



REPORT FOR ACTION

Charbonneau Commission Report - Review and Relevance of Recommendations for Toronto's Purchasing and Materials Management Division

Date: September 6, 2017
To: Government Management Committee
From: Treasurer
Wards: All

SUMMARY

The Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry (the “Charbonneau Commission”) was created in 2011 with the mandate to examine collusion or corruption in the award or management of public contracts in Quebec's construction industry. The report was released, in French, on November 24, 2015 and found schemes of collusion and corruption to be widespread in Quebec's Construction industry. As a result, the report sets forth 60 recommendations to detect and prevent collusion and corruption in the awarding and management of public contracts in Quebec's construction industry, including its infiltration by organized crime.

This report provides a high level summary of the Charbonneau Commission report and its recommendations and highlights where Purchasing & Material's Management Division (PMMD) has addressed or will address recommendations relevant to the City's procurement process.

RECOMMENDATIONS

The Treasurer recommends that:

Government Management Committee receive this report for information.

FINANCIAL IMPACT

There is no immediate financial impact associated with the adoption of this report.

The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its April 26, 27 and 28, 2017 Council meeting, Council adopted, as amended, AU8.3 "Detection of Warning Signs for Potential Bid Rigging Should be Strengthened". As part of that report, Council requested the Director, Purchasing and Materials Management to adopt a practice of keeping the identity of prospective bidders who purchased the bid documents confidential.

See: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.AU8.3>

At its April 1, 2 and 3, 2014 Council meeting, Council adopted, as amended, AU14.4 "The Charbonneau Commission - An Opportunity for the City to Re-evaluate its Procurement Practices". As part of that report, Council directed the Director, Purchasing & Materials Management to review the upcoming report of the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry. The review was intended to determine whether recommendations pertaining to establishing measures to identify, reduce and prevent collusion and corruption in the awarding and managing of public contracts in the construction industry have relevance to the City of Toronto.

See: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.AU14.4>

COMMENTS

The Charbonneau Commission's Mandate

The Charbonneau Commission was created in October 2011 to investigate the awarding and management of public contracts in Quebec's construction industry for 15 years dating back to 1996. More specifically, the Commission was given a mandate to:

- Examine the existence of schemes involving collusion and corruption in the awarding of public construction contracts, and the possibility of links to political party financing;
- Outline how organized crime may have infiltrated the construction industry; and
- Provide solutions and recommendations on how to detect and prevent collusion and corruption in the awarding and management of public construction contracts and infiltration of the industry by organized crime.

The Schemes Identified in Quebec's Construction Industry

The commission identified schemes as falling into three categories: 1) schemes involving collusion and corruption, 2) links to the financing of political parties; and 3) activities to infiltrate the construction industry by organized Crime.

1. Collision and Corruption Schemes in Quebec's Construction Industry

The Commission defines "collusion" as a secret agreement, implicit or tacit, between private sector actors (contractors, consulting engineering firms, suppliers) responding to a public call for tenders, or in some cases, an invitation to bid, with a view to reducing or eliminating competition in order to gain control over a public contract. The secretive nature of collusion between private actors means that public actors are necessarily unaware of the arrangement in their official capacity.

The report defines "corruption" as situations in which private actors obtain benefits (contract, payment of extras, confidential information) from public actors within the administrative or political apparatus. In exchange for the advantage provided to the "corrupter", the "corrupted" receives consideration from the latter that can take various forms (bribes, employment, favours, gifts, etc.).

The report also distinguishes between simple and complex systems of collusion and corruption. Simple systems are based upon collusion or corruption. Complex systems rely upon both collusion and corruption, which are interrelated and essential to maintain that system. Examples of simple and complex schemes identified by the commission in Quebec's Construction Industry are tabled below:

Table 1: Simple and Complex Collusion and Corruption Systems in the Industry

1.	Simple Collusion Based Systems:
	<p>The Charbonneau Commission report found the following simple collusion practices to exist in the construction industry;</p> <ul style="list-style-type: none"> • Colluders rotated successful bidders amongst themselves, by others submitting "soft" bids ("Cover", "courtesy" or "complementary" bidding); • Rotation of successful bidders by other colluders not submitting bids; • Winning firms agreed to subcontract to other colluders; • Dividing the market (by kind of work, client, geographic area) and colluders agreeing not to bid competitively in other cartel partners markets; and • Closing the market to prevent competitors outside the cartel from participating in a procurement through a variety of schemes such as: intimidation, vandalism or sabotage on the competitor's job sites, and bidding very low to prevent the competitor from winning contracts.

2.	Simple Corruption Based Systems:
	<p>The Charbonneau Commission report found the following simple corruption practices to exist in the construction industry;</p> <ul style="list-style-type: none"> • Political corruption; a firm would finance a specific municipal candidate's election to obtain quasi- exclusivity on municipal contracts after the election; • Bureaucratic corruption; a bureaucrat or other member of the public service is corrupted where the following practices were observed; <ul style="list-style-type: none"> • Agreements to provide the appointed or elected official with a specific kickback on the amount of the contract, as well as various gifts; • Officials influencing proposal/bid criteria that is biased to benefit the firm through directed tendering schemes; and • Officials manipulating the composition of selection committees by adding people in favour of the firm. • Private corruption; private actors (contractors) were seen to charge a public contracting authority for work that had not been performed or for quantities of materials not used, while private engineering firms (responsible for contract administration) would approve false quantities or false extras.
3.	Complex schemes:
	<p>Complex schemes combining collusion and corruption practices and were mainly observed in large cities such as Montreal where the larger political and administrative machinery of government require a combination of collusion and corruption to be in place to maintain successful schemes and cartels. The report confirmed that elected officials and public employees played a central role in protecting against the detection of complex schemes.</p>

2. Links with Political Financing

The Commission observed both direct and indirect links between financing of political parties and awarding of public contracts. Direct links (i.e. where a specific private benefit was given to an official in exchange for a specific contract) were most often seen in Quebec municipal politics, and indirect links (i.e. where private parties provide general support in exchange for some general advantage to be awarded at a later date) were observed in Quebec provincial politics.

3. Infiltration Activities by Organized Crime

The commission identified four main types of infiltration by organized crime in Quebec's construction industry;

- Infiltration of companies and industry sectors; where businesses in financial difficulty acquired alternate sources of financing from criminal organizations who eventually take over the company for their own purposes (i.e. money laundering);

- Control of territories; where criminal organizations would control a sector or territory by using intimidation and violence;
- The provision of mediation and intimidation services; where organized crime groups were seen to provide services to businesses to assist in their schemes of collusion, such as intimidating other firms or businesses in the market; and
- Access to trade unions investment capital; where Individuals linked to the Hells Angels and the mafia sought to infiltrate the industry by obtaining access to the capital investments of a construction union.

The Causes of the Schemes Identified by the Commission

The Commission identified the following five categories of causes for the emergence and maintenance of the schemes observed in Quebec's construction industry; 1) causes linked to the construction industry, 2) causes associated with the public procurement process, 3) causes related to institutional governance, 4) causes leading to the infiltration of the construction industry by organized crime and 5) weaknesses in monitoring and supervision. Appendix 2 summarises these causes.

Consequences of the Schemes for Quebec

The Charbonneau Commission report identified the patterns of collusion and corruption and the infiltration of the industry by organized crime as not only having economic costs but also having other consequences such as undermining Quebec's democratic foundations, rule of law and confidence in public institutions.

The Commission's Recommendations

In response to the collusion and corruption schemes and the infiltration of the industry by organized crime, the Commission's report provided sixty (60) recommendations (set out in Appendix 1) to assist Quebec's public contracting authorities with identifying measures to detect and prevent collusion and corruption in the awarding and management of public contracts and infiltration by organized crime. The recommendations are Quebec-centric as they reflect Quebec's legislative landscape.

Some of the key recommendations include;

- Creation of an independent authority to oversee public contracts;
- Better protection for whistleblowers;
- Requirement that construction companies report acts of intimidation or violence;
- Increased penalties for construction companies that break the law, up to and including cancelling their licence under Quebec's building authority, la Régie du bâtiment du Québec; and
- Increased penalties for people who make use of so-called "strawman" schemes.

A number of these recommendations have been implemented in the City previously, including some recommendations that arose from the Bellamy Inquiry, including around the establishment of a Lobbyist Registrar.

Recommendations of Relevance for PMMD

While the recommendations from the Commission are specific to the Quebec situation, PMMD has identified Ten (10) recommendations from the Commission's report which are of relevance to the City's procurement process. Nine (9) of those recommendations, set out in Table 2, PMMD has already existing policies or procedures in place to address the objective of the recommendation. PMMD will be addressing one additional recommendation through the implementation of Category Management discussed in Table 3.

Table 2: List of Commission's Recommendations in Place at PMMD

Rec No.	Recommendation	PMMD Measure in Place	Objective
2.	Standardize laws and regulations to allow all public contracting authorities to decide, in cooperation with the Public Procurement Authority and under its supervision, the appropriate weighting of price and quality criteria in the public procurement process for a contract in the construction industry.	PMMD's processes already give the Divisions, in consultation with PMMD, the discretion to determine the appropriate weighting of price and quality for procurement of all types of goods and services, including construction services. The City is not bound to award to only lowest price, as long as any qualitative evaluation criteria is disclosed as part of the procurement process. This includes the ability to prequalify contractors.	Prevention
7.	Adopt rules enabling a public contracting authority to establish the reasonable time for the receipt of bids, depending on the financial significance and the complexity of the project being tendered.	PMMD's Procurement Processes Policy, Section 9, Timelines for Posting Procurements requires PMMD to implement procedures that ensure suppliers are provided with the appropriate amount of response time for open competitive procurements that takes into consideration the complexity of the procurement and complies with applicable laws and trade agreements.	Prevention

Rec No.	Recommendation Statement	PMMD Measure in Place	Objective
20.	<p>Standardize the legislative provisions applicable to public bodies in order to:</p> <ul style="list-style-type: none"> • Ensure the confidentiality of the names of selection committee members; • Ensure the anonymity of bidders who choose not to have their identity disclosed; • Prohibit any elected official or public employee from disclosing the number and names of parties who request tender documents and bidders prior to the opening of tenders. 	<p>PMMD's practice is to not disclose the names of selection committee members during the blackout period. Councillors have limited access to a procurement in process and are allowed viewing only access to the confidential details of a particular procurement provided that a formal request has been made to the Chief Purchasing Officer in accordance with the Policy for Access to Information for Members of Council at Various Stages of the Procurement Process.</p> <p>PMMD suspended the document takers list from the City's website in April 2017 in response to the Auditors General (AG) Report, "Detection of Warning Signs for Potential Bid Rigging Should be Strengthened" where Council requested the Director of PMMD, to adopt a practice of keeping the identity of prospective bidders who purchase bid documents confidential to avoid the possibility of collusion and/or submission of higher prices by contractors.</p>	Prevention

Rec No.	Recommendation Statement	PMMD Measure in Place	Objective
21.	<p>Create a penal offence to sanction any attempt by a bidder to communicate directly or indirectly with a member of a selection committee of a public contracting authority for purposes of influencing that individual's decision.</p>	<p>The Supplier Code of Conduct in the Toronto's Purchasing By-law 195 prohibits suppliers from:</p> <ul style="list-style-type: none"> • Threatening, harassing or intimidating staff, Councillors or any other supplier from bidding on a City solicitation or performing a City contract. • Communicating with anyone other than the official point of contact for a solicitation, from the time of issuance to the final award of the solicitation. <p>Failure to comply with the Supplier Code of Conduct could result in a supplier being suspended from doing business with the City and also losing any existing contracts.</p>	Sanction
36.	<p>Clarify the provisions of the Act respecting contracting by public bodies to require all bidders to provide a statutory declaration in which they disclose any discussions they have had with respect to their bid, with whom and on what subject.</p>	<p>The Supplier Code of Conduct in Toronto's Purchasing By-law Municipal Code Chapter 195 requires Suppliers to declare that they abide by the Supplier Code of Conduct and, amongst other things, disclose to the Chief Purchasing Official any affiliations or other relationships with other suppliers that might be seen to compromise the principle of fair competition, including any proposed subcontracting relationships.</p> <p>Failure to comply with the Supplier Code of Conduct could result in a supplier being suspended from doing business with the City and also losing any existing contracts.</p>	Prevention Detection

Rec No.	Recommendation Statement	PMMD Measure in Place	Objective
53.	<p>Impose a minimum deadline for submission to municipal council of documents relating to the awarding of public contracts in order to provide elected representatives and the public adequate time for analysis.</p>	<p>The Purchasing By-law sets out the award process for all procurements. For contracts valued over \$500,000 up to \$20,000,000 million, the Bid Award Panel must approve the award. The Bid Award Panel meets weekly and its agenda is posted at least 48 hours in advance. With respect to contracts valued over \$20,000,000, the appropriate Standing Committee approves the award. Award reports that go to Standing Committee follow the established Council Procedures as set out in Chapter 27 of the Toronto Municipal Code.</p> <p>Further, all call documents for contracts valued over \$100,000 are posted publically and can be viewed free of charge while the call is on the street. After the call closes, the call document can be disclosed as part of routine disclosure if requested.</p>	Prevention Detection

Rec No.	Recommendation Statement	PMMD Measure in Place	Objective
55.	<p>Amend the relevant statutes and regulations to:</p> <ul style="list-style-type: none"> • Prohibit employees involved with the contract management of a public entity from accepting a position or employment, within one year of termination of employment, with a private sector entity with which they had formal, direct and significant dealings in the year preceding termination of employment, except with the written consent of the public entity; • Require officials involved with the contract management of a public entity to inform their employer in writing of any discussions they have with a supplier with regard to potential employment with the latter. 	<p>The Supplier Code of Conduct in Toronto's Purchasing By-law requires suppliers to declare and disclose any actual or perceived conflict of interest in the preparation of a submission or during contract execution, including but not limited to where:</p> <ul style="list-style-type: none"> • A supplier has engaged current or former City employees, Councillors or other officials to take any part in the preparation of the bid or the performance of the contract if awarded, any time within two years of such persons having left the employ or elected office of the City; • A supplier has engaged any family members, friends or private business associations of any City employee, Councillors or other officials which may have or appear to have any influence on the procurement process or performance of the contract if awarded; • There has been prior involvement by the supplier, its agents or affiliated persons in developing technical specifications or other evaluation criteria for the solicitation; • There has been prior access to confidential City information by the supplier, its agents or affiliated persons that is materially related to the solicitation and that was not readily accessible to other prospective suppliers; or • A supplier or its affiliated persons are engaged in litigation with the City. 	Prevention

Rec No.	Recommendation Statement	PMMD Measure in Place	Objective
56.	<p>Amend the Act respecting contracting by public bodies, the Cities and Towns Act and the Municipal Code of Québec to include a contract cancellation clause and a back-to-tender clause, in the event of non-compliance with the post-employment rules.</p>	<p>The Supplier Code of Conduct in Toronto's Purchasing By-law maintains that suppliers that do not certify compliance with, or that violate the Supplier Code of Conduct, including failing to disclose conflicts of interest may be disqualified by the Chief Purchasing Official in consultation with the City Solicitor. The contract may also be terminated by the Division Head.</p> <p>The Chief Purchasing Official, in consultation with the City Solicitor, may also disqualify any supplier who may otherwise have an unfair advantage or conflict of interest that cannot be resolved in relation to the procurement.</p> <p>In addition, The City may suspend suppliers from future solicitations for contraventions to the Supplier Code of Conduct. More specifically, Council may suspend a supplier from bidding for a period between one and five years due to such a contravention while The Chief Purchasing Official, in consultation with the City Solicitor, may temporarily suspend a supplier's eligibility to bid for up to Six months.</p>	Prevention Sanction

<p>58.</p>	<p>Amend the relevant statutes, regulations, guidelines or codes of ethics to prohibit all elected provincial and municipal officials and their political staff, public servants, municipal employees, and government and public administrators from accepting any gift, regardless of its nature or value, from any supplier of goods or services whatsoever.</p>	<p>The Supplier Code of Conduct in Toronto's Purchasing By-law 195 prohibits suppliers from offering gifts or favours to City Staff, Councillors or other officials to influence or interfere with their duties in respect of a procurement process or contract management.</p> <p>In addition, the Purchasing By-law, Article 14 - Employee Ethical Procurement Standards requires that:</p> <ul style="list-style-type: none"> • City employees perform their duties and arrange their private interests so that public confidence in their integrity, objectivity and impartiality are conserved and enhanced in compliance with Chapter 192, Public Service; • Any potential Conflict of Interest or unfair advantage related to a divisional procurement where known, shall be disclosed to the Chief Purchasing Official as early as possible in the purchasing process by the Division Head; and • Any potential conflict of interest or unfair advantage shall be managed in a manner consistent with the highest standards of purchasing ethics, which is not limited to cancelling a solicitation or implementing reasonable safeguards to prevent an employee from having any access to confidential information or involvement in a particular procurement. <p>Further, chapter 192 of the Toronto Municipal Code stipulates that City or Agency employees will not accept, arrange to accept, give or</p>	<p>Prevention</p>
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Rec No.	Recommendation Statement	PMMD Measure in Place	Objective
		request to be given a reward, gift, advantage or benefit of any kind from any person or entity that influences or could be perceived to influence the performance of the employee's duties and where such instances occur, employees must immediately notify their manager, supervisor or Ethics Executive.	

Table 3: Additional Recommendation to be Implemented by PMMD

Rec No.	Recommendation Statement	PMMD Measure to be Implemented	Objective
5.	Encourage public contracting authorities to recognize similar products approved by other jurisdictions where relevant and to analyze requirements that limit the number of potential competitors in their procurement processes.	PMMD's transformational project to implement Category Management will move PMMD from a largely transactional service to one that provides strategic advice to the Divisions on their procurements. To that end, understanding the market place for a specific category is important to ensure that the City is achieving savings. This would include analyzing requirements that may limit potential competition and finding ways to expand the pool of potential bidders.	Prevention

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SIGNATURE

Mike St. Amant
 Treasurer

ATTACHMENTS

Appendix 1 Charbonneau Commission Report Recommendations

Appendix 2 The Causes of Schemes in Quebec's Construction Industry

Appendix One

Charbonneau Commission Report Recommendations:

The Commission's sixty (60) recommendations were formulated along five lines;

- Review the framework for the awarding and management of public contracts;
- Improve prevention and detection activities and strengthen sanctions;
- Protect political party financing from influence;
- Promote citizen participation; and
- Renew confidence in elected officials and public servants.

The list of all sixty (60) recommendations released by the Charbonneau Commission are provided below:

1. Review the framework for the awarding and management of public contracts

Rec No.	Recommendation Statement	Purpose
1.	Create a provincial public procurement authority mandated to: <ul style="list-style-type: none"> • Monitor public contracts to identify malfeasance; • Support public contracting authorities in managing contracts; • Intervene with public contracting authorities when necessary. 	Prevention Detection
2.	Standardize laws and regulations to allow all public contracting authorities to decide, in cooperation with the Public Procurement Authority and under its supervision, the appropriate weighting of price and quality criteria in the public procurement process for a contract in the construction industry.	Prevention
3.	Establish a committee of independent experts to approve Ministère des transports du Québec programming for projects involving preservation of pavement and structures and improvements to the road network, based on a budget established by the Conseil du trésor and the Minister of Transport.	Prevention
4.	Reduce the time required to obtain certificates of authorization for the installation of mobile asphalt plants and for their designation to tender in order to promote competition in the paving sector.	Prevention
5.	Encourage public contracting authorities to recognize similar products approved by other jurisdictions where relevant and to analyze requirements that limit the number of potential competitors in their procurement processes.	Prevention

Rec No.	Recommendation Statement	Purpose
6.	Subject all para-municipal corporations and NPOs controlled or subsidized by a public body or municipality to the same contractual obligations as the organizations with which they are associated	Prevention
7.	Adopt rules enabling a public contracting authority to establish the reasonable time for the receipt of bids, depending on the financial significance and the complexity of the project being tendered.	Prevention

2. Improve prevention and detection activities and strengthen sanctions

Rec No.	Recommendation Statement	Objective
8.	<p>Improve the whistleblower protection system to ensure:</p> <ul style="list-style-type: none"> • Anonymity for all whistleblowers, regardless of the agency to which they report; • Assistance to whistleblowers in their efforts; • Financial support, when required. 	Prevention Detection
9.	Give the Director of Criminal and Penal Prosecutions the power to accord certain benefits to cooperating witnesses, in the public interest and after consultation with the authorities concerned; in particular, to order a stay of any disciplinary proceeding, civil proceeding undertaken by a public authority, or Quebec tax claim, and to maintain communications with the federal agencies involved.	Detection Sanction
10.	Add to article 58(8) of the Building Act the offences of trafficking, producing or importing drugs, laundering the proceeds of crime and those related to collusion and corruption as grounds for non-issuance of an RBQ licence.	Sanction
11.	<p>Amend the Building Act such that:</p> <ul style="list-style-type: none"> • The five-year waiting period following loss of the contractor's licence or loss of the right to enter into a public contract commences after the end of the term of imprisonment fixed by the sentence resulting from the conviction giving rise to the RBQ's decision; • A licensee convicted a second time for an indictable offence listed in the Building Act may not obtain a licence from the RBQ or run a business unless that individual has obtained a pardoned or the criminal record has been expunged. 	Sanction

Rec No.	Recommendation Statement	Objective
12.	Amend the Building Act to: <ul style="list-style-type: none"> • Reduce from 20% to 10% the proportion of the company that a shareholder must hold in order to be considered an officer of a corporate entity and be included in the assessment of the company's integrity; • Clarify the power of the Régie du bâtiment du Québec to examine the integrity of officers who indirectly hold shares in a company subject to the provisions of the Building Act. 	Detection
13.	Amend article 194 of the Building Act to specify that criminal offences include: <ul style="list-style-type: none"> • Any natural person who, in the context of an application for a contractor's licence, or at any time during the period of licence validity, lends his name to another person; • Any legal person who, in the context of an application for a contractor's licence, or at any time during the period of licence validity, has an officer who lends his name to another person; • Any natural or legal person who uses a "proxy" in any of the situations described above. 	Sanction
14.	Require of the following organizations that any active participation in the share capital of a construction company, beyond a certain financial threshold determined by the government, be entered into only with a company whose name is listed in the Autorité des marchés financiers Register of authorized firms: <ul style="list-style-type: none"> • Workers' funds and any company for which the purchase of shares entitles the shareholder to a tax credit; • Investissement Québec; • The Caisse de dépôt et placement du Québec. 	Prevention
15.	Adopt legislative or regulatory provisions to propose a standard on the timing for the production of incremental invoices and payments in the context of a main contract and any subcontracts, in order to reduce the stranglehold that site supervisors and public contracting authorities have on companies in the construction industry, as well as the possible infiltration by organized crime.	Prevention
16.	Require all public contracting authorities to report to the Commission de la construction du Québec any situations involving intimidation or violence on worksites established for their projects.	Detection

Rec No.	Recommendation Statement	Objective
17.	Require that the five-year study on developments in the Quebec construction industry, which is produced by the Minister of Labour, in collaboration with the Commission de la construction du Québec, include a status report on violence and intimidation on construction sites.	Prevention
18.	Amend the Act respecting labour relations, vocational training and workforce management in the construction industry (Act R-20) in order to combat intimidation in the construction industry and maintain a healthy working environment by amending article 113.1 to remove the words “to cause” and replace them with “likely to provoke”, and article 119.11 to add articles 113.1 and 119.0.3 to the list of offences that disqualify persons from leading or representing.	Sanction
19.	Amend the Act respecting labour relations, vocational training and workforce management in the construction industry and the Act respecting occupational health and safety to: <ul style="list-style-type: none"> • Limit the terms of office of all directors of the Commission de la santé et de la Sécurité du travail and the Commission de la construction du Québec to two consecutive terms, for a maximum of six years; • Prohibit any person from being simultaneously a director of the Commission de la santé et de la Sécurité du travail or the Commission de la construction du Québec and a president or chief executive officer of an employer or trade union organization. 	Prevention
20.	Standardize the legislative provisions applicable to public bodies in order to: <ul style="list-style-type: none"> • Ensure the confidentiality of the names of selection committee members; • Ensure the anonymity of bidders who choose not to have their identity disclosed; • Prohibit any elected official or public employee from disclosing the number and names of parties who request tender documents and bidders prior to the opening of tenders. 	Prevention
21.	Create a penal offence to sanction any attempt by a bidder to communicate directly or indirectly with a member of a selection committee of a public contracting authority for purposes of influencing that individual’s decision.	Sanction
22.	Amend the Tax Administration Act to create a penal offence for the production and possession of a false document.	Sanction

Rec No.	Recommendation Statement	Objective
23.	Expedite efforts to increase the internal expertise of the Ministère des Transports du Québec in order to meet the established targets for 2017 and develop an improvement plan for subsequent years.	Prevention
24.	Review the criteria for subsidy programs to include in eligible expenditures the costs associated with the salaries of the municipality's professionals involved in carrying out the projects.	Prevention
25.	Extend to all public contracting authorities the relevant exclusions provided for in article 19 of the Act respecting labour relations, vocational training and workforce management in the construction industry (Act R-20) in order to support the development of more in-house construction expertise.	Prevention
26.	Add municipalities with fewer than 100,000 inhabitants to the jurisdiction of the Auditor General of Quebec so that he can conduct audits and report to the municipal councils concerned.	Detection
27.	Amend the Regulation respecting the annual reports of professional orders to impose standardized reporting of expenditures on protection of the public, including professional inspections and discipline.	Prevention Detection
28.	Amend the Professional Code of Quebec such that professional services firms connected to the construction sector are subject to the oversight of professional orders in their sector of activity.	Prevention Detection
29.	Make it mandatory for all professional orders covered by the Commission's mandate to adopt a regulation requiring their professional members, and those wishing to become members, to receive training in ethics and professional conduct.	Prevention
30.	Require newly elected directors of professional orders covered by the Commission's mandate to complete training on good governance and ethics, as well as the statutes and rules to which they are subject within the scope of their duties.	Prevention
31.	Amend the Anti-Corruption Act to make the term of office and manner of appointment and removal of the Anti-Corruption Commissioner similar to those of the Director of Criminal and Penal Prosecutions.	Prevention
32.	Require Revenue Quebec to take the necessary measures to improve the reliability of the data in the Quebec enterprise register.	Detection

Rec No.	Recommendation Statement	Objective
33.	Review the penal provisions of the Act respecting the legal publicity of enterprises in order to include incentives to comply with legal obligations.	Sanction
34.	Issue a directive to the Fonds de recherche du Québec – Société et culture instructing it to encourage research initiatives that deal with the phenomena of collusion, corruption and infiltration of the construction industry by organized crime.	Prevention
35.	Require the Director of Criminal and Penal Prosecutions to adopt and disseminate a clear policy regarding its jurisdiction to institute criminal proceedings under the Competition Act of Canada.	Sanction
36.	Clarify the provisions of the Act respecting contracting by public bodies to require all bidders to provide a statutory declaration in which they disclose any discussions they have had with respect to their bid, with whom and on what subject.	Prevention Detection
37.	<p>Apply a limitation period on criminal proceedings of three years after the offence has come to the attention of the prosecutor, but not exceeding seven years since its commission:</p> <ul style="list-style-type: none"> • In the Act respecting contracting by public bodies; • In the sections of municipal bylaws dealing with contracts; • In election Acts relating to political financing; • In the Lobbying Transparency and Ethics Act; • In the Act respecting labour relations, vocational training and manpower management in the construction industry; • In the provisions of the Professional Code relating to the initiation of criminal proceedings before judicial bodies; • In the provisions of the Anti-Corruption Act relating to protecting whistleblowers from reprisals. 	Sanction

3. Protect political party financing from influence:

Rec No.	Recommendation Statement	Objective
38.	<p>Amend the Elections Act to require that:</p> <ul style="list-style-type: none"> • The annual financial report of the party or authority be signed by the party leader and the highest official of each party authority in addition to the official representative; • The party leader, the elected representative or the candidate sign a statement in the annual financial report and in the report on election expenses stating that: <ul style="list-style-type: none"> • The representative or official agent informed him of the financing rules; • He reminded his colleagues of the obligation to respect these rules; • He has been informed of the fundraising practices of his party and is satisfied that they comply with the law; and • He obtained any clarification he required from the representative or the official agent on the contents of the financial report. 	Prevention
39.	Specify in the Election Act that volunteer work must at all times be performed personally, voluntarily and without consideration.	Prevention
40.	Amend electoral laws to require that authorized political entities disclose in their annual financial reports and their returns of election expenses the names of individuals who have worked as volunteers in the area of expertise for which they are usually remunerated.	Prevention Detection
41.	Make the training on political financing rules prepared by the Chief Electoral Officer of Quebec mandatory for the official representatives and official agents of political parties and their authorities, as well as independent candidates.	Prevention
42.	Require that the contribution sheet used by provincial political parties and candidates include the name of the contributor's employer at the time of contribution, as is the case at the municipal level.	Detection
43.	Amend the Taxation Act to prohibit the deduction of expenses related to the payment or reimbursement to persons, in any form whatsoever, of contributions made for political purposes in Quebec when calculating income from a business or property.	Prevention

Rec No.	Recommendation Statement	Objective
44.	Strengthen the provisions of the electoral statutes relating to political financing through loans and guarantees by requiring a non-proxy declaration in loan and guarantee instruments in which an elector participates, fixing a ceiling at the provincial level on loans and guarantees from electors, and re-evaluating the existing ceiling at the municipal level.	Prevention
45.	Amend the Act respecting elections and referendums in municipalities to prohibit partners in a partnership from making political contributions in a municipality where they are not domiciled.	Prevention
46.	Amend the codes of ethics and professional conduct applicable to elected provincial and municipal officials and their staff to prohibit the announcement of projects, contracts or grants in the context of political fundraising events.	Prevention
47.	Change the composition of the advisory committee to the Chief Electoral Officer of Quebec (DGEQ) to exclude MNAs and add persons appointed by the DGEQ who are independent of political parties.	Prevention
48.	Ensure that the statutory hearing of the Chief Electoral Officer of Quebec is held before a parliamentary committee once a year in order to assess his performance with regard to compliance with the rules of political financing.	Prevention
49.	Mandate the Chief Electoral Officer of Quebec to produce and publish a five-year review of the application of provincial and municipal financing rules.	Prevention

4. Promote citizen participation:

Rec No.	Recommendation Statement	Objective
50.	Adopt a law allowing citizens to prosecute fraudsters on behalf of the government.	Detection Sanction
51.	Adopt provisions to limit the exceptions to the public nature of the deliberations of elected municipal officials of Quebec, drawing on sections 239 and 239.1 of Ontario's Municipal Act, 2001.	Prevention Detection

Rec No.	Recommendation Statement	Objective
52.	Require municipalities to provide Internet access to municipal by-laws on contract management in order to enhance municipal transparency and citizen participation at the local level.	Prevention Detection
53.	Impose a minimum deadline for submission to municipal council of documents relating to the awarding of public contracts in order to provide elected representatives and the public adequate time for analysis.	Prevention Detection

5. Renew confidence in elected officials and public servants

Rec No.	Recommendation Statement	Objective
54.	<p>Adopt a law creating a single agency that would incorporate existing entities responsible for monitoring and applying the rules related to ethics and lobbying in the Quebec government and its municipalities, including in it the following provisions:</p> <ul style="list-style-type: none"> • Abolition of the Ethics Commissioner for the National Assembly (CED) and the Québec Lobbyists Commissioner (CLQ); • Appointment of an ethics and lobbyist commissioner by a two-thirds vote in the National Assembly for a fixed term of seven years; • Power to monitor all provincial and municipal elected officials and their political staff, deputy ministers, heads of public agencies, and chairs of boards of agencies and state-owned enterprises. 	Prevention Detection
55.	<p>Amend the relevant statutes and regulations to:</p> <ul style="list-style-type: none"> • Prohibit employees involved with the contract management of a public entity from accepting a position or employment, within one year of termination of employment, with a private sector entity with which they had formal, direct and significant dealings in the year preceding termination of employment, except with the written consent of the public entity; • Require officials involved with the contract management of a public entity to inform their employer in writing of any discussions they have with a supplier with regard to potential employment with the latter. 	Prevention

Rec No.	Recommendation Statement	Objective
56.	Amend the Act respecting contracting by public bodies, the Cities and Towns Act and the Municipal Code of Québec to include a contract cancellation clause and a back-to-tender clause, in the event of non-compliance with the post-employment rules.	Prevention Sanction
57.	Ensure that the ethical rules applicable to ministers and their staff members prohibit the acceptance or solicitation of gifts or other benefits for a political party or for themselves, from officers or representatives of suppliers to their department or agency, or applicants for or recipients of financial assistance from their department, or their suppliers.	Prevention
58.	Amend the relevant statutes, regulations, guidelines or codes of ethics to prohibit all elected provincial and municipal officials and their political staff, public servants, municipal employees, and government and public administrators from accepting any gift, regardless of its nature or value, from any supplier of goods or services whatsoever.	Prevention
59.	Propose to the National Assembly provisions governing the temporary or permanent suspension of one of its members who is being prosecuted for offences related to collusion or corruption involving public funds.	Sanction
60.	Establish a public consultation process on limiting terms of office for mayors.	Prevention

Appendix 2

Table Two: The Causes of Schemes in Quebec's Construction Industry

1.	Causes Related to the Construction Industry
	<p>The Commission identified the following characteristics in Quebec's construction industry as creating opportunities for schemes;</p> <ul style="list-style-type: none"> • A lack of mobility in the industry allowed for the creation of geographic segmentation of markets and restricted competition by discouraging businesses which cover multiple territories. This was also seen to increase repeated contacts and uncomfortably close relationships; • The industry was observe to be a smaller market dominated by a small number of businesses. There was an “elite” which dominated the industry and increased the risk of corruption and collusion; • Meetings of professional organizations designed for professional development or industry purposes were seen to provide opportunities for companies to form cartels and reach agreements to collude; and • The industry's low-skilled and low-technology work, rendered it vulnerable to collusion. In this kind of market, it is unlikely that the market would be disrupted by a new entrant or technology.
2.	Causes Associated with the Public Procurement Process
	<p>The Commission identified the following causes in Quebec's public procurement process as enabling schemes to take place:</p> <ul style="list-style-type: none"> • The dollar value of public sector contracts makes them very attractive to colluders and corrupters; • Public officials lacked experience in identifying the goods and supplies necessary for finishing projects and gave cartels specific information they needed to enter into collusive agreements with suppliers; • Predictable contract criteria, processes and pressures created by low bid selections made it easy for firms to rig bids and collude in order to reduce costs, minimize losses or guarantee a stable profit margin; • Insufficient time for receipt of bids; In Quebec, regulations require a minimum 15 day window for firms to submit bids. In complex projects, a 15 day window was not enough time to make a comprehensive bid as a result, corrupted public actors either delayed the time for submissions or leaked confidential information to certain businesses that enabled them to bid successfully within the short submission window; • The presence of weak regulatory frameworks of selection committee's such as not having members who were competent, impartial, and free of all real or perceived conflicts of interest and the absence of a neutral and independent secretary to ensure members did not influence each other;

	<ul style="list-style-type: none"> • Release of strategic information by public contracting authorities (such as contract specifications, project cost estimates, budget costs for emergencies and access to document takers lists and selection committee members) was observed; and • Political influences in the construction industry by political parties accepting contributions from firms and making it a "safer" way for construction firms to gain influence instead of bribing public employees.
3.	Causes related to the Governance Institutions and Organizations
	<p>The Commission identified the following causes in governance institutions and organizations in Quebec's construction industry as influencing schemes:</p> <ul style="list-style-type: none"> • Organization cultures in which corrupt or collusive schemes were practiced as a norm and where elected officials and public senior managers, as well as private managers, either directed schemes themselves, were complicit in them, tolerated them, failed to denounce them or normalized them; • Public institutions which ignored the risks associated with conflicts of interest or did not address them, generated conditions for corruption; • Lack of transparency within Quebec's municipal frameworks resulted in information being concentrated with the executive committee and being controlled by the mayor, making it difficult for both citizens and other public officials to monitor the awarding of contracts; • Lack of internal expertise in public agencies made it difficult to verify whether the costs charged were justified based on the work completed resulting in participation by engineering firms in planning certain projects and rendering the process vulnerable to overestimating costs and needs; • Inadequate supervision and staff capabilities at agencies to effectively estimate costs of future projects generated conditions for schemes; • Discretionary powers in the awarding and oversight of public contracts within municipal frameworks lacking in transparency and oversight; • Failures minimize the fear of reprisal for whistle blowers as well as have protective frameworks in place for allowing whistleblowers to report corruption or collusion to credible agencies; • Vulnerabilities in awarding of contracts by municipalities such as, smaller municipalities being vulnerable to private companies' schemes and bribes for awarding specific projects, Modest-sized municipalities not having the expertise to correctly assess their project needs and estimate costs and elected officials in larger municipalities, using their roles to manipulate the procurement process to favour certain companies; and • The delegation of bidding processes by municipalities to not for profit organizations which have less stringent regulations.

4.	Causes of Infiltration into the Industry by Organized Crime
	<p>The Commission identified the following characteristics which make the construction industry vulnerable to criminal infiltration;</p> <ul style="list-style-type: none"> • The size of the industry renders it as having significant financial value making it an attractive target for money laundering; • Few barriers to entry into the construction industry exist for a company with resources due to basic technology and low educational levels making it easy for organized crime to gain expertise in the industry; • Easy to register front-men as business “owners” in documents and difficult for government to detect such scams thereby making it easy to conceal connections to the mafia and organized crime; • Construction projects are complex with long contract lengths making it easy to pay employees with cash and submit lower bids than competitors, engage in money laundering and conduct black market activities; • Businesses in the construction industry often have difficulty borrowing funds from traditional lending institutions and tend to get large sums of money quickly from criminal organizations; • High volumes of violence within the construction industry enable criminal organizations to offer services involving the use of violence; • The need to use criminal organizations to act as private enforcers when members within a cartel are not complying with cartel rules; and • Construction unions also attract organized crime as union pension funds can be used to finance projects of interest to organized crime.
5.	Weaknesses in Monitoring and Supervision
	<p>The Charbonneau Commission identified a lack of government oversight and control in preventing bid rigging and illegal activities. In particular, the Commission noted that the system failed in protecting the integrity of public contracts, preventing undesirable actors from participating in the market and the absence of punitive measures for not adhering to regulations.</p> <p>The commission reported the failures as being attributable to public institutions (such as the Competition Bureau of Canada, Quebec Securities Commission, Quebec municipal commission etc.) as having insufficient resources, overly restrictive interpretations of laws and regulations, insufficient detection tools, a lack of use of investigative powers, lax attitudes, a lack of communication with multiple organizations across the industry and having no mechanisms for oversight of elected officials.</p>