other contractors to bid on contracts. These new contractors had never operated in the towing industry before being approached by the excluded individuals to bid on calls for tenders launched by the City. In two cases, the excluded individuals were the ones handling and managing the towing activities as if they themselves had obtained the contracts. In the third case, the excluded individual used a company that he had created before he was excluded, appointing his spouse as director and shareholder of the company, so that it would be able to bid on public contracts of the City. On March 23, 2017, Montréal’s IG unveiled the true structure of the tendering companies in order to demonstrate the fraudulent tactics that took place. The IG rescinded the contracts awarded as a result of these schemes and recommended that the three “new” contractors be excluded from City contracts for five years (as the three excluded contractors already had been). The City followed this recommendation, excluding these three “new” companies, as well as their presidents, from all of its calls for tenders until March 23, 2022. Moreover, the City decided to extend the exclusion period of the individuals and companies initially excluded until March 23, 2022.

THE ADDED VALUE OF THE OIG

We believe that the mandate and powers entrusted to the Montréal OIG – particularly the power to rescind contracts and the means to provide strong and constant oversight – coupled with the office’s guarantees of independence make the OIG a valuable asset in combatting collusion and fraudulent tactics used during contractual processes. The OIG’s investigations in the snow removal and towing industries have led to substantial improvements in the procurement system and the uncovering of numerous instances of collusion and fraud. In a time where municipal democracy and institutions are in need of comprehensive reform, this is the true evidence of the OIG’s significant added value in the fight against corruption, collusion and other fraudulent tactics.

ENDNOTES

¹ In Montréal, each borough of the City is divided into sectors for snow removal purposes. Contracts are issued with certain specifications for snow removal in a particular sector. Previously, the contracts were issued by the boroughs; following the OIG investigation, all contracts are issued centrally by the City.

Two aspects of towing services were ultimately deemed problematic: towing related to snow removal, i.e. cars that needed to be towed to permit snow removal operations to proceed; and towing of vehicles that had been in accidents and were obstructing traffic.

² Snow removal is an industry generating significant revenues year after year in Montréal. As reported by the Auditor General of the City in its audit, between 2005 and 2013, 545 snow removal contracts were granted for a total expense of CAD 528 million. See: *Report of the Auditor General of the Ville de Montréal to the City Council and the Urban Agglomeration Council for the year ended December 31, 2013* (version amended in September 2014), p. 498.

³ The OIG’s global report on contracts granted for snow removal operations was filed on November 23, 2015; the report on the towing industry was issued on April 24, 2017. The recommendation reports are available on the OIG’s Website: <https://www.bigmtl.ca/en/publications-and-reports/>

⁴ Montréal is composed of nineteen (19) boroughs.

⁵ The Montréal OIG has the power to rescind contracts, but does not control the “blacklist” that prohibits companies from bidding on contracts for a certain period of time.

About:

Author

This brief was authored by The Office of the Inspector General of Montréal, which was created to oversee contracting processes and the carrying out of contracts by the City and its legal entities. The office diligently works to propose measures aimed at preventing a breach of integrity in the making of contracts or the carrying out of such contracts, to recommend measures designed to foster compliance with the applicable legal provisions and the City's requirements regarding contracting or contract performance, to verify the implications of all measures adopted, and to train members as well as the offices and employees to recognize and prevent any breach of integrity or of the applicable rules in the making of contracts by the city or the carrying out of such contracts.

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The Center for the Advancement of Public Integrity is a nonprofit resource center dedicated to improving the capacity of public offices, practitioners, policymakers, and engaged citizens to deter and combat corruption. Established as partnership between the New York City Department of Investigation and Columbia Law School in 2013, CAPI is unique in its city-level focus and emphasis on *practical* lessons and tools.

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