



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

ORDER AND REASONS

File No. PR-2014-015

CGI Information Systems and
Management Consultants Inc.

v.

Canada Post Corporation and
Innovapost Inc.

*Order and reasons issued
Tuesday, June 24, 2014*

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IN THE MATTER OF a complaint filed by CGI Information Systems and Management Consultants Inc. pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C., 1985, c. 47 (4th Supp.);

AND FURTHER TO a motion by CGI Information Systems and Management Consultants Inc. seeking an order directing Canada Post Corporation and Innovapost Inc. to produce certain documents.

BETWEEN

**CGI INFORMATION SYSTEMS AND MANAGEMENT
CONSULTANTS INC.**

Complainant

AND

CANADA POST CORPORATION AND INNOVAPOST INC.

**Government
Institutions**

ORDER

The Canadian International Trade Tribunal grants the motion in part.

Having reviewed the motion filed by CGI Information Systems and Management Consultants Inc. dated May 27, 2014, the submissions on the motion by Canada Post Corporation and Innovapost Inc. dated June 10, 2014, and the submissions by CGI Information Systems and Management Consultants Inc. dated June 13, 2014, the Canadian International Trade Tribunal orders Canada Post Corporation and Innovapost Inc., under subsection 17(2) of the *Canadian International Trade Tribunal Act*, to file with the Tribunal, no later than June 30, 2014, i.e. the filing date for the Government Institution Report, the following documents that relate to Solicitation No. 2012-SDL-006:

- the identity of the evaluators who evaluated the proposals at each stage of the Phase 2 requirements and their relationship, if any, with the winning bidder;
- the methodology actually used by the evaluators to evaluate the proposals submitted in response to the Phase 2 requirements, including all criteria used to evaluate proposals, all written instructions provided to evaluators, any evaluation plan or other guidance provided to evaluators and the scoring sheets used by evaluators to evaluate the proposals;
- with respect to the evaluation of CGI Information Systems and Management Consultants Inc.'s proposal, the individual scoring sheets and notes of each evaluator (i.e. the raw data regarding CGI Information Systems and Management Consultants Inc.'s evaluation), the points achieved by CGI Information Systems and Management Consultants Inc. with respect to each evaluation criterion at each stage of the Phase 2 requirements, the consensus scoring sheets and notes from any consensus evaluation, and all notes, minutes, memoranda or other documents produced by evaluators in evaluating CGI Information Systems and Management Consultants Inc.'s proposal; and
- with respect to the evaluation of the winning proposal, the individual scoring sheets and notes of each evaluator (i.e. the raw data regarding the evaluation of the selected proposal), the consensus scoring sheets and notes from any consensus evaluation, all notes, minutes,

memoranda or other documents produced by evaluators in evaluating the selected proposal, the points achieved by the selected proposal with respect to each evaluated criterion at each evaluation stage of the Phase 2 requirements, the total points obtained by the selected proposal, the evaluated price of the selected proposal and the selected proposal.

If the documents contain information that Canada Post Corporation and Innovapost Inc. wish to be kept confidential, they should consult subsection 46(1) of the *Canadian International Trade Tribunal Act* and proceed accordingly.

Stephen A. Leach

Stephen A. Leach
Presiding Member

Gillian Burnett

Gillian Burnett
Secretary

STATEMENT OF REASONS

1. On May 27, 2014, CGI Information Systems and Management Consultants Inc. (CGI) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*,¹ alleging that the Canada Post Corporation, through its subsidiary, Innovapost Inc. (together, Canada Post), breached its obligations under the *North American Free Trade Agreement*² in relation to a Request for Proposal (RFP), Solicitation No. 2012-SDL-006.

2. Specifically, CGI alleged that Canada Post (1) unreasonably interpreted the evaluation criteria and unreasonably evaluated CGI's proposal in multiple instances at Stage 7 and Stage 8 of the Phase 2 requirements, contrary to Articles 1013(1) and 1015(4) of *NAFTA*, and (2) conducted an evaluation tainted by improper considerations, to wit, bias.

3. CGI's complaint included a motion requesting an order pursuant to subsection 17(2) of the *CITT Act* requiring Canada Post to produce the following documents and information prior to the filing of its Government Institution Report (GIR):

- (a) the identity of the evaluators who evaluated the proposals at each stage of the Phase 2 requirements, their qualifications and their relationship, if any, with the winning bidder;
- (b) the methodology actually used by the evaluators to evaluate the proposals submitted in response to the Phase 2 requirements, including all criteria used to evaluate proposals, all written instructions provided to evaluators, any evaluation plan or other guidance provided to evaluators and the scoring sheets used by evaluators to evaluate the proposals;
- (c) with respect to the evaluation of CGI's proposal, the individual scoring sheets and notes of each evaluator (i.e. the raw data regarding CGI's evaluation), and their identities, the points achieved by CGI with respect to each evaluation criterion at each stage of the Phase 2 requirements, the consensus scoring sheets and notes from any consensus evaluation, and all notes, minutes, memoranda or other documents produced by evaluators in evaluating CGI's proposal;
- (d) with respect to the evaluation of the winning proposal, the individual scoring sheets and notes of each evaluator (i.e. the raw data regarding the evaluation of the selected proposal) and their identities, the consensus scoring sheets and notes from any consensus evaluation, all notes, minutes, memoranda or other documents produced by evaluators in evaluating the selected proposal, the points achieved by the selected proposal with respect to each evaluated criterion at each evaluation stage of the Phase 2 requirements, the total points obtained by the selected proposal, the evaluated price of the selected proposal, the selected proposal (subject to confidentiality issues) and a description of relevant characteristics and advantages of the selected proposal; and
- (e) information and documents relating to Canada Post's development and application of its information technology (IT) transformation initiative referred to in its 2013 Annual Report that focused on the renewal/re-procurement of Canada Post's IT supply chain.

1. R.S.C., 1985, c. 47 (4th Supp.) [*CITT Act*].

2. *North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2 (entered into force 1 January 1994) [*NAFTA*].

4. Under subsection 17(2) of the *CITT Act*, the Tribunal may order the production of documents or information relevant to the grounds of complaint. This kind of order enables the Tribunal to obtain and examine exhibits or documents in the context of exercising its jurisdiction,³ i.e. in procurement cases, determining the validity of the particular grounds of complaint before it. In this respect, the relevance of documents or information to the grounds of complaint is a separate question from, and does not depend on, the extent of Canada Post's obligation to provide pertinent information to unsuccessful bidders under Article 1015(6) of *NAFTA*. As such, for the purposes of this order, the Tribunal has not taken into account the parties' arguments concerning the scope of Article 1015(6) of *NAFTA*, and this decision does not pre-determine the Tribunal's decision on the merits of File No. PR-2014-006, to be made in due course, regarding whether Canada Post breached its obligations under that article in relation to this solicitation.

5. Having considered the initial motion filed by CGI requesting the production of documents, as well as the submissions on the motion by Canada Post dated June 10, 2014, and the reply submissions on the motion by CGI dated June 13, 2014, the Tribunal finds that the following documents are relevant to the grounds of complaint and must be produced by Canada Post:

- the identity of the evaluators who evaluated the proposals at each stage of the Phase 2 requirements and their relationship, if any, with the winning bidder;
- the methodology actually used by the evaluators to evaluate the proposals submitted in response to the Phase 2 requirements, including all criteria used to evaluate proposals, all written instructions provided to evaluators, any evaluation plan or other guidance provided to evaluators and the scoring sheets used by evaluators to evaluate the proposals;
- with respect to the evaluation of CGI's proposal, the individual scoring sheets and notes of each evaluator (i.e. the raw data regarding CGI's evaluation), the points achieved by CGI with respect to each evaluation criterion at each stage of the Phase 2 requirements, the consensus scoring sheets and notes from any consensus evaluation, and all notes, minutes, memoranda or other documents produced by evaluators in evaluating CGI's proposal; and
- with respect to the evaluation of the winning proposal, the individual scoring sheets and notes of each evaluator (i.e. the raw data regarding the evaluation of the selected proposal), the consensus scoring sheets and notes from any consensus evaluation, all notes, minutes, memoranda or other documents produced by evaluators in evaluating the selected proposal, the points achieved by the selected proposal with respect to each evaluated criterion at each evaluation stage of the Phase 2 requirements, the total points obtained by the selected proposal, the evaluated price of the selected proposal and the selected proposal.

6. With respect to CGI's request for the information under (a) above, the qualifications of the evaluators are not relevant to the grounds of complaint and could have no bearing on the Tribunal's determining whether CGI's bid was evaluated unreasonably, having regard to the evaluation criteria published in the RFP. Similarly, the qualifications of the evaluators are not relevant to determining whether Canada Post's evaluation of bids was tainted by bias.

7. On the other hand, the documents requested under (b) and (c) above regarding the evaluation of CGI's bid and the evaluation process in general are clearly relevant to the grounds of complaint. In addition, given that CGI has made allegations of bias, the identities of the evaluators and their relationships, if any, to the winning bidder (requested under [a]), as well as documents pertaining to the winning proposal (requested under [d])) are relevant and might be helpful to the disposition of that ground of complaint.

3. See, for example, *Ecosfera Inc. v. Department of the Environment* (11 July 2007), PR-2007-004 (CITT) at para. 55.

8. While the allegations of bias justify producing the identity of the evaluators, their evaluation of the winning bid, and their relationship, if any, with the winning bidder, the Tribunal finds that the production of documents relating to Canada Post's IT transformation initiative is unnecessary to determine the merits of the complaint. CGI has not convincingly explained how any such documents could be relevant to the question of whether the evaluators actually evaluated or appear to have evaluated the proposals in a manner tainted by bias. Indeed, the requested documents are far removed from the core of the complaint, that is, the evaluation actually carried out by Canada Post. The only potential relevance of any such documents could be in support of an allegation of institutional bias. However, the only evidence filed in support of institutional bias is Canada Post's 2013 Annual Report which, in and of itself, is not indicative of institutional bias. Accordingly, the Tribunal finds that ordering the production of the information and documents requested under (e) would constitute an unjustified foray into the records of Canada Post.

9. Finally, the Tribunal finds it appropriate to order Canada Post to produce the relevant documents and information at the same time as it files its GIR. The inquiry process, as described in rules 103 and 104 of the *Canadian International Trade Tribunal Rules*,⁴ was established by taking into account the appropriate time frames required by the respective parties to produce and/or review relevant documentation. The circumstances of this case, including the scheduled filing of the GIR on June 30, 2014, do not warrant departing from the established time frames.

10. If the documents contain information that Canada Post wishes to be kept confidential, it should consult subsection 46(1) of the *Canadian International Trade Tribunal Act* and proceed accordingly.

11. On the basis of the foregoing, the Tribunal grants the motion in part.

Stephen A. Leach
Stephen A. Leach
Presiding Member

4. S.O.R./91-499.