



# 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, 2012

## Subcontracted Construction Work

5.10





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## List of Acronyms

AMF	Autorité des marchés financiers	MAMROT	Ministère des Affaires municipales, des Régions et de l'Occupation du territoire
CTA	<i>Cities and Towns Act</i>	RBQ	Régie du bâtiment du Québec
DEP	Direction de l'eau potable	RENA	register of enterprises ineligible for public contracts
DI	Direction des infrastructures	SCARM	Service de la concentration des arrondissements et des ressources matérielles
DSTI	Direction des stratégies et transactions immobilières		
IPCA	<i>Integrity in Public Contracts Act</i>		

## 5.10. Subcontracted Construction Work

### 1. Introduction

Ville de Montréal (the city) enters into contracts with contractors to carry out the construction work set out in the three-year capital expenditures program. Under the *Cities and Towns Act*<sup>1</sup> (CTA), business units must issue a public call for tenders when the contract involves an anticipated expenditure of \$100,000 or more. For the years 2011 and 2012, the monetary value of the work contracts awarded by authorities amounted to approximately \$500 million.

The major steps in the public call for tenders process include the preparation of call for tenders documents, market solicitation, analysis of the bids tendered, awarding of the contract and management of the contract. In the case of work to be executed, it is the central departments and boroughs that see to each of these major steps, depending on the jurisdiction within which the work is to be done or the mandate entrusted to them (e.g., the Direction des infrastructures [DI]).

Work contracts are awarded to the lowest qualified tenderer, and the bid price is the determining factor. It may happen that a contractor who is the lowest qualified tenderer entrusts part of the work to subcontractors.

The city, as the client, is legally bound to the contractor to whom it has awarded the contract. In the case of the subcontractor, the legal bond is between the contractor and the subcontractor. However, for the purposes of sound management and to ensure that subcontractors on work sites are qualified, the city has a duty to know their identity and the nature of the work that they will be doing.

Since 2010, the provincial government has also brought several amendments to the laws in an effort to prevent, combat and penalize certain fraudulent practices in the construction industry and to fight against collusion. A licence issued to a contractor under the *Building Act*<sup>2</sup> may contain a restriction from obtaining a public contract if the holder has been found guilty of certain criminal or tax offenses.

Under these laws, the city must obtain assurances that the contractors that will be doing the work within the scope of the contracts awarded to them are compliant. While this legal

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<sup>1</sup> RSQ, chapter C-19.

<sup>2</sup> RSQ, chapter B-1.1.

obligation does not apply to subcontractors, the city is responsible, nonetheless, for ensuring that they also are compliant. In order to have such assurances, the city must receive relevant information or check with the Régie du bâtiment du Québec (RBQ), the Secrétariat du Conseil du trésor and Revenu Québec.

In the case of contractors that are awarded city contracts, this compliance is assessed at the time bids are analyzed. In the case of subcontractors, while the city is not legally bound to them, the tender documents should contain clauses that require the contractors to provide the necessary information about the subcontractors throughout the period of the contract.

Since December 7, 2012, other amendments to the laws have come into effect. The *Integrity in Public Contracts Act*<sup>3</sup> (IPCA), which amended the *Act respecting contracting by public bodies*<sup>4</sup>, states that any enterprise that wishes to enter into a contract with a public body must obtain pre-authorization from the Autorité des marchés financiers (AMF). It should be pointed out that the AMF works in close collaboration with the Unité permanente anticorruption (UPAC). The authorization also applies to any subcontract that is directly or indirectly related to the contract concerned and that involves expenditures equal to or greater than the amount determined by the government. The latter estimates that it will take three years to draw up the register of enterprises authorized to enter into a public contract.

As a first step, beginning on January 15, 2013, authorization to contract is required for any new construction contract and subcontract valued at or above \$40 million, as well as for contracts defined in the decrees adopted by the government.<sup>5</sup> It should be noted that the government can, before March 31, 2016, amend the amount of \$40 million set by the IPCA and adopt new decrees governing other contracts that will require authorization from the AMF.

In the interim, contracts and subcontracts that are not currently regulated by the IPCA or by decree should continue to be checked with the RBQ and the register of enterprises ineligible for public contracts (RENA) prior to the awarding of the contract in order to ensure that the tenderer can enter into a contract with a public body. Moreover, a certificate of compliance from Revenu Québec is also required for all contracts and subcontracts unless the contractor has been authorized by the AMF.

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<sup>3</sup> SQ, 2012, chapter 25.

<sup>4</sup> RSQ, chapter C-65.1.

<sup>5</sup> Decree 1226-2012 of December 19, 2012, and Decree 96-2013 of February 13, 2013, for certain contracts of Ville de Montréal. Each of these decrees focuses on 25 contracts resulting from calls for tenders for which the two lowest qualified tenderers must obtain authorization from the AMF. In the case of these two first decrees, subcontractors are not required to obtain an authorization from the AMF.

## 2. Audit Scope

The purpose of the audit was to evaluate the extent to which the city:

- Assures itself that the work entrusted by the contractor to subcontractors complies with the call for tenders documents and books of specifications;
- Implements the necessary audit procedures to obtain relevant information for decision making.

More specifically, our audit focused on the work contracts that followed a public call for tenders. We selected a sample of 13 contracts that were awarded during 2012, ranging across three directorates from central departments and four boroughs that were planning construction work. In the case of the central departments, our audit concentrated on the Direction de l'eau potable (DEP) of the Service de l'eau, the DI of the Service des infrastructures, du transport et de l'environnement, and the Direction des stratégies et transactions immobilières (DSTI) of the Service de la concertation des arrondissements et des ressources matérielles (SCARM). In the case of the four other business units selected, our audit focused on Ahuntsic-Cartierville, Mercier–Hochelaga-Maisonneuve, Pierrefonds-Roxboro and Verdun boroughs.

In order to corroborate the legal aspects of the contracts, we enlisted the assistance of representatives of the Division du droit contractuel, which reports to the Direction des affaires civiles of the Service des affaires juridiques et de l'évaluation foncière.

## 3. Findings and Recommendations

As mentioned at the start, no contractual bond exists between the city and subcontractors. Since 2010, however, the adoption by the provincial government of bills aimed at preventing, combating and penalizing certain fraudulent practices in the construction industry, in an effort to fight collusion, reinforces the fact that the city must know the identity of subcontractors that perform work on behalf of its contractors. We will briefly look at how provincial acts and regulations have an impact on the city's practices regarding subcontractors.

### Contract Management Policy

To begin, in 2010, the CTA required municipalities to have a contract management policy that applied to all contracts as of January 1, 2011. In the case of the city, this policy was adopted by city council in December 2010. Its scope covers, inter alia, the stakeholders

involved in all the steps leading to entering into a contract, including work contracts, from the time the contract is awarded through its management. The term “stakeholder” includes tenderers, contracting authorities, suppliers, co-contractors of the city, consultants but, also, subcontractors. In this policy, the city specifically reiterates its commitment to preventing any situation, such as influence peddling, intimidation, corruption, collusion or conflicts of interest, which is likely to besmirch the integrity or hinder the efficacy of the procurement process and the awarding of contracts. To do this, the city adopted requirements for the conduct expected in all of its contract dealings, regardless of the value of the contract, in order to ensure compliance and to prevent and avoid collusion, potential sources of fraud or malfeasance.

If we concentrate on the scope of the policy as it concerns subcontractors, this specifically means that, in tendering a bid, the signatory solemnly affirms that, to the best of his personal knowledge and upon careful verification, there has been no collusion in preparing the bids, and that the tenderer has not been found guilty of collusion, corruption, malfeasance or bribery in the five years preceding the call for tenders.

Any misleading solemn declaration can result in the rejection of a bid. The city may also apply sanctions if, during the course of the contract, it is discovered that the solemn declaration was false. For this reason, we believe that the city must, at the very minimum, know the subcontractors in order to properly monitor the application of the policy.

### Register of Enterprises Ineligible for Public Contracts

The *Anti-Corruption Act*<sup>6</sup> (given assent in June 2011) amended the *Act respecting contracting by public bodies* to allow for the creation of the RENA. It also amended municipal legislation, including the CTA, so that provisions regarding the RENA would be applicable to municipal contracts. More specifically, the contracts affected are those that are required to carry out work or provide insurance, equipment, materials or services. The provisions regarding the RENA and those amending municipal legislation accordingly came into effect on June 1, 2012.

From the moment a conviction is recorded in the RENA, a contractor or an associate of the contractor as defined in the Act who is convicted, by a final judgment, of any offence determined by government regulation, is ineligible for public contracts.

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<sup>6</sup> RSQ, chapter L-6.1.

In its *Muni-Express* bulletin of May 2012, the Ministère des Affaires municipales, des Régions et de l'Occupation du territoire (MAMROT) specifies that it is the responsibility of the municipal body to ensure, prior to entering into a contract, that each tenderer or successful bidder is not recorded in the RENA or, if so, that the period of ineligibility for public contracts has ended.

The following information, which appears in the RENA, has been accessible since June 1, 2012:

- Name of the enterprise;
- Address of the principal establishment;
- Québec business number, if applicable;
- Offences for which the enterprise has been convicted, or those for which a guilty verdict involving an associate has led to it being entered in the register;
- Date on which its ineligibility for public contracts will end;
- All other information prescribed under government regulation.

Again, according to the same MAMROT bulletin, the contractor who enters into a contract with a municipal body must forward to the body, prior to the start of work, a list showing the following information for each subcontract, where applicable:

- Name and address of the principal establishment of the subcontractor;
- Amount and date of the subcontract.

Moreover, this list must be updated and sent to the municipal body, where applicable.

The contractor who enters into a subcontract with an ineligible contractor commits an offence and is liable to a fine. As well, if this contractor has already been convicted of a similar offence in the two years preceding a second conviction, the contractor becomes ineligible for public contracts for a period of two years from the recording of the conviction in the RENA.

These legal provisions carry with them the obligation on the part of the city to obtain information about subcontractors and the responsibility to perform the necessary checks.

### Certificate of Compliance from Revenu Québec

The *Regulation respecting construction contracts of municipal bodies*<sup>7</sup> (adopted in August 2011) sets out new rules regarding the obligation to request a Revenu Québec certificate of

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<sup>7</sup> *Gazette officielle du Québec. Part 2, Vol. 143, No. 35, August 31, 2011, pp. 3899–3901.*

compliance from construction contractors and their subcontractors. This regulation applies to calls for tenders issued and to contracts awarded since January 1, 2012.

The Regulation requires that all contractors seeking to enter into a construction contract involving an expenditure of \$25,000 or more with a municipal body must obtain a certificate of compliance from Revenu Québec. This certification is granted to all contractors who have filed the returns and reports required under Québec tax laws and who do not have any overdue accounts with Revenu Québec. To be valid, the contractor's certification must not have been issued more than 90 days prior to the date and time set for receiving the bids or after such date and time or, in the case of mutual agreement contracts, more than 90 days before the contract award date.

The same certification requirement also applies to subcontractors who wish to enter directly into a contract with a contractor who has secured a construction contract. To be valid, the subcontractor's certification must not have been issued more than 90 days before the date set for receiving bids for the contractor's contract nor after the subcontract award date or, in the case of mutual agreement contracts, more than 90 days prior to the subcontract award date.

The contractor who has been awarded a construction contract by a municipal body must, prior to the start of work, forward to the body a list showing the following information for each subcontract:

- Name and address of the subcontractor;
- Amount and date of the subcontract;
- Number and date of issue of the subcontractor's certificate of compliance from Revenu Québec.

These legal provisions carry with them the obligation on the part of the city to obtain information about subcontractors and proof that subcontractors hold a valid certificate of compliance from Revenu Québec.

### **Authorization of the Autorité des marchés financiers**

Since December 7, 2012, the IPCA stipulates that any contractor who wishes to be a party to a public contract must have the prior authorization of the AMF. In a first phase, as of January 15, 2013, an authorization is required for any new construction or services contract or subcontract equal to or greater than \$40 million, as well as for contracts defined in the decrees adopted by the provincial government on December 19, 2012 (Decree 1226-2012), and on February 13, 2013 (Decree 96-2013). It should be noted that the government has

until March 31, 2016, to amend the amount of \$40 million set by the IPCA and to adopt new decrees aimed at other contracts for which AMF authorization will be required.

Accordingly, in the case of contracts that are not regulated by the IPCA or by decree, the RENA and the list of licences that are restricted by the RBQ must still be consulted to obtain assurance, prior to the awarding of a contract, that the tenderer is eligible to enter into a contract with a public body. Moreover, a certificate of compliance from Revenu Québec is also still required for all contracts or subcontracts, unless the contractor has been authorized by the AMF.

Against the backdrop of legal provisions that have been strengthened to prevent, combat and penalize certain fraudulent practices in the construction industry and fight against collusion, our audit examined the extent to which the city has information about subcontractors that were performing work within various contracts. We also looked into the mechanisms in place to ensure that these subcontractors were compliant at the time that the contract was awarded and during the contract.

In order to substantiate our findings, we selected a sample of 13 contracts (see Appendix 4.1) from among those awarded in 2012, including seven valued at over \$7.5 million each and five contracts that involved a wide diversity of work for which subcontractors were more likely to be involved. Our sample consisted, therefore, of work contracts awarded by authorities following a public call for tenders. The amount of the contracts that we examined ranged from \$0.6 million to \$16.4 million.

In the first phase, we examined the clauses contained in the books of specifications and in the tender documents, which enabled the city to receive information about subcontractors. In a second phase, we evaluated how the application of these clauses was followed up, as well as the mechanisms that were put in place to ensure that subcontractors were compliant.

### **3.1. Clauses Contained in the Books of Specifications and in the Call for Tenders Documents**

#### **3.1.A. Background and Findings**

A book of specifications is a contractual document that describes what the client expects from the contractor. The document outlines in the most precise way possible and in simple terms the needs, requirements and obligations that the contractor must meet. Books of specifications include general and specific documents.

The general documents consist of the general administrative clauses document and the general technical clauses document. The first establishes the administrative provisions that apply to a category of goods and services (for example, the work to be done). The second establishes the technical provisions that apply to all deliverables of the same kind (for example, road and sidewalk paving).

The specific documents are comprised of specific administrative and technical specification clauses. In the first case, they establish the administrative provisions of each contract. In the second case, they establish the technical provisions that are required to complete the work of each contract.

The call for tenders documents are made up of bid forms, plans and specifications, addenda and instructions to tenderers that establish all the conditions required to tender a bid. When the contract is awarded, the call for tenders documents, books of specifications and retained bid together form the contract.

During our audit, we identified, for each of the contracts selected, the clauses in the books of specifications and in the call for tenders documents that enabled the city to request information about the subcontractors.

To begin, in the case of the seven business units that we audited, we found that the general (administrative and technical) clauses had been prepared on different dates. For example, Pierrefonds-Roxboro borough awarded a contract that refers to general administrative clauses dating from 1997, while the DI awarded a contract that refers to general clauses dating back to March 2009.

With this in mind, we identified the general subcontracting clauses in each of the contracts we examined to evaluate the extent to which they enabled the city to request information about subcontractors. These clauses were found either in the general administrative clauses or in the instructions to tenderers.

A comparison of the clauses revealed items that were common to all the business units. The books of specifications and the call for tenders documents of all the clients (the DEP, the DI, the DSTI, and Ahuntsic-Cartierville, Mercier–Hochelaga-Maisonneuve, Pierrefonds-Roxboro and Verdun boroughs) stipulated that, when a contractor wishes to subcontract work:

- The contractor must provide the manager with a complete and detailed list of subcontractors;
- The list must include a description of the work to be done;

- A copy of the licences issued by the RBQ must accompany the list of subcontractors, as well as any amendment to this list;
- The contractor must provide, at the manager's request, all additional information about these subcontractors;
- The contractor must, prior to the start of work, provide a list indicating the following for each construction subcontract valued at more than \$25,000:
  - the name and address of the subcontractor,
  - the amount and award date of the subcontract,
  - the number and date of issue of the subcontractor's certificate of compliance from Revenu Québec,
  - during the contract, an amended list, where applicable, when a new subcontract is awarded and before the work entrusted to this subcontractor begins.

A comparison of the clauses also revealed differences between the business units as to:

- The time of receipt of the list of subcontractors:
  - a clause in the administrative documents of Pierrefonds-Roxboro borough provides for the list of subcontractors to be sent within 15 days of the awarding of the contract,
  - the general administrative clauses of the other business units (the DEP, the DI, the DSTI, and Ahuntsic-Cartierville and Mercier-Hochelaga-Maisonneuve boroughs) provide for receipt of the list as soon as the contract is awarded,
  - the clause of Verdun borough is silent in this regard;
- The approval of the list of subcontractors:
  - a clause in the administrative documents of Pierrefonds-Roxboro borough provides for the client's approval,
  - the general administrative clauses of the other business units are silent in this regard;
- The approval of amendments made to the list of subcontractors:
  - a clause in the administrative documents of Pierrefonds-Roxboro borough specifies that the contractor must have all amendments to this list approved by the borough,
  - an administrative clause for Verdun borough specifies that the written permission of the engineer must be obtained for any addition or amendment to the list after the contract is awarded,
  - the clauses of the other business units (the DEP, the DI, the DSTI, and Ahuntsic-Cartierville and Mercier-Hochelaga-Maisonneuve boroughs) specify that the contractor must submit to the manager all amendments made to the list after the contract is awarded;

- The transmission, in a timely manner, of a copy of the renewal of all licenses that will expire before the end of the contract:
  - a clause makes provisions to this effect for the DEP, the DI, and the DSTI, as well as Ahuntsic-Cartierville and Mercier–Hochelaga-Maisonneuve boroughs,
  - the other business units (Pierrefonds-Roxboro and Verdun boroughs) do not address this issue.

This comparison led us to the conclusion that there is no consistency regarding all the items in the administrative clauses on subcontracting. When tendering a bid, contractors need to familiarize themselves with clauses that vary from one business unit to the other. In the case of the list of subcontractors, in particular, clauses differ as to deadlines for transmission, approval and amendments made. In addition, when an item is not specified in a clause, it becomes subject to interpretation by the contractors and those responsible for its application. This kind of situation can make it more difficult to obtain the required information.

Finally, as mentioned earlier, the general administrative clauses in the books of specifications provide for the receipt of a list of subcontractors to be accompanied by copies of licences from the RBQ. We also found that, in the wake of new legal provisions that made certificates of compliance mandatory as of January 1, 2012, the Service des affaires juridiques et de l'évaluation foncière informed the business units, in November 2011, that all call for tenders documents must now include the new requirements. During our audit, we effectively noted that all the business units had integrated the new requirements either into the instructions to tenderers or into the general administrative clauses. Thus, a clause in the call for tenders documents provides for the transmission of a list of subcontractors with the information required by law (name and address of the subcontractor, date and amount of the subcontract, and certification number from Revenu Québec). In our opinion, this is an example of where the books of specifications and the call for tenders documents include two clauses that ask contractors to supply a list of subcontractors, but with information that achieves different objectives. We are of the opinion that only one list of subcontractors should be required, showing all the necessary information.

During our audit, we were informed that the SCARM had begun thinking about standardizing the books of specifications for the execution of work and that the file has been entrusted to the Direction de l'approvisionnement. Based on the information we obtained, the mandate needs to be clarified. Although the scope of the project to standardize the clauses of the various books of specifications is much broader than subcontracting in work contracts, we believe that our findings can be taken into account within the framework of this project.

While it would be preferable if the clauses of books of specifications and of call for tenders documents were standardized, the fact of the matter is that contracts must continue to be awarded and managed on the basis of the clauses that are currently in effect. In the case of the subcontracting clauses, business units must obtain the required information to ensure that subcontractors are compliant. During our audit, we noted that, in addition to these clauses, call for tenders documents generally include a reminder to tenderers about the documents that they must provide. The form that this reminder takes varies from one business unit to another:

- In the case of Pierrefonds-Roxboro borough, the tenderer must declare that he has familiarized himself with the list of documents, including the list of subcontractors and materials, that must be provided within 15 days of the contract award date.
- In the case of Verdun borough, the tenderer must ensure that his bid submission form meets all the requirements of the books of specifications with respect to 10 items, including those involving the list of subcontractors and copies of the appropriate licenses issued by the RBQ. Mention is made that this verification avoids the bid being rejected for reasons of irregularities.
- For some business units, the instructions to tenderers require them to check off and sign a list entitled [TRANSLATION] “Documents and information that must be submitted with the bid”:
  - In the case of the DEP, it clearly states the list of subcontractors. The same is true for Mercier–Hochelaga-Maisonneuve borough, with the exception of the signature on this list;
  - In the case of the DI and of Ahuntsic-Cartierville borough, this list includes an item worded as follows: [TRANSLATION] “Other documents that may be required in the bid,” without referring directly to the list of subcontractors.
- In the case of the DSTI, a reminder of certain requirements of the books of specifications is included in the “instructions to tenderers,” but does not specifically refer to the information to be provided about subcontractors. It should be pointed out that, for this business unit, it is the only place where the clause about the obligation to provide the certificate of compliance is mentioned.

In all the contracts we examined, with the exception of those of the DSTI, we found that the reminder of the documents to be provided did not mention the list of subcontracts above \$25,000 and the relevant information required, such as the date and amount of the subcontracts awarded, as well as the date and number of the certificate of compliance. In our opinion, this list should have been included in the reminder of the documents to be provided.

Furthermore, the reminder about the information and documents that are expected helps emphasize the importance of the requirements of the books of specifications and encourages receipt of the information requested. This is particularly true when there is a deadline to produce the information requested or a cautionary note is added to this reminder to the tenderer, should the information be omitted.

### 3.1.B. Recommendation

**We recommend that the Direction générale clarify the mandate to standardize the books of specifications related to the execution of work and ensure that it makes provisions for the standardization of clauses dealing with the receipt of a list of subcontractors and of required information so that the same requirements apply to all business units.**

#### **Business unit's response:**

*[TRANSLATION] In late 2012, the city manager and senior department managers met to put in place the means to complete a review and harmonization of the specifications. Following this meeting, the actions below were taken:*

- *Each senior manager named a construction site superintendent for his department. These individuals are responsible for overseeing the review process in their respective departments, supporting working groups and taking all other measures to help advance the work, while ensuring good interdepartmental coordination. These include:*
  - *for the Service de la qualité de vie: Superintendent 1,*
  - *for the Service des infrastructures, du transport et de l'environnement: Superintendent 2,*
  - *for the Service de l'eau: Superintendent 3;*
- *The required specifications for work on the street right-of-way have been prioritized;*
- *The objective is to finalize a block of updated specifications that will be used for calls for tenders beginning in January;*
- *The general coordinating officer is preparing a work plan for the end of April 2013;*
- *We are evaluating the addition of interns to support the work of the teams;*
- *The required lists will be added to the work plan and integrated starting in January 2014. (Planned completion: January 2014)*

### 3.1.C. Recommendation

We recommend that the Direction de l'eau potable, the Direction des infrastructures, and the Direction des stratégies et transactions immobilières, as well as Ahuntsic-Cartierville, Mercier–Hochelaga-Maisonneuve, Pierrefonds-Roxboro and Verdun boroughs, include the following in the reminder of documents to be received with the bid, following a call for tenders for the execution of work:

- The obligation of the tenderer to provide a list of subcontracts and all the information required to comply with the requirements of the books of specifications and call for tenders documents;
- A deadline or cautionary note to the tenderer should the documents and information requested not be sent, as a way of emphasizing the importance of the city obtaining them.

#### Business units' responses:

##### SERVICE DE L'EAU – DIRECTION DE L'EAU POTABLE

*[TRANSLATION] The DEP will add a section in the instructions to remind tenderers of their obligation to provide known information about subcontractors when submitting their bid. (Planned completion: June 2013)*

*The DEP will amend the format of the document entitled "List of subcontractors" that is in the bid form, so that it includes more detailed information about subcontractors. (Planned completion: September 2013)*

*In the DEP's call for tenders contract documents, there is no applicable deadline for the receipt of documents.*

##### SERVICE DES INFRASTRUCTURES, DU TRANSPORT ET DE L'ENVIRONNEMENT – DIRECTION DES INFRASTRUCTURES

*[TRANSLATION] The clause in the specifications that provides for this obligation will be revised as part of the harmonization of the specifications documents currently under way. (Planned completion: October 2013)*

##### SERVICE DE LA CONCERTATION DES ARRONDISSEMENTS ET DES RESSOURCES MATÉRIELLES – DIRECTION DES STRATÉGIES ET TRANSACTIONS IMMOBILIÈRES

*[TRANSLATION] A reminder of the documents to be provided by the successful contractor is made at the work site start-up meeting.*

*To reinforce this, a document in the form of a checklist will be added to the bank of standard documents used by contract managers in order to improve follow-up of the various information and documents to be produced by the contractor. (Planned completion: June 2013)*

**AHUNTSIC-CARTIERVILLE BOROUGH**

*[TRANSLATION] At the start-up meeting, the borough will require the contractor to provide the list of all subcontractors along with the required supporting documents.*

*A paragraph will be added to the contract award letter as a reminder to the contractor of the importance of his obligations regarding subcontractors.*

*The start work order could be conditional on receipt of all the documents pertaining to the contractor's subcontractors. (Planned completion: May 2013)*

**MERCIER-HOCHELAGA-MAISONNEUVE BOROUGH**

*[TRANSLATION] We have already amended our specifications with the following clauses 3.3.3.1 and 3.3.3.6:*

*[TRANSLATION]*

**3.3.3 Subcontracting**

Any contractor who has work done by subcontractors must:

3.3.3.1. Submit to the manager, upon the awarding of the contract, a complete and detailed list specifying the name of the known subcontractors and the work that they are required to do, and advise the manager of any amendments and/or additions made to this list after the contract is awarded and during the contract. He must attach to this list and to any notice of amendment and/or addition to the list, where applicable, a photocopy of the licence issued by the Régie du bâtiment du Québec for each subcontractor according to the nature of the contract, the certificate of compliance from Revenu Québec and, where applicable, the authorization of the Autorité des marchés financiers (AMF). He must also provide, in a timely manner, a copy of the renewal of any licence that will expire before the end of the contract.

3.3.3.6. Changes to this list do not amend the contract, create a contractual bond between the city and the subcontractors, nor release the contractor from the obligations arising out of the contract.

*We added clause 3.3.3.8 to these clauses, which reads as follows:*

*[TRANSLATION]*

3.3.3.8. In failing to provide all the information requested by the city (RBQ, Revenu Québec and AMF) on all subcontractors, the contractor exposes himself to the withholding of payment for each of the subcontracted specialties. Payment will be made once the city receives all the information requested. **(Completed, April 2013)**

**PIERREFONDS-ROXBORO BOROUGH**

*[TRANSLATION] An article will be drafted and added to the instructions to tenderers, specifying the list of documents that must be provided with the bid, including the list of subcontractors. This same article will emphasize the importance of obtaining the documents requested. (Completed, April 2013)*

**VERDUN BOROUGH**

*[TRANSLATION] Review the clauses in the books of specifications (see book A, articles 4.7 and 4.8) in order to integrate a reminder about the documents to be received with the bid. (Planned completion: May 2013)*

### 3.2. Monitoring the Application of the Clauses Related to the Information on Subcontractors and Verifications Carried Out on the Compliance of Subcontractors

The clauses in the books of specifications and the call for tenders documents correspond to the needs, requirements and obligations with which contractors must comply when preparing their bids and executing the work. The business units responsible must follow up to ensure that these clauses are being respected and that the information obtained is compliant. Measures must be taken in the event of non-compliance with the clauses.

For each of the contracts selected, we evaluated more specifically how the application of the subcontracting clauses in the books of specifications and in the call for tenders documents was being monitored. We began by examining the moment at which the list of subcontractors was received by the business units. Secondly, we verified the contents of this list, along with the documents supplied, and evaluated the extent to which there were mechanisms in place to ensure that subcontractors were compliant. Thirdly, we examined the extent to which contractors communicated additions and amendments to subcontractors. Finally, we examined measures that were taken to apply the clauses provided.

#### 3.2.1. Receipt of the List of Subcontractors

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

Once the bids have been analyzed, the business units recommend to authorities that a contract be awarded to the lowest qualified tenderer. In the weeks following the awarding of the contract, a work site start-up meeting is held. Representatives from the business unit, the contractor, the construction site superintendent and other stakeholders, where applicable, are present. The purpose of this meeting, inter alia, is to ensure implementation of the project, to review the contractual obligations, to validate the roles and responsibilities

of the stakeholders, and to remind everyone of the importance of complying with timelines and costs. Following the meeting, the business unit must issue, by registered letter to the contractor, the order to begin work.

During our audit, we assured ourselves that a list of subcontractors had been received by the business units and, if so, when it was received.

To begin, a list of subcontractors was indeed received for all the contracts that we examined, with the exception of one for the DI. However, while the administrative clauses in the books of specifications and the call for tenders documents required receipt of the list of subcontractors when the contract was awarded or within 15 days of its being awarded (Pierrefonds-Roxboro borough), we concluded that this was not interpreted the same way by everyone.

Overall, our audit showed that the list of subcontractors was not always obtained (1/13)<sup>8</sup>, that there was not always proof of the date of receipt (2/13)<sup>9</sup>, that the list was received at the start-up meeting in one case (1/13)<sup>10</sup> and after the start-up meeting in nearly half of the cases (6/13)<sup>11</sup>. In other words, in only three<sup>12</sup> out of the 13 cases we examined was the list of subcontractors received at the time that the bid was submitted.

In the opinion of some of the managers that we met, receiving a list as soon as the contract is awarded means that it must be accessible when authorities award the contract. However, in the opinion of others we met, the list cannot be received until after the start-up meeting; in fact it is an item on the agenda of that meeting. In the case of two of the contracts of the DI, we even noticed that the list of subcontractors was requested in the start work order. This kind of situation clearly shows that the interpretation of when the list of subcontractors should be sent varies, reinforcing the importance of clearly specifying the city's requirements in the clause provided for this purpose.

However, with the exception of the contracts for which a list of subcontractors was received when the bid was submitted, the results of our audit failed to reassure us that, in the majority of other cases, every possible effort was made to obtain a list of subcontractors as soon as possible following the awarding of the contract.

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<sup>8</sup> The DI.

<sup>9</sup> The DEP and Ahuntsic-Cartierville borough.

<sup>10</sup> The DSTI.

<sup>11</sup> The DEP, the DI (2 cases), the DSTI, and Ahuntsic-Cartierville and Verdun boroughs.

<sup>12</sup> Mercier-Hochelaga-Maisonneuve, Pierrefonds-Roxboro and Verdun boroughs.

In summary, it is our opinion that the list of subcontractors should be received as soon as possible after the contract is awarded so that the designated person in charge is able to carry out the required checks to ensure that the subcontractors are compliant.

### 3.2.1.B. Recommendation

**We recommend that the Direction de l'eau potable, the Direction des infrastructures, and the Direction des stratégies et transactions immobilières, as well as Ahuntsic-Cartierville, Mercier–Hochelaga-Maisonneuve, Pierrefonds-Roxboro and Verdun boroughs, undertake a thorough follow-up to obtain the list of subcontractors as soon as possible, once the contract is awarded, in order to be able to ensure that they are compliant.**

#### Business units' responses:

##### **SERVICE DE L'EAU – DIRECTION DE L'EAU POTABLE**

*[TRANSLATION] An addition will be made to the letter awarding the contract, indicating the contractor's obligation to comply with article 2.3.3 "subcontracting" of the general administrative clauses. (Planned completion: June 2013)*

##### **SERVICE DES INFRASTRUCTURES, DU TRANSPORT ET DE L'ENVIRONNEMENT – DIRECTION DES INFRASTRUCTURES**

*[TRANSLATION] The list of subcontractors is requested in the letter awarding the contract. A follow-up will be undertaken to ensure that the list is received within the required timeframe. (Planned completion: May 2013)*

##### **SERVICE DE LA CONCERTATION DES ARRONDISSEMENTS ET DES RESSOURCES MATÉRIELLES – DIRECTION DES STRATÉGIES ET TRANSACTIONS IMMOBILIÈRES**

*[TRANSLATION] Contracts for work on buildings involve a high number of subcontractors. It is impossible to obtain the complete list of subcontractors with the bid since not all subcontracts have been entered into before the bidding process.*

*The checklist will enable us to follow up contracts as they are communicated to us. (Planned completion: June 2013)*

##### **AHUNTSIC-CARTIERVILLE BOROUGH**

*[TRANSLATION] The successful tenderer must provide a list of subcontractors before the borough will award the contract.*

*A table containing all the items to be verified will be prepared to ensure compliance (RBQ, certificate of compliance from Revenu Québec, RENA). These documents will be placed in the contract file folder and digitized. (Planned completion: May 2013)*

**MERCIER-HOCHELAGA-MAISONNEUVE BOROUGH**

*[TRANSLATION] We are adding the following clause to our specifications:*

*[TRANSLATION]*

3.3.3.7. The successful tenderer must provide at each work-site meeting an updated copy of the list of subcontractors (amendments and/or additions). He must also provide, for each subcontractor, a photocopy of the licence issued by the Régie du bâtiment du Québec based on the nature of the contract, the certificate of compliance from Revenu Québec and, where applicable, the authorization of the Autorité des marchés financiers (AMF).  
**(Completed, April 2013)**

**PIERREFONDS-ROXBORO BOROUGH**

*[TRANSLATION] A contract award letter is sent to the contractor as soon as the council awards the contract. This letter specifies a list of documents to be provided, including a list of subcontractors, within 15 calendar days. An internal schedule will be used to follow up receipt of the documents to ensure that they are received within the established timelines. (Planned completion: May 2013)*

**VERDUN BOROUGH**

*[TRANSLATION] Review the process used to analyze the compliance of bids submitted in order to include the list of subcontractors as a document to be received and as a condition for awarding the contract. Review the clauses in the books of specifications accordingly. (Planned completion: May 2013)*

## 3.2.2. Contents of the List of Subcontractors and of the Documents Transmitted

### 3.2.2.A. Background and Findings

The clauses in the books of specifications of all the business units stipulate that the contractor must provide a complete and detailed list of subcontractors. The list must also include a description of the work to be done by each subcontractor, accompanied by a copy of the license issued by the RBQ to each one.

The clauses dealing with the obligation to provide subcontractors' certificates of compliance state that the following information must be provided for each subcontract over \$25,000:

- Name and address of the subcontractor;
- Amount and date of the subcontract;
- Number and date of issue of the subcontractor's certificate of compliance from Revenu Québec.

We sought assurances that the business units had obtained this information and that it had been entered into the files. Our audit showed that the lists of subcontractors obtained did not have all the required information. In the 12 cases where we found that a list existed, it contained the name and specialty of the subcontractor and, in some, the subcontractor's address and telephone number.

Generally speaking, we did not find the following items in the files:

- A description of the work to be done by each subcontractor;
- A copy of the licence from the RBQ for each subcontractor;
- The amount and date of each subcontract above \$25,000;
- The number and date of issue of the certificate of compliance from Revenu Québec held by the subcontractors regulated under the Act.

In all the contracts that we examined, the contractors failed to comply with the subcontracting clauses in the books of specifications and in the call for tenders documents. As well, we did not find any evidence that the project managers or other designated persons had followed up with the contractors to obtain the missing information.

For three of the contracts, the contractors did send some information at the time of submitting their bid:

- The first involved the contract that we examined for Pierrefonds-Roxboro borough. In this case, the contractor submitted a copy of the certificates of compliance from Revenu Québec for two subcontractors. However, the RBQ licences were not provided.
- The second involved one of the contracts that we examined for Verdun borough. In this case, the contractor provided copies of the subcontractors' RBQ licences. However, the certificates of compliance from Revenu Québec were not provided.
- The third involved the contract of Mercier-Hochelaga-Maisonneuve borough. In this case, a copy of the RBQ licence of one of the subcontractors was specifically required at the time that the bid was submitted, to ensure that he was compliant. However, copies of RBQ licences for the other subcontractors were not obtained.

The information required is necessary to enable the designated persons in charge within the business units to, on the one hand, verify that the subcontractors are qualified to do the work and, on the other hand, ensure that the subcontractors present on the work sites are compliant. Verifications must be made with the RBQ to ensure that the contractor does not have a restricted licence. Other verifications need to be made with the Secrétariat du Conseil du trésor to ensure that the subcontractors are not among the enterprises that are ineligible for public contracts.

Finally, the amount and date of each subcontract above \$25,000, as well as the number and date of issue of the certificate of compliance from Revenu Québec held by the subcontractors are required to enable the designated persons in charge within the business units to have assurances that the subcontractors present on the work sites are in good standing with Revenu Québec.

During our audit, we also looked for evidence that business units had performed checks. According to the people that we met during our interviews, these checks of subcontractors are generally not undertaken.

This kind of situation means that the business units failed to show that they had sought assurances that the subcontractors had the required licences to perform the work. It is worth mentioning at this point an exception for the contract of the DSTI. We found evidence that the licenses were validated on the RBQ website for each of the subcontractors present on the list provided by the contractor. However, we noted that the checks were completed after work had begun, not before.

For all the contracts that we examined, the business units failed to show that they had consulted the RBQ's and the RENA's lists of restricted licences for assurances that subcontractors' licences were compliant. Finally, for all the contracts examined (13/13), the business units failed to obtain assurances that subcontractors had a valid certificate of compliance when entering into the subcontracts.

In summary, it is our opinion that the business units should put mechanisms in place to monitor the receipt of all the required information concerning the subcontractors. This would enable them to apply the clauses of the books of specifications and the call for tenders documents and to ensure that the subcontractors are qualified and compliant. It goes without saying that the business units should enter evidence of the follow-up and checks that were undertaken in the contract files.

#### **3.2.2.B. Recommendation**

**We recommend that the Direction de l'eau potable, the Direction des infrastructures, and the Direction des stratégies et transactions immobilières, as well as Ahuntsic-Cartierville, Mercier-Hochelaga-Maisonneuve, Pierrefonds-Roxboro and Verdun boroughs, set up mechanisms to strictly monitor compliance with the subcontracting clauses in the books of specifications and the call for tenders documents in order to obtain all the required information.**

**Business units' responses:****SERVICE DE L'EAU – DIRECTION DE L'EAU POTABLE**

[TRANSLATION] There will be a systematic follow-up of the list of subcontractors at each work site meeting. **(Planned completion: June 2013)**

A daily list of subcontractors present on the work site will be entered in the work site log kept by the construction superintendent. **(Planned completion: June 2013)**

**SERVICE DES INFRASTRUCTURES, DU TRANSPORT ET DE L'ENVIRONNEMENT – DIRECTION DES INFRASTRUCTURES**

[TRANSLATION] Upon receipt of the list, a contract management officer will verify that it is compliant. Any non-compliance will be communicated to the project manager who will notify the contractor so that the latter may submit a compliant list. **(Planned completion: June 2013)**

**SERVICE DE LA CONCERTATION DES ARRONDISSEMENTS ET DES RESSOURCES MATÉRIELLES – DIRECTION DES STRATÉGIES ET TRANSACTIONS IMMOBILIÈRES**

[TRANSLATION] The information on the checklist includes:

- The name of the subcontractor;
- The number of the RBQ license and the Québec business number;
- The number of the certificate of compliance from Revenu Québec. **(Planned completion: June 2013)**

**AHUNTSIC-CARTIERVILLE BOROUGH**

[TRANSLATION] The successful tenderer must provide a list of subcontractors before the borough will award the contract.

The list should specify the subcontractor's contact information, the amount and date of the subcontract, and the certificate of compliance from Revenu Québec.

The construction site superintendent will have this list to ensure monitoring during work on the site. **(Planned completion: May 2013)**

**MERCIER-HOCHELAGA-MAISONNEUVE BOROUGH**

[TRANSLATION] We will make the following amendments to our list of documents to be provided with the call for tenders: we already indicated in the checklist that the list of subcontractors must be provided. On this point, we will complete this document by specifying the information to be provided. **(Completed, April 2013)**

**PIERREFONDS-ROXBORO BOROUGH**

[TRANSLATION] The list of documents requested in the contract award letter will refer the contractor to the subcontracting articles in the books of specifications and call

for tenders documents as a reminder of his obligations. An internal schedule will be used to follow up receipt of the documents to ensure that they comply with the requirements of the contract documents. **(Planned completion: May 2013)**

**VERDUN BOROUGH**

*[TRANSLATION]* Establish follow-up mechanisms to obtain all the required information. **(Planned completion: June 2013)**

**3.2.2.C. Recommendation**

We recommend that the Direction de l'eau potable, the Direction des infrastructures, and the Direction des stratégies et transactions immobilières, as well as Ahuntsic-Cartierville, Mercier-Hochelaga-Maisonneuve, Pierrefonds-Roxboro and Verdun boroughs, put in place mechanisms to record evidence in the files of information obtained on each subcontractor, prior to the start of work, including:

- Valid licences from the Régie du bâtiment du Québec;
- The certificate of compliance from Revenu Québec;
- The verification that the subcontractor is not entered on the register of enterprises ineligible for public contracts.

**Business units' responses:**

**SERVICE DE L'EAU – DIRECTION DE L'EAU POTABLE**

*[TRANSLATION]* Creation of an internal mechanism to verify the documents received from subcontractors. **(Planned completion: September 2013)**

**SERVICE DES INFRASTRUCTURES, DU TRANSPORT ET DE L'ENVIRONNEMENT – DIRECTION DES INFRASTRUCTURES**

*[TRANSLATION]* The compliant list of subcontractors will be entered in the file, along with copies of valid RBQ licences, certificates of compliance from Revenu Québec and proof of RENA verification. **(Planned completion: June 2013)**

**SERVICE DE LA CONCERTATION DES ARRONDISSEMENTS ET DES RESSOURCES MATÉRIELLES – DIRECTION DES STRATÉGIES ET TRANSACTIONS IMMOBILIÈRES**

*[TRANSLATION]* The information on the checklist includes:

- The name of the subcontractor;
- The number of the RBQ licence and the Québec business number;
- The number of the certificate of compliance from Revenu Québec. **(Planned completion: June 2013)**

**AHUNTSIC-CARTIERVILLE BOROUGH**

[TRANSLATION] A table comprising all the items to be verified will be prepared in order to ensure that subcontractors are compliant (RBQ, certificate of compliance from Revenu Québec, RENA).

Include in the current filing system a section on subcontractors by contract and gather all the subcontractors' certificates of compliance. These documents will be filed in the contract folder. **(Planned completion: May 2013)**

**MERCIER-HOCHELAGA-MAISONNEUVE BOROUGH**

[TRANSLATION] We will create a file for each project that systematically groups together evidence of all the information obtained before the start of work or as soon as it is made known to us, as the case may be. **(Completed, April 2013)**

**PIERREFONDS-ROXBORO BOROUGH**

[TRANSLATION] Upon receipt of the documents requested in the contract award letter, we will carry out an internal verification with the RBQ and the RENA. The certificate of compliance from Revenu Québec will be validated against article 1.4 of the instructions to tenderers. An internal follow-up form placed in the contract file will ensure that this procedure is followed. **(Planned completion: May 2013)**

**VERDUN BOROUGH**

[TRANSLATION] Put in place mechanisms to enter the information received on each of the subcontractors in the file before work begins. **(Planned completion: June 2013)**

### 3.2.3. Follow-Up on Additions and Amendments to Subcontractors During the Contract

#### 3.2.3.A. Background and Findings

The subcontracting clauses in the books of specifications and call for tenders documents stipulate that, once a contract is awarded, the manager must receive, where applicable, an amended list of subcontractors. The clauses related to the obligation to have a certificate of compliance specify that [TRANSLATION] “for the duration of the contract, the successful tenderer must provide the manager an amended list when entering into any new subcontract before the work entrusted to this subcontractor can begin.” Copies of RBQ licences must accompany any amendments to the list. In the case of the certificate of compliance from Revenu Québec, the same information is required before work can begin, i.e. the amount and date of each new subcontract above \$25,000, along with the number and date of issue of the subcontractor's certificate of compliance from Revenu Québec.

During our audit, we looked for the existence of amended lists of subcontractors and examined the follow-up undertaken by the business units to receive the required information, as well as the nature of the checks carried out. To begin, of the 13 contracts that we examined, amended lists were obtained for three. Two of these were managed by the DSTI and involved construction work on municipal buildings.

We failed to find evidence that the project managers had followed up with the contractors, after receiving the amended lists, to obtain the required information. When adding to or amending the list of subcontractors, therefore, the contractors were non-compliant with the subcontracting clauses in the books of specifications and call for tenders documents. As well, we found no evidence that checks were carried out to ensure that the subcontractors were qualified and compliant.

During our audit, we also sought assurances that additions or substitutions of subcontractors had been communicated to the business units involved. To do this, we looked at the superintendent's daily work site log and the minutes of work site meetings. Keeping in mind that business units receive contract withdrawals by subcontractors, we compared the list of subcontractors initially sent by the contractor with the withdrawals received. In the case of withdrawals, it should be specified that, under the Québec civil code, a subcontractor can withdraw from a contract it has entered into with a contractor in order to maintain its right to a legal mortgage in the event that the contractor fails to pay him. Based on the information obtained, subcontractors can withdraw voluntarily from their contract with contractors. The business units have no assurance, therefore, that they are being informed of all the subcontractors based on the withdrawals received.

Upon examining the contract monitoring reports, we found that the form and content of these reports varied from one business unit to the other, depending on whether the reports had been prepared by the city's superintendents or by outside firms. The form used for the monitoring reports of Pierrefonds-Roxboro borough already has a section reserved for subcontractors. In the case of two contracts of the DI, we noted that the work site logs showed the name of the subcontractors present and the nature of the work done. In the case of the other contracts that we examined, we could not be sure that the monitoring reports systematically showed the names of all the subcontractors that were performing the work.

Based on the information obtained for all the contracts selected, our examination of the daily monitoring reports revealed that the names of some subcontractors did not appear on the original list provided by the contractor. Our audit also failed to find in these monitoring reports the names of all the subcontractors who appeared on the initial list provided by the

contractor. This situation leads us to believe that either the monitoring reports do not contain all the information about the subcontractors or that the initial list is not representative of all the subcontractors who actually worked on the work site.

The minutes of the work site meetings failed to reveal any significant information that would enable us to evaluate the completeness of the initial list of subcontractors.

Furthermore, our analysis of contract withdrawals received from subcontractors showed that, in seven of the contracts, some subcontractors did not appear on the list provided by the contractor. Since the value of the subcontract is shown on the withdrawals, we found that almost half of the subcontracts had a value that ranged from \$25,000 to several hundred thousand dollars. This analysis also revealed the presence of subcontracts issued by subcontractors for three of the contracts that we examined.

In summary, the analysis of the monitoring reports and of the contract withdrawals revealed the existence of subcontractors that were not on the lists of subcontractors sent by the contractor. This situation means that, in the case of these contracts, an amended list of subcontractors was not received, as required by the books of specifications and the call for tenders documents. Also, because the business units failed to receive the amended lists and required information, they were obviously unable to validate whether the new subcontractors were qualified and compliant.

According to the information obtained, no comparison was done between monitoring reports, contract withdrawals received and lists of subcontractors. While we wondered about the completeness of the information on the subcontractors contained in the monitoring reports, it is our opinion that construction site superintendents should be made aware of the importance of being thorough in logging information about subcontractors. Business units should also ensure that monitoring reports are compared with lists of subcontractors submitted by contractors. Along the same lines, we also feel that contract withdrawals received from subcontractors should be compared with the list of subcontractors.

### 3.2.3.B. Recommendation

We recommend that the Direction de l'eau potable, the Direction des infrastructures, and the Direction des stratégies et transactions immobilières, as well Ahuntsic-Cartierville, Mercier-Hochelaga-Maisonneuve, Pierrefonds-Roxboro and Verdun boroughs, put control mechanisms in place to ensure receipt, from contractors, of complete and updated information about subcontractors in order to have all the required information and carry out the necessary verifications to ensure compliance with the requirements set out by the city in the books of specifications.

#### Business units' responses:

##### **SERVICE DE L'EAU – DIRECTION DE L'EAU POTABLE**

*[TRANSLATION] There will be a systematic follow-up of the list of subcontractors at each work site meeting. (Planned completion: June 2013)*

*A daily list of subcontractors present on the work site will be entered in the work site log kept by the construction superintendent. (Planned completion: June 2013)*

##### **SERVICE DES INFRASTRUCTURES, DU TRANSPORT ET DE L'ENVIRONNEMENT – DIRECTION DES INFRASTRUCTURES**

*[TRANSLATION] At the start-up meeting, the contractor will be reminded of his obligation to submit all amendments to the list of subcontractors to the city for approval; and the procedure that applies in the event of non-compliance with this requirement will be explained. (Planned completion: June 2013)*

##### **SERVICE DE LA CONCERTATION DES ARRONDISSEMENTS ET DES RESSOURCES MATÉRIELLES – DIRECTION DES STRATÉGIES ET TRANSACTIONS IMMOBILIÈRES**

*[TRANSLATION] In addition to the measures already mentioned, a correlation will be made between the list of subcontractors who have withdrawn their contract and the contractor's list of subcontractors in order to ensure that the latter is complete.*

*A sample document enabling this correlation will be added to the electronic bank of contract management documents. The checklist will refer back to this document. (Planned completion: June 2013)*

##### **AHUNTSIC-CARTIERVILLE BOROUGH**

*[TRANSLATION] The construction site superintendent and the project manager (architect, engineer, property manager, landscape architect, and others) must keep an updated list of subcontractors.*

*At each work site meeting, an item on the agenda will deal with subcontractors so that they can be updated. If there are any changes, checks can be carried out and*

the contractor must provide all the supporting documents. **(Planned completion: May 2013)**

#### **MERCIER–HOCHELAGA-MAISONNEUVE BOROUGH**

[TRANSLATION] See the specifications clauses mentioned above in response to recommendations 3.1.C and 3.2.1.B (clauses 3.3.3.1, 3.3.3.7 and 3.3.3.8.).

In addition, a dual verification is systematically undertaken when payments are discharged. **(Completed, April 2013)**

#### **PIERREFONDS-ROXBORO BOROUGH**

[TRANSLATION] Checking the compliance and validity of the information provided by the contractor and his subcontractors will be achieved by consulting various bodies. In order to ensure that the information is up to date, various websites will be used. As well, construction site superintendents will monitor the work site in order to validate the list of subcontractors provided by the contractor. In the event of non-compliance, corrective measures will be taken. **(Planned completion: May 2013)**

#### **VERDUN BOROUGH**

[TRANSLATION] Put in place control mechanisms to ensure receipt, from the general contractor, of complete and updated information about subcontractors, especially when an addition or amendment is made to the subcontractors during the contract. **(Planned completion: June 2013)**

### 3.2.4. Measures to Apply the Clauses

#### 3.2.4.A. Background and Findings

Monitoring must be carried out to ensure that contractors apply the clauses in the books of specifications and the call for tenders documents so that the required information is received and the necessary checks are completed. In the event that a contractor fails to comply with his contractual obligations, there are provisions in the clauses of the books of specifications to address the issue with the contractor.

For example, the contractor is clearly at fault if he:

- Has work performed by a subcontractor who does not hold the appropriate licence;
- Contravenes laws, decrees, orders in council, regulations or managers' instructions.

In the event of default, the manager's authorized representative must notify the contractor and caution him about these defaults and the deadline for remedying the situation.

In the case of the contractor's obligations to supply information on subcontractors who are performing work on work sites, we identified several discrepancies in the preceding sections, including:

- The list of subcontractors not sent or not containing all the information required by law (for example, the date and amount of any subcontract above \$25,000, the date and number of subcontractors' certificates of compliance);
- The amended list of subcontractors not transmitted following the addition of subcontractors;
- Copies of subcontractors' RBQ licences not provided.

Based on the information received, it is often the same contractors and subcontractors who perform the work, so project managers do not always see the relevance of obtaining the information requested about subcontractors' qualifications and compliance. Therefore no measures have been taken to date by the business units with whom we met to point out these discrepancies to the contractors and the fact that corrective action needs to be taken regarding subcontracting.

In our opinion, the business units should provide thorough monitoring of how the clauses in the books of specifications and call for tenders documents are applied. They should also ensure that actions taken are properly documented. This will make it easier afterward to strictly apply the default clauses and not to leave the impression of "tolerant" management.

#### 3.2.4.B. Recommendation

**We recommend that the Direction de l'eau potable, the Direction des infrastructures, and the Direction des stratégies et transactions immobilières, as well as Ahuntsic-Cartierville, Mercier-Hochelaga-Maisonneuve, Pierrefonds-Roxboro and Verdun boroughs, properly document the follow-up undertaken with contractors to obtain the information required in the books of specifications and call for tenders documents in order to be able to apply the default procedure when required.**

#### Business units' responses:

**SERVICE DE L'EAU – DIRECTION DE L'EAU POTABLE**

*[TRANSLATION] The follow-up with the contractors will be entered in the minutes of work site meetings. (Planned completion: June 2013)*

*The work site log kept by the superintendent will be updated daily to reflect the subcontractors present on the work site. (Planned completion: September 2013)*

**SERVICE DES INFRASTRUCTURES, DU TRANSPORT ET DE L'ENVIRONNEMENT –  
DIRECTION DES INFRASTRUCTURES**

[TRANSLATION] The amended compliant list of subcontractors will be entered in the file, along with copies of valid RBQ licences, certificates of compliance from Revenu Québec and proof of RENA verification. **(Planned completion: June 2013)**

**SERVICE DE LA CONCERTATION DES ARRONDISSEMENTS ET DES RESSOURCES  
MATÉRIELLES – DIRECTION DES STRATÉGIES ET TRANSACTIONS IMMOBILIÈRES**

[TRANSLATION] Implementation of the checklist will complete the monitoring measures already in place and standardize the way information is presented. **(Planned completion: June 2013)**

**AHUNTSIC-CARTIERVILLE BOROUGH**

[TRANSLATION] Preserve all traces of the follow-up undertaken with contractors on the issue of subcontractors. **(Planned completion: May 2013)**

**MERCIER-HOCHELAGA-MAISONNEUVE BOROUGH**

[TRANSLATION] As set out in clauses 3.3.3.7 and 3.3.3.8 of the specifications (see responses to recommendations 3.1.C and 3.2.1.B), regular follow-up will now be undertaken at each work site meeting, in addition to a thorough examination of the payments discharged and requests for payment for work performed by subcontractors, prior to authorizing such payments.

All this information will be kept in the subcontracting file, as mentioned in our response to recommendation 3.2.2.C. **(Completed, April 2013)**

**PIERREFONDS-ROXBORO BOROUGH**

[TRANSLATION] An internal form will be used to record each level of verification of information received, and the supporting documents will be printed and kept in the relevant contract file. **(Planned completion: May 2013)**

**VERDUN BOROUGH**

[TRANSLATION] See to it that project managers document all follow-up undertaken with contractors to obtain the required information in order to be able to apply the relevant procedure in the event of default. **(Planned completion: June 2013)**

## 4. Appendix

### 4.1. Summary of the Work Contracts Examined

**Table A – Sample of the Contracts Selected**

Selection No.	Nature of the work	Business units	Amount of the awarded contract	Date the contract was awarded
1	Water mains	DEP	\$16,420,479	2012-08-23
2	Water mains	DEP	\$8,083,625	2012-05-17
3	Bridge demolition	DI <sup>a</sup>	\$12,996,905	2012-05-14
4	Pavement and sidewalks	DI	\$8,329,798	2012-08-20
5	Pavement and markings	DI	\$1,974,088	2012-08-20
6	Drinking water plant repairs	DSTI	\$9,220,535	2012-06-21
7	Building	DSTI	\$7,615,511	2012-08-20
8	Pavement and sidewalks	Ahuntsic-Cartierville borough	\$2,065,159	2012-09-19
9	Pavement and sidewalks	Ahuntsic-Cartierville borough	\$2,566,389	2012-10-04
10	Pavement repairs	Verdun borough	\$3,433,210	2012-08-22
11	Sewer reconstruction	Verdun borough	\$877,600	2012-06-01
12	Pavement and lateral mains	Pierrefonds-Roxboro borough	\$601,943	2012-09-05
13	Construction of an indoor pool	Mercier–Hochelaga-Maisonneuve borough	\$12,873,530	2012-07-03

<sup>a</sup> This contract is under the Direction des transports of the Service des infrastructures, du transport et de l'environnement as of January 1, 2013, following changes in the city's organizational structure.