



**Report of the Auditor General
of the Ville de Montréal**
to the City Council and to the
Urban Agglomeration Council

For the Year Ended December 31, 2015

4.3

**Authorization
of the Autorité des
marchés financiers**



Table of Contents

1. Background.....	141
2. Purpose and Scope of the Audit.....	143
3. Main Findings.....	144
4. Audit Results.....	144
4.1. Application of Orders in Council and Control Mechanisms.....	145
4.2. Information Conveyed Prior to the Awarding of a Contract	164
5. Conclusion	169
6. Appendices	171
6.1. Analysis of a Sample of Construction Contracts on a Borough-by- Borough Basis – O.C. 1049-2013 (January 1, 2014, to August 31, 2015).....	171
6.2. Analysis of a Sample of Service Contracts on a Borough-by-Borough Basis – O.C. 795-2014 (October 1, 2014, to August 31, 2015)	173
6.3. Diagram Illustrating How Orders in Council Are Applied	174

List of Acronyms

AMF	Autorité des marchés financiers	O.C.	order in council
BC	borough council	RENA	Registre des entreprises non admissibles
CC	City council	SÉAO	Système électronique d'appel d'offres
EC	executive committee	UAC	urban agglomeration council
GDD	gestion des dossiers décisionnels		

4.3. Authorization of the Autorité des marchés financiers

1. Background

A number of incidents related to the awarding of public contracts in Québec have made the headlines in recent years. The municipal world has also been shaken by these events, which have brought to light various problems linked to fraud, corruption and collusion in municipal contracts. Consequently, several laws and amendments have been adopted since 2010 to change the way contracts are managed and awarded by municipal authorities.

More specifically, in 2011, in an effort to curb corruption at the municipal level, several important pieces of provincial legislation were enacted, including the *Anti-Corruption Act*,¹ which modified the *Act Respecting Contracting by Public Bodies*² and created the Registre des entreprises non admissibles (RENA).³ A regulation related to the application of this register was also adopted.⁴ Accordingly, an enterprise accused of violations under this regulation would be entered in the RENA and thus barred from any future dealings with a public body. The *Cities and Towns Act*⁵ was also amended in 2011 to specify that municipalities were to be considered public bodies from that point onward.

In 2012, in an attempt to bolster the integrity of the public tendering process, further legislation was passed on the awarding of municipal contracts, namely the *Integrity in Public Contracts Act*,⁶ which amended the *Act Respecting Contracting by Public Bodies*,⁷ thereby requiring enterprises that wish to enter into public contracts with a municipality to possess the authorization to do so from the Autorité des marchés financiers (AMF). As a result of these legislative modifications, a new system has emerged, i.e., a register of authorized enterprises. The *Cities and Towns Act*⁸ has also been amended so that these new rules apply to municipal administrations.

Since these changes, enterprises that wish to enter into a contract with a public body or a municipality must show that they meet the stipulated requirements and integrity conditions

¹ SQ, 2011, Chapter 17.

² CQRL, Chapter C-65.1.

³ The RENA came into effect June 1, 2012, with the adoption of the *Regulation respecting the register of enterprises ineligible for public contracts and oversight and monitoring measures*, *Gazette officielle du Québec* (GO), Part 2, Vol. 144, No. 20, May 16, 2012, pp. 2381–2401.

⁴ *Regulation respecting the register of enterprises ineligible for public contracts and oversight and monitoring measures* (GO) Part 2, Vol. 144, No. 20, May 16, 2012, pp. 2381–2401.

⁵ CQRL, Chapter C-19, Section 573.3.3.2.

⁶ SQ, 2012, Chapter 25.

⁷ CQRL, Chapter C-65.1.

⁸ CQRL, Chapter C-19, Section 573.3.3.3.

and must obtain authorization from the AMF. Because the RENA is still in force, the result is an overlapping system, with one register of enterprises deemed ineligible and another of enterprises authorized to enter into contracts with public bodies and municipalities.⁹ It should be noted that these rules also apply to subcontracts directly or indirectly related to contracts of this nature.¹⁰

Effective January 15, 2013, the first contracts and subcontracts subject to this authorization were construction contracts and subcontracts and service contracts and subcontracts involving an expenditure of \$40 million or more.¹¹ In addition, the law specified that the government could adopt an order in council (O.C.) applicable to contracts and subcontracts that fell under categories other than the ones indicated or that were valued at another amount.

Several orders in council have since been passed for specific contracts undertaken by the Ville de Montréal (the City). In 2013, the government adopted an O.C. regarding service contracts and subcontracts and construction contracts and subcontracts involving an expenditure of \$10 million or more.¹² In 2014, the government enacted an O.C. targeting the same type of contracts and subcontracts, but valued at \$5 million or more.¹³

Moreover, at the City's request,¹⁴ the government adopted two orders in council solely for City contracts, namely O.C. 1049-2013,¹⁵ which came into effect on October 23, 2013, and O.C. 795-2014,¹⁶ enacted September 24, 2014. Our audit focused on both.

The first O.C. 1049-2013 applies to contracts related to the construction, reconstruction, demolition, repair or renovation of roads, waterworks and sewer services involving an

⁹ Register of authorized businesses: The first contracts and subcontracts to be subject to this authorization were construction contracts and subcontracts and service contracts and subcontracts involving an expenditure of \$40 million or more. This came into effect on January 15, 2013. Since then, as soon as an O.C. for a given contract category is adopted and declared in force, authorization is required for the corresponding contracts.

¹⁰ *Integrity in Public Contracts Act*, SQ, 2012, Chapter 25, Section 10.

¹¹ *Integrity in Public Contracts Act*, SQ, 2012, Chapter 25, Section 85.

¹² O.C. 1105-2013 – *Service contracts and subcontracts and construction contracts and subcontracts involving an expenditure equal to or greater than \$10,000,000*, GO, Part 2, Vol. 145, No. 45, November 6, 2013, pp. 4888–4889.

¹³ O.C. 796-2014 – *Service contracts and subcontracts and construction contracts and subcontracts involving an expenditure equal to or greater than \$5,000,000*, GO, Part 2, Vol. 146, No. 39, September 24, 2014, pp. 3405–3406.

¹⁴ Resolution CM14 0521, adopted at a regular CC meeting May 26, 2014, and Resolution CE13 1585.

¹⁵ O.C. 1049-2013 – *Application of Chapter V.2 of the Act Respecting Contracting by Public Bodies to contracts for the construction, reconstruction, demolition, repair or renovation of roads, waterworks and sewer services of Ville de Montréal involving an expenditure equal to or greater than \$100,000 and to subcontracts of the same nature directly or indirectly related to such contracts and involving an expenditure equal to or greater than \$25,000*, GO, Part 2, Vol. 145, No. 44, October 30, 2013, pp. 4813–4814.

¹⁶ O.C. 795-2014 – *Certain supply contracts and service contracts of Ville de Montréal involving an expenditure equal to or greater than \$100,000 and various subcontracts involving an expenditure equal to or greater than \$25,000*, GO, Part 2, Vol. 146, No. 39, September 24, 2014, pp. 3404–3405.

expenditure of \$100,000 or more. This O.C. also applies to subcontracts directly or indirectly related to such contracts and involving an expenditure equal to or greater than \$25,000.

As for the second O.C. 795-2014, it applies to service contracts involving the same purposes and materials as O.C. 1049-2013, for expenditures of \$100,000 or more. Similar to O.C. 1049-2013, it also extends to subcontracts for services involving the same purposes and materials, for expenditures valued at \$25,000 or more. In addition, this O.C. covers contracts and subcontracts for the supply of bituminous compounds involving an expenditure equal to or greater than \$100,000.

In this context, the City's business units must, within the framework of the contract-awarding process, implement control mechanisms that allow them to evaluate whether the contractors and subcontractors that execute work or provide services under a contract with the City comply with the provisions of these orders in council.

2. Purpose and Scope of the Audit

The purpose of this audit was to ensure that the audited business units had put control mechanisms in place within the framework of their contract-awarding processes to ensure compliance with O.C. 1049-2013 and O.C. 795-2014 in terms of AMF authorization for enterprises that wish to enter into a contract with the City.

Our audit was carried out in each of the City's 19 boroughs and focused on a sample of 191 construction and service contracts subject to O.C. 1049-2013 and O.C. 795-2014 awarded between January 1, 2014, and August 31, 2015, for the former, and between October 1, 2014, and August 31, 2015, for the latter.

More specifically, with respect to the review of compliance with O.C. 1049-2013, pursuant to the rules stipulated therein, our audit examined contracts related to the construction, reconstruction, demolition, repair or renovation of roads, sewer services and waterworks involving an expenditure equal to or greater than \$100,000. For O.C. 795-2014, we focused on service contracts valued at \$100,000 or more pertaining to the construction, reconstruction, renovation, demolition or repair of roads, sewer services and waterworks.

During the course of the audit, we interviewed managers and staff members, examined various documents and conducted surveys that we deemed relevant in obtaining useful information.

3. Main Findings

Our audit revealed areas where improvements should be made, including the following:

- For some contracts in two boroughs, there are still discrepancies between the information contained in the tendering documents and those in the decision-making summaries concerning the application of orders in council;
- In some boroughs (five), confusion in the interpretation of the orders in council for certain types of contracts has resulted in situations where contracts were awarded even though it was uncertain whether or not they were subject to the provisions of the orders in council;
- The content of the tendering documents is not consistent from one borough to the next when it comes to clauses concerning the application of the orders in council and the information required to ensure subcontractor compliance;
- Almost all of the boroughs (16) have yet to adopt a mechanism to ensure that bidders possess valid AMF authorization to enter into municipal contracts, if applicable, when submitting their tenders;
- None of the boroughs systematically obtains a list of subcontractors comprising all of the information required under the law and in the clauses in the tendering documents;
- None of the boroughs systematically uses the mechanisms designed to remind successful bidders of their contractual obligations and ensure subsequent follow-up regarding the compliance of the subcontractors selected to execute subcontracts;
- In almost all of the boroughs (17), decision-making summaries submitted to managers and elected officials within the borough do not always contain relevant information about the applicability of the orders in council as part of the decision-making process.

4. Audit Results

Order in council (O.C.) 1049-2013 and O.C. 795-2014 apply solely to contracts entered into with the City. Both orders in council have been passed by the government and thus have had the force of law since they came into effect with regard to the contracts within their purview.

As a result, when a decision is made that work or services are necessary to carry out a given project and that tendering documents must be prepared in order to issue a call for tenders, the business units involved must ensure the compliance of the process as it pertains to these orders in council. Adherence to these orders in council requires the introduction of mechanisms that facilitate their interpretation and application, especially through the inclusion of clauses in tendering documents, compliance evaluation tools and mechanisms designed to remind bidders of their legislative requirements under these orders in council.

O.C. 1049-2013 and O.C. 795-2014, which constitute the subject of this report, apply to subcontractors as well. The risks associated with a subcontractor's non-compliance with these orders in council are not inconsequential for the City. For example, if a subcontractor were to be removed from a construction site for non-compliance with one of these orders in council, it could potentially delay the project timeline. Although there are no contractual ties per se between the City and the subcontractors retained by the successful bidder, it is important for control mechanisms to be put into place to ensure the contractor is doing business with subcontractors that are duly authorized by the Autorité des marchés financiers (AMF) where required.

Various authorities, namely the borough council (BC), executive committee (EC), City council (CC) and the urban agglomeration council (UAC), are involved in awarding City contracts, based on their respective jurisdictions. Decisions of this nature are made by resolution.

A significant percentage of the documents associated with the contracts in our sample were prepared primarily by borough staff and issued by their BC, as the work involved was to be carried out in the borough itself and thus fell under its jurisdiction. However, although many of the selected files are in fact the responsibility of other authorities (EC, CC and UAC), the documents and decision-making summaries for the contracts were prepared primarily by borough staff and received prior approval from their BC before being submitted to the central authority for the final decision by way of a resolution, based on the jurisdiction allocated to it for a given type of category or expenditure. Both managers and elected officials from these various authorities must be aware of the compliance status of contractors selected for a contract because they are ultimately responsible for any decisions made in this regard. Consequently, whether or not orders in council are in fact applicable, given the nature of the work and the amount of money involved, we believe that there should be mechanisms in place to provide the authorities with proof that the necessary checks have been made as to whether AMF authorization is required under current orders in council.

4.1. Application of Orders in Council and Control Mechanisms

4.1.1. Preparation of Tendering Documents

4.1.1.A. Background and Findings

When documents need to be prepared for a call for tenders for a construction or service contract, one of the first steps in the process is to identify any applicable laws, regulations, by-laws and orders in council. It is therefore important for the staff in charge of preparing the

tendering documents to have comprehensive information at their disposal about the nature, scope and amount of the contract to be awarded, as well as other relevant details.

4.1.1.1. Application of Orders in Council

4.1.1.1.A. Background and Findings

At this stage, the requirement concerning AMF authorization in relation to the application of O.C. 1049-2013 and O.C. 795-2014 deserves particular attention, since each business unit must begin by determining if this authorization is necessary.

This first step is critical and entails a significant level of risk, given the impact it will have on the contents of the tendering documents. This is the point at which a decision has to be made as to whether the tendering documents need to include clauses requiring contractors to be authorized by the AMF to enter into public contracts. Among the risks of incorporating such clauses into the tendering documents when they are not required, considering the nature and amount of the contract to be awarded, is that they may discourage some contractors from bidding or that they may cause otherwise qualified bidders to be declared non-compliant. Conversely, excluding these clauses when they are actually necessary, pursuant to the applicable O.C., may lead to an increased risk of awarding the contract to a bidder that does not adhere to the law.

The City is responsible for providing bidders with clear, accurate information during the tendering process so that they are in a position to understand what is required of them.

Our audit shows that, for a significant proportion of the 191 contracts we examined, which for the most part involved road rehabilitation, the reconstruction of streets, sidewalks, sewer mains or water mains, or pavement repairs, interpreting and applying orders in council is not particularly problematic.

However, our work highlighted the fact that there are some interpretation and application irregularities associated with a certain category of contract. While examining the contracts in our sample with regard to the two orders in council that were the focus of our audit, and analyzing all of the tendering documents, the information posted on the Système électronique d'appel d'offres (SÉAO) and the information obtained from the people we met or contacted within the various business units, we encountered a number of situations regarding the interpretation and application of the orders in council that we felt were a cause for concern.

In particular, our audit revealed the following about certain types of contracts included in our sample:

- For a road marking contract involving an expenditure of over \$100,000 awarded in Lachine in 2015, our audit showed that there was significant confusion in the application of the orders in council.

To elaborate, a clause had been incorporated in the tendering documents specifying that O.C. 1049-2013 would be applicable to the contract awarded following the call for tenders. The tendering documents also included a clause concerning O.C. 795-2014. However, the information in the decision-making summary provided to managers and elected officials indicated that the contract was not subject to the *Integrity in Public Contracts Act*. Furthermore, the public notice posted to SÉAO identified this as a construction contract, whereas the bid specifications indicated that it was a contract to provide goods and services. We did not find any copies of the winning bidders' authorization from the AMF to enter into public contracts. According to the information obtained from the people we met with, AMF authorization had not been required of bidders. These same individuals mentioned that they were unsure about how to apply the orders in council to this type of contract, although they also acknowledged that no legal opinion had been obtained to clarify the interpretation and application of the orders in council to determine whether or not AMF authorization was required.

In addition, a contract involving an expenditure in excess of \$100,000 for the layout and marking of lines on the road was awarded in the LaSalle borough in 2015. An examination of the tendering documents, decision-making summaries and SÉAO notices showed similarities with those in the previous example. More specifically, we noted that the tendering documents were prepared by the Service de l'approvisionnement, whereas the decision-making summary was prepared by the borough staff. We also observed that the decision-making summary contained information from the Service de l'approvisionnement indicating that the call for tenders related to this contract was not subject to the *Integrity in Public Contracts Act* and that AMF authorization was not mandatory. Based on the information obtained from the manager we contacted at the Service de l'approvisionnement, no legal opinion had been obtained to determine whether AMF authorization was indeed required for this contract category.

Our audit revealed that similar contracts for road marking and signage were also awarded in other boroughs, namely Anjou, Saint-Léonard and Verdun. An examination of the decision-making summaries associated with the contracts granted in Anjou and Verdun showed that they contained no information for analyzing the applicability of the orders in

council. As for the decision-making summary for the contract awarded in Saint-Léonard, it incorporated information from the Service de l'approvisionnement indicating that the call for tenders for the contract was not subject to the AMF authorization requirement. The public notice in SÉAO identified these contracts as construction contracts.

Clearly there is some confusion as to how the orders in council are to be applied to this type of contract. As a result, there is an increased risk of non-compliance with the law and the orders in council.

- A contract involving an expenditure of more than \$100,000 to replace street lamps and refurbish the underground street lighting system was awarded in Saint-Laurent. Our work showed, however, that clauses related to O.C. 1049-2013 were not included in the tendering documents. The information in the decision-making summary did not indicate whether the orders in council were applied or whether the AMF authorization was required or not.

Our audit also showed that a similar contract was allocated in Verdun for the installation of street lamps along the borough's bicycle paths. The information in the decision-making summary indicated that the contract was in fact subject to the *Integrity in Public Contracts Act* and that the selected bidder was required to hold AMF authorization to enter into public contracts. Moreover, according to the documents we examined in Verdun, AMF authorization was sought and obtained for a subcontractor for an electrical subcontract on traffic lights valued at over \$25,000.

In addition, a contract to repair and refurbish light poles was awarded in Rosemont-La Petite-Patrie. In this case, the tendering documents included clauses related to O.C. 795-2014 indicating that Chapter V.2 of the *Act Respecting Contracting by Public Bodies* and AMF authorization would apply to contracts arising from the call for tenders. For this contract, the Service de l'approvisionnement prepared the tendering documents and issued the call for tenders on behalf of the borough, although the contract-awarding process remained the responsibility of the BC. However, we found no copies of the AMF authorization and no indication in the records that gave us reason to believe that this authorization had been required or obtained. According to the information provided by the individual we contacted in the Service de l'approvisionnement, AMF authorization was not sought.

We are left to wonder why, for contracts and subcontracts of a similar nature, AMF authorization is required in some cases but not in others, not to mention the fact that

some tendering documents contain clauses from O.C. 795-2014 indicating that a contract is subject to an O.C. without also requiring AMF authorization.

- Two contracts awarded in Verdun involving an expenditure of over \$100,000 for professional services related to material monitoring and supervision of various work sites and streets were included in our sample. The people we interviewed admitted that no queries had been made to determine whether or not these contracts were subject to O.C. 795-2014.
- Two contracts involving an expenditure of more than \$100,000 for professional services associated specifically with the supervision of civil engineering infrastructure work and the study and design of civil engineering structures were awarded within the Villeray–Saint-Michel–Parc-Extension borough, one contract to prepare plans and specifications for the redevelopment of a street was awarded in the Le Plateau-Mont-Royal borough, and one contract for the preparation of plans and specifications to supervise the rehabilitation of water and sewer facilities, roads and sidewalks was awarded in the Saint-Laurent borough. We were not able to track down proof in the tendering documents or decision-making summaries for any of these contracts of any investigation into whether these contracts were subject to O.C. 795-2014.
- One contract involving an expenditure in excess of \$100,000 for professional services concerning the design and supervision of various civil engineering jobs was awarded in the LaSalle borough. The tendering documents contained clauses in relation to O.C. 795-2014 that indicated that the contract was subject to this O.C.. However, information in the decision-making summary contradicts this by stating that the contract did not come under the purview of the law or an O.C..

We feel it is important to examine contracts for professional services as well as other types of services to determine whether O.C. 795-2014 is applicable. Similarly, we believe it is essential for the information in tendering documents to be consistent with the information in the decision-making summaries prepared to help designated managers and the elected officials make informed decisions.

In summary, our audit brought to light some difficulties in the interpretation and application of the orders in council for certain contract categories. In our opinion, this prevailing confusion inevitably leads to an increased risk of contract-awarding practices not adhering to the law. In order to mitigate this risk, we feel it would be helpful for the boroughs to have access to a guide for the interpretation and application of these orders in council. To the best of our knowledge, such a guide does not already exist. In our opinion, the guide could also be used

to identify the subcontract categories for which AMF authorization is required. In this case, we believe that a legal opinion should have been sought prior to awarding several contracts for road marking and electrical work (e.g., street lamp installation and repair) to help the boroughs decide whether or not the orders in council and the AMF authorization requirement were applicable. In this regard, we feel that the Service des affaires juridiques could be approached to prepare a guide to interpreting these orders in council for distribution to all of the City's business units.

4.1.1.1.B. Recommendation

We recommend that the Lachine and LaSalle boroughs implement the necessary control mechanisms to maintain consistency in the information provided in tendering documents and decision-making summaries as regards the application of orders in council in order to ensure the compliance of the contract-awarding process.

4.1.1.1.C. Recommendation

We recommend that the Anjou, Lachine, LaSalle, Le Plateau-Mont-Royal, Rosemont–La Petite-Patrie, Saint-Laurent, Saint-Léonard, Verdun and Villeray–Saint-Michel–Parc-Extension boroughs implement the appropriate control mechanisms to exercise careful oversight and ensure the contract-awarding process takes the orders in council into consideration, where applicable.

4.1.1.1.D. Recommendation

We recommend that the Direction générale make the necessary arrangements to produce a guide and distribute it to all of the City's business units to help them interpret and apply the orders in council in order to support staff members involved in the preparation of tendering documents and decision-making summaries.

Business unit's response:

[TRANSLATION] The Direction générale will instead ask the Service de l'approvisionnement to reacquaint the appropriate administrative units with the available documents regarding the application of orders in council and decision-making summaries. (Planned completion: June 2016)

4.1.1.2. Tendering Document Clauses

4.1.1.2.A. Background and Findings

As previously mentioned, orders in council apply to contracts involving an expenditure equal to or greater than \$100,000. In this case, the law requires a tendering mechanism to be used

and the requisite documents to be prepared in order to issue a call for tenders. These documents include instructions to bidders, a bid form, plans and specifications, and special and general conditions.

Once the terms of the contract have been examined and it has been determined whether or not the orders in council are applicable, the exact content of the tendering documents must be established, taking into account the orders in council and the AMF authorization requirement, as appropriate.

These tendering documents essentially form the basis of the eventual contract and contain various clauses that the winning bidder will adhere to in the performance of the work or services requested by the City. Some of these clauses may refer to laws, regulations, by-laws or orders in council, although they may also specify the information and documents that the contractor is required to provide to the client concerning the subcontractors it intends to do business with.

The January 2013 edition of *Muni-Express*,¹⁷ a newsletter published by the Ministère des Affaires municipales et de l'Occupation du territoire (MAMOT), addresses the role of municipalities with regard to the AMF authorization requirement. The newsletter specifically points out that municipalities should indicate in their tendering documents whether a given contract is subject to AMF authorization (pursuant to the law or orders in council) and incorporate certain clauses in these documents. The same newsletter contains a reference to sample clauses recommended by the MAMOT.

Furthermore, various documents touching on legal issues are available to the City's business units through a computer application known as gestion des dossiers décisionnels (GDD) (the decision-making record management system), administered by the Service des affaires juridiques. This includes a document dated October 28, 2014, containing sample clauses that may be included in tendering documents concerning AMF authorization, as set forth in O.C. 1049-2013 and O.C. 795-2014.

That being said, for 113¹⁸ of the 191 contracts in our sample (see Appendices 6.1 and 6.2), our work at this stage entailed examining the tendering documents in order to make sure that they contained clauses pertaining to these orders in council and the AMF authorization requirement, as applicable. At the same time, we reviewed the tendering documents to check

¹⁷ *Muni-Express*, No. 2, January 29, 2013, Ministère des Affaires municipales et de l'Occupation du territoire (MAMOT).

¹⁸ 96 construction contracts (O.C. 1049-2013) and 17 service contracts (O.C. 795-2014).

that they included clauses compelling the contractor to deal with AMF-authorized subcontractors, when this condition was required pursuant to the orders in council.

In our sample of construction contracts, as regards the requirement for bidders to hold AMF authorization, our audit revealed that the tendering documents for almost all (98%) of the selected contracts within the boroughs contained clauses related to these orders in council (see Appendix 6.1). We also observed that these clauses were based on the sample clauses recommended by the City's Service des affaires juridiques, available through the GDD application.

Our audit nevertheless showed that, in the tendering documents used in calls for tenders issued after September 24, 2014,¹⁹ several boroughs did not use the most recent and up-to-date wording, as provided by the Service des affaires juridiques. This situation occurred in the following boroughs: Ahuntsic-Cartierville, Anjou, Lachine, LaSalle, Mercier–Hochelaga-Maisonneuve, Outremont, Pierrefonds-Roxboro, Le Plateau-Mont-Royal, Rosemont–La Petite-Patrie, Saint-Laurent, Le Sud-Ouest, Verdun, Ville-Marie and Villeray–Saint-Michel–Parc-Extension.

The most recent sample clauses contain certain reworded phrases to be used for construction contracts (1049-2013). Now, service subcontracts valued at \$25,000 or more that are associated directly or indirectly with a construction contract awarded by way of a call for tenders are subject to the AMF authorization requirement, pursuant to O.C. 795-2014. The same applies to subcontracts for the supply of bituminous compounds. The sample clauses updated by the City's Service des affaires juridiques take into account several factors that arise when new orders in council come into effect and help lessen the risk of legal non-compliance. As a result, we feel it would be in the boroughs' best interest to ensure, prior to issuing a call for tenders, that the clauses incorporated in their tendering documents are up to date.

In addition, with respect to our sample of service contracts, which we examined in connection with O.C. 795-2014, our audit revealed that a little over half (59%) of the tendering documents for the selected contracts contained a clause about the O.C. (see Appendix 6.2). We confirmed that these clauses correspond to the up-to-date samples available through the City's Service des affaires juridiques.

¹⁹ The date O.C. 795-2014 came into force, thereby subjecting service subcontracts and subcontracts for the supply of bituminous compounds to the requirement to obtain authorization from the AMF when they are directly or indirectly related to a construction contract (O.C. 1049-2013).

However, the tendering documents for five contracts involving the boroughs of Saint-Laurent (one), Verdun (two) and Villeray–Saint-Michel–Parc-Extension (two) did not contain any specific clause concerning the O.C.. Neither were we able to find any proof in the documents we reviewed that the application of this O.C. had been checked.

Lastly, regarding the existence of clauses in tendering documents in which the contractor is compelled to do business with AMF-authorized subcontractors when required by law, our audit led us to conclude the following:

- **Construction contracts (O.C. 1049-2013)**

Our examination highlighted that practically all of the tendering documents used in all of the boroughs included clauses about subcontractors in relation to these contracts. By and large, however, these clauses did little more than indicate that subcontractors for subcontracts subject to the orders in council must hold AMF authorization to enter into public contracts.

Six boroughs²⁰ nevertheless incorporated slightly more detailed clauses in their tendering documents to require the winning bidder to provide information on the subcontractors to which subcontracts would be granted (e.g., name and address, amount and date of the subcontract). These clauses state that:

- The winning bidder must submit this information before work commences or before the subcontract comes into effect;
- A copy of the AMF authorization must be forwarded to the borough for subcontracts involving an expenditure equal to or greater than \$25,000;
- The winning bidder is considered to be in default of its obligations if it enters into a subcontract subject to the O.C. with a subcontractor that does not hold the required AMF authorization or it fails to provide the client with the necessary information;
- The City will pay nothing to the contractor for work carried out by a non-AMF-authorized subcontractor for a subcontract subject to the O.C..

- **Service contracts (O.C. 795-2014)**

The detailed clauses we described above concerning the tendering documents examined in six boroughs were not found in any of the tendering documents reviewed in connection with these service contracts. The clauses in these tendering documents were limited to

²⁰ Ahuntsic-Cartierville, Le Plateau-Mont-Royal, Le Sud-Ouest, Montréal-Nord, Rivière-des-Prairies–Pointe-aux-Trembles and Villeray–Saint-Michel–Parc-Extension.

requiring subcontractors that work on subcontracts covered by the O.C. to hold the appropriate AMF authorization.

It is our view that efforts should be made to ensure the tendering documents used by the various boroughs are consistent. Furthermore, we believe that incorporating more detailed clauses in tendering documents, similar to the ones described earlier, to require the winning bidder to provide the borough with information on the amount and date of a subcontract would allow the boroughs to ensure all subcontractors comply with the orders in council.

4.1.1.2.B. Recommendation

We recommend that Ahuntsic-Cartierville, Anjou, Lachine, LaSalle, Mercier–Hochelaga-Maisonneuve, Outremont, Pierrefonds-Roxboro, Le Plateau-Mont-Royal, Rosemont–La Petite-Patrie, Saint-Laurent, Le Sud-Ouest, Verdun, Ville-Marie and Villeray–Saint-Michel–Parc-Extension make the necessary arrangements to include up-to-date clauses related to the orders in council in their tendering documents in an effort to mitigate the risk of non-compliance with applicable legislation.

4.1.1.2.C. Recommendation

We recommend that the Service de concertation des arrondissements, in conjunction with the Service des affaires juridiques, make the necessary arrangements so that the tendering documents used by the City's boroughs are consistent in applying the orders in council and in requiring the corresponding authorization from the Autorité des marchés financiers, in order to ensure compliance with all applicable laws.

Business unit's response:

[TRANSLATION] The Service de concertation des arrondissements, in conjunction with the Service des affaires juridiques, will meet with the borough directors to reacquaint them with existing tools (standardized documents, bank of legal documents) available to assist them in applying the orders in council and in obtaining the authorization from the Autorité des marchés financiers. (Planned completion: April-May 2016)

A new notice will also be sent to the boroughs about this topic. (Planned completion: May 2016)

4.1.2. Evaluation of Compliance and Valid Authorization

4.1.2.A. Background and Findings

The law²¹ stipulates that an enterprise that responds to a call for tenders for a public contract must be duly authorized by the AMF to enter into such a contract as of the date the bid is submitted, unless the call for tenders specifies an alternative date prior to the contract closing date. This rule applies to both O.C. 1049-2013 and O.C. 795-2014. It should be noted that AMF authorization is valid for three years.

Furthermore, although tendering documents should require a copy of the AMF authorization to be included with the bid, it is important to subsequently verify the authenticity of the document in order to avoid awarding a contract to a contractor whose AMF authorization has expired.

4.1.2.1. Mechanisms for Evaluating Bidders' Compliance with the Authorization Requirement of the Autorité des marchés financiers

4.1.2.1.A. Background and Findings

At this stage of our audit, we sought to determine the extent to which the boroughs had implemented mechanisms to ensure that bidders included AMF authorization in their bid and to verify that this authorization was valid as of the bid closing date.

Regarding the two orders in council that were the subject of the audit, our work revealed that a number of boroughs had implemented mechanisms to evaluate bid compliance vis-à-vis the AMF authorization (see Appendices 6.1 and 6.2). In accordance with these mechanisms, once bids have been received and opened, the compliance of the documents submitted with the bid must be examined and the validity of the AMF authorization confirmed. The evaluation tool of choice is an analysis table or a compliance checklist indicating the documents received and their respective compliance.

That said, for the 96 construction contracts (O.C. 1049-2013) we examined in our sample, our audit showed that the boroughs used a mechanism of this nature only 50% of the time. As for the 17 service contracts covered in our audit (O.C. 795-2014), this proportion dropped to 18% (see Appendices 6.1 and 6.2).

²¹ *Act Respecting Contracting by Public Bodies*, CQRL, Chapter C-65.1, Section 21.18.

More specifically, the examination of the contracts in our sample with regard to the two orders in council that were the focus of our audit showed that only three boroughs, namely Côte-des-Neiges–Notre-Dame-de-Grâce, LaSalle and Saint-Léonard, used an evaluation mechanism to check the AMF authorization in all of the records pertaining to the awarded contracts.

For the 16 other boroughs, our audit brought the following facts to light about our sample of construction and service contracts:

- For some boroughs, our examination of the contracts in the sample did not reveal any evidence that a compliance evaluation mechanism was used to verify the winning bidder's AMF authorization;
- Although this mechanism had been put in place in some of these boroughs, it had not been used on any of the contracts we examined;
- The compliance evaluation mechanism implemented by some boroughs does not include a check of AMF authorization.

Analyzing the validity of AMF authorization is a key part of the contract-awarding process. It makes it possible to ensure that bidders have included a copy of the AMF authorization with their bids and confirm that this authorization is valid as of the bid closing date. It is a crucial step in that, as we will see in Section 4.2 of this report, once the authorization has been authenticated, it must be attached to the decision-making summary for managers and elected officials to confirm compliance and help them make an informed decision when it comes time to award the contract.

4.1.2.1.B. Recommendation

We recommend that the Ahuntsic-Cartierville, Anjou, Lachine, L'Île-Bizard–Sainte-Geneviève, Mercier–Hochelaga-Maisonneuve, Montréal-Nord, Outremont, Pierrefonds-Roxboro, Le Plateau-Mont-Royal, Rosemont–La Petite-Patrie, Saint-Laurent, Le Sud-Ouest, Rivière-des-Prairies–Pointe-aux-Trembles, Verdun, Ville-Marie and Villeray–Saint-Michel–Parc-Extension boroughs introduce and make use of a compliance evaluation mechanism to verify that bidders are duly authorized by the Autorité des marchés financiers to enter into public contracts and to ensure the compliance of their contract-awarding process.

4.1.2.2. Examination of the Validity of the Winning Bidder's Authorization to Enter into Public Contracts as Issued by the Autorité des marchés financiers

4.1.2.2.A. Background and Findings

During the second stage of our audit, for 113²² out of 191 contracts in our sample, we also checked the validity of the AMF authorization submitted by the winning bidder with its bid and attempted to determine whether the boroughs obtained a copy of this authorization for contracts subject to the orders in council.

Accordingly, for the construction contracts in the sample (O.C. 1049-2013, see Appendix 6.1), our audit revealed that 13 boroughs obtained a copy of the winning bidder's AMF authorization for all of the contracts we examined. In addition, we determined that, for all of these contracts, the authorization was valid as of the date the bid was submitted. For the six other boroughs, our work highlighted the following:

- Anjou: For two contracts, we did not find any evidence that a copy of the winning bidder's AMF authorization had been obtained or that this authorization was valid when the bid was submitted, even though the borough's tendering documents contained a clause requiring bidders to provide a copy of their AMF authorization;
- Verdun: For one contract, the AMF authorization submitted by the winning bidder in its bid was actually its subcontractor's authorization;
- LaSalle, Lachine, Rosemont–La Petite-Patrie and Saint-Laurent: AMF authorizations were not obtained for one contract, for the reasons explained earlier in Section 4.1.1 related to the ambiguities observed in the interpretation and application of the orders in council as the tendering documents were being prepared. It is worth noting, however, that for one contract involving LaSalle borough, although the decision-making summary indicated that the contract was not subject to the *Integrity in Public Contracts Act* and the tendering documents did not require the winning bidder to produce AMF authorization, this proof was submitted nonetheless.

Finally, for the service contracts in the sample (O.E. 795-2014, see Appendix 6.2), our audit showed that five boroughs out of the nine where we were able to include contracts in our sample linked to this O.C. had obtained proof of AMF authorization from the winning bidders, for each of the contracts we examined. In addition, the authorizations obtained from the AMF were valid. For the four other boroughs, our work brought the following facts to light:

²² 96 construction contracts (O.C. 1049-2013) and 17 service contracts (O.C. 795-2014).

- Le Plateau-Mont-Royal: For one contract, the decision-making summary indicated that the winning bidder held AMF authorization, although we were not able to track this authorization down;
- LaSalle, Verdun, Villeray–Saint-Michel–Parc-Extension: AMF authorizations were not systematically obtained because of the facts outlined in Section 4.1.1 of this report, namely the ambiguities observed in the interpretation and application of the orders in council while the tendering documents were being prepared.

We believe it is important that, when authorization is required from the AMF pursuant to the orders in council, a copy of this authorization be kept on file, as is the case for most tendering documents, to ensure compliance with the law.

4.1.2.2.B. Recommendation

We recommend that the Anjou, Le Plateau-Mont-Royal and Verdun boroughs make the necessary arrangements to obtain a copy of the Autorité des marchés financiers authorization to enter into public contracts, when required, at the same time as bids are submitted in order to ensure the compliance of the contract-awarding process within each business unit.

4.1.3. Control Mechanisms for Subcontractors' Authorizations

4.1.3.A. Background and Findings

As we mentioned earlier in this report, both orders in council also apply to subcontracts. As a result, when the winning bidder is awarded a contract from the City and works with a subcontractor to provide work or services or supply bituminous compounds, this subcontractor must also be authorized by the AMF to enter into public contracts.

Accordingly, O.C. 1049-2013 (see Appendix 6.3) applies to all subcontracts that are directly or indirectly related to a contract for the construction, reconstruction, demolition, repair or renovation of roads, waterworks and sewer services involving an expenditure equal to or greater than \$25,000.

As for O.C. 795-2014 (see Appendix 6.3), it applies to all subcontracts for the supply of bituminous compounds involving an expenditure of \$25,000 or more, directly or indirectly related to a contract referred to in the O.C. (service contract valued at \$100,000 or more for the construction, reconstruction, demolition, repair or renovation of roads, waterworks or

sewer services or a contract for the supply of bituminous compounds involving an expenditure equal to or greater than \$100,000).

O.C. 795-2014 also applies to all service subcontracts related to the construction, reconstruction, demolition, repair or renovation of roads, waterworks or sewer services involving an expenditure of \$25,000 or more, directly or indirectly related to a contract referred to in the O.C. (service contract of \$100,000 or more related to the construction, reconstruction, demolition, repair or renovation of roads, waterworks or sewer services and supply contracts of bituminous compounds [\$100,000 and up]).

Lastly, O.C. 795-2014 applies to all service subcontracts related to the construction, reconstruction, demolition, repair or renovation of roads, waterworks or sewer services involving an expenditure equal to or greater than \$25,000, directly or indirectly related to a contract for the construction, reconstruction, demolition, repair or renovation of roads, waterworks or sewer services valued at \$100,000 or more. Likewise, it applies to all subcontracts for the supply of bituminous compounds involving an expenditure equal to or greater than \$25,000, directly or indirectly related to a contract for the construction, reconstruction, demolition, repair or renovation of roads, waterworks or sewer services valued at \$100,000 or more.

Boroughs, as the clients representing the City, have a legal relationship with the selected contractor, whereas the link for subcontractors is with the contractor, not the borough. However, for the sake of sound management, boroughs are obliged to ensure subcontractors' compliance with a variety of aspects. It is therefore essential that boroughs know the identity of these subcontractors and the nature of the work entrusted to them by the contractor selected to execute the contract. There are also certain legal obligations²³ that the contractor must heed in terms of providing information about subcontractors to the client.

The act²⁴ was amended in 2011 to impose obligations on contractors with regard to the information they provide about subcontractors when a contract with a public body, in this case, a municipal administration, is involved. Section 21.13 of the *Act Respecting Contracting by Public Bodies* requires contractors to provide public bodies referred to in the act (for these purposes, the City and its boroughs) with a list containing the following information for each subcontract before the performance of the contract begins²⁵:

- The name and address of the principal establishment of the subcontractor;
- The amount and date of the subcontract.

²³ *Act Respecting Contracting by Public Bodies*, CQRL, Chapter C-65.1, Section 21.13.

²⁴ *Act Respecting Contracting by Public Bodies*, CQRL, Chapter C-65.1, Section 21.13.

²⁵ *Act Respecting Contracting by Public Bodies*, CQRL, Chapter C-65.1.

Section 21.13 goes on to specify that contractors that, while a contract entered into with a public body or a body described in the act is in process, enter into a subcontract must notify the public body by providing a modified list before the performance of the subcontract begins.

In this same section, it is stated that contractors that fail to provide the required information are committing an offence and are subject to a fine of \$100 to \$400 (for an individual) and \$200 and \$800 (for a legal person), for each day the offence continues.

Generally speaking, the boroughs' tendering documents contain clauses that require contractors to provide a list of the subcontractors they plan to do business with as part of the contract. We observed that the documents in six boroughs repeated the legal provisions outlined above, practically word for word, and then added a requirement in their tendering documents to receive not only a list of the subcontracts involving an expenditure equal to or greater than \$25,000, but also a copy of the subcontractors' authorization to enter into public contracts as issued by the AMF, where applicable, without which the contractors would be considered to be in default of the contract.

Evaluating the compliance of contractors to which contracts are awarded should, in theory, be carried out at the same time bid compliance is being analyzed. For subcontractors awarded subcontracts related to these contracts, the compliance evaluation process is more complex when it comes to AMF authorization and requires different control mechanisms since the City is not contractually linked to them. Moreover, bidders have not necessarily finalized all their subcontracts when bidding for a contract or when the bids are being evaluated for compliance.

In order to be able to apply the provisions of the orders in council to the subcontracts and ensure subcontractors comply with the AMF authorization requirement, boroughs must have access to relevant information in this regard. To determine whether a subcontractor is required to obtain AMF authorization to enter into a contract, pursuant to both orders in council, it is necessary to have the information we listed earlier, e.g., the name of the subcontractor, the contact information, the value of the contract, the nature of the work or activities to be performed, and the contract's closing date.

That said, we believe that the boroughs should ensure they receive a full list of the selected subcontractors so they can validate for themselves whether the orders in council have been applied and whether the subcontractors are in compliance. It is worth remembering that O.C. 795-2014 also applies to subcontracts for the supply of bituminous compounds. The list must therefore include suppliers that have been awarded a subcontract of this nature.

A subcontract executed on a City work site by a subcontractor that does not hold AMF authorization represents a risk for the City. If a subcontractor were to be removed or changed as a result of non-compliance with these orders in council, it could delay the overall schedule and lead to various work management problems, not to mention the risk of an increase in costs for executing the work.

As a result, although there are no contractual ties per se between the City and subcontractors, we believe mechanisms should be put into place to ensure that the orders in council are being adhered to and that the subcontractors possess the necessary AMF authorization if required.

For 113²⁶ of the 191 contracts in our sample within the boroughs, we first sought to determine whether the boroughs had implemented reminder mechanisms to help them collect information on subcontractors with subcontracts that may have been assigned prior to the commencement of work (e.g., name and address of the subcontractor's principal establishment, and the amount and the date of the subcontract).

Our audit then consisted in examining whether the boroughs had adopted a follow-up mechanism to ensure they had obtained this list of subcontractors, complete with the aforementioned information, in order to verify their compliance with the orders in council.

As regards the introduction of reminder mechanisms to allow boroughs to collect information concerning these subcontractors to which subcontracts could be granted, our audit revealed that, in one or more pieces of correspondence with contractors, all of the boroughs mention that, in accordance with the two orders in council, they require a list of their subcontractors, the list of subcontracts valued at \$25,000 or more and a copy of the authorizations issued by the AMF to the subcontractors granted a subcontract covered by these orders in council. The various pieces of correspondence used include the letter confirming the awarding of the contract, the letter authorizing work to begin and the report from the project inception meeting.

However, our work showed that the reminder process lacked follow-through. We observed that these reminder mechanisms were not used for all of the contracts in the sample. Similarly, we were not always able to find specific evidence that the boroughs for all of the contracts in our sample had sought to obtain the list of subcontracts valued at \$25,000, as identified in the orders in council, or the copy of the AMF authorization for subcontractors subject to the orders in council for which a reminder had been issued by the borough. Furthermore, although the use of the letter authorizing work to begin and the report from the project

²⁶ 96 construction contracts (O.C. 1049-2013) and 17 service contracts (O.C. 795-2014).

inception meeting to remind contractors of their obligations is acceptable, we believe that the process should be initiated long before work is under way. In this regard, the *Act Respecting Contracting by Public Bodies*²⁷ clearly states that contractors must forward to the City the aforementioned information before performance of the contract begins, as well as a modified list while a contract is in process when they enter into a subcontract.

As a result, based on the contracts in our sample, our audit subsequently entailed examining the extent to which the list of information required of contractors, either under the law or via provisions in the tendering documents, had been obtained by the boroughs. We questioned how subcontractors' compliance with the orders in council had been checked.

Excluding contracts for which we had information confirming that there were no subcontractors involved, our audit revealed that the lists containing the information required under the law were not systematically obtained for the contracts we examined.

In addition, we observed that, in all of the boroughs, when these lists were sent, they did not always contain the required information, particularly as it pertains to the amount of the subcontract and the date it was entered into.

Regarding subcontractors' authorization to enter into public contracts, as issued by the AMF, our investigation did not always turn up evidence that the boroughs had confirmed subcontractors' compliance with the applicable orders in council. For example, in several of the contracts in our sample, we found written declarations of contracts²⁸ submitted to boroughs by subcontractors. In these declarations, the subcontractors inform the borough that they have obtained a subcontract from the contractor to which the borough has awarded a contract. Generally speaking, the declarations we examined stipulated the amount of the work, the description of the work performed and the date the contract was entered into. However, not all of the declarations we examined contained this information, especially when it came to the amount of the subcontract. Furthermore, the examination of these declarations led us to the following conclusions:

- The subcontract-related declarations found for one contract were not consistent with the list of subcontractors on file for this same contract;

²⁷ CQRL, Chapter C-65.1.

²⁸ The purpose of this written declaration is to allow owners to make sure that, prior to finalizing the contract payment, subcontractors that have filed such a declaration have been paid by the intermediary that requested the work to be performed.

- Declarations for subcontracts valued at more than \$25,000 involved construction, services and the supply of bituminous compounds. However, we found no evidence that these subcontractors obtained AMF authorization;
- For one contract, we found the subcontractor declarations but no list of subcontractors.

The fact that we were not able to track down the lists of subcontractors, or written confirmation that no subcontractors had been used, for all of the contracts in our sample casts doubt on whether both orders in council were fully complied with.

In our opinion, it is essential to implement follow-up mechanisms to ensure lists of subcontractors containing the information required under the law are received in order to confirm that said subcontractors are in compliance with the orders in council. Mechanisms of this nature could also be used to indicate non-adherence to the law in instances where the list of subcontractors has not been sent to the borough as required. These mechanisms may also be useful as evidence should a borough wish to make use of the remedies set out in the contract (default clauses) with regard to the requirements related to this information.

In this respect, we observed during the course of the audit that only a few boroughs use logs to track various pieces of information required under the law, namely Ahuntsic-Cartierville, Pierrefonds-Roxboro, Rivière-des-Prairies–Pointe-aux-Trembles and Verdun.

Despite everything, although we believe that this follow-up mechanism represents an effective management practice, we have yet to locate evidence that it has been used for all of the contracts in our sample in the four boroughs we audited. Likewise, the documents we did find and examine did not necessarily include all of the information required to carry out an exhaustive check to ensure adherence to the law and subcontractors' compliance with the orders in council. Specifically missing are the date the list of subcontractors was received, the amount of the work, the date the subcontract was entered into, the name and address of the subcontractor's principal establishment and a description of the work performed.

4.1.3.B. Recommendation

We recommend that all of the City's boroughs use a mechanism to remind winning bidders to respect their obligations under the law and submit all required information concerning subcontractors in order to ensure all subcontractors are in compliance with the orders in council.

4.1.3.C. Recommendation

We recommend that all of the City's boroughs make the appropriate arrangements to implement and use a follow-up mechanism to track the actual receipt of all information required of the winning bidder under the law in order to justify the use of default clauses when necessary.

4.2. Information Conveyed Prior to the Awarding of a Contract

4.2.A. Background and Findings

Prior to awarding a contract, a file must be established to allow the appropriate managers and elected officials, as applicable, to make an enlightened decision. To achieve this, the managers involved in the decision-making process and elected officials must be properly informed to ensure that all of the necessary checks to ensure compliance with applicable laws, regulations, by-laws and orders in council have been performed in advance.

The decision-making process at the City is supported by a computer application commonly known as the GDD (decision-making record management system), which stores the records to be submitted to various authorities (BC, EC, CC or UAC) for approval. These records are in the form of a decision-making summary, in which a range of information is entered and to which the relevant documents can be attached to assist in sound decision-making.

Following the adoption of O.C. 1049-2013 and O.C. 795-2014, the City's Service du greffe issued a notice²⁹ in January 2014 to all of the City's business units concerning the nature of the information to be included in decision-making summaries to enable the central authorities (EC, CC and UAC) to award contracts. This notice was issued as a complement to the information already contained in the various guides to developing decision-making records prepared by the Service du greffe and the Direction générale. The notice mentions that EC members expect decision-making summaries related to contract awarding to contain information on whether or not the contracts are subject to the *Integrity in Public Contracts Act*³⁰ or an O.C. adopted under this act. The decision-making summary must therefore confirm whether bidders comply with the AMF authorization requirement, when applicable, or indicate that the contract is not subject to this authorization.

²⁹ Notice No. 587, Ville de Montréal, January 20, 2014.

³⁰ SQ, 2012, Chapter 25.

Moreover, in October 2015, the Direction générale of the Ville de Montréal updated its guide (*Octroyer un contrat*³¹) on the content and layout of decision-making records. This guide is available to all personnel through the City's intranet portal. It indicates that, when a decision-making summary is being prepared for a contract, the date a bidder received AMF authorization must be entered in the "Justification" section of the decision-making summary, with a copy attached. This applies to all contracts subject to the *Integrity in Public Contracts Act*. The guide also stipulates that, for all contracts not subject to the *Integrity in Public Contracts Act*, the decision-making summary should explicitly indicate that the enterprise does not hold this authorization. However, if the winning bidder holds this authorization even when not required, this should still be included in the decision-making summary. Note that these information requirements were already outlined in the previous version of the guide dated August 2014³² and that part of this information, specifically as concerns the date authorization was issued and the requirement to attach a copy of the authorization to the decision-making summary, was already included in the November 2013 version of the guide.³³

Finally, while consulting the documents made available to all City personnel via the GDD application, we learned of two documents issued by the Service des affaires juridiques concerning the *Integrity in Public Contracts Act*,³⁴ one dated March 27, 2013, and the other December 2, 2014. In both, the recommendation is to attach, when required, a copy of the AMF authorization to the decision-making summary to confirm to the relevant authorities during the contract-awarding process that the recommended bidder holds a valid AMF authorization. As the reader may recall, AMF authorization remains valid for three years.

In light of this information, we must conclude that efforts have been made to raise awareness among the City's business units about the importance of providing decision-making authorities with all of the relevant information concerning the application of the orders in council during the contract-awarding process and, as required, confirmation that a contractor holds a valid authorization from the AMF to enter into public contracts. This information is essential for managers and elected officials. Recording the date of AMF authorization in the decision-making summary, attaching a copy of the authorization obtained from the contractor or indicating that the contract is not subject to the O.C. pursuant to its rules and that the bidder is not required to obtain this authorization for the contract all help reassure decision-

³¹ See *Éléments de contenu et de présentation des dossiers décisionnels : Guide spécifique : octroyer un contrat*. Direction générale, Ville de Montréal, October 2015.

³² *Éléments de contenu et de présentation des dossiers décisionnels : Guide spécifique : octroyer un contrat*. Direction générale, Ville de Montréal, August 2014.

³³ *Éléments de contenu et de présentation des dossiers décisionnels : Guide spécifique : octroyer un contrat*. Direction du greffe, Ville de Montréal, November 2013.

³⁴ SQ, 2012, Chapter 25.

making authorities that the process is compliant and thus assist them in making informed decisions.

That said, regarding the application of O.C. 1049-2013 and O.C. 795-2014, our audit consisted in examining the nature of the information contained in the decision-making summaries and the supporting documentation for all 191 contracts in the sample in each of the City's 19 boroughs (see Appendices 6.1 and 6.2). More specifically, the focus of our examination of the decision-making summaries was on locating the following:

- Confirmation of the date the winning bidder received AMF authorization to enter into public contracts;
- Inclusion of the AMF authorization as an attachment to the decision-making summary;
- Any evidence of confirmation that the contract is not subject to the *Integrity in Public Contracts Act*³⁵ and that the contractor is not bound to obtain this authorization for the contract in question.

- **Construction contracts (O.C. 1049-2013³⁶)** (see Appendix 6.1)

For the 174 construction contracts we audited, we ascertained that only the boroughs of L'Île-Bizard–Sainte-Geneviève and Montréal-Nord provided all of the information required in 100% of the decision-making summaries related to the selected contracts, namely the date of the AMF authorization along with an attached copy or a mention that the contractor was not required to obtain this authorization.

In the other boroughs, we observed that practices vary and that the information required for decision-making summaries is sometimes lacking. Specific observations are as follows:

- Although the process requires further improvement, the decision-making summaries examined in the three boroughs mentioned below contained, for the most part, the required information concerning the date of the AMF authorization and the inclusion of this authorization in the attachments:
 - Ø Côte-des-Neiges–Notre-Dame-de-Grâce borough (78%);
 - Ø Le Plateau-Mont-Royal borough (83%);
 - Ø Pierrefonds-Roxboro borough (93%);
- Ahuntsic-Cartierville borough indicated the date of AMF authorization 85% of the time in its decision-making summaries, but attached a copy of this authorization only 15% of the time. In comparison, Le Sud-Ouest borough mentioned the date of the AMF

³⁵ SQ, 2012, Chapter 25.

³⁶ This O.C. applies to contracts related to the construction, reconstruction, demolition, repair or renovation of roads, waterworks and sewer services involving an expenditure equal to or greater than \$100,000.

authorization 88% of the time, but included this authorization as an attachment to the decision-making summary every time;

- The boroughs of Lachine (75%) and Mercier–Hochelaga-Maisonneuve (100%) tended to include the AMF authorization in the attachments without mentioning it in the body of the decision-making summary;
- As for the 10 other boroughs³⁷ audited, our investigation revealed that the required information concerning evidence of AMF authorization to enter into public contracts was included less frequently (60% and lower) in decision-making summaries. We also determined that the Villeray–Saint-Michel–Parc-Extension borough provides no information of this nature in its decision-making summary.

It is our view that the inclusion in the decision-making summary of a copy of the AMF authorization to enter into public contracts, as well as the date it was granted, is necessary to enable managers and elected officials to make informed decisions. This is all the more important considering that, according to our examination of the selected files, in nearly all of the cases (93%), AMF authorization was obtained when bids were submitted. The inclusion of this information in the decision-making summary, on one hand, confirmed the existence of this approval process to the powers that be and, on the other hand, corroborated the validity of the authorization requirement in the contract-awarding process.

On a related topic, of all of the construction contracts selected for examination (O.C. 1049-2013), 23% (40/174, see Appendix 6.1) were the subject of a decision-making summary prepared for the most part by borough personnel for approval by central authorities (EC, CC and UAC). Our audit revealed that 80% of these decision-making summaries (32/40) contained the expected information vis-à-vis AMF authorization. A copy of this authorization was found in decision-making summary attachments 93% of the time.

The decision-making summaries prepared by the boroughs for approval by their respective BCs represented 77% (134/174) of the sample we focused on. Our audit revealed that only 34% (45/134, see Appendix 6.1) of these decision-making summaries included the requisite information regarding the date of the AMF authorization. As for the copy of the authorization that is supposed to be attached to the decision-making summary, even after excluding the decision-making summaries for contracts that were not subject to a specific act or O.C., 45% of the summaries were missing a copy of the respective AMF authorization.

In conclusion, it would appear that the decision-making summaries prepared for contracts awarded by a central authority (EC, CC or UAC) possess more comprehensive information

³⁷ Anjou, LaSalle, Outremont, Rivière-des-Prairies–Pointe-aux-Trembles, Rosemont–La Petite-Patrie, Saint-Laurent, Saint-Léonard, Verdun, Ville-Marie and Villeray–Saint-Michel–Parc-Extension.

with regard to AMF authorization than do the summaries prepared for BCs. We nevertheless feel that the BCs are entitled to the same level of information to help them in making their decisions.

- **Service contracts (O.C. 795-2014³⁸)** (see Appendix 6.2)

As pertains to O.C. 795-2014, a smaller number of contracts (17) was examined because of the shorter timeframe and nature of the contracts (services). As illustrated in Appendix 6.2, the service contracts we documented were limited to nine boroughs, namely Ahuntsic-Cartierville, Lachine, LaSalle, Le Plateau-Mont-Royal, Outremont, Pierrefonds-Roxboro, Saint-Laurent, Verdun and Villeray–Saint-Michel–Parc-Extension.

For all 17 records in our sample for the nine boroughs, the results of the audit showed that the corresponding decision-making summaries include the date of the AMF authorization only 12% of the time and that the authorization is included as an attachment only 18% of the time. And yet, as was the case for the construction contracts we audited, our efforts showed that, in a large majority of cases (71%), AMF authorization had been obtained in time for the bid submission deadline.

4.2.B. Recommendation

We recommend that, with the exception of Montréal-Nord and L'Île-Bizard–Sainte-Geneviève, the City's 17 other boroughs make the necessary arrangements to ensure that all of the decision-making summaries prepared as part of the contract-awarding process include, as stipulated in the applicable guides, all of the required information concerning the application or non-application of the orders in council in order to provide the designated authorities with the assurance that the recommended bidder complies with legislation.

The following replaces the individual responses of the business units to these recommendations and summarizes their action plans:

[TRANSLATION] Depending on the circumstances specific to their business unit, three to seven recommendations applied to each of the 19 boroughs.

As of April 7, 2016, the action plan for Le Sud-Ouest borough had not yet been received by our offices.

³⁸ This O.C. applies to service contracts related to the construction, reconstruction, demolition, repair or renovation of roads, waterworks or sewer services involving an expenditure equal to or greater than \$100,000.

Overall, the 18 boroughs that submitted their action plans indicated their agreement with the recommendations applicable to them. The action plans we received outline a series of relevant initiatives to implement these recommendations within a timeframe that does not extend beyond 2016.

The key corrective measures proposed are as follows:

- Develop checklists to ensure information in the tendering documents is consistent with information in decision-making summaries;
- Develop administrative compliance grids to determine whether or not contracts are subject to a given O.C., to ensure clauses concerning the orders in council are included in tendering documents and to verify that bidders submit a valid copy of their authorization to enter into public contracts as issued by the AMF;
- Use mechanisms to remind winning bidders to forward the required information to their subcontractors to enable the City to comply with the provisions in the orders in council;
- Include information related to AMF authorization in decision-making summaries to assist managers and elected officials with their decision-making responsibilities.

5. Conclusion

Given the laws and amendments adopted since 2010 to fight corruption at the local government level and promote integrity in the awarding of municipal contracts, it is important for all of the City's business units to take the necessary measures to ensure that the contractors they intend to deal with, and their subcontractors, comply with the new rules that have been established.

In this context, although the audit of the 19 City boroughs allowed us to determine that some measures had been taken in an effort to ensure compliance with the requirements outlined in the orders in council regarding such aspects as contractors' obligation to hold an authorization from the Autorité des marchés financiers (AMF) to enter into public contracts, it is clear that additional efforts must be made to reinforce the integrity and compliance of the process.

We ascertained that it can be difficult to tell if the orders in council apply to the work associated with a given contract. Our audit shed light on the fact that there can be a lack of consistency in the information that appears in the tendering documents, the details posted to Système électronique d'appel d'offres (SÉAO) and the content of the decision-making summaries. It also seems that interpreting and applying the orders in council can be problematic for certain types of contracts (e.g., contracts for road marking and signage). These situations inevitably result in confusion, which may mislead potential bidders or increase the chances of a contract being awarded to a non-compliant bidder. We therefore

believe that developing and distributing a guide to aid in the interpretation and application of the orders in council would support the business units in mitigating risks of this nature.

With regard to compliance with applicable orders in council by subcontractors retained by winning bidders, our audit revealed that clauses in the various tendering documents are not consistent on a City-wide basis. As a result, subcontractors may not be required to provide information that would make it possible to achieve the desired outcomes. Accordingly, we feel that various measures must be taken to promote compliance with the orders in council and consistency among the tendering documents used by the City's business units.

At the same time, our audit highlighted that mechanisms to remind contractors of their obligations and to follow up on the documents received have not systematically been implemented and adopted by each of the boroughs in order to check that the subcontractors selected to execute various subcontracts (e.g., a list of subcontractors for each contract, including the information required by law). And yet these mechanisms could prove useful in the event a borough wishes to invoke a default clause, as the risk of non-compliance is quite real and can have a significant impact on the way contracts are managed and how efficiently and effectively work proceeds.

Finally, we observed that actions have been taken to make a guide available to all of the City's business units and to issue notices indicating the nature of information to be submitted to the authorities in decision-making summaries to confirm the recommended bidder's compliance with the law. We nevertheless believe that the situation should be re-evaluated at a later date, since our work showed that managers and elected officials in the boroughs do not have access to all the information required to make informed decisions, whereas the managers and elected officials in the central authorities (EC, CC and urban agglomeration council [UAC]) do.

6. Appendices

6.1. Analysis of a Sample of Construction Contracts on a Borough-by-Borough Basis – O.C. 1049-2013 (January 1, 2014 to August 31, 2015)

Table A – Construction Contracts

Borough	Number of decision-making summaries examined by criterion	Criterion 1 Mechanisms to ensure authorization is obtained when bids are submitted			Criterion 2 Mechanisms to inform managers and elected officials prior to awarding a contract	
		Clauses in tendering documents that require proof of authorization to be submitted with bid Clauses up to date ³⁹	Mechanisms to evaluate bid compliance (AMF)	Copy of valid authorization submitted with bid	Information in the GDD system mentioning the date of the authorization or indicating that the enterprise is not required to obtain authorization	AMF authorization attached to the decision-making summary (GDD system)
Ahuntsic-Cartierville	Criterion 1: 7 Criterion 2: 13	100% 7/7 Not up to date (3) ⁴⁰	7/7 100%	7/7 100%	11/13 85%	2/13 15%
Anjou	Criterion 1: 4 Criterion 2: 8	4/4 100% Not up to date (2)	2/4 50%	2/4 50%	0/8 0%	3/8 38%
Côte-des-Neiges–Notre-Dame-de-Grâce	Criterion 1: 5 Criterion 2: 9	5/5 100% Up to date	5/5 100%	5/5 100%	7/9 78%	7/9 78%
Lachine	Criterion 1: 6 Criterion 2: 12	6/6 100% Not up to date (2)	5/6 83%	5/6 83%	0/12 0%	9/12 75%
LaSalle	Criterion 1: 7 Criterion 2: 14	6/7 86% Not up to date (2)	7/7 100%	6/7 86%	5/14 36%	2/14 14%
L'Île-Bizard–Sainte-Geneviève	Criterion 1: 4 Criterion 2: 4	4/4 100% Up to date	3/4 75%	4/4 100%	4/4 100%	4/4 100%
Mercier–Hochelega-Maisonneuve	Criterion 1: 4 Criterion 2: 8	4/4 100% Not up to date (2)	1/4 25%	4/4 100%	0/8 0%	8/8 100%
Montréal-Nord	Criterion 1: 5 Criterion 2: 9	5/5 100% Up to date	3/5 60%	5/5 100%	9/9 100%	9/9 100%
Outremont	Criterion 1: 3 Criterion 2: 3	3/3 100% Not up to date (1)	2/3 67%	3/3 100%	0/3 0%	1/3 33%

³⁹ Tendering documents for which the call for tenders was issued after September 24, 2014, must include the most recent sample clauses to take into account additions made to O.C. 795-2014 concerning service subcontracts and subcontracts for bituminous compounds used in construction contracts.

⁴⁰ Number of contracts for which the tendering documents are not up to date (do not contain recent sample clauses).

Table A – Construction Contracts (continued)

Borough	Number of decision-making summaries examined by criterion	Criterion 1 Mechanisms to ensure authorization is obtained when bids are submitted			Criterion 2 Mechanisms to inform managers and elected officials prior to awarding a contract	
		Clauses in tendering documents that require proof of authorization to be submitted with bid	Mechanisms to evaluate bid compliance (AMF)	Copy of valid authorization submitted with bid	Information in the GDD system mentioning the date of the authorization or indicating that the enterprise is not required to obtain authorization	AMF authorization attached to the decision-making summary (GDD system)
Pierrefonds-Roxboro	Criterion 1: 8 Criterion 2: 15	8/8 100% Not up to date (4)	0/8 0%	8/8 100%	14/15 93%	14/15 93%
Le Plateau-Mont-Royal	Criterion 1: 3 Criterion 2: 6	3/3 100% Not up to date (1)	2/3 67%	3/3 100%	5/6 83%	5/6 83%
Rivière-des-Prairies–Pointe-aux-Trembles	Criterion 1: 7 Criterion 2: 13	7/7 100% Up to date	0/7 0%	7/7 100%	7/13 54%	6/13 46%
Rosemont–La Petite-Patrie	Criterion 1: 4 Criterion 2: 7	4/4 100% Not up to date (3)	3/4 75%	3/4 75%	0/7 0%	1/7 14%
Saint-Laurent	Criterion 1: 7 Criterion 2: 13	6/7 86% Not up to date (2)	0/7 0%	6/7 86%	1/13 8%	5/13 38%
Saint-Léonard	Criterion 1: 3 Criterion 2: 7	3/3 100% Up to date	3/3 100%	3/3 100%	0/7 0%	0/7 0%
Le Sud-Ouest	Criterion 1: 4 Criterion 2: 8	4/4 100% Not up to date (2)	2/4 50%	4/4 100%	7/8 88%	8/8 100%
Verdun	Criterion 1: 6 Criterion 2: 11	6/6 100% Not up to date (4)	1/6 17%	5/6 83%	5/11 45%	4/11 36%
Ville-Marie	Criterion 1: 5 Criterion 2: 10	5/5 100% Not up to date (2)	1/5 20%	5/5 100%	2/10 20%	6/10 60%
Villeray–Saint-Michel–Parc-Extension	Criterion 1: 4 Criterion 2: 4	4/4 100% Not up to date (3)	1/4 25%	4/4 100%	0/4 0%	0/4 0%
TOTAL	Criterion 1: 96 Criterion 2: 174	94/96 98%	48/96 50%	89/96 93%	77/174 44%	94/174 54%
Decision-making summaries prepared by the boroughs for the central authorities	40	40/174 23%			32/40 80% Central: 40 (for 32, the date is included)	37/40 93% 37 joint authorizations
Decision-making summaries for boroughs	134	134/174 77%			77 - 32 = 45 45/134 34%	134 - 8 = 126 57 joint authorizations 57/26 45%
TOTAL	174	100%				

6.2. Analysis of a Sample of Service Contracts on a Borough-by-Borough Basis – O.C. 795-2014 (October 1, 2014 to August 31, 2015)

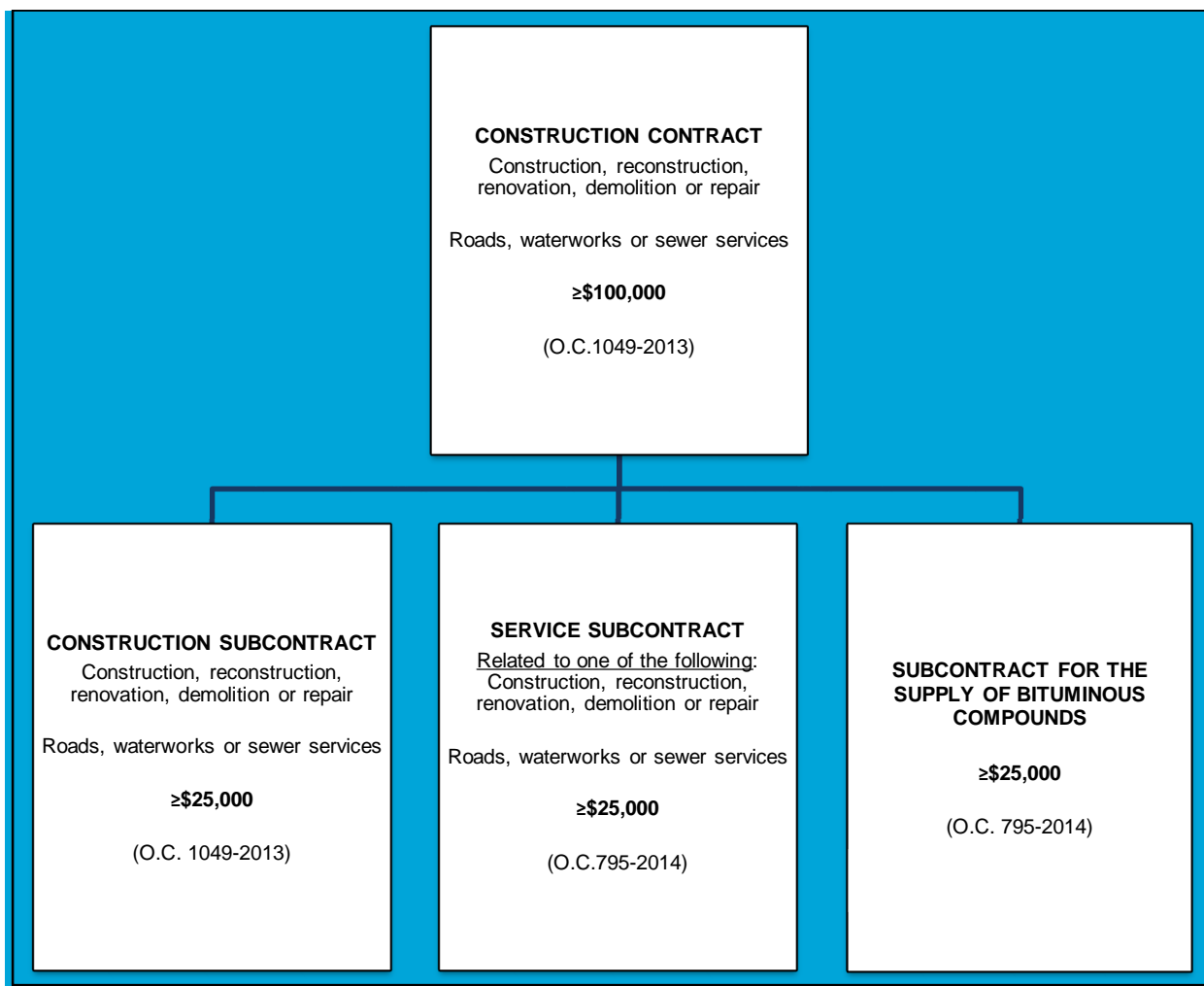
Table B – Service Contracts

Borough	Number of decision-making summaries examined according to two criteria	Criterion 1 Mechanisms to ensure authorization is obtained when bids are submitted			Criterion 2 Mechanisms to inform managers and elected officials prior to awarding contracts	
		Clauses in tendering documents that require proof of authorization to be submitted with bid	Mechanisms to evaluate bid compliance with AMF	Copy of valid authorization obtained with bid	Information in the GDD system mentioning the date of authorization or indicating that the firm did not obtain authorization	AMF authorization attached to the decision-making summary (GDD system)
Ahuntsic-Cartierville	2	2/2 100%	0/2 0%	2/2 100%	0/2 0%	0/2 0%
Lachine	1	1/1 100%	0/1 0%	1/1 100%	0/1 0%	1/1 100%
LaSalle	2	1/2 50%	2/2 100%	1/2 50%	1/2 50%	0/2 0%
Outremont	1	1/1 100%	1/1 100%	1/1 100%	0/1 0%	0/1 0%
Pierrefonds-Roxboro	1	1/1 100%	0/1 0%	1/1 100%	0/1 0%	0/1 0%
Le Plateau-Mont-Royal	2	1/2 50%	0/2 0%	1/2 50%	1/2 50%	1/2 50%
Saint-Laurent	4	3/4 75%	0/4 0%	4/4 100%	0/4 0%	1/4 25%
Verdun	2	0/2 0%	0/2 0%	0/2 0%	0/2 0%	0/2 0%
Villeray–Saint-Michel–Parc-Extension	2	0/2 0%	0/2 0%	1/2 50%	0/2 0%	0/2 0%
TOTAL	17	10/17 59%	3/17 18%	12/17 71%	2/17 12%	3/17 18%

6.3. Diagram Illustrating How Orders in Council Are Applied

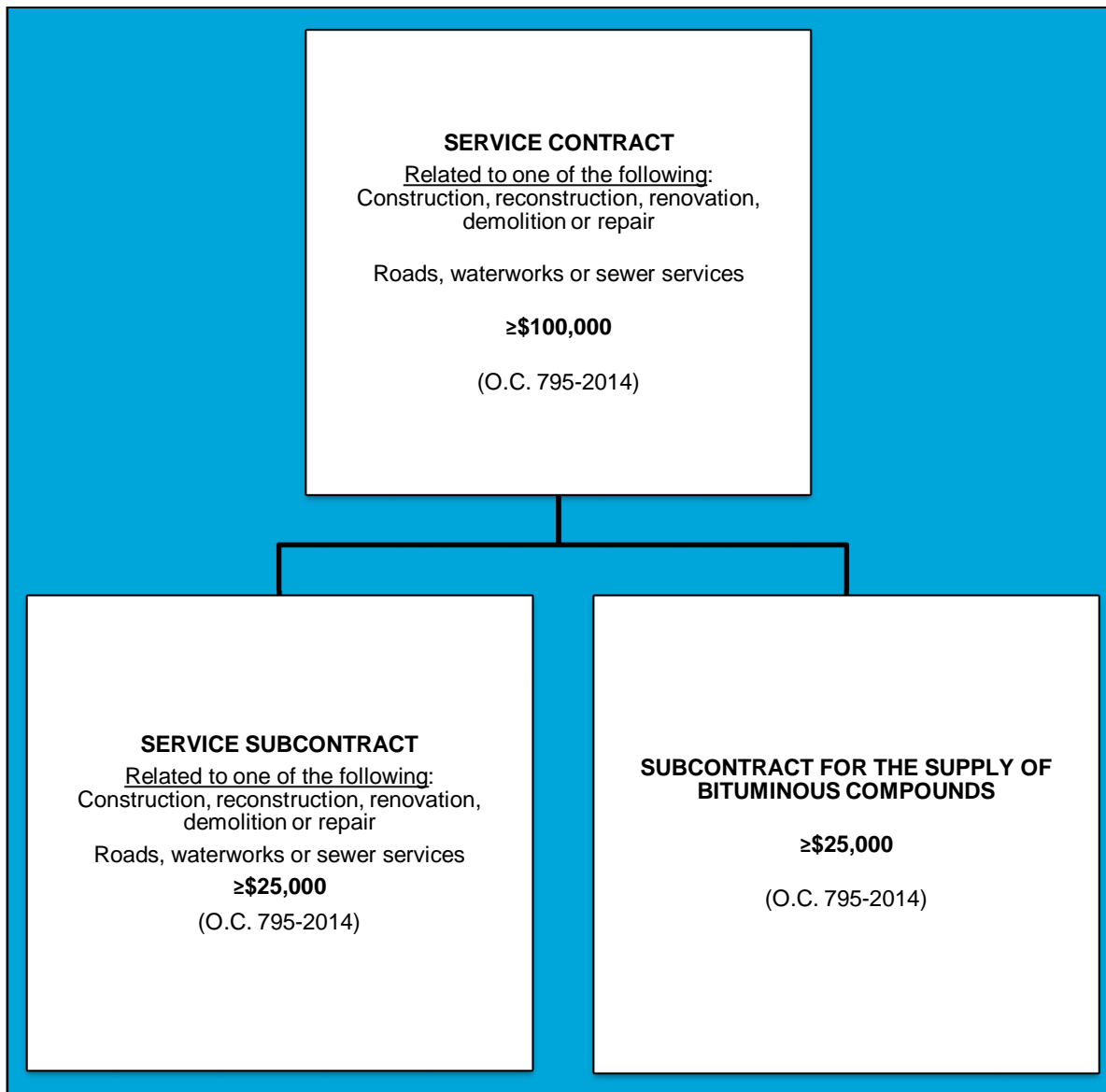
O.C. 1049-2013 and O.C. 795-2014 apply to the following contracts and subcontracts, which, within the framework of the Ville de Montréal, are subject to Chapter V.II of the *Act Respecting Contracting by Public Bodies*.

Figure A – Construction Contract



Source: Service des affaires juridiques, Ville de Montréal, 2014.

Figure B – Service Contract



Source: Service des affaires juridiques, Ville de Montréal, 2014