



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

ORDER AND REASONS

File No. PR-2015-021

Méridien Maritime Réparation

v.

Department of Public Works and
Government Services

*Order and reasons issued
Thursday, October 1st, 2015*

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IN THE MATTER OF a complaint filed by Méridien Maritime Réparation 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 filed by Méridien Maritime Réparation requesting an order directing the Department of Public Works and Government Services to produce certain documents.

BETWEEN

MÉRIDIEN MARITIME RÉPARATION

Complainant

AND

**THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT
SERVICES**

**Government
Institution**

ORDER

The motion is denied.

Peter Burn
Peter Burn
Presiding Member

STATEMENT OF REASONS

BACKGROUND

1. On July 22, 2015, Méridien Maritime Réparation (Méridien) 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 Department of Public Works and Government Services (PWGSC) breached its obligations under the *Agreement on Internal Trade*² in relation to Request for Proposal (RFP) (Solicitation No. F7047-141000/C) for the procurement of search and rescue lifeboats for the Canadian Coast Guard.

2. Specifically, Méridien alleged that PWGSC ignored vital information in the bid and did not conduct the evaluation in a procedurally fair manner. Méridien also alleged that PWGSC failed to properly and fairly evaluate Méridien's bid in relation to two mandatory technical criteria (MTC), MTC2 and MTC6.

3. MTC6 required bidders to identify proposed personnel for specific positions in the bidders' project management team, including for the position of Lead Marine Engineer. MTC6 also set out qualification requirements for each position and indicated that bidders were to submit detailed résumés demonstrating that the proposed personnel met these requirements. In particular, the bidder was required to demonstrate that the candidate had a minimum of 60 months of experience in a lead marine engineering role within the last 120 months for ship construction projects, in order to qualify for the position of Lead Marine Engineer.

4. Méridien's complaint was accepted for inquiry on July 27, 2015. On August 28, 2015, PWGSC filed a Government Institution Report (GIR). In responding to Méridien's complaint regarding MTC6, PWGSC maintained its position that the résumé submitted by Méridien's candidate for Lead Marine Engineer, Mr. Roger Duke, did not contain “. . . detailed information to clearly indicate . . .”³ [underlining in original] that he had the requisite experience to meet the qualification requirements for the position of Lead Marine Engineer. In response to Méridien's contention that few employees would have been able to gain the requisite experience over the identified 120-month period due to a lack of ship construction projects in Eastern Canada during that period, PWGSC indicated that four other bidders had been successful in meeting this requirement.

5. On September 3, 2015, Méridien filed a motion for the production of certain documents, on the grounds that PWGSC had failed to include all relevant documents in the GIR as required by rule 103 of the *Canadian International Trade Tribunal Rules*.⁴ Méridien is seeking all information on which PWGSC relied to find the four qualifying bidders compliant with MTC6, on the basis that this information is relevant to its argument that PWGSC adopted an unreasonable interpretation of the term “Lead Marine Engineer” in evaluating Méridien's bid.

6. In response to Méridien's motion, PWGSC submitted that the information sought by Méridien is irrelevant. PWGSC submitted that each bid was evaluated on the basis of its own content as measured against the criteria stated in the RFP, as opposed to being rated against one another, and pointed to previous jurisprudence in which the Tribunal found that, in these circumstances, absent allegations of bias in the complaint, the bid materials of other bidders are irrelevant.

1. R.S.C., 1985, c. 47 (4th Supp.).

2. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <http://www.ait-aci.ca/index_en/ait.htm>.

3. Exhibit PR-2015-021-13 at para. 27, Vol. 1E.

4. S.O.R./91-499 [*Rules*].

7. In reply, Méridien maintained that the documents should be produced, as they are clearly relevant to the issue of PWGSC's interpretation of the term "Lead Marine Engineer", and will demonstrate how that term was interpreted and applied in assessing the qualifications of the bidders. Méridien pointed to the Government's obligation under paragraph 103(2)(e) of the *Rules* to provide "any additional evidence . . . that may be necessary to resolve the complaint."

8. Further, Méridien pointed to the Tribunal's decision in *Pomerleau Inc. v. Department of Public Works and Government Services*,⁵ in which the Tribunal indicated as follows:

30. While fishing expeditions by complainants will not be countenanced by the Tribunal any more than they are by the courts, when a complainant can precisely identify a document in its complaint (for example, because it is specifically referred to by name in another document that is already in its possession), such a document should be disclosed by the government institution. Objections to relevance should only be made for the most compelling of reasons and should therefore be a rarity. And it is not a compelling reason to object to or resist the production of readily obtainable documents merely for tactical reasons.

9. Méridien stated that the information that it is seeking is clearly identified, in the government's possession, that it would not be onerous for PWGSC to produce it and that, therefore, it should be produced.

TRIBUNAL ANALYSIS

10. As argued by PWGSC, the Tribunal has previously found that, absent a claim of bias, the evaluations of other bidders are not relevant to a complaint where the bids are evaluated against the criteria set out in the RFP and not against one another.⁶

11. Méridien has not alleged that PWGSC evaluated its bid in a biased manner, nor has it provided any evidence of bias. Further, there is no indication in any of the materials before the Tribunal that Méridien's bid was evaluated against the contents of the other bids, rather than against the evaluation criteria set out in the RFP. The requested documents are therefore not relevant to the assessment of Méridien's complaint.

12. Méridien's argument that the disclosure of the information provided by the bidders that were successful in meeting MTC6 will shed light on PWGSC's interpretation of "Lead Marine Engineer" presumes that PWGSC must have interpreted and applied the term "Lead Marine Engineer" inconsistently as between its evaluation and the evaluations of the other bidders, based on its assertion that there would have been little opportunity for any other potential candidates to gain the requisite experience during the relevant period. Méridien's argument is based entirely on speculation. The Tribunal will not order the production of documents on this basis.

13. Finally, Méridien seeks to use the Tribunal's recent decision in *Pomerleau* in support of its position that the documents should be produced because they are clearly identified, in the government's possession, and would not be onerous for PWGSC to produce. Méridien's argument implies that *Pomerleau* stands for the premise that government institutions should not object to disclosure based on relevance where the documents requested meet those criteria.

5. (21 May 2015), PR-2014-048 (CITT) [*Pomerleau*].

6. *Chamber of Shipping of British Columbia* (24 March 2010), PR-2009-069 (CITT) at paras. 12-17; *Raymond Chabot Grant Thornton Consulting Inc. and PricewaterhouseCoopers LLP v. Department of Publics Works and Government Services* (25 September 2013), PR-2013-005 and PR-2013-008 (CITT) at paras. 10-12.

14. However, the factual circumstances here are very different than those in *Pomerleau*. In *Pomerleau*, the government institution failed to disclose, for purely tactical reasons, documents that were clearly relevant to a jurisdictional matter that it had raised. This is not the situation here. Further, the Tribunal cautions that *Pomerleau* should not be construed as permitting documentary or informational requests that do not shed light on the grounds of complaint by limiting the ability of the government institution to object to disclosure based on relevance.

Peter Burn

Peter Burn

Presiding Member