

# V.9. Purchase Agreement Renewals



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## **LIST OF ACRONYMS**

AIT	Agreement on Internal Trade	OQTCA	Ontario-Québec Trade and Cooperation Agreement
AQNB	Agreement on the Opening of Public Procurement for Québec and New Brunswick on Internal Trade	SCARM	Service de la concertation des arrondissements et des ressources matérielles
CTA	<i>Cities and Towns Act</i>	SEAO	electronic tendering system
MAMROT	ministère des Affaires municipales, des Régions et de l'Occupation du territoire		

## V.9. PURCHASE AGREEMENT RENEWALS

### 1. INTRODUCTION

To achieve economies of scale by pooling needs and consolidating purchases for boroughs and central departments, the Direction de l'approvisionnement, under the Ville de Montréal (the city) Service de la concertation des arrondissements et des ressources matérielles (SCARM), negotiates and manages a portfolio of 400 purchase agreements on behalf of all city business units.

These purchase agreements, contracted with suppliers following calls for tenders, involve products or services (general or professional) that may be required on an ongoing basis by several or all of the city's business units. These purchase agreements contain provisions and conditions (e.g., prearranged prices, delivery times) that apply to products or services to be ordered and generally have a term of three to five years.

The Direction de l'approvisionnement has responsibilities in all purchase agreements in effect, such as making all information on each agreement accessible via a search engine on the city's intranet, and ensuring that the information is up to date. In addition, the Direction de l'approvisionnement must ensure that the selected bidders comply with the agreements, especially where they concern invoiced prices, suitability and quality of the products provided if a product is withdrawn or modified, and set in motion the renewal process for purchase agreements in a timely manner as they expire.

### 2. AUDIT SCOPE

The purpose of the audit was to ensure that the contracting process for renewing purchase agreements for the supply of goods and services, including professional services:

- was conducted in compliance with current contracting rules and procedures
- was designed to ensure the healthy competition of all potential suppliers

and that the prices subsequently billed to city business units matched those in the agreements.

Our audit focused more particularly on purchase agreements of over \$500,000 that were in force in 2011 and for which at least three consecutive contracts were granted to the same supplier following a public call for tenders. Since these purchase agreements generally have a term of three to five years, our audit focused on agreements for which calls for tenders were issued in 2011 or earlier, during the years 2007 to 2010.

Our audit was concentrated in the Direction de l'approvisionnement. However, to substantiate the more operational aspects of preparing the tender documents of some purchase agreements or the verification of prices billed, the following business units were also approached:

- Service des affaires juridiques et de l'évaluation foncière: Section du greffe, Division du greffe de la cour municipale, under the Direction des services judiciaires
- Service du capital humain: Direction de la santé, du mieux-être, des communications et de l'administration
- SCARM: Division de la gestion du parc de véhicules of the Direction du matériel roulant et des ateliers
- Verdun borough: Division des ressources financières under the Direction d'arrondissement and the Division des immeubles, du matériel roulant et de l'approvisionnement under the Direction des travaux publics
- Outremont borough: Division des ressources financières et matérielles under the Direction des services administratifs, du greffe et des relations avec les citoyens
- Le Sud-Ouest borough: Division des ressources financières, matérielles et immobilières under the Direction des services administratifs

### **3. FINDINGS, RECOMMENDATIONS AND ACTION PLANS**

To back the conclusions we reached in this audit, we created a sample of purchase agreements from a list of about 400 purchase agreements that were in force in 2011 under the supervision of the Direction de l'approvisionnement and subjected them to more in-depth review. During our initial screening, we first identified 189 purchase

agreements out of the 400 that met our selection criteria, which specified that the contract underlying the purchase agreement concluded must be over \$500,000.

Out of these 189 purchase agreements, we then looked for those for which the underlying contract was the third (or more) consecutive one granted to the same supplier. This second screening enabled us to identify 16 purchase agreements that involved either the purchase of goods (e.g., vehicle parts, de-icing salt) or professional service requisitions (e.g., interpretation and translation services, the services of various professionals required under the employee assistance program). It should be noted from the outset that these 16 renewed purchase agreements actually arose from 12 public calls for tenders because, in some cases, the call for tenders allowed for the possibility of signing purchase agreements with more than one supplier. Thus, according to our selection criteria (e.g., three or more contracts), 1 of the 12 tender files included four purchase agreements concluded with four different suppliers, while another of the 12 calls for tenders allowed for the possibility of concluding two purchase agreements with different suppliers. Our sample therefore consists of 16 purchase agreements, each with a value of over \$500,000 and for which the supplier was awarded a renewed contract at least three consecutive times after a public call for tenders was issued (see Appendix 4.1). Since a purchase agreement generally has a term of three to five years, we noted that some of these suppliers have been the city's incumbent suppliers for close to 10 consecutive years.

It was therefore to ensure that the process of renewing purchase agreements was in compliance with principles of healthy competition, fairness and transparency that the 16 purchase agreements selected were reviewed.

### **3.1. AWARDING OF CONTRACTS FOR PURCHASE AGREEMENT RENEWALS**

Section 573 of the *Cities and Towns Act* (CTA) sets forth general rules for municipal bodies to award contracts. According to these rules, any contract for the supply of goods and services involving an expenditure of over \$100,000 may be awarded only after a public call for tenders advertised in a newspaper circulated throughout the municipality. Furthermore, the call for tenders must also be published in the electronic

tendering system (SEAO) approved by the Québec government. The minimum time granted bidders to submit their bids must not be less than 15 days. Furthermore, the bids must be opened publicly in the presence of at least two witnesses on the date and at the time and place specified in the tender notice.

Added to these general rules is the requirement to use the two-step system of bid weighting and evaluating for all professional service contracts of \$25,000 or more for which a municipal body must issue a public call for tenders or an invitation to tenders. The first step consists in evaluating the quality of the service offer according to pre-established criteria to eliminate, if applicable, tenders that did not receive a pass grade (at least 70%). The prices of the bids are not considered until the second step. A selection committee must also be formed to evaluate the tenders.

Since the contracts underlying the renewed purchase agreements in our sample were awarded consecutively three or more times to the same suppliers, we wanted to ensure that the main steps in the contract awarding process had been carried out in compliance with the applicable acts and by-laws and in such a way as not to prejudice the competitiveness of contending bidders.

We reviewed the contract awarding process of the 16 purchase agreements selected for compliance with the following:

- Choice of contract awarding method
- Creation of tender documents
- Use, where applicable, of a system of bid weighting and evaluating and prior approval of evaluation criteria by the authority in charge
- Approval of tender documents
- Publication of tender notices and compliance with the deadline for receiving tenders
- Tender opening procedure
- Compliance with the conditions for forming selection committees and individual evaluation of bids by each committee member

### 3.1.1. SELECTION OF CONTRACT AWARDING METHOD

#### 3.1.1.A. Background and Findings

As a result of our review of tender files supporting renewal of the 16 purchase agreements selected, we observed that all contracts that involve an expenditure of over \$100,000 were awarded after public calls for tenders were issued in compliance with the rules of section 573 of the CTA.

Although no irregularities were found in the contract awarding method selected, our review revealed nonetheless that some of the reference tools, which the Direction de l'approvisionnement makes accessible to all the city's business units through its intranet, were not up to date.

In fact, in consulting the Direction de l'approvisionnement intranet we found that a version of a table summarizing the contract-awarding rules, dated January 12, 2004, had been posted on it. This table, which sets out the contract-awarding rules applicable to the city, corresponds to the table prepared and updated by the Service des affaires juridiques et de l'évaluation foncière. However, the most recent version of this table at the time of our audit, which was posted in the legal database of the decision-making record management system (GDD), was dated January 11, 2011. This latest version takes into account legislative amendments that were made since 2004, especially as they pertain to exceptions to the application of the section 573 general rule (e.g., exceptions concerning contracts granted to non-profit organizations were amended).<sup>1</sup>

But reading the guide entitled *Guide de référence en matière d'octroi et de gestion de contrats de services professionnels*, accessible on the Direction de l'approvisionnement intranet, showed that some of the elements in the checklist for awarding professional services contracts are out of date. In fact, even though this guide was last updated on March 16, 2011, we noticed that the exceptions to the contract awarding method more closely resembled those that were in force in 2004, whereas the Act has been amended since then and the table summarizing the contract-awarding rules prepared by the

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<sup>1</sup> An Act to amend various legislative provisions concerning municipal affairs, LQ, 2009, chapter 26 (section 23).

Service des affaires juridiques et de l'évaluation foncière included those amendments in an update made on January 11, 2011, or before March 16, 2011. The exception that was granted for a contract with the designer of plans and specifications<sup>2</sup> was amended, for example.

To avoid any potential errors or confusion, we consider it important that all tools that the Direction de l'approvisionnement makes available to facilitate the preparation of tender documents be updated on an ongoing basis.

### 3.1.1.B. Recommendations

**We recommend that the Direction de l'approvisionnement take the necessary steps to ensure that reference tools used for awarding contracts that are distributed to all city business units and are accessible via the city's intranet be updated continually to avoid any potential confusion or errors on the part of business units that might use them as a model.**

### 3.1.1.C. Action Plan of the Relevant Business Unit

*[TRANSLATION] “A steering committee was set up in 2010 to manage and organize the flow of information published on the intranet. This objective of this committee is to make the intranet a reliable, up-to-date management and information-sharing tool.*

*The task of restructuring the ‘procurement’ function, along with the many challenges that this entailed, meant that throughout 2011 the committee’s time was spent on other issues.*

*The first step to update the intranet will be to revive this committee’s activities, taking into account the Direction de l'approvisionnement’s current issues. Once the committee is back in action, its members will be able to discuss what action to take, what people will be in charge of each action and create a project calendar. (**Planned completion: April 2012**)*

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<sup>2</sup> An Act to amend the Act respecting the Régie du logement and various Acts concerning municipal affairs, LQ, 2010, chapter 42 (section 4).

*All the documents have been revised and classified according to whether they need to be removed, updated or maintained, and an action plan for the work and follow-up will be proposed.” (Planned completion: September 2012)*

### 3.1.2. CREATION OF TENDER DOCUMENTS

#### 3.1.2.1. BID FORM

##### 3.1.2.1.A. Background and Findings

Of necessity, the contract awarding process involves the preparation of a tender file, which includes several documents, including the bid form, technical specifications, specific and general provisions, instructions to bidders, additional information and *addenda*, if applicable. Particular attention must be given when these documents are prepared so that the process will allow the city to benefit from the lowest prices possible while ensuring that all bidders are treated fairly and transparently by providing them all with the same information on a timely basis.

In this step, since the 16 purchase agreements in our sample were granted at least three consecutive times to the same supplier, the criterion that guided our review of the files was obtaining reasonable assurance that the 12 tender document files that formed the basis of these 16 purchase agreements facilitated healthy competition among bidders. During our review, tender documents for two agreements were of particular concern to us because they pointed to areas of greater weakness in the fairness and transparency of the contract awarding process.

One of these purchase agreements, which is for tender 07-10559, concerns a call for tenders for legal interpretation and translation services for the Montréal Municipal Court. The successful bidder has also been the city's incumbent supplier for this type of service agreement since 2003. During these years, this supplier obtained three consecutive contracts with terms varying from one and a half to five years. The last contract that it obtained, under the agreement in force, has a five-year term. However, according to the information compiled, this same supplier also obtained at least three

consecutive contracts during the 1990s for the same interpretation services at the Montréal Municipal Court.

At the time the contract was awarded (2007) the management of interpretation needs was under the Direction des affaires pénales et criminelles<sup>3</sup> of the Service des affaires corporatives. The Municipal Court makes use of interpretation services mainly for legal proceedings. Under the Québec and Canadian Charters of Rights, the Municipal Court must offer such interpretation services.

During this call for tenders, two bidders submitted bids. According to the instructions given to bidders, the contract was to be granted to the firm that submitted the bid that obtained the highest final score.

We note that the bid form provides an estimate of the number of days and sessions per year for interpretation services, as well as an estimate of the number of words per year for legal translation services.

The estimated number of days is for the presence of English- and French-language interpreters in the course of the year based on the judicial calendar, current and summer season. The bidder must specify on the form both a unit price per day and an overall price. These two sections of the bid form are based on the judicial year in which the Municipal Court is open (about 250 days). There are two sections on the bid form for the sessions. The first section concerns the presence of an interpreter (all language combinations), who is asked to appear with more than 24 hours' notice, a situation described as a "regular service request." The second section concerns the presence of an interpreter with less than 24 hours' notice, a situation described as an "urgent request." According to the technical specifications and those interviewed at the Direction des services judiciaires, a session is roughly the equivalent of half a day. The schedule is therefore established on the basis of two sessions per day. Finally, the last section of the form provides an estimate of the number of words per year for translating documents.

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<sup>3</sup> Management of interpretation and translation needs is now under the purview of the Service des affaires juridiques et de l'évaluation foncière.

In the light of information from those interviewed and analyses of documents we received, we were unable to determine the exact source of the data used to prepare the bid form, either for the number of sessions at which an interpreter must be present (regular and urgent requests) or with respect to the number of words per year for translation. In fact, while the people we met with at the Direction des services judiciaires presented us with tables illustrating data on summonses requested for the years 2006 to 2011 (statistics on notices issued to translators), this information does not in any way make it possible to substantiate the data used to prepare the bid form. According to those we interviewed, the data on the form are based on an estimate, even a calculation. However, no supporting document could be found for the data used to prepare the bid form. The people we met with claim that they received no recommendation from the Direction de l'approvisionnement, whose representatives are nevertheless involved with the preparation of the bid form. A Direction de l'approvisionnement manager we met with mentioned that when its employees prepare a bid form, they tend to obtain the most reliable data possible, consulting as much as they can with the people responsible for the file in the requesting business units.

Under the circumstances, we were not able to obtain assurance that the data entered in the bid form had been established on the basis of actual activities compiled on a historical basis. Yet, in our view, the data used to prepare bid forms should either be the most representative of the actual activities carried out previously for those types of services, or they should take into account changes that will have to be made based on foreseeable needs. In our opinion, it is the city's responsibility as a work provider to ensure that tender documents include all the information that bidders will find useful and necessary in order to be able to properly assess the scope of the work to be done so that they can then determine and submit a fair price. But such a situation casts an element of doubt when the current bidder, which also won the contract at previous purchase agreements renewals, may have had a certain advantage over his competitor (one other bidder). In fact, based on his knowledge of the actual historical needs of the Municipal Court, this bidder was able to compare the data on the bid form with his own statistics (e.g., the number of current sessions and the number of urgent sessions) and adjust his quotation accordingly. For this reason, we believe that special attention

should be devoted to the preparation of the bid form in the event that this purchase agreement is renewed.

### **3.1.2.1.B. Recommendations**

To ensure a more competitive environment for the purchase agreement renewal of legal interpretation and translation services for Montréal Municipal Court, we recommend that the Direction de l'approvisionnement, with the Direction des services judiciaires of the Service des affaires juridiques et de l'évaluation foncière, give special attention to the information entered in the bid form to ensure that the data used are based on actual activities compiled on a historical basis or that they reflect foreseeable needs.

### **3.1.2.1.C. Action Plan of the Relevant Business Unit**

- DIRECTION DE L'APPROVISIONNEMENT**

[TRANSLATION] “A joint committee (Direction de l'approvisionnement and Service des affaires juridiques et de l'évaluation foncière) was set up to compile data on and analyze historical interpretation and translation needs.” (**Planned completion: September 2012**)

- SERVICE DES AFFAIRES JURIDIQUES ET DE L’ÉVALUATION FONCIÈRE**

[TRANSLATION] “The current agreement providing the professional services of legal interpreters and translators that the city’s municipal court requires for its activities will expire on December 31, 2012.

Therefore, since the municipal court does not have internal expertise in this area, it will be necessary to issue a new public call for tenders in early September 2012 to contract out these professional services again.

The Direction des services judiciaires will take into account and follow up on the Auditor General’s recommendation when it prepares the specifications and documents associated with this call for tenders.” (**Planned completion: September 2012, at the time of the next public call for tenders**)

### 3.1.2.2. ADDENDA

#### 3.1.2.2.A. Background and Findings

When an important change occurs that affects the information or requirements in the tender documents, an *addendum* must be produced before the tenders are opened. These amendments then become an integral part of the tender documents and must be sent to all bidders who have received the documents so that they can take them into account when preparing their bids.

Our review of the same call for tenders (07-10559) for the requisition of legal interpretation and translation services revealed that during the contract awarding process, the firm that ultimately obtained the contract had sent a letter to the Direction de l'approvisionnement. In its letter, this firm requested clarifications about the interpretation of two provisions of the technical specifications. A second letter that this firm sent and enclosed with the file showed that it obtained the requested clarifications verbally by speaking to a representative of the Direction de l'approvisionnement. Yet even though this firm sent written correspondence on two occasions and received the clarifications it needed in a response from Direction de l'approvisionnement staff, we noted that no *addendum* containing the content of these questions and the responses to them was prepared and sent to all firms that had taken possession of the tender documents (three parties, in all). We believe that the type of information communicated to the successful bidder may have influenced the price it submitted.

In our opinion, such a situation is prejudicial to the fairness and transparency that any contract awarding process must demonstrate and violates the principles stated in the city's procurement policy. In fact, it is possible that verbal information on interpreting special provisions that was conveyed to only one of the parties that obtained the tender documents gave it an advantage over its competitors.

While the derogation noted in tender 07-10559 (not sending an *addendum*) is clearly not part of the common practices of the Direction de l'approvisionnement, we nonetheless believe that it may be appropriate to reiterate to all staff members concerned the importance of producing and publishing an *addendum* when changes are made to the

information or requirements in a call for tenders, to ensure that the potential bidders are treated equally.

### **3.1.2.2.B. Recommendations**

We recommend that the Direction de l'approvisionnement, in accordance with the *Guide de référence en matière d'octroi et de gestion de contrats de services professionnels*, reiterate to all staff members concerned the importance of producing and publishing an *addendum* when major changes are made to the information or requirements in a call for tenders, in order to ensure that the potential bidders are treated equally.

### **3.1.2.2.C. Action Plan of the Relevant Business Unit**

[TRANSLATION] “We reviewed the number of amendments made during the tendering process as well as the average cost, and a guideline will be sent to our staff.” (**Planned completion: April 2012**)

## **3.1.2.3. INSUFFICIENT INFORMATION COMMUNICATED TO BIDDERS**

### **3.1.2.3.A. Background and Findings**

As mentioned above, our attention was also drawn to a second purchase agreement, which was also the subject of at least three consecutive contracts. This is tender 09-11085, for a purchase agreement for professional services to support the boroughs and central departments in providing an employee assistance program.

In reviewing the technical specifications, we noted that it mentions that the bidder must enclose with its bid statistical reports and table models for each central department, each borough and each accreditation or association, with a frequency described in these specifications. This section corresponds effectively to one of the criteria on which the bidders will be evaluated. The weighting for this criterion may not exceed 30%.

In Appendix 1, attached to the technical specifications, the bidders (five in this case) have access to the 2008 activity report entitled *Programme d'aide aux employés de la Ville de Montréal*, which was prepared by the city's Service du capital humain. This

report includes various statistics and other information that should enable bidders to prepare the statistical reports and table models required in the specifications. But in reviewing the information in this 2008 activity report more closely, we observed that it provides no statistics on any of the city's boroughs or central departments. This report contains only very general and summarized information on all city business units (e.g., the percentage of consulting handled by each workplace: 41.9% for the boroughs and 58.1% for the central departments). No specific statistics are given for individual boroughs or central departments. In fact, in our review of the tender documents, we noted that, apart from the bidder that won the contract, some of the bidders had difficulty satisfying the requirements of this criterion.

In our opinion, such a situation makes it difficult, if not impossible, for some bidders to produce the statistical reports requested in the technical specifications for their bids, as the requirements are very specific to the city's structure (boroughs and central departments) and no specific historical data on these different business units is provided. In short, only a bidder that has held the city contract for a few years can perfectly meet the technical specification requirements. In our opinion, the technical specifications are so specific to the city's organizational structure that it would result in calls for tenders being oriented toward a particular bidder, the one that is already the incumbent supplier and is familiar with the historical needs of the city's different business units. In short, this situation is prejudicial to the principle of healthy competition, especially in view of section 7.2 of the city's new procurement policy, adopted in October 2011, which states that: *[TRANSLATION] “Documents included in a call for tenders must be standardized and written with clarity, rigour and precision, so as to ensure transparency, fairness and the most competitive environment possible.”*

### **3.1.2.3.B. Recommendations**

**In the interest of fostering a contract awarding process that is fair to all bidders and is based on the principles of healthy competition, we recommend that the Direction de l'approvisionnement, with the Service du capital humain's Direction de la santé, du mieux-être, des communications et de l'administration ensure that tender documents for renewal of the purchase agreement for the employee**

assistance program are designed in such a way that potential bidders have all the information they need to prepare their bids.

### 3.1.2.3.C. Action Plan of the Relevant Business Unit

- **DIRECTION DE L'APPROVISIONNEMENT**

[TRANSLATION] “We have mandated our business practices department to review the templates and documents used in calls for tenders in this area and propose the necessary changes.” (**Planned completion: September 2012**)

- **SERVICE DU CAPITAL HUMAIN**

[TRANSLATION] “In order to make the contract awarding process fair for all bidders as well as comply with principles of healthy competition, very careful attention will be given to the design of technical specifications for calls for tenders, so that all the information bidders are asked to provide in the form of reports, tables and other documents is clearly defined in advance and available to everyone. Accordingly, in the interest of complying with principles of clarity, rigour and accuracy, and in order to ensure transparency, fairness and the most competitive environment possible given the city’s particular structure, each of the boroughs and central departments will be specified by name.” (**Planned completion: immediately [April 2012], because we are now in the process of writing technical specifications to renew the employee assistance program contract, which should come into force on January 1, 2013**)

## 3.1.3. USING A SYSTEM OF BID WEIGHTING AND EVALUATING AND PRIOR APPROVAL OF EVALUATION CRITERIA

### 3.1.3.A. Background and Findings

Under section 573.1.0.1.1 of the CTA, the council must use a two-step system of bid weighting and evaluating for professional services calls for tenders for contracts involving an expenditure of more than \$25,000.

To evaluate the tenders received, a selection committee made up of at least three members who are not council members must be formed. The contract is awarded to the bidder that receives the best final score. As mentioned above, the quality of a service

offer must first be evaluated according to pre-established criteria, then a score is assigned to each service offer (evaluation grid), to eliminate any bids that do not obtain a pass grade (at least 70%). This evaluation grid must be pre-approved by the appropriate authority. Only in the second step are the prices of bids considered.

For the city, it is the executive committee that has jurisdiction to approve the bid evaluation grid. Generally, this power is exercised in the context of a decision-making record, mainly when a call for tenders is authorized.

In our sample (see Appendix 4.1), 4 of the 12 tender files reviewed for purchase agreement renewals involved professional service requisitions. Our audit revealed that the contracts associated with these agreements were all awarded in compliance with section 573 of the CTA. In particular, we noted that in every case the evaluation grid had been pre-approved by the city's executive committee.

### **3.1.4. APPROVAL OF TENDER DOCUMENTS**

#### **3.1.4.A. Background and Findings**

As discussed above, a call for tenders is composed of numerous documents (e.g., technical specifications, specific provisions, bid form, instructions to bidders, additional information, statements of evaluation criteria and their definitions, in the case of professional services and an *addendum*, if applicable).

That is why it is important that the different parties concerned with the file closely monitor a call for tenders before it is issued, to ensure that document contents are accurate and that they contain nothing that is confusing or is likely to prejudice the competitive tendering of bidders. The Direction de l'approvisionnement therefore has an important role to play for the files that it handles in guaranteeing that the contract awarding process is compliant with the applicable acts and by-laws and that it treats all potential suppliers fairly and transparently.

According to information obtained from the Direction de l'approvisionnement, a procurement officer and occasionally an advisor, depending on the complexity of the

case, are appointed to collect some documents from the business unit project managers concerned (e.g., technical specifications) when necessary, and prepare the other documents under the responsibility of the Direction de l'approvisionnement (e.g., the bid form, general provisions). Once the file is considered complete, the procurement officer and the advisor, if applicable, submit the file to a Direction de l'approvisionnement manager, usually a section manager, who can then approve the tender documents and publication of the call for tenders. For this, the Direction de l'approvisionnement advocates use of a form entitled Project Report that, in its most recent version, details the main information on the contract to be awarded (e.g., purpose of the contract, contract awarding method required, tender number, name of the requestor, estimated cost of the contract). This form provides in particular fields to be approved (signed) by the manager in charge: [TRANSLATION] “Call for tenders authorized by” and [TRANSLATION] “Publication authorized by,” along with the date of approval and signature of the procurement officer, and, if applicable, the advisor assigned to the file. Such an approval form must be included in all tender files created.

As part of our audit, we wanted to confirm that the tender documents had effectively been approved by a manager in charge before they were distributed. As a result, our review of the 12 tender files supporting the renewal of 16 purchase agreements selected revealed the following facts:

- For 2 of the 12 public tender files reviewed, we found that the Project Report form enclosed with the file did not demonstrate that the tender documents were approved by a manager in charge. In our opinion, this approval is essential for the Direction de l'approvisionnement to have reasonable assurance that the market was approached in compliance with the applicable acts and by-laws and with the principles of fairness and transparency adopted by the city.
- Some fields in the form are not always completed. This is notably the case with information such as the signature of the agent or advisor responsible for the file, date of the approval and signature of the person making the entry. In short, we note that the forms are not always completed uniformly depending on staff assigned to the file.
- While the Project Report form has a field for declaring that the tender file is compliant, it does not allow the main aspects of the contract awarding process or

tender documents that were audited and approved by various parties involved with the file to be specified.

#### **3.1.4.B. Recommendations**

To obtain reasonable assurance that markets were approached in compliance with the applicable acts and by-laws and with the principles of fairness and transparency adopted by the city, we recommend that the Direction de l'approvisionnement:

- A) make the necessary arrangements to reiterate to its employees the importance of checking and approving all tender documents before a call for tenders is issued, ensuring in particular that the Project Report form is signed and dated and that all the fields in this form are completed, so as to ensure that practices are standardized;
- B) improve the presentation of the Project Report form so that it reflects the fact that approval was obtained for the main aspects of the contract awarding process or the tender documents that were checked by employees and managers assigned to the file.

#### **3.1.4.C. Action Plan of the Relevant Business Unit**

- A) [TRANSLATION] “A memo will be sent to all employees.” (**Planned completion: April 2012**)
- B) [TRANSLATION] “A reminder will be sent out regarding the Project Report form, and the files will be evaluated to ensure that they comply with standards.”

*Following this evaluation, the Project Report will be evaluated once again.”* (**Planned completion: September 2012**)

### **3.1.5. PUBLICATION OF TENDER NOTICES AND RESPECT OF TIMES ALLOWED FOR RECEIVING TENDERS**

#### **3.1.5.A. Background and Findings**

For contracts involving an expenditure of \$100,000 or more, the general rule in section 573 of the CTA is that a public call for tenders must be published in a

newspaper circulated throughout the municipality as well as in the government-approved SEAO. Furthermore, for a public call for tenders, the time allowed for receiving tenders must not be less than 15 days.

In reviewing the files created for the 12 calls for tenders for the 16 purchase agreements selected we noted that in every case, the notices were published in a newspaper and in the SEAO, in accordance with the Act. The times allowed for receiving tenders were also compliant with the applicable legal provisions.

However, in the 1990s and, more recently, in 2008 and in 2009, Québec entered into market liberalization agreements with the federal government and the provinces and territories of Canada. These agreements, which are aimed at opening markets to competition, apply to public calls for tenders issued by municipalities and municipal bodies for certain types of contracts when expenditures are above certain thresholds and must be entered in the SEAO when contracts are published. The main potentially applicable market liberalization agreements that we reviewed in relation to contracts underlying the renewal of agreements in our sample are:

- AIT: Agreement on Internal Trade, which involves all provinces and territories of Canada, applies to municipal bodies in Québec since July 1, 1999
- OQTCA: Ontario-Québec Trade and Cooperation Agreement, which took effect on October 1, 2009
- AQNB: Agreement on the Opening of Public Procurement for Québec and New Brunswick on Internal Trade, which became effective and applicable to municipalities on December 2, 2008, except for construction contracts of \$100,000 to \$250,000, which took effect for municipalities on June 30, 2009

Based on the files reviewed, we noted that the Direction de l'approvisionnement entered all applicable agreements except the AQNB in the SEAO. In fact, of the 12 tender files reviewed, the AQNB was missing for 9 of them, while the agreement was not in force when the calls for tenders for the other 3 were published. According to the information obtained from the managers we met with, it has always been current practice at the Direction de l'approvisionnement to enter the OQTCA and the AIT in the SEAO when a public call for tenders is issued. We were informed that this has been the practice since

the SEAO was put into operation on June 1, 2004 and that this was the case even before that, when the electronic tendering system known as “MERX” had to be used. It appears that the lack of entries in the SEAO for the AQNB is an omission.

In December 2011, while we were conducting our audit, the Direction de l’approvisionnement took steps to have the Service des affaires juridiques et de l’évaluation foncière approve the practice that was adopted for entering market liberalization agreements in the SEAO. In response to questions sent by email to a lawyer in this department, the Direction de l’approvisionnement was informed that no market liberalization agreement was applicable to municipalities and that, under the circumstances, the words “no agreement applicable” should be entered in the SEAO.

We were surprised by the information communicated, especially since the Ministère des Affaires municipales, des Régions et de l’Occupation du territoire (MAMROT) advances a completely different interpretation of the application of these market liberalization agreements.

In fact, on the MAMROT website, a table entitled *Régime général concernant l’octroi des contrats municipaux*, which was revised on November 8, 2011, clearly states that the abovementioned market liberalization agreements apply to municipalities and municipal bodies. A similar table can also be accessed on the Conseil du trésor website.

At the same time, the MAMROT also published on its website reports illustrating the results of audits conducted on the process that various municipalities and municipal bodies follow for awarding contracts. (Click the tab “Gestion contractuelle et éthique,” then the section “Rapports de vérification et plaintes,” followed by the subsection “Rapports de vérification.”) But in recent reports on Ville de Saint-Constant (February 2012), Ville de Saint-Jérôme (June 2011), Ville de Sainte-Anne-des-Plaines (May 2011), to name just a few, the MAMROT, citing section 573 of the CTA, states that when these municipalities issue calls for tenders, appropriate entries must be made in the SEAO for all market liberalization agreements that apply to the specific contracts. Furthermore, in all these reports, the MAMROT talks about the “application” of market

liberalization agreements to municipal affairs. The February 2012 report on Ville de Saint-Constant even refers to the Direction des affaires juridiques under MAMROT to support its position concerning the need to place checkmarks next to the appropriate agreements when entering a call for tenders in the SEAO.

The conclusion is inescapable that the information the Direction de l'approvisionnement obtained recently from the Service des affaires juridiques et de l'évaluation foncière is very confusing and leaves considerable doubt in view of MAMROT's conflicting interpretations of the applicability of market liberalization agreements to municipalities.

In our opinion, there is good reason to seek additional clarification and confirmation on the question of whether market liberalization agreements apply to the city, so as to dispel any doubts concerning the procedure to be followed when calls for tenders are published in the SEAO and so that ultimately, the process ensures that all potential suppliers are included in the competitive bid call.

### **3.1.5.B. Recommendations**

**To dispel any remaining doubts concerning the procedure to be followed for making entries in the electronic tendering system and to promote competition among all potential suppliers, we recommend that the Direction de l'approvisionnement take whatever action it considers appropriate to obtain further clarification and confirmation on the question of whether market liberalization agreements apply to the city.**

### **3.1.5.C. Action Plan of the Relevant Business Unit**

*[TRANSLATION] “In this recommendation we are being asked to oppose or dispute a legal opinion advanced by the city’s legal services. However, while we have great respect for the recommendations that are made, we do not think it is our responsibility to seek out an opinion that runs counter to the position of our legal service.*

*Our action will therefore be to communicate with the senior manager of the Service des affaires juridiques et de l'évaluation foncière regarding this recommendation.” (Planned completion: April 2012)*

### 3.1.6. TENDER OPENING PROCEDURE

#### 3.1.6.A. Background and Findings

Under section 573, paragraph 4 of the CTA, all bids received must be opened publicly in the presence of at least two witnesses.

During our audit, we found that for each of the 12 tender files reviewed, a record of the opening of tenders was written and signed by Direction du greffe employees. These records confirm that two witnesses were present when the tenders are opened.

### 3.1.7. FORMATION OF SELECTION COMMITTEES AND INDIVIDUAL EVALUATION OF TENDERS

#### 3.1.7.A. Background and Findings

For the purpose of awarding contracts for professional services, section 573.1.0.1.1 of the CTA stipulates in particular that the council must set up a selection committee composed of at least three members who are not council members, who must evaluate each tender individually without knowing its price. As mentioned in section 3.1.3, this evaluation must be carried out using an evaluation system (evaluation criteria) and weighting system pre-authorized by the city's executive committee. Furthermore, no bids must be compared with each other during the individual evaluation of bids. According to information obtained from the manager interviewed at the Direction de l'approvisionnement, the procurement officer responsible for a tender file explains to selection committee members how to evaluate bids. Subsequently, as provided for by the Politique de gestion contractuelle de la Ville (section 1.2), all committee members must sign a formal declaration attesting to their impartiality and to the absence of conflict of interest or appearance of conflict of interest prior to their deliberations.

To provide better support and guidance for the procurement process for professional services, the Direction de l'approvisionnement has also produced reference guides, including:

- *Guide de référence en matière d'octroi et de gestion de contrats de services professionnels*, March 2011

- *Guide de référence des systèmes de pondération et d'évaluation des comités de sélection et comités techniques*, March 2011

In addition to the rules set out in section 573.1.0.1.1 of the CTA, these guides provide other criteria for forming selection committees, depending on whether the value of the contract to be awarded is between \$25,000 and \$500,000 or over \$500,000. For contracts over \$500,000, such as those that make up our sample, the applicable criteria are as follows:

- When the contract involves fees of more than \$1 million, the committee must consist of a majority of managers, and one of these must be a senior manager.
- At least one manager must be from a department or borough other than the one directly concerned by the contract.
- There must be no reporting relationships among committee members.
- The project manager may not be part of the committee, even as an observer.

Depending on the city's internal procedure, once the proposed composition of the selection committee is determined, it must be approved by the associate city manager of SCARM.

It was in order to review compliance with all these criteria provided for in the CTA and the Direction de l'approvisionnement reference guides that we examined the four tender files in our sample that were related to professional services. We also reviewed another tender file from our selection for general services (other than professional services), because an optional weighting system (not required under the CTA) was used and a selection committee was formed. The results of our review reveal the following facts:

- CTA requirements regarding the number of members needed for forming a selection committee were complied with, as was the prohibition of council members from sitting on such a committee, as well as the criteria set out in reference guides produced by the Direction de l'approvisionnement.
- The analysis conducted by the Direction de l'approvisionnement to ensure compliance with all criteria provided for in the CTA and the reference guides has been documented since 2007.

- The current internal procedure to authorize the formation of the selection committee is ratified when the contract is awarded by the authority concerned.

Regarding the formal declaration that all selection committee members must sign to confirm their impartiality and the absence of any conflict of interest or the appearance of conflict of interest prior to analyzing tenders individually, we noted that the process was compliant for four of the five files reviewed, depending on whether the established procedure was in force when these calls for tenders were issued. Despite searches conducted by Direction de l'approvisionnement representatives, it proved impossible to demonstrate that a duly completed form was signed by the selection committee members for one of the files reviewed. While the document may very well have been accidentally misplaced, we still believe that it would be appropriate for the Direction de l'approvisionnement to introduce a management tool (e.g., a checklist) to ensure that all necessary supporting documents and declarations for the contract awarding process are obtained and entered in the file.

Because of a lack of supporting documents, our audit did not allow us to confirm that each tender had been individually evaluated. In fact, no written statement can be found in the files that would confirm that the operating rules in the CTA have been followed.

We believe that in the event of a legal dispute, comprehensive documentation of every aspect of a tender file could be used to prove both compliance with the applicable acts and by-laws and the impartiality of the bid evaluation process.

#### **3.1.7.B. Recommendations**

**To ensure that the tender files created for the professional (or general) service contract awarding process demonstrate compliance with the operating rules set forth in the *Cities and Towns Act* and the internal governance rules established by the city, we recommend that the Direction de l'approvisionnement:**

- **Acquire a management tool to ensure that all required documents and declarations, particularly the formal declaration that all selection committee members must sign, were obtained and entered in the file.**

- Ensure through a written declaration that the bids received were evaluated individually by the selection committee members, without knowing their prices, as set forth in the *Cities and Towns Act*.

### 3.1.7.C. Action Plan of the Relevant Business Unit

[TRANSLATION] “The procedure for closing files will be reviewed. (**Planned completion: June 2012**)

*The directives issued to the selection committee will be amended, and a new form will be created for a formal declaration of compliance.*” (**Planned completion: June 2012**)

## 3.2. USE OF AGREEMENTS AND MONITORING PRICES BILLED

To determine whether the city's business units were making use of the purchase agreements and monitoring the prices billed by suppliers under these agreements, we selected 6 agreements (see Table 1) from our sample of 16. These six agreements were selected randomly, with care taken to ensure that they covered goods procurement contracts and professional service contracts.

**Table 1—Purchase Agreements Selected (6) out of the 16 in the Sample**

Tender number	Type of contract	
	Procurement of goods	Professional services
07-10322	Vehicle batteries and motor fleet equipment	
07-10559		Legal interpretation and translation services for the Municipal Court
09-11085		Support for providing boroughs and central departments with an employee assistance program
10-11423	Desktop computers, laptops and other standardized equipment	
11-11530	Asphalt	
11-11666	De-icing salt	

An audit of these more operational aspects was conducted with the following five business units:

- Service des affaires juridiques et de l'évaluation foncière: Section du greffe, of the Division du greffe de la cour municipale, under the Direction des services judiciaires
- SCARM: Division de la gestion du parc de véhicules of the Direction du matériel roulant et des ateliers
- Verdun borough: Division des ressources financières under the Direction d'arrondissement and the Division des immeubles, du matériel roulant et de l'approvisionnement under the Direction des travaux publics
- Outremont borough: Division des ressources financières et matérielles under the Direction des services administratifs, du greffe et des relations avec les citoyens
- Le Sud-Ouest borough: Division des ressources financières, matérielles et immobilières under the Direction des services administratifs

### **3.2.1. BUSINESS UNIT USE OF PURCHASE AGREEMENTS**

#### **3.2.1.A. Background and Findings**

The city encourages pooling needs to obtain the necessary goods and services. By concluding purchase agreements on behalf of all business units, the city promotes continuity and ease of supply while helping everyone concerned obtain the best prices and ultimately help achieve economies of scale. Moreover, under section 7.2 of the city's new procurement policy (adopted in October 2011): *[TRANSLATION] “All units are required to use the framework agreements for fairness towards bidders, controlling the growth of costs in the next call for tenders and the city’s credibility with markets.”* The Direction de l'approvisionnement is the administrative unit appointed to approach markets and conclude purchase agreements with compliant suppliers. Boroughs and central departments must avail themselves of these agreements when they purchase common goods and services that are necessary for their operations.

We wanted to enquire about the extent to which the business units covered by the six agreements selected for this portion of our audit made use of the agreements for purchases needed for current operations.

Our audit revealed that the business units used the purchase agreements that we selected for our audit, except for Verdun and Outremont boroughs, which did not use some of them. In fact, we noted that these two boroughs do not use the purchase agreement for batteries for motor fleet vehicles and equipment (call for tenders 07-10322) and that the Verdun borough does not make use of the agreement for the acquisition of desktop computers, laptops and other standard equipment (call for tenders 10-11423). These business units purchase instead from suppliers with which no collective purchase agreement was concluded. According to the information obtained from individuals contacted in these two boroughs, a lack of knowledge of the purchase agreements negotiated by the city could account for this situation.

Following our intervention, a representative of the Verdun borough informed us that he had compared an outside supplier's prices for motor fleet vehicle and equipment batteries with those in the city's purchase agreement. The comparison revealed that 78 batteries purchased in 2011 from an outside supplier cost the borough \$2,576.94 (26%) more than if batteries of the same type had been acquired under the city's existing purchase agreement. Use of the purchase agreement would therefore have generated savings.

We obtained a sample of five invoices for purchases the Outremont borough made from an outside supplier, also for motor fleet vehicle and equipment batteries. But our review of these invoices revealed that one of them was for a product similar to products appearing in the purchase agreement. A comparison of the price paid with that of the purchase agreement revealed once again that the borough could have paid 24% less. We also noted that this supplier is located about 25 kilometres from the location of the borough's activities while the supplier that was awarded the purchase agreement is located about 8 kilometres closer to the location of this borough's activities. The two suppliers have comparable opening hours.

With respect to the purchase agreement covering the acquisition of desktop computers, laptops and other standard equipment, based on the invoices we sampled in our review at the Verdun borough, we were unable to find any products acquired that were equivalent in every way to those appearing in the agreement.

### 3.2.1.B. Recommendations

In order for the city to be able to benefit from economies of scale, we recommend that the Direction de l'approvisionnement take the necessary steps to remind all business units of the existence of the purchase agreements negotiated and the requirement of using them for the purchases of goods and services in accordance with the provisions of the city's procurement policy, adopted in October 2011.

For the same reasons, we also recommend that Verdun and Outremont boroughs reiterate to their employees the importance and the requirement of using all purchase agreements negotiated by the Direction de l'approvisionnement.

### 3.2.1.C. Action Plan of the Relevant Business Unit

- **DIRECTION DE L'APPROVISIONNEMENT**

[TRANSLATION] “We have already created a newsletter. There is also a link to these newsletters on the intranet site. A reminder will be sent to everyone to underscore the importance of reading the Info-achats newsletter.” (**Planned completion: May 2012**)

- **VERDUN BOUROOUGH**

[TRANSLATION] “Our mechanical part and computer equipment purchasing agents were instructed to use the purchase agreements negotiated by the Direction de l'approvisionnement for products and services covered by the terms of those agreements. (**Planned completion: April 2012**)

A memo was issued to all Verdun borough employees to remind them to comply with the Montréal procurement policy that was adopted in October 2011 and to use purchase agreements negotiated by the Direction de l'approvisionnement.” (**Planned completion: April 2012**)

- **OUTREMONT BOROUGH**

[TRANSLATION] “The Direction des travaux publics manager reminded the team that they must use purchase agreements. (**Planned completion: March 2012**)

*This point in the auditor general's report was brought up by the borough director at the last meeting of the expanded steering committee. (Planned completion: April 2012)*

*A reminder of the procedures for using purchase agreements will be sent to all employees." (Planned completion: April 2012)*

### 3.2.2. MONITORING PRICES BILLED

#### 3.2.2.A. Background and Findings

When purchases are made under the purchase agreements, both the Direction de l'approvisionnement, as the unit responsible for managing the purchase agreements, and the business units, which use these purchase agreements to acquire goods or services, must monitor the prices billed to ensure that they correspond to the conditions for which the supplier won the contract.

To ensure that the prices subsequently billed to city business units corresponded to those in the purchase agreements, referring to the same six purchase agreements mentioned in the previous section (see Table 1), we reviewed a sample of 60 invoices distributed in the following business units:

- Service des affaires juridiques et de l'évaluation foncière: Section du greffe, of the Division du greffe de la cour municipale, under the Direction des services judiciaires (5 invoices)
- SCARM: Division de la gestion du parc de véhicules of the Direction du matériel roulant et des ateliers, which handles battery purchases for maintaining vehicles of city business units when they require its services (5 invoices)
- Verdun borough: Division des ressources financières under the Direction d'arrondissement and Division des immeubles, du matériel roulant et de l'approvisionnement under the Direction des travaux publics (14 invoices)
- Outremont borough: Division des ressources financières et matérielles of the Direction des services administratifs, du greffe et des relations avec les citoyens (20 invoices)

- Le Sud-Ouest borough: Division des ressources financières, matérielles et immobilières of the Direction des services administratifs (16 invoices)

As a consequence of our review, we found that the invoiced prices corresponded to the prices set in the purchase agreements. There were therefore no irregularities to report.

### 3.3. UPDATING PURCHASE AGREEMENT RESEARCH AND CONSULTATION TOOLS

#### 3.3.A. Background and Findings

The Direction de l'approvisionnement places two search engines at the disposal of city business units that enable users to find and consult the various purchase agreements in force. They are accessible on the Direction de l'approvisionnement intranet. One of them, Index des produits et des services, consists of an alphabetical index of products and services that can be searched using keywords (e.g., *accumulateur pour véhicules et appareils* is found under the letter “A,” *sel de déglaçage* is indexed under the letter “S”) to find a purchase agreement and its corresponding number. The other tool, called “Moteur de recherche des ententes d'achat,” can also be used to search for an agreement and consult its content (e.g., the pricelist for products or services for which the call for tenders was issued, delivery procedure). More specifically, this search engine can be used to search for an agreement by number (e.g., 408569), product or service name (e.g., *sel de déglaçage*), or supplier name (e.g., XYZ Company).

According to the information obtained from managers we met with in the Direction de l'approvisionnement, all purchase agreements entered in the alphabetical index should also be found in the search engine and vice versa. As part of our audit, we therefore tested consistency between the two existing search tools.

The tests we performed reveal that the alphabetical index includes agreements that do not exist in the search engine and vice versa. More specifically, we noted that the numbers corresponding to 35 purchase agreements appearing in the alphabetical index were nonexistent when the search engine was used. After checking with a Direction de l'approvisionnement employee, we found that the search index in question is not

necessarily up to date and that it may contain numbers that correspond to agreements that are no longer in force.

Conversely, when we used the search engine for an agreement number, we noted that 11 of the agreements that appeared could not be found in the alphabetical index. According to the explanations obtained from a manager at the Direction de l'approvisionnement, there are possible delays in the manual operation for integrating key words into the alphabetical index.

In our opinion, since close to 400 purchase agreements have been negotiated and it is therefore unlikely that a product not currently needed by the business units is not covered by one of them, this lack of harmonization between the search tools could mislead users in the city's business units who, as a result of the search tool they chose, might not find any purchase agreements negotiated for the product or service they were looking for and might seek to obtain them from another supplier. Moreover, since the city's new procurement policy (adopted in October 2011) stipulates that all the city's business units are required to use the purchase agreements, it is especially important that all search tools used to locate them be kept up to date, to avoid confusion and promote their use.

### **3.3.B. Recommendations**

**We recommend that the Direction de l'approvisionnement make the necessary arrangements so that all research and consultation tools that are used in connection with purchase agreements and are accessible via the city's intranet are kept continuously updated.**

### **3.3.C. Action Plan of the Relevant Business Unit**

*[TRANSLATION] “A steering committee was set up in 2010 to manage and organize the flow of information published in the intranet. This objective of this committee is to make the intranet a reliable, up-to-date management and information-sharing tool.*

*The task of restructuring the ‘procurement’ function, along with the many challenges that this entailed, meant that throughout 2011 the committee’s time was spent on other issues.*

*The first step to update the intranet will be to revive this committee’s activities, taking into account the Direction de l’approvisionnement’s current issues. Once the committee is back in action, its members will be able to discuss what action to take, what people will be in charge of each action and create a project calendar. (**Planned completion: April 2012**)*

*All the documents have been revised and classified according to whether they need to be removed, updated or maintained, and an action plan for the work and follow-up will be proposed.” (**Planned completion: September 2012**)*

## 4. APPENDIX

### 4.1. PURCHASE AGREEMENTS REVIEWED

**Table A—Details of the 16 Purchase Agreements in our Audit Sample**

Tender number	Number of agreements per call for tenders	Amount of agreement	Duration of agreement	Year awarded	Type of contract		
					Procurement of goods	Professional services	General services
07-10322	1	\$0.5 million	5 years	2007	Motor fleet equipment and vehicle batteries		
07-10559	1	\$1.9 million	5 years	2007		Legal interpretation and translation services provided to Municipal Court	
08-10848	1	\$2.6 million	6 years	2008		Retention of an actuarial consulting firm – group insurance	
09-10905	1	\$0.6 million	3 years	2009	Procurement of oils and lubricants for motor equipment		
09-11085	1	\$2.8 million	3 years	2009		Support provided to boroughs and central departments for an employee assistance program	
10-11246	2 (2 suppliers)	\$0.65 and \$0.68 million	3 years	2010	Recycling bags, recycling bins and rolling bins		
10-11285	1 (1 supplier)	\$0.9 million	3 years	2010	Hydrated lime for water production plants		
10-11423	1	\$4.2 million	2.5 years	2010	Desktop computers, laptops and other standard equipment		
11-11530	1	\$1.5 million	1 year	2011	Asphalt		
11-11559	4 (4 suppliers)	\$9.2 million (2.3 million x 4)	4.7 years	2011		Bailiff services	
11-11599	1	\$2.4 million	3 years	2011			Procurement of labour and materials for ground maintenance at the Montréal Biodôme
11-11666	1	\$6.3 million	6 months	2011	De-icing salt		
<b>12 calls for tenders</b>	<b>16 purchase agreements</b>						