



[This is an English version of the decision originally submitted in French to Montréal's City Council on September 13, 2017]

Decision

Rescinding of Contract for the Reconstruction of Lookouts, Footbridges and Paths in the Bois-de-l'Île-Bizard Nature Park (Call for Tenders 16-6853)

(s. 57.1.10 of *Charter of Ville de Montréal*)

September 13, 2017

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SUMMARY

The Office of Inspector General (OIG) initiated an investigation after receiving complaints that a company other than the winning bidder of the contract awarded following call for tenders 16-6853 was performing work on the site. The complainants asked how this was possible, particularly since criminal charges were pending against the president of this company.

Call for tenders 16-6853 was launched by Montréal's Large Parks, Greening and Mount-Royal Department (Service des grands parcs, du verdissement et du Mont-Royal) for the reconstruction of lookouts, footbridges and paths in the Bois-de-l'Île-Bizard nature park. The contract, for \$11,284,767.25, was awarded to the lowest compliant bidder, Construction Généphi Inc. Given the nature and value of the contract, all bidders were required to have authorization to enter into public contracts from the Autorité des marchés financiers ("AMF"). Généphi holds such an authorization.

The investigation revealed that Généphi had previously concluded a joint venture agreement with Congeres Inc. Pascal Patrice, the latter's president and sole shareholder, is facing criminal charges in the Faubourg Contrecoeur case and is currently on trial. Congeres does not hold and has never applied for authorization from the AMF.

The agreement was concluded in 2014 and details the operation of the Généphi-Congeres joint venture. The president and sole shareholder of Généphi, Daniel Lefebvre, handles the financial aspect: he provides the bonding and financing and agrees to pay the invoices issued by Congeres, which handles operations, searches for tender opportunities, prepares the bids, and supplies labour and materials for carrying out the contract.

The facts gathered during the OIG's investigation show that Généphi and Congeres applied and respected the joint venture agreement throughout call for tenders 16-6853. Pascal Patrice found the call for tenders, handled most of the bid preparation, including contacting subcontractors, and supervised work on the job site. He is also Généphi's main spokesperson with the City. For his part, Daniel Lefebvre attended two meetings with City representatives and paid the invoices issued by Congeres.

The issue in this case is that Généphi submitted a bid in its name only, without revealing the existence of the joint venture to the City. Other actions taken created some confusion as they further concealed the real role played by Congeres in executing the contract awarded following call for tenders 16-6853, including the use of Généphi's email account and electronic signature by Congeres employees.

Under section 57.1.10 of Charter of Ville de Montréal, two conditions allow for the Inspector General's intervention, which are cumulative. The Inspector General must find that a requirement of tender documents or contract has not been met or that false information was given during the contracting process. He must also be of the opinion that the seriousness of the breach observed justifies the cancellation, rescinding or suspension of the contract.

With respect to the first criterion, the Inspector General believes submitting a bid solely in Généphi's name, when the head of this company, Daniel Lefebvre, knew full well that the contract would be performed through a joint venture, constitutes false information given during the contracting process. In this instance, it concerns the real identity of the City's contracting party.

This breach is objectively serious for two reasons. First, by failing to submit a bid in the name of the joint venture Généphi-Congeres, Généphi enabled Congeres to avoid the obligation of holding authorization from the AMF and in so doing, deprived the City and the public of the opportunity to get assurance concerning the winning bidder's integrity. Allowing Généphi to act in this manner would undermine the usefulness and credibility of such authorization in the Government's fight against corruption and the use of fraudulent tactics.



Second, G  n  phi's actions damages the integrity of the tendering process. Since the obligation to hold AMF authorization pursuant to Order-in-Council 796-2014 is a public policy requirement, the other bidders had every reason to expect that the "real" winning bidder also meet this requirement.

In short, the Inspector General is of the opinion that the conditions set out in section 57.1.10 of Chart of Ville de Montr  al have been established, and therefore rescinds the contract awarded by the Agglom  ration Council on August 25, 2016 following call for tenders 16-6853.

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1. Scope of Work

1.1 Warning

Under section 57.1.8 of *Chart of Ville de Montréal* (CQLR c C-11.4), the Inspector General has the mandate to oversee contracting processes and the carrying out of contracts by the City or by an associated legal person.

The Inspector General does not conduct any criminal investigations. It conducts investigations of an administrative nature. In this decision, wherever the term “investigation” is used, it means an investigation of an administrative nature and under no circumstances shall it be interpreted as referring to a criminal investigation.

1.2 Applicable standard of proof

The Inspector General places upon himself the obligation of delivering that are timely, objective, accurate and presented in a manner to ensure that the individuals and organizations under his jurisdiction are able to act on the information provided.

Consequently, in support of his opinions, reports and decisions, the Inspector General imposes upon himself the burden of proof of the civil standard of the balance of probabilities.¹

1.3 Notice to interested party

In accordance with his duty of procedural fairness, before releasing the findings of an investigation, the Inspector General sends the parties concerned a Notice to Interested Parties (the “Notice”) indicating the facts gathered during the investigation.

On receipt of the Notice, the persons concerned may submit written comments, representations or observations that can influence the OIG’s decision.

On August 18, 2017, such a Notice was sent to Daniel Lefebvre for *Construction Généphi Inc.*, to Pascal Patrice for Congeres Inc. and to the City’s Large Parks, Greening and Mount-Royal Department (*Service des grands parcs, du verdissement et du Mont-Royal*).

Their responses will be discussed in this decision.

¹ Evidence is sufficient if it renders the existence of a fact more probable than its non-existence (see Article 2804 of the *Civil Code of Québec*).



2. Contract covered by the OIG's investigation

2.1 Call for tenders 16-6853

On May 18, 2016, Montréal's Large Parks, Greening and Mount-Royal Department launched call for tenders 16-6853 for the reconstruction of lookouts, footbridges and paths in the Bois-de-l'Île-Bizard nature park.

According to the decision summary (1166316014), this work part of major strategic issues described in the *Strategic Development Plan for Montréal's Nature Parks - 2015-2024* (*Plan stratégique de développement des parcs-nature de Montréal – 2015-2024*).

The decision summary states that [TRANSLATION] “the main purpose of the mandate is to showcase the landscape and natural heritage of the Bois-de-l'Île-Bizard nature park, and in a spirit of innovation, update its image by proposing works that are in keeping with the park's setting. [...] Concretely, the work essentially involves dismantling and replacing the existing structures with new, improved structures. [...] The project includes eleven (11) separate structures and associated facilities. The work entails demolishing two large footbridges, two lookouts and six low footbridges and rebuilding two large footbridges, two lookouts, one observation tower and six low footbridges.”

There were five (5) addenda to call for tenders 16-6853 and the public bid opening took place on July 6, 2016. Of the twenty-three (23) firms that expressed an interest, two (2) contractors submitted compliant bids. The lowest compliant bidder to which the contract was ultimately awarded was *Construction Généphi Inc.* (“Généphi”).

On August 25, 2016, the Montréal Agglomeration Council approved the contract award to *Généphi*. The total maximum cost of the contract, including taxes, contingencies and incidentals, was \$11,284,767.25

2.2 Requirements of call for tenders 16-6853

Call for tenders 16-6853 contained several documents including Fact Sheet (*Fascicule*) 1-575, which set out the special administrative clauses. This fact sheet was modified twice during the tender period.

The first addendum replaced the May 2016 version of Fact Sheet 1-575 with that of June 2016, while the second addendum slightly amended clause 14 and removed clauses 36 and 37. In both cases, the clauses of particular importance in this matter remained unchanged from the start to the end of the tender period.

One such clause was clause 13 titled [TRANSLATION] “Provisions to promote contract integrity.” The purpose of this clause was to inform interested parties that all bidders must hold an authorization from the *Autorité des marchés financiers* (“AMF”) and submit a copy thereof to the City before the contract award. This clause reflects government

Order-in-Council 796-2014 (September 10, 2014)² adopted pursuant to the *Act respecting contracting by public bodies* (RLRQ, c C-65.1) (“ARCPB.”)

In fact, the first paragraph of section 21.17 of the ARCPB states as follows:

“An enterprise that wishes to enter into a contract with a public body involving an expenditure equal to or greater than the amount determined by the Government must obtain an authorization for that purpose from the Autorité des marchés financiers (the Authority). The amount may vary according to the category of contract.”³

The Government thus adopted Order-in-Council 796-2014 covering all construction contracts or subcontracts involving an expenditure of \$5 million or more, including expenditures incurred if all the renewal options were exercised.

Since the contract arising from call for tenders 16-6853 is for construction work and its value exceeds this threshold, all bidders interested in this contract had to have authorization from the AMF.

Thus, Généphi attached to its bid a copy of the AMF authorization received on October 3, 2014 and was qualified to be awarded the contract following call for tenders 16-6853.

2.3 Complaints

In fall 2016, the OIG received two complaints concerning call for tenders 16-6853. Various issues were raised, including poor management of the work, the fact that the work was not being supervised and carried out by the winning bidder, *Généphi*, but by another company, Congeres Inc. (“Congeres”), and questions as to whether the president and sole shareholder of Congeres, Pascal Patrice, should be entrusted with carrying out a public contract when he was facing criminal charges in the *Faubourg Contrecoeur* case.

The OIG conducted an investigation, which culminated in this decision.

² In the interest of transparency, the Inspector General wishes to point out that clause 13 of Fact Sheet 1-575 of call for tenders 16-6853 reflects the previous order-in-council, i.e. Order-in-Council 1105-2013 (October 30, 2013). However, this has no impact on this case. Although the 2013 order-in-council was aimed at construction contracts and subcontracts involving an expenditure of \$10 million or more as opposed to \$5 million or more, the contract awarded to *Généphi* is valued at \$11,284,767.25 and is therefore covered by both orders-in-council.

³ This section applies to City contracts by way of section 573.3.3.3 of the *Cities and Towns Act* (CQLR c C-19).



3. About the two firms

3.1 *Construction Généphi Inc.*

According to the company's website, *Généphi* is an engineering consultancy and real estate development firm in operation since 2004. Its president and sole shareholder, Daniel Lefebvre, is an engineer with expertise in road projects. He runs his business from offices he set up on the second floor of a home in Saint-Sauveur.

Daniel Lefebvre describes *Généphi* as a business based on the “lean” model: the firm has few permanent employees, preferring to outsource contracts based on the mandates it receives. Daniel Lefebvre states that the absence of such fixed costs gives him more flexibility in choosing the firm's projects. Besides him, the firm has only two permanent employees: his son Guillaume Lefebvre, who is also an engineer, and an assistant.

The information posted on *Généphi*'s website indicates that its achievements include the construction of condominiums, plants and schools. The website also states that the firm offers construction, engineering as well as financing services.

Apart from call for tenders 16-6853, *Généphi* currently has a few other construction contracts obtained following public calls for tender, including one for the reconstruction of a dam in Cowansville and another for the construction and development of a recreational park in Sainte-Catherine. Although *Généphi* is the legitimate winning bidder of these contracts, its website does not list them among its achievements.

As mentioned earlier, *Généphi* holds an authorization from the AMF since October 3, 2014.

3.2 *Congeres Inc. and Pascal Patrice*

3.2.1 *Congeres Inc.*

Founded in 1996, Congeres is a construction firm whose president and sole owner is Pascal Patrice. According to its website, the firm has expertise in formwork and concrete as well as in the design and manufacture of steel structures.

Located in Sainte-Catherine, the firm has about 12 permanent employees. However, depending on the contracts obtained and peak construction periods, it can employ up to 30 people.

Although the Québec government's electronic tendering system (*Système électronique d'appels d'offres du gouvernement du Québec*—SEAO) indicates that Congeres was awarded several public contracts in the past, the latest one dates back to July 2014. According to Pascal Patrice, Congeres is currently working as a subcontractor on the three projects underway at *Généphi*, i.e. call for tenders 16-6853 and the Sainte-Catherine and Cowansville projects.

3.2.2 Pending criminal charges against Pascal Patrice

As pointed out in the complaints to the OIG, Pascal Patrice is currently facing criminal charges. Arrested in May 2012 in the *Faubourg Contrecoeur* case,⁴ he was accused of fraud and conspiracy under the *Criminal Code* (RSC (1985), c C-46) and is currently on trial with co-defendants.

However, it is important to point out that these charges do not, in and of themselves, prevent Pascal Patrice and Congeres from obtaining and performing public contracts. Rather, as mentioned in subsection 2.2, the current law requires that interested parties have authorization from the AMF to bid on certain calls for tender, and when evaluating a request for authorization, the AMF may take certain charges into account.

More specifically, paragraph 3 of section 21.28 ARCPB states that the AMF may consider “whether a person in authority acting on behalf of the enterprise has, in the preceding five years, been found guilty of or prosecuted for an offence listed in Schedule I.” The offences listed in the schedule include precisely fraud and conspiracy.

At the time of writing, Congeres did not have an authorization from the AMF.

The Inspector General wishes to point out that he is not making any inference concerning the outcome Pascal Patrice’s criminal trial, pursuant to his right to the presumption of innocence.

3.3 Relationship between G  n  phi and Congeres

As mentioned earlier, it’s been about three (3) years since Congeres was awarded a contract following a public call for tenders. During this time, Congeres chose to participate in public contracts obtained by other firms, in particular, *G  n  phi*.

According to Daniel Lefebvre, although Congeres has the manpower required to execute public construction projects, only his firm, *G  n  phi*, has the financial resources required to obtain and support large-scale projects such as call for tenders 16-6853. Pascal Patrice confirmed this.

Daniel Lefebvre further explained that this is why Congeres acts as a subcontractor and *G  n  phi* submits the bids as general contractor. Moreover, the latter told OIG investigators that he [TRANSLATION] “prefers to handle the financial and administrative aspects whereas Pascal [Patrice] likes machinery and being on the ground.”

In other words, there is a kind of partnership between *G  n  phi* and Congeres, with each firm making a different but complementary contribution when executing public projects.

⁴ Docket number (Num  ro de dossier) 500-01-072674-127.



However, the definitive form of this partnership is described in a contradictory manner. Although Daniel Lefebvre and Pascal Patrice claim that Congeres is just a *Généphi* subcontractor, the OIG's investigation revealed that the relationship between the two firms goes well beyond subcontracting. Daniel Lefebvre once considered buying Congeres, and an agreement detailing the operation of a *Généphi-Congeres* joint venture was concluded in 2014 and has since been applied by the two contractors.

3.3.1 *Acquisition of Congeres by Généphi*

Daniel Lefebvre told OIG investigators that in 2014, when *Généphi* had to execute two contracts obtained in 2012 and 2013 to refurbish the drinking water treatment plant in Chomedey, Laval, he considered acquiring Congeres.

However, after consulting with his accountant and legal counsel, he changed his mind. A number of reasons led to this decision. First, he contented that he could not check Congeres' books before the deal to make sure the company was financially sound.

Second, Daniel Lefebvre said he was concerned about the impact the acquisition of Congeres would have on *Généphi*'s AMF authorization. Knowing that Pascal Patrice was facing criminal charges and that Congeres did not have an authorization from the AMF, he told OIG investigators that he came to the following conclusion: [TRANSLATION] "It doesn't work well for me, but there's nothing I can do about it. The law being what it is, we won't be doing ourselves any favours if I lose my AMF [authorization] or damage my reputation." According to him, [TRANSLATION] "damaging" his reputation could also affect his access to bank financing for future bids.

Lastly, Daniel Lefebvre said that he discussed with his legal counsel the possibility of just acquiring Congeres' assets. However, this option was also rejected because in order for *Généphi* to keep its AMF authorization, Pascal Patrice would have had to be completely excluded from the company formed as a result of the acquisition, and Daniel Lefebvre needed him to execute the public contracts obtained by *Généphi*.

3.3.2 *Joint venture agreement between Généphi and Congeres*

Since *Généphi*'s acquisition of Congeres was not deemed viable, Daniel Lefebvre and Pascal Patrice fell back on the plan to form a *Généphi-Congeres* joint venture.

When interviewed by OIG investigators, Pascal Patrice provided a document titled [TRANSLATION] "Joint Venture Agreement" (the "Agreement"). Dated September 1, 2014, the Agreement defines the relationship between *Généphi* and Congeres with respect to [TRANSLATION] "drinking water and/or wastewater treatment projects as well as road infrastructure projects bid on and obtained by *GÉNÉPHI-CONGERES*."

Section 2.1 of the Agreement states that Congeres [TRANSLATION] “agrees to provide project management, secretariat and specialized labour service for the consortium's work.” In particular, its responsibilities include:

- *[TRANSLATION] “Find and bid on wastewater and drinking water treatment projects and/or industrial mechanics and road infrastructure projects;*
- *Hire and manage the personnel required to successfully carry out these projects;*
- *Determine the materials and quantities required to execute the contract;*
- *Create lists of suppliers and subcontractors required for projects based on price, quality, inventory and reliability criteria;*
- *Ensure project activities are carried out in accordance with the architectural and engineering documents provided;*
- *Supervise subcontractors’ project-related construction work;*
- *Provide GÉNÉPHI with project construction cost and progress reports.”*

Section 3.3 of the Agreement states that [TRANSLATION] “CONGERES will track construction costs and prepare the documents required to pay project suppliers and subcontractors, no later than 30 days after these costs are billed. The rate table appended to this Agreement forms an integral part thereof.”

For its part, *Généphi* agreed in section 3.1 of the Agreement to [TRANSLATION] “reimburse CONGERES for costs incurred for the projects, no later than 30 days after such costs are billed.” This is the only obligation imposed on *Généphi* by the Agreement.

Section 2.2 of the Agreement stipulates that [TRANSLATION] “the parties agree to equally share the gross profits generated by projects obtained by the GÉNÉPHI-CONGERES consortium.”

Lastly, section 4.1 stipulates that the Agreement is effective for five (5) years commencing on [TRANSLATION] “September 1, 2014, or at least until the final acceptance of projects obtained by the consortium.”

To summarize, the Agreement states that Congeres will handle the operations aspect of the joint venture while *Généphi* will handle the financial aspect, and that profits will be shared equally.

3.3.3 Outcome of the Agreement

While he acknowledged that he considered forming a joint venture, Daniel Lefebvre told OIG investigators that it would [TRANSLATION] “not have been a good idea to do this given the turn of events and the current situation [criminal charges against Pascal Patrice].” However, the facts gathered during the investigation lead the Inspector General to believe that Daniel Lefebvre and Pascal Patrice went ahead with the Agreement and that *Généphi* and Congeres functioned as a joint venture for several public contracts.



First, although the copy of the Agreement provided by Pascal Patrice to OIG investigators was signed by only one of the two parties, it turns out that the signatory is Daniel Lefebvre.

In addition, both Pascal Patrice and Daniel Lefebvre told OIG investigators that the Agreement is the only document governing the *Généphi*-Congeres relationship. More importantly, Daniel Lefebvre told OIG investigators that even though the Agreement was created for the contracts obtained by *Généphi* in Laval, *Généphi* and Congeres continued to operate according to the spirit of the Agreement, including for the execution of the contract awarded following call for tenders 16-6853.

In fact, in 2015, *Généphi* and Congeres submitted a joint bid as a formal consortium in response to a call for tenders launched by the Québec Department of Transport (*Ministère du transport du Québec*) for the reconstruction of a bridge in Saint-Valentin. The consortium was awarded the \$710,000 contract.

Lastly, it should be noted that since the Agreement was concluded in 2014, *Généphi* has been a major customer of Congeres for the execution of public contracts. Apart from call for tenders 16-6853, two other public contracts obtained by *Généphi* following municipal calls for tender are being executed by Congeres, i.e. those for the reconstruction of a dam in Cowansville and for the development and construction of a recreational park in Sainte-Catherine.

In short, the *Généphi*-Congeres Joint Venture Agreement was initially to apply only to the Laval project, but its operating mode continued to be used for contracts subsequently obtained by *Généphi*. The next section will discuss the facts gathered by the OIG that lead to the opinion that the Agreement was applied by both firms to submit a bid in response to call for tenders 16-6853 and to execute the contract resulting therefrom.

4. Application of the Agreement in call for tenders 16-6853

4.1 *Decision to bid in response to call for tenders 16-6853*

Pascal Patrice told OIG investigators that he was the one who first noticed call for tenders 16-6853 on SEAO. He was especially interested in the project because it involved the construction and assembly of footbridges and metal structures, which he described as part of Congeres' area of expertise.

He said that he then contacted Daniel Lefebvre to discuss the possibility of *Généphi* submitting a bid. Daniel Lefebvre said he was mostly interested in the part of call for tenders 16-6853 pertaining to the supply of Goodfellow FSC-certified IPÉ wood. This is because as the owner of a hardware store, he would be supplying the wood, which could generate over one million dollars (\$1,000,000) in sales.

Since both contractors stood to gain from this contract, Daniel Lefebvre and Pascal Patrice calculated their respective anticipated profit margins and decided that

Généphi should submit a bid. Congeres and *Généphi* both obtained the specifications of call for tenders 16-6853 on June 2, 2016, respectively at 12:46 p.m. and 12:54 p.m.

Thus, this first step of *Généphi*'s bid process for call for tenders 16-6853 proceeded in accordance with sections 2.1 and 2.2 of the Agreement, i.e. Pascal Patrice found the project on which to bid and the two contractors agreed on margin sharing.

4.2 Preparation of *Généphi*'s bid

Pascal Patrice, Daniel Lefebvre, Guillaume Lefebvre and Mathieu Lafaille said they all helped prepare *Généphi*'s bid. The task, however, was not evenly split since Pascal Patrice handled the lion's share of the work.

4.2.1 Estimate prepared by Pascal Patrice

Guillaume Lefebvre said that he sat down with Pascal Patrice to estimate the quantities and costs for the bid after the latter had evaluated all the material resources required for the project. Incidentally, Guillaume Lefebvre was the one designated by *Généphi* to sign its bid.

Congeres engineer Mathieu Lafaille, whose role in executing the contract awarded following call for tenders 16-6853 will be examined further on, said he also worked with his boss, Pascal Patrice, on the estimates.

The fact that the quantities and materials required for the bid were estimated by Pascal Patrice is consistent with the tasks assigned to Congeres in section 2.1 of the Agreement.

4.2.2 Search for subcontractors by Pascal Patrice

Besides the estimates, Pascal Patrice was also the one who looked for the subcontractors required for the *Généphi* bid. He contacted companies in the fields required by the work described in the call for tenders (welding, drilling, supply of piles, etc.).

The emails exchanged between Pascal Patrice and the representatives of these companies, a copy of which was obtained by the OIG, confirm that the search for subcontractors was essentially handled by Pascal Patrice alone. None of the emails mentioned the fact that the outsourcing offers were for a bid that would ultimately be submitted by *Généphi*.

Pascal Patrice's work involving the selection and management of subcontractors continued even after the contract was awarded to *Généphi*. After learning that *Généphi*



was the winning bidder for call for tenders 16-6853, a number of subcontractors sent their service offers to the firm. These offers were all redirected to Pascal Patrice.

Once again, Pascal Patrice's management of the subcontractors respects section 2.1 of the Agreement, which stipulates that Congeres must [TRANSLATION] “hire and manage the personnel required to successfully carry out these projects.”

4.2.3 No subcontracting offer and no disclosure of subcontract by Congeres

Although Pascal Patrice and Daniel Lefebvre claim that Congeres is just one of many *Généphi* subcontractors, it is interesting to note that the two men admitted that Congeres did not submit a formal subcontracting offer to *Généphi*.

Pascal Patrice said that this is not how his relationship with *Généphi* works. For his part, Daniel Lefebvre explained the situation as follows: [TRANSLATION] “Look at Congeres and *Généphi* as one and the same: it's a subcontractor with which we have a really tight relationship.”

As such, Congeres issues an invoice every month to *Généphi* for the work performed by its employees, charged at an hourly rate, and for any other costs incurred, such as payments to suppliers by Congeres. The OIG gathered some of the invoices issued to *Généphi* by Congeres in connection with call for tenders 16-6853. These will be examined in detail in the next section.

Besides not submitting a subcontracting offer, Congeres differed from the other subcontractors in another way. More specifically, four (4) of the subcontractors used the provisions of article 2724 C.C.Q. and following to disclose their subcontract to the City. The values reported range from \$30,000 to \$500,000.

Although Pascal Patrice told OIG investigators that Congeres' contribution to call for tenders 16-6853 would be about four million dollars (\$4,000,000), the City has yet to receive any disclosure of a subcontract from the firm.

While the Agreement does not cover the non-disclosure of subcontracting by Congeres, the monthly invoicing of the firm's costs and expenses is consistent with the provisions of sections 3.1 and 3.3 of the Agreement.

4.3 Execution of the contract awarded following call for tenders 16-6853

The following subsections present the facts gathered by the OIG regarding the operating mode chosen by *Généphi* and Congeres to execute the contract awarded following call for tenders 16-6853 and the repercussions thereof.

4.3.1 Tasks performed by Congeres in connection with the contract awarded following call for tenders 16-6853

Just as in the preliminary phases involving the search for calls for tender and the bid preparation, Congeres has played a major role in executing the contract awarded following call for tenders 16-6853.

Generally speaking, the vast majority of the employees on the work site are either Congeres employees or employees of subcontractors hired by Congeres. The same holds true for the machinery and tools on the site: they belong either to Congeres or to the subcontractors it hired. The footbridges and other structures required for the project are assembled and stored at the Congeres plant.

Pascal Patrice continues to manage the subcontractors and suppliers, a role he had assumed before the contract was awarded to *Généphi*. Mathieu Lafaille, the Congeres employee mentioned earlier, assists him in this regard. Together, the two handle procurement and the logistics of executing the contract awarded following call for tenders 16-6853.

Congeres employees oversee the work on the site. Mathieu Lafaille handles the daily coordination of the work and Frédéric Houle is the site superintendent.

Representations between the winning bidder, *Généphi*, and City representatives, are also handled by Congeres employees, namely, Pascal Patrice and Mathieu Lafaille.

In other words, Congeres is fulfilling his obligations under section 2.1 of the Agreement, i.e. to ensure [TRANSLATION] “that the project activities are carried out in accordance with the architectural and engineering documents provided” and to “supervise subcontractors’ project-related construction work.”

4.3.2 Tasks performed by Généphi in connection with the contract awarded following call for tenders 16-6853

As stipulated in the Agreement, *Généphi*’s contribution to the contract awarded following the call for tenders is essentially financial in nature. It’s true that Guillaume Lefebvre was involved in calculating the estimates for *Généphi*’s bid, and now that the work has begun, he claims that he checks, signs and seals shop drawings. However, neither he nor his father Daniel Lefebvre are present on the work site and there is no indication that they play a role in managing the work. They confirmed that they have attended only two (2) or three (3) meetings with City representatives.

By his own admission, Daniel Lefebvre prefers to handle the financial and administrative aspects of a construction project. Thus, he is the one who provided a surety bond equal to ten percent (10%) of the value of the contract contemplated by call for tenders 16-6853, i.e. just over one million one hundred thousand dollars (\$1,100,000). As mentioned earlier, he is also in charge of paying the invoices sent by Congeres and by some of the subcontractors.



The financial documentation obtained by the OIG reveals that the invoices received by *Généphi* as part of call for tenders 16-6853 can be broken down into three categories, as follows:

- those sent monthly by Congeres for the time worked by its employees and charged at a pre-set hourly rate, as well as other costs paid by Congeres in the performance of the work, including the work performed by subcontractors;
- those sent by subcontractors after Pascal Patrice and Mathieu Lafaille signed purchase orders on behalf of *Généphi*; and
- those sent monthly by Congeres for management fees and including half of certain fixed expenses incurred by Congeres. Totalling \$138,065.924 including taxes, these expenses in connection with call for tenders 16-6853 have been assumed and paid by *Généphi* since July 2016. They are detailed in the following table.

Type of Congeres Expense	Amount Paid by <i>Généphi</i>
Rent	\$3,000
Manulife Financial	\$900
Gaz Métro (garage)	\$100
Hydro (garage)	\$250
Bell Telephone	\$100
Bell Internet	\$47.50
Cafo assurances MP2B	\$230.36
Audi SQ5	\$792.90
Salary of Congeres assistant	\$616.80
Salary of Pascale Patrice	\$7,305
Monthly total (before taxes)	\$13,342.56

Notably, the method used by *Généphi* to pay these invoices is different from the method used in a typical subcontractor relationship and is indicative of a deeper cooperation, or even a certain financial entanglement between the two firms.

Although Congeres sends monthly invoices regarding call for tenders 16-6853 and management fees, *Généphi* issues cheques on a far less consistent basis. As well, some of the stubs of the cheques issued by *Généphi* sometimes indicate the Congeres

invoice number while others state “advance” with or without mentioning the month. Either way, the amounts of these cheques are almost always multiples of twenty-five thousand dollars (\$25,000), regardless of the amount of the last invoice issued by Congeres.⁵ In other words, the cheques issued by *Généphi* do not match the amounts invoiced by Congeres.

This results in complicated accounting. In an email sent to OIG investigators, Pascal Patrice conceded that [TRANSLATION] “it’s hard to reconcile the deposits with the associated invoices. *Généphi* makes partial payments that may include other invoices from other projects.”⁶ He went on to say that [TRANSLATION] “for Congeres, we make sure we receive the right amount in the end but we don’t systematically track each invoice.”

For his part, Daniel Lefebvre told OIG investigators that he gives advances to Congeres because it does not have the money to pay its expenses. He stated that the profits are calculated at the end of the project and then shared between them.

In short, the financial aspect of the *Généphi*-Congeres relationship is handled in accordance with sections 2.2, 3.1 and 3.3 of the Agreement: Congeres sends monthly invoices to *Généphi*, which fulfills its only obligation under the Agreement by paying them within a certain amount of time. Then, the two contractors split the profits.

4.3.3 Discussions between Daniel Lefebvre and Pascal Patrice concerning changes in the project’s financial situation

Beyond the monthly billing, section 2.1 of the Agreement stipulates that Congeres must [TRANSLATION] “provide *GÉNÉPHI* with project construction and progress reports.”

In this regard, Pascal Patrice sends Daniel Lefebvre progress reports on all the expenditures incurred by all the subcontractors on the site and of revenues received from the City. This reporting goes well beyond the information usually provided by a subcontractor.

In fact, not only does Pascal Patrice have access to all the expenditures incurred by *Généphi* on the construction site and to the amounts paid to *Généphi* by the City, he also records these amounts to estimate the anticipated profits under various scenarios. Furthermore, another Congeres employee, Mathieu Lafaille, also performs budget analyses, including profit and loss projections for the project, which he then sends to Pascal Patrice and Daniel Lefebvre.

Incidentally, email exchanges between the two contractors, a copy of which was obtained by the OIG, revealed intense discussions concerning cash and advances required by Congeres to pay its employees. According to one email sent by Pascal

⁵ The cheques obtained from *Généphi* by the OIG are for \$50,000, \$100,000, \$125,000, \$150,000 and \$225,000.

⁶ The other projects in question are those mentioned earlier, i.e. the public contracts awarded to *Généphi* in Laval, Sainte-Catherine and Cowansville and in whose execution Congeres is involved.



Patrice, these amounts were needed and if not received, [TRANSLATION] “Congeres won’t last more than two weeks” and *Généphi* will have to finish the projects [TRANSLATION] “with subcontractors who don’t work at cost.” Thus, Congeres would invoice only the gross cost of its employees and the materials used, with no profit margin.

When interviewed by OIG investigators, Daniel Lefebvre said that this was offset by the fact that Pascal Patrice will share in the overall profits made by *Généphi* once the contract awarded following call for tenders 16-6853 is completed. He said he also sees it as a way of ensuring Pascal Patrice remained strongly committed to the project. If the project is poorly managed and there are no profits in the end, Congeres will have covered its costs, but made no money.

None of the other subcontractors working on the project regarding call for tenders 16-6853 have access to such information, and Daniel Lefebvre confirmed to OIG investigators that [TRANSLATION] “he’s [Pascal Patrice] the only one with whom I share the profits. There won’t be any others,” because [TRANSLATION] “they’re not as important as him.”

4.3.4 Use of Généphi email addresses by Congeres employees and confusion in representations to the City

As mentioned at the beginning of subsection 4.3, *Généphi* and Congeres did not tell the City, their suppliers or employees about the Agreement or that they would apply its terms and conditions to call for tenders 16-6853. The f operating mode used by the two firms to execute the project further concealed the existence of the Agreement and confused these three groups of people. One source of confusion was the use of *Généphi* email addresses by Congeres employees to legitimize their roles in call for tenders 16-6853.

In fact, in their dealings with City employees during the bid process and execution of the contract awarded following call for tenders 16-6853, Congeres employees sent emails from *Généphi*’s accounts (@genephi.ca or @genephi.com) to which they added an electronic signature giving the impression they were *Généphi* employees.

4.3.4.1 Pascal Patrice

The first to do so was Congeres president Pascal Patrice. From the start of his email exchanges with City employees, Pascal Patrice presented himself as *Généphi*’s project manager. In this capacity, he established himself as *Généphi*’s sole spokesperson with the City on various matters. In fact, Daniel Lefebvre told OIG investigators that he deliberately sought to position Pascal Patrice as spokesperson, believing it would be more efficient if he were the only person dealing with the City.

As such, it was Pascal Patrice who represented *Généphi* at site meetings. Daniel Lefebvre attended just two (2) meetings with City representatives, one of which

was the kickoff. When City employees tried to contact Daniel Lefebvre, he would always refer them to Pascal Patrice, who was even in charge of sending *Généphi's* invoices and requests for payment to the City.

In light of the major role played by Pascal Patrice during the three (3) months following the contract award for call for tenders 16-6843, the City representatives sent a letter to Daniel Lefebvre asking him to clarify the situation and confirm the name of *Généphi's* authorized representative. A few days later, on December 19, 2016, the City received a letter from Daniel Lefebvre officially naming Pascal Patrice as *Généphi's* authorized representative.

4.3.4.2 Mathieu Lafaille

In his emails to the City, Mathieu Lafaille presented himself as *Généphi's* project manager for call for tenders 16-6853. In this capacity, he handled the daily coordination of the work on the site and attended several site meetings with the City's representatives. As mentioned earlier, he is an employee of Congeres and reports directly to Pascal Patrice.

4.3.4.3 Chantal Quirion

For her part, Chantal Quirion sent a few emails to the City after the bid opening on July 6, 2016. She inquired about the progress of call for tenders 16-6853 through the various City bodies and tried to find out when the contract would be awarded. She then signed her emails as *Généphi's* administrative assistant. In fact, she is an administrative assistant at Congeres and also reports to Pascal Patrice. Ultimately, it was to her *Généphi* email address that the City sent notification of the contract award to *Généphi*.

This complete management of the project by Congeres employees is consistent with the stipulations of section 2.1 of the Agreement.

4.3.5 Misrepresentations as to the nature and scope of the work performed by Congeres

A second indicator that both firms were concealing the extent of Congeres' role in executing the contract awarded following call for tenders 16-6853 relates to the obligation to provide the City with a list of the subcontractors.

Under clause 2.3.3.1 of the general administrative clauses of call for tenders 16-6853, the winning bidder must [TRANSLATION] "submit to the Director, immediately following the contract award, a complete and detailed list of subcontractors and the work they will perform, and notify the Director of any change thereto after the contract award."



The first version of this list was only provided by Pascal Patrice, on behalf of *Généphi*, on January 13, 2017, i.e. almost five (5) months after the contract was awarded. At the end of March, City representatives noted inconsistencies between the amount of work indicated for some suppliers and subcontractors and how much was actually performed as well as the absence of contract amounts for some of these suppliers. They asked for an amended version and on April 6, 2017, Mathieu Lafaille, still signing on behalf of *Généphi*, sent a new list.

In the two versions, two Congeres employees, Pascal Patrice and Mathieu Lafaille, are listed as *Généphi* employees, respectively the firm's "project director" and "project manager - facilities/civil." The amount of the subcontract awarded by *Généphi* to Congeres changed in the two versions of the list, increasing from \$100,000 before taxes to \$400,000 before taxes. The nature of the subcontract remained unchanged and was listed as [TRANSLATION] "machinery rental + labour."

This information is false for three reasons. First, Pascal Patrice and Mathieu Lafaille are employees of Congeres, not *Généphi*. At best, Pascal Patrice can claim to be *Généphi*'s authorized representative, which is not the case for Mathieu Lafaille.

Second, the actual value of the Congeres "subcontract" greatly exceeds the two amounts on the list. The invoices sent by Congeres to *Généphi*, a copy of which was obtained by the OIG, show that the work performed as of the end of April 2017 amounts to almost two million dollars (\$1,995,151.64). When interviewed by OIG investigators at the end of June 2017, Daniel Lefebvre and Pascal Patrice respectively estimated that Congeres' contribution to the contract would be between one million five hundred thousand dollars to two million dollars (\$1,500,000 - \$2,000,000) and four million dollars (\$4,000,000).

Lastly, the evidence gathered during the investigation clearly shows that Congeres' contribution to the execution of the contract awarded following call for tenders 16-6853 is not limited to machinery rental and labour. Mathieu Lafaille and Pascal Patrice themselves acknowledged that they performed other tasks associated with general and project management, such as finding call for tenders 16-6853, preparing the *Généphi* bid, managing the subcontractors, placing and paying for supplier orders and acting as *Généphi* representatives with City stakeholders.

4.3.6 Confusion among subcontractors

As mentioned earlier, the operating mode used by *Généphi* and Congeres, according to which Pascal Patrice managed the suppliers selected for call for tenders 16-6843 created confusion among these subcontractors.

Indeed, some suppliers were negotiating with Congeres employees (i.e. Pascal Patrice or Mathieu Lafaille), but then receiving purchase orders signed on behalf of *Généphi*. As attested by the emails obtained by the OIG, they had trouble figuring out whether Congeres or *Généphi* was responsible for paying the invoice, in particular because Pascal Patrice used his Congeres email address during the negotiations. Some

subcontractors sent emails to Pascal Patrice asking whether they should be sending their invoices to Congeres, *Généphi* or both firms, while others had to cancel sales, credit Congeres' account and reissue the invoice to *Généphi*.

4.3.7 Confusion among *Généphi* and Congeres employees

The confusion between *Généphi* and Congeres even extended to the latter's employees.

For example, when OIG investigators asked them to identify *Généphi* employees on the work site, Daniel Lefebvre et Guillaume Lefebvre gave unclear answers.

Besides *Généphi*'s administrative assistant, Daniel Lefebvre first identified Denis Gendron as one of his site superintendents. In truth, although Denis Gendron was indeed a *Généphi* employee who worked on call for tenders 16-6853, he no longer works for the firm and only did so briefly in fall 2016. During his employment, he reported to Pascal Patrice.

Daniel Lefebvre then named another site superintendent, a person by the name of Frédéric and whose last name he could not remember, on whom he relied to keep him informed of what was happening on the site. Frédéric Houle is indeed a site superintendent working on the contract awarded following call for tenders 16-6853, but he is an employee of Congeres. Daniel Lefebvre admitted this, but claimed that this is not important to him since his salary is rebilled to *Généphi* by Congeres.

Daniel Lefebvre and Guillaume Lefebvre also identified Mathieu Lafaille as a *Généphi* project manager for the contract awarded following call for tenders 16-6853. Guillaume Lefebvre went on to say that Mathieu Lafaille is responsible for negotiating and signing purchase orders for materials and tools required for the construction. However, Guillaume Lefebvre did not know whether Mathieu Lafaille was paid by *Généphi* or by Congeres, whereas his father, Daniel Lefebvre, said he used to be paid by *Généphi* but is now being paid by Congeres for group insurance reasons. Mathieu Lafaille said he is an employee of Congeres and reports to Pascal Patrice. He also appears in Congeres' organization chart provided by the firm to the OIG.

As mentioned earlier, Mathieu Lafaille has and uses a *Généphi* email account. He admitted to signing purchase orders on behalf of *Généphi* for some suppliers and even adding his name to *Généphi*'s account with these suppliers to facilitate future transactions. When OIG investigators asked him to define the relationship between *Généphi* and Congeres, he said that according to his understanding, *Généphi* entrusted Congeres with the management of call for tenders 16-6853 and that *Généphi* was responsible for paying the invoices. However, he was not sure whether he was an employee of Congeres or a representative of *Généphi* when he was on the work site.

The status of Guillaume Lefebvre, however, is clear. Still, although he is paid by *Généphi* and cited by Daniel Lefebvre as a permanent employee of his firm, Guillaume Lefebvre's name also appears as [TRANSLATION] "project manager" in the organization chart that Congeres provided to the OIG. The only explanation the witnesses could think of to



explain this situation is that Guillaume Lefebvre is involved in various projects that Congeres is executing in partnership with *Généphi*. Guillaume Lefebvre also said he has an office in the premises of Congeres that he uses from time to time.

Even Pascal Patrice himself used the wrong email address in his exchanges with City representatives; instead of sending the messages from his mailbox as *Généphi*'s project director, he sent them from his Congeres account and signed them as president of this firm. Less than ten (10) minutes after Pascal Patrice one such [TRANSLATION] "mistake," Daniel Lefebvre wrote Pascal Patrice telling him to correct it and resend the email from his *Généphi* email account, which he did shortly thereafter.

4.3.8 Confusion concerning the advertising by Congeres and *Généphi*

The confusion between Congeres and *Généphi* even extends to their advertising and promotional activities.

Initially, Pascal Patrice installed promotional posters bearing the Congeres name on the site of the project awarded following call for tenders 16-6853. However, he had to remove them at the City's request because Congeres was not the winning bidder. Neither Pascal Patrice nor Daniel Lefebvre installed or had promotional signs bearing *Généphi*'s name installed on the work site.

Furthermore, the websites of both two firms lead to confusion. Three of the most recent public contracts awarded to *Généphi* are prominently mentioned on the Congeres site, i.e. call for tenders 16-6853, the Sainte-Catherine recreation park and the refurbishment of the drinking water treatment plant in Chomedey, Laval. The description of the project regarding call for tenders 16-6853 is vague and misleading, and does not mention that Congeres is a subcontractor: it states that the project [TRANSLATION] "was awarded by the City of Montréal" and that the value of the work is [TRANSLATION] "\$11.3 million." However, this amount is *Généphi*'s total bid.

In addition, a photo taken on the site of the refurbishment of the Cowansville dam - another public contract awarded to *Généphi* - also appears prominently on the home page of the Congeres website.

Despite being awarded to *Généphi*, none of these projects are mentioned on *Généphi*'s website, not under the [TRANSLATION] "Achievements" tab or anywhere else.

5. Analysis

These facts lead the Inspector General to make the following three observations and conclude that *Généphi* gave false information when it submitted its bid. Subsection 5.4 will also discuss the responses of *Généphi* and Congeres to the Notice sent by the OIG.

5.1 Need for all bidders responding to call for tenders 16-6853 to have authorization from the AMF

As mentioned in subsection 2.2 of this decision, clause 13 of the special administrative clauses and Order-in-Council 796-2014 require that all bidders responding to call for tenders 16-6853 have authorization from the AMF.

Généphi has such an authorization but not Congeres.

Daniel Lefebvre told OIG investigators that he knew of the pending criminal charges against Pascal Patrice and that Congeres does not have authorization from the AMF.

In his narrative of the events that led to the Agreement, he said that he had decided against acquiring Congeres for fear that it would [TRANSLATION] “damage” his reputation with the AMF and his bank creditors and cause him to lose his authorization and financing. In order to avoid such [TRANSLATION] “damage,” Daniel Lefebvre said that he would have had to completely remove Pascal Patrice from the firm, but that he could not do so as he needed him to execute the projects.

In other words, Daniel Lefebvre considered it unlikely that Congeres or a *Généphi*-Congeres joint venture would obtain authorization from the AMF. As such, because of the criterion requiring authorization from the AMF, only *Généphi* could submit a valid bid in response to call for tenders 16-6853.

5.2 The existence and implementation of a joint venture agreement between *Généphi* and Congeres

A joint venture agreement between *Généphi* and Congeres was drafted and signed by Daniel Lefebvre in September 2014.

The facts detailed in the previous section as to the operating mode used by Congeres and *Généphi* clearly attest to the willingness of both Daniel Lefebvre and Pascal Patrice to implement the Agreement. From the step involving the search for call for tenders 16-6853 to the execution of the contract, including the bid preparation, the two contractors acted in a manner that fully respected their obligations under the Agreement.

This operating mode also respected each party's preferences because in Daniel Lefebvre's words, he [TRANSLATION] “prefers handling the financial and administrative aspects, whereas Pascal [Patrice] likes machinery and being on the ground.”

In short, while the bid was submitted by *Généphi* alone, it was prepared by Pascal Patrice and Daniel Lefebvre so that the project would respect the terms of the *Généphi*-Congeres Joint Venture Agreement. Although *Généphi* was the official winning bidder of call for tenders 16-6853, the contract was essentially executed by Congeres with financing provided by *Généphi*.



5.3 Bid submission in Généphi's name only

The documents for call for tenders 16-16853 allow consortiums to submit a bid under certain conditions.

Clause 1.2.7 of the general administrative clauses states the following:

[TRANSLATION] "When two or more natural or legal persons decide to partner to go to tender, each person must provide a bid bond, a performance bond, a payment bond, and a labour and material bond, where required, as well as insurance, unless such bonds and insurance are issued for and on behalf of the joint venture."

In other words, all these elements must be provided either by each firm forming the joint venture or by the joint venture itself.

For its bid to be eligible, a consortium also must respect the obligation mentioned earlier with respect to holding authorization from the AMF. In this regard, section 21.18 ARCPB stipulates as follows: "In the case of a consortium, every enterprise in the consortium must hold an authorization on that date."

In this case, Daniel Lefebvre and Pascal Patrice did not avail themselves of the option of submitting a bid as a joint venture. Instead, *Généphi* submitted a bid in its name only, along with a bid bond applicable only to *Généphi* and an authorization from the AMF, again applicable only to *Généphi*.

5.4 Responses to the Notice to Interested Party

Daniel Lefebvre and Pascal Patrice each responded to the Notice they received on behalf of their respective firms. The Inspector General wishes to point out the following three facts in their answers.

First, neither of the two contractors denies the existence of the Agreement. In fact, not only did Pascal Patrice confirm its existence,⁷ he also revealed that it was just an adjustment to a previous agreement concluded in 2012.

Second, both men confirmed that the Agreement governs the *Généphi*-Congeres relationship and forms the basis for their operating mode for call for tenders 16-6853.

Third, Daniel Lefebvre and Pascal Patrice describe the *Généphi*-Congeres relationship as one of subcontracting. However, the facts, the content of the Agreement, and Daniel Lefebvre's statement as to the intent of the Agreement not only refute such a contention, but point to a joint venture. Daniel Lefebvre stated the following in his response to the Notice:

⁷ As mentioned in subsection 3.3.3 of this report, the copy of the Agreement submitted to OIG investigators by Pascal Patrice was signed only by Daniel Lefebvre.

[TRANSLATION] “In one “Agreement,” we used the term “joint venture” and perhaps “consortium.” As far as I’m concerned, both are a translation of “joint venture”, a notion “found in common law which implies a joint enterprise with a division of responsibilities. Unfortunately, this concept does not exist in our Civil Code. Our “Agreement” describes the cost distribution; however, the responsibility rests solely with the general contractor, the one who submitted the bid and provided the surety.”

While it is true that the concept of “consortium” is not defined by the legislator in Québec law, the three (3) terms used by Daniel Lefebvre, “coentreprise” (in French), “joint venture” and “consortium,” are synonymous.⁸ In this regard, it bears mentioning that the Agreement is titled “Joint Venture Agreement” and that the term “consortium” is used three (3) times. In short, the Agreement provides for and details the formation of a *Généphi*-Congeres consortium.

In essence, the responses provided by *Généphi* and Congeres confirm the existence of the Agreement and its application to call for tenders 16-6853, and Daniel Lefebvre provides an element that further proves his intent to form a *Généphi*-Congeres consortium.

At this point, it bears reiterating what was stated in subsection 5.3. Because the *Généphi*-Congeres consortium was created for call for tenders 16-6853, section 21.18 ARCPB stipulates that each company in the consortium must be individually authorized. However, the response provided by Congeres confirms that the firm chose not to apply for authorization from the AMF. Thus, even if *Généphi* and Congeres had submitted a joint bid in the form of a consortium, it would not have been eligible.

6. Conclusion

Section 57.1.10 of *Charter of Ville de Montréal* sets out two cumulative criteria allowing the Inspector General to intervene in order to rescind a contract awarded by the City:

- 1° The Inspector General must find non-compliance with a requirement in the tender documents or contract or that false information was given during the contracting process;
- 2° He must be of the opinion that the seriousness of the breach observed justifies the cancellation, rescinding or suspension.

In this case, submitting a bid in *Généphi*’s name alone when in fact, its president, Daniel Lefebvre, knew that the contract would be executed by a joint venture, constitutes giving false information during the contracting process. The Inspector General deems

⁸ KARIM, Vincent, *Le consortium d’entreprises, joint-venture : nature et structure juridique : rapports contractuels, partage des responsabilités, règlements des différends*, 2nd edition. Édition Wilson & Lafleur, Montréal, 2016, p. xi. See also the definition of “joint venture” provided by the *Office québécois de la langue française* (in French): http://gdt.oqlf.gouv.qc.ca/ficheOqlf.aspx?Id_Fiche=8368602



that false information was given with respect to the real identity of the party contracting with the City.

In the Inspector General's view, the seriousness of the breaches justifies rescinding call for tenders 16-6853. By submitting a bid in the name of *Généphi* alone while knowing that the project would essentially be executed and administered by the *Généphi*-Congeres joint venture, *Généphi* ultimately imposed a different winning bidder on the City. More importantly, this unofficial winning bidder does not meet the obligation of having authorization from the AMF, because neither Congeres nor the joint venture has such an authorization. This is important for two reasons.

First, the Inspector General would like to emphasize the importance of the general principles that the ARCPB seeks to promote, i.e. public confidence in the public procurement process by attesting to the bidders' integrity, transparency in the contracting process, and the honest and fair treatment of bidders.⁹ More specifically, section 21.27 ARCPB states that the AMF may refuse to grant authorization "if the enterprise concerned fails to meet the high standards of integrity that the public is entitled to expect from a party to a public contract or subcontract."

The public's interest in having the provisions of the ARCPB respected has also been recognized by the courts. Ruling on a firm's passive reaction to a notice of refusal from the AMF, the Court stated the following:

*[TRANSLATION] "These new provisions of the ARCPB are intended to fight corruption and collusion in public contracts, particularly in the construction industry. The importance of this public interest objective is too great to allow firms seeking authorization to contract with public bodies to shirk their responsibilities."*¹⁰

Thus, by exempting Congeres from its obligation to obtain authorization from the AMF, *Généphi* prevented the City and the public from being assured of the winning bidder's integrity.

Second, *Généphi*'s actions also undermine the integrity of the tendering process. Considering that the obligation to hold authorization from the AMF is a public order requirement pursuant to Order-in-Council 796-2014, any law-abiding person who learns of call for tenders 16-6853 is unlikely to submit a bid if he does not hold such an authorization. As for the other bidders, it is not unreasonable for them to expect that the "real" winning bidder also meet this requirement.

Accepting that *Généphi* submit a bid knowing that the contract would be executed by the *Généphi*-Congeres joint venture and that Congeres does not have authorization from the AMF would undermine the usefulness and credibility of such authorization in the Government's fight against corruption and the use of fraudulent tactics.

⁹ ARCPB, s. 2.

¹⁰ 9129-2201 *Québec inc. v. Autorité des marchés financiers*, 2014 QCCS 2070, para. 60.

The Inspector General therefore finds that *Généphi* gave false information in the contracting process for call for tenders 16-6853 by not identifying the real contracting party and deems this breach serious enough to justify rescinding the contract.

FOR THESE REASONS,

The Inspector General

RESCINDS the contract for the reconstruction of lookouts, footbridges and paths in the Bois-de-l'Île-Bizard nature park awarded to *Construction Généphi Inc.* by the Montréal Agglomeration Council on August 25, 2016, following call for tenders 16-6853 and pursuant to resolution CG16 0498.

SENDS, in accordance with section 57.1.10 of *Charter of Ville de Montréal*, a copy of this decision to the mayor of the City as well as to the City Clerk's Office, who shall in turn send it to the City council concerned, in this case, the Montréal Agglomeration Council.

SENDS, in accordance with section 57.1.18 of *Charter of Ville de Montréal*, a copy of this decision to the *Autorité des marchés financiers* in light of its mandate under Chapter V.2 of the *Act respecting contracting by public bodies*.

The Inspector General

Denis Gallant, Ad. E.

ORIGINAL SIGNED