

TRUST | INTEGRITY | TRANSPARENCY



Unique Powers Conferred to Montréal's Inspector General

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Mandate Given to Montréal's Inspector General

Created on February 24, 2014, Montréal's OIG conducts investigations of an **administrative nature**. The OIG does not conduct criminal investigations.



1. Oversee

contracting processes and the carrying out of contracts by the City or by a legal person.



2. Recommend

to the council any measure aimed at preventing a breach of integrity in the making of contracts by the City or the carrying out of such contracts.



3. Recommend

to the council any measure designed to foster compliance with the applicable legal provisions and the City's requirements regarding contracting or the carrying out of contracts.



4. Verify

within the City, the implementation of such measures adopted by any council.



5. Train

council members as well as the officers and employees to recognize and prevent any breach of integrity or violation of the applicable rules concerning contracting by the City or the carrying out of contracts.



Investigative Powers of the Inspector General

- **Power to obtain information and documents**

Montréal's IG is entitled to **examine and make copies** of any book, register or record or **obtain any information** relevant to his mandate.

- **Inspection powers**

Montréal's IG may, at any reasonable hour, **enter a building or on land** to conduct the examination of any book, register or record.

Montréal's IG may also **use any computer or material or any other thing found on the premises visited** to access data relevant to his mandate.



Powers of Intervention

- **Power to make recommendations**

The Inspector General may, at any time, send the council or any decision-making body of the City any report presenting findings or recommendations that, in his opinion, warrant being brought to its attention.

- **Power to cancel, rescind or suspend**

The Inspector General can

- **Cancel** any contracting process involving a contract of the City or of any related legal person;
- **Rescind** any contract of the City or of the legal person;
- **Suspend** the carrying out of such a contract.



Power to Cancel, Rescind or Suspend

Two conditions must be met:

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

Among the documents which form part of the calls for tenders as well as the contracts, is **Montréal's Contract Management Policy**:

- Includes provisions on collusion, corruption, fraudulent tactics, lobbying, conflicts of interests and provisions requiring full and complete collaboration with the OIG.
- Failure to comply can trigger the IG's right to use his power to cancel, rescind or suspend.



Use of the Unique Powers in the Investigations Conducted

- **Rescinding of a contract for the rental of a hydraulic excavator**
Value: \$1.3M – Contractor used an excavator which did not meet mandatory technical specifications and was not the one described in the bid + contractor falsified the data sheet submitted in his bid in order to lead the borough to believe he owned the equipment which met the required specifications.

- **Suspension of a contract for road levelling work**
Value: \$3.4M – Contractor made no partial-depth repairs whereas, according to the specifications of the contract, the condition of the levelled surface warranted such repairs. Contract suspended to allow the city to remind the contractor of his obligations and the supervising firm of its role.



Use of the Unique Powers in the Investigations Conducted

- **Rescinding of a snow removal contract**

Value: \$1.7M – Contract rescinded due to subcontracting, which was prohibited by the call for tenders documents. Subcontracting was also identified as a tool used by contractors in their collusion schemes.

- **Rescinding of a contract for the acquisition of pump sets**

Value: \$24.6M - The successful bidder did not meet the eligibility criteria and major technical requirements set out in the tendering documents + attempt of the contractor to mislead the OIG in its investigation.

- **Rescinding of a contract for the replacement of signage**

Value: \$271,992- The successful bidder did not have the licences required by the call for tenders to perform the work.



Use of the Unique Powers in the Investigations Conducted

- **Rescinding of 3 contracts for the rental of tow trucks**

Total value: \$1M - Contracts rescinded due to collusion scheme used by contractors. Three contractors made arrangements with each other regarding the decision to bid or not, the price to bid as well as the number of tow trucks they should include in their bids.

- **Rescinding of 12 contracts for the rental of tow trucks**

Total value: \$2.3M - Follow-up of the last decision. The OIG noticed that contractors continued their fraudulent tactics, attempted to circumvent the measures put in place following the last report and tried to continue obtaining city contracts by entering into agreements with other competitors (the three contractors were put on a blacklist).



Use of the Unique Powers in the Investigations Conducted

The two conditions allowing the Inspector General to cancel, rescind or suspend a contractual process or a contract are restrictive.

→ The legislator assumed that the failure would come from the contractor.

In cases where the city breached public policy rules governing the awarding or carrying out of contracts, or when there is a directed tendering process, the Inspector General cannot use those powers.

But, in four investigations, the IG used his power to make any recommendation he deems fit to recommend to the council to cancel, rescind or suspend a contractual process/contract. In those cases, the Inspector General considered that he would have used his powers had it not been for the restrictive wording of the law.



Use of the Unique Powers in the Investigations Conducted

- So far, elected officials of the city have never reversed the OIG's decisions → *Political price to pay?*
- Necessity to extend the scope of application of the law to allow the OIG to cancel, rescind or suspend a contractual process/contract when faced with a directed tendering process or a breach of public policy rules in the awarding and carrying out of contracts.
 - The OIG has immunity, unlike elected officials.
- The power to cancel, rescind or suspend is an additional argument used in investigations where the OIG intervenes upstream of problematic situations.



Questions?
