



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

## DECISION AND REASONS

File No. PR-2015-036

eVision Inc.

*Decision made  
Friday, November 6, 2015*

*Decision issued  
Monday, November 9, 2015*

*Reasons issued  
Tuesday, November 17, 2015*

IN THE MATTER OF a complaint filed pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C., 1985, c. 47 (4th Supp.).

**BY**

**EVISION INC.**

**AGAINST**

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

**DECISION**

Pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal has decided not to conduct an inquiry into the complaint.

Peter Burn

Peter Burn

Presiding Member

The statement of reasons will be issued at a later date.

## STATEMENT OF REASONS

1. Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,<sup>2</sup> a potential supplier may file a complaint with the Canadian International Trade Tribunal (the Tribunal) concerning any aspect of the procurement process that relates to a designated contract and request the Tribunal to conduct an inquiry into the complaint. Subsection 30.13(1) of the *CITT Act* provides that, subject to the *Regulations*, after the Tribunal determines that a complaint complies with subsection 30.11(2) of the *CITT Act*, it shall decide whether to conduct an inquiry into the complaint.

### SUMMARY

2. On October 30, 2015, eVision Inc. (eVision) filed a complaint relating to a Request for Proposal (RFP) (Solicitation No. W8482-156405/A) for the provision of junior procurement specialist services by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence, Director General Maritime Equipment Program Manager.

3. eVision alleged that PWGSC improperly deemed its financial proposal non-compliant with the mandatory requirements of the RFP and failed to seek clarification of eVision's financial proposal. As a remedy, eVision requested that its financial proposal be re-evaluated and that the re-evaluation take into account certain clarifications provided by eVision after its bid was disqualified. eVision also asked the Tribunal to issue an order postponing the contract award.

### BACKGROUND OF COMPLAINT

4. The solicitation was issued on May 28, 2015, and the solicitation period concluded on June 19, 2015.

5. On October 23, 2015, eVision was informed that its financial proposal was non-compliant due to the improper completion of the required pricing schedule. That same day, eVision spoke to the contracting authority who confirmed the decision declaring eVision's bid non-compliant.

6. On October 26, 2015, the Tribunal received eVision's complaint. On October 27, 2015, the Tribunal informed eVision that it required additional information and documentation, including a copy of eVision's bid.

7. On October 27, 2015, eVision filed some of the requested information, but did not file its bid. On October 30, 2015, eVision confirmed that it did not have a copy of its bid.

8. On November 3, 2015, the Tribunal asked PWGSC to provide the Tribunal with a copy of eVision's bid. On November 5, 2015, PWGSC complied with the Tribunal's request.

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

2. S.O.R./93-602 [*Regulations*].

## ANALYSIS

9. Pursuant to sections 6 and 7 of the *Regulations*, the Tribunal may conduct an inquiry if and only if the following four conditions are met:

- the complaint has been filed within the time limits prescribed by section 6;<sup>3</sup>
- the complainant is an actual or potential supplier;<sup>4</sup>
- the complaint is in respect of a designated contract;<sup>5</sup> and
- the information provided discloses a reasonable indication that the government institution did not conduct the procurement in accordance with the applicable trade agreements.<sup>6</sup>

10. eVision's complaint meets the first three requirements. However, eVision's complaint fails to disclose a reasonable indication that PWGSC did not conduct the procurement in accordance with the applicable trade agreements.

### No Reasonable Indication of Breach

11. In conducting procurement inquiries, the Tribunal has repeatedly stated that it will not substitute its judgment for that of the evaluators unless the evaluators have not applied themselves in evaluating a bidder's proposal, have ignored vital information provided in a bid, have wrongly interpreted the scope of a requirement, have based their evaluation on undisclosed criteria or have otherwise not conducted the evaluation in a procedurally fair way.<sup>7</sup>

12. It was a requirement of the RFP that bidders complete the pricing schedule included in the SA.<sup>8</sup> The RFP also required that a bid *comply with the requirements of the bid solicitation* and meet all mandatory technical evaluation criteria in order to be declared responsive.<sup>9</sup> In addition, the pricing schedule itself stated that “[t]he Bidder *must complete* this pricing schedule and include it in its financial bid . . .”<sup>10</sup> and that “[b]idders *must quote* only one firm per diem rate *in the space provided* for each period . . .”<sup>11</sup> [emphasis added].

13. It is a bidder's responsibility to ensure that its proposal is compliant with all essential elements of a solicitation<sup>12</sup> and to ensure that the information submitted as part of its bid is clear.<sup>13</sup> A review of eVision's financial bid confirms that the pricing schedule was neither fully nor accurately completed.<sup>14</sup> In particular, the “per diem rate” column for each of the proposed resources was left entirely blank, the result being that

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3. Subsection 6(1) of the *Regulations*.

4. Paragraph 7(1)(a) of the *Regulations*.

5. Paragraph 7(1)(b) of the *Regulations*.

6. Paragraph 7(1)(c) of the *Regulations*.

7. *Excel Human Resources Inc. (operating as excelITR) v. Department of Public Works and Government Services* (25 August 2006), PR-2005-058 (CITT) at para. 30; *Northern Lights Aerobatic Team, Inc. v. Department of Public Works and Government Services* (7 September 2005), PR-2005-004 (CITT) at para. 51; *Marcomm Inc.* (11 February 2004), PR-2003-051 (CITT) at para. 10.

8. RFP, Part 3, Section II, Article 1.1.

9. RFP, Part 4, Article 2.1.

10. RFP, Part 3, Attachment 1.

11. RFP, Part 3, Attachment 1, Article 1.2.

12. *Thomson-CSF Systems Canada Inc.* (12 October 2000), PR-2000-010 (CITT); *Canadian Helicopters Limited* (19 February 2001), PR-2000-040 (CITT); *WorkLogic Corporation* (12 June 2003), PR-2002-057 (CITT).

13. *Polaris Inflatable Boats (Canada) Ltd.* (23 June 2003), PR-2002-060 (CITT); *Empowered Networks Inc.* (27 December 2001), PR-2001-025 (CITT).

14. eVision's bid, Section II.

PWGSC could not determine eVision's proposed per diem rate. eVision also acknowledged, in its complaint, that the amounts listed in the "total" column for each of the proposed resources were intended to be the per diem rates.<sup>15</sup> This error resulted in extremely low total rates which could not be verified using per diem rates, as none were provided.<sup>16</sup> Consequently, PWGSC had no choice but to declare eVision's bid non-compliant.

### **PWGSC Not Obligated to Seek Clarification**

14. eVision submitted that the errors in its pricing schedule were obvious—the amount included as the total was meant to be the per diem rate—and could have easily been corrected if PWGSC had sought clarification.

15. The Standard Instructions incorporated by reference into the RFP allow (but do not require) PWGSC to seek clarification or verification from bidders regarding information contained in a bid.<sup>17</sup> The Tribunal has also recognized that a government institution may seek post-bid clarifications provided they do not amount to substantive revisions of a proposal.<sup>18</sup>

16. However, in the present case, the Tribunal does not accept that PWGSC could have relied upon the clarifications that eVision has put forward with respect to its financial bid. Interpreting the pricing schedule in the manner suggested by eVision would require adding the entire "per diem rate" column and changing the amounts entered in the "total" column, resulting in substantive changes to eVision's pricing schedule. In fact, if PWGSC allowed eVision to amend its pricing schedule in this manner after bid closing, it would be tantamount to bid repair.

17. Moreover, had PWGSC found eVision's bid to be compliant on its face (which, as discussed above, PWGSC could not do), eVision would have been bound to provide its services in accordance with its pricing schedule, resulting in significant losses.

18. In light of the above, the Tribunal finds that the complaint filed by eVision does not disclose a reasonable indication that PWGSC did not conduct the procurement in accordance with the relevant trade agreements.

### **DECISION**

19. Pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal has decided not to conduct an inquiry into the complaint.

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Peter Burn

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Presiding Member

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- 15. Complaint form at 5.
  - 16. The 2003 (2014-09-25) Standard Instructions – Goods or Services - Competitive Requirements [Standard Instructions] were incorporated by reference into the RFP. Paragraph 16(1)(e) allows Canada to correct an error in the extended pricing of bids by using unit pricing and indicates that, in the case of error in the extension of prices, the unit price will govern.
  - 17. Standard Instructions, paragraph 16(1)(a).
  - 18. *Mechron Energy Ltd.* (18 August 1995), PR-95-001 (CITT) at 9. For an example where the Tribunal found that changes to pricing information were substantive in nature, see *Maritime Fence Ltd. v. Parks Canada Agency* (23 November 2009), PR-2009-027 (CITT).