



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File No. PR-2015-011

Arctus Inc.

v.

Department of Public Works and
Government Services

*Determination and reasons issued
Wednesday, October 7, 2015*

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IN THE MATTER OF a complaint filed by Arctus 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 decision to conduct an inquiry into the complaint pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

BETWEEN

ARCTUS INC.

Complainant

AND

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

**Government
Institution**

DETERMINATION

Pursuant to subsection 30.14(2) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal determines that the complaint is not valid.

Pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal awards the Department of Public Works and Government Services its reasonable costs incurred in responding to the complaint, which costs are to be paid by Arctus Inc. In accordance with the *Procurement Costs Guideline*, the Canadian International Trade Tribunal's preliminary indication of the level of complexity for this complaint case is Level 1, and its preliminary indication of the amount of the cost award is \$1,150. If any party disagrees with the preliminary indication of the level of complexity or the preliminary indication of the amount of the cost award, it may make submissions to the Canadian International Trade Tribunal, as contemplated by article 4.2 of the *Procurement Costs Guideline*. The Canadian International Trade Tribunal reserves jurisdiction to establish the final amount of the award.

Serge Fréchette
Serge Fréchette
Presiding Member

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STATEMENT OF REASONS

SUMMARY

1. On June 10, 2015, Arctus Inc. (Arctus) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*.¹ The complaint relates to a Request for Proposal (RFP) (Solicitation No. EE010-15198/A) by the Department of Public Works and Government Services (PWGSC) for the provision of services for the conduct of a large-scale suspended matter monitoring demonstration project at sea using multispectral satellite imagery during an actual dredging project.

2. Arctus alleged that the evaluation of the experience of the proposed resources in its bid was incorrect. Furthermore, Arctus alleged that some of the evaluation criteria were not relevant or were improperly weighted and that the members of the evaluation committee did not have the necessary scientific expertise to analyze the bids received. According to Arctus, these grounds of complaint all led to a loss of points for its bid, which was rejected.

3. As a remedy, Arctus requested that the bids be re-evaluated and that the designated contract be terminated. In the alternative, Arctus requested that it be awarded its bid preparation costs. Arctus also requested its costs incurred in preparing the complaint.

4. For the following reasons, the Tribunal finds that Arctus' complaint is not valid.

BACKGROUND OF THE COMPLAINT

5. On February 23, 2015, PWGSC issued the RFP and its annexes. Five amendments were made to the RFP during the solicitation period to incorporate certain answers to questions asked by potential bidders.

6. Arctus submitted its bid before the solicitation closing date of April 7, 2015.

7. On May 28, 2015, PWGSC informed Arctus that its bid had not been accepted and that the contract had been awarded to Consultants AECOM Inc. Arctus was, at the same time, informed that its bid had been rejected because it did not obtain the required minimum points under the criterion related to proposed resources.²

8. Further to its objection made to PWGSC on May 28, 2015, and a debriefing on June 1, 2015, Arctus filed a complaint with the Tribunal on June 10, 2015.

9. On June 15, 2015, the Tribunal informed the parties that the complaint had been accepted for inquiry, as it met the requirements of subsection 30.11(2) of the *CITT Act* and the conditions set out in subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.³

10. On July 10, 2015, PWGSC filed the Government Institution Report (GIR). On July 30, 2015, Arctus filed its comments on the GIR.⁴

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

2. Exhibit PR-2015-011-08 at para. 16, Vol. 1A; exhibit PR-2015-011-01A (protected) at 16, Vol. 2.

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

11. The parties had the opportunity to file additional submissions concerning annexes C and D, designated as confidential, in support of the GIR, which they did on August 14 and 27, 2015 (Arctus) and on August 24, 2015 (PWGSC).

12. Given that there was sufficient information in the record to determine the validity of the complaint, the Tribunal decided that a hearing was not required and disposed of the complaint on the basis of the information in the record.

RELEVANT PROVISIONS OF THE RFP

13. The RFP set out the objective of the procurement as follows:

PWGSC wishes to conduct a large-scale SM monitoring demonstration project at sea using multispectral satellite imagery during an actual dredging project. In 2015, Transport Canada will undertake the sediment remediation directly south of the Gaspé (Sandy Beach) commercial wharf by dredging. One of the anticipated impacts of the restoration project is the resuspension of sediments during the dredging operations and their transport to marine aquaculture sites northwest of Gaspé harbour.

As detailed in Annex A – Statement of Work, the Contractor must:

- perform calibration of multispectral bands from satellite imagery in spring 2015 before the start of the work;
- develop and apply SM prediction model(s);
- monitor SM at sea while dredging work is done in the summer and fall of 2015; and
- map the information and present the results in report form and a Powerpoint presentation.⁵

14. In accordance with the RFP, bidders had to comply with the following:

PART 3 - BID PREPARATION INSTRUCTIONS

...

Section I: Technical Bid

In their technical bid, bidders should demonstrate their understanding of the requirements contained in the bid solicitation and explain how they will meet these requirements. Bidders should demonstrate their capability and describe their approach in a thorough, concise and clear manner for carrying out the work.

The technical bid should clearly address and in sufficient depth the points that are subject to the evaluation criteria against which the bid will be evaluated. Simply repeating the statement contained in the bid solicitation is not sufficient.⁶

15. The following requirements were also stated in the RFP:

PART 4 - EVALUATION PROCEDURES AND BASIS OF SELECTION

...

4. The Tribunal granted Arctus an extension for the filing of its comments on the GIR. As a result, in accordance with paragraph 12(c) of the *Regulations*, the Tribunal made a determination with respect to the complaint within 135 days after the filing of the complaint.

5. Exhibit PR-2015-011-01, Vol. 1.

6. *Ibid.*

4.1.1 Technical Evaluation

...

4.1.1.2 Point Rated Technical Criteria

Each Bid will be rated by assigning a score to the rated criteria, which are described in **attachment 1**, Point Rated Technical Criteria. Any bid that is not complete and does not contain all the information required on the Request for proposal will be scored accordingly.

...

4.2.1 Basis of Selection - Highest Combined Rating of Technical Merit and Price

1. To be declared responsive, a bid must:
 - (a) Comply with all the requirements of the bid solicitation;
 - (b) Meet all mandatory criteria;
 - (c) *Obtain the required minimum points for each criterion and each group of criteria with a pass mark;*
 - (d) Obtain the required minimum of points overall for the technical evaluation criteria which are subject to point rating.
2. *Bids not meeting (a) or (b) or (c) or (d) will be declared non-responsive.*

[Emphasis added]

POSITIONS OF PARTIES

Arctus

16. The complaint challenged the relevance and weighting of some of the rated technical evaluation criteria in Annex A of the RFP. In particular, Arctus alleged that it was incorrect to require, under point-rated criteria 1 (technical proposal) and 2 (bidder's achievements) of the RFP, the orthorectification of the images because this is a process that is not relevant to the marine environment. Arctus was also concerned about the fact that PWGSC awarded the same number of points to the "atmospheric corrections" step as it did to the "orthorectification" step under point-rated criteria 1 and 2. According to Arctus, many more points should have been awarded to the atmospheric corrections step because orthorectification is not relevant to monitoring coastal waters.

17. Arctus argued that the evaluation of the experience of the proposed resources in its bid under criterion 3 (proposed resources) of the RFP was incorrect, which contributed to the loss of points awarded to its bid. Arctus was of the opinion that the members of the evaluation committee should have known who the proposed resources were; it added that, where applicable, an on-line search on the "Google" search engine would have provided references for the proposed resources. Consequently, Arctus contended that the evaluators should have evaluated its bid in light of all the professional achievements of the proposed resources instead of limiting their evaluation to the contents of the bid. It also alleged that the bid provided a detailed description of the expertise and achievements of the Arctus team, which implicitly included leadership experience.

18. Finally, Arctus alleged that the members of the evaluation committee did not have the necessary scientific expertise to analyze the bids received.

PWGSC

19. PWGSC argued that the evaluation criteria were relevant in the context of the project in question. PWGSC maintained that, notwithstanding the fact that orthorectification was a legitimate need that it was entitled to require, Arctus should have raised its concerns with respect to that criterion at the first opportunity.

20. According to PWGSC, the evaluation committee evaluated the experience of the resources proposed by Arctus in light of the information in its bid and it could not, in all fairness to the other bidders, consider other information, as suggested by Arctus.

21. Regarding the members of the evaluation committee, PWGSC argued that all three have higher education in fields that are relevant for the purposes of the RFP. Furthermore, they are employees of PWGSC's environmental and geomatics services because of the particular expertise that they acquired in their academic training.

STATUTORY FRAMEWORK

22. Subsection 30.14(1) of the *CITT Act* requires that, in conducting an inquiry, the Tribunal limit its considerations to the subject matter of the complaint. At the conclusion of the inquiry, the Tribunal must determine whether the complaint is valid on the basis of whether the procedures and other requirements prescribed in respect of the designated contract have been observed. Section 11 of the *Regulations* provides that the Tribunal is required to determine whether the procurement was conducted in accordance with the applicable trade agreements, which, in this instance, are the *North American Free Trade Agreement*,⁷ the *Agreement on Internal Trade*,⁸ the *Canada-Chile Free Trade Agreement*,⁹ the *Canada-Colombia Free Trade Agreement*,¹⁰ the *Canada-Panama Free Trade Agreement*¹¹ or the *Canada-Honduras Free Trade Agreement*.¹²

23. The trade agreements require that a procuring entity provide potential suppliers with all the information necessary to permit them to submit responsive tenders, including the criteria which will be used for evaluating and, further, awarding the contract. For instance, Article 1013(1) of *NAFTA* provides as follows: "Where an entity provides tender documentation to suppliers, the documentation shall contain all information necessary to permit suppliers to submit responsive tenders The documentation shall also

7. *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*].

8. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <http://www.ait-aci.ca/index_en/ait.htm>.

9. *Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile*, 1997 Can. T.S. No. 50 (entered into force 5 July 1997). Chapter *Kbis*, entitled "Government Procurement", came into effect on September 5, 2008.

10. *Free Trade Agreement between Canada and the Republic of Colombia*, online: Department of Foreign Affairs and International Trade <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/colombia-colombie/anc-colombia-toc-tdm-can-colombie.aspx>> (entered into force 15 August 2011).

11. *Free Trade Agreement between Canada and the Republic of Panama*, online: Department of Foreign Affairs and International Trade <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/panama/panama-toc-panama-tdm.aspx>> (entered into force 1 April 2013).

12. *Free Trade Agreement between Canada and the Republic of Honduras*, online: Department of Foreign Affairs, Trade and Development <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/honduras/toc-tdm.aspx>> (entered into force 1 October 2014).

include: . . . (h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders”.

24. The trade agreements also stipulate that, to be considered for contract award, a tender must conform to the essential requirements set out in the tender documentation and require that procuring entities award contracts in accordance with the criteria and essential requirements specified in the tender documentation. For instance, Articles 1015(4)(a) and (d) of *NAFTA* provide as follows: “An entity shall award contracts in accordance with the following: (a) to be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation . . . (d) awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation”

ANALYSIS

Evaluation of the experience of the proposed resources

25. In light of the foregoing, the Tribunal examined Arctus’ allegations starting with whether the evaluation of Arctus’ bid under the technical evaluation criterion related to the proposed resources was reasonable. For the following reasons, the Tribunal finds that the ground of complaint is not valid.

26. Arctus’ bid was deemed non-responsive on the specific ground that it did not obtain the required minimum points pursuant to criterion 3 of Annex A of the RFP.

27. On that point, Arctus alleged that its bid received an incorrect mark for criterion 3, which was stated as follows in Annex A of the RFP:

B. Rated Technical Criteria

Evaluation of the experience of the proposed resources

...

For each proposed resource, the Bidder should indicate experience in terms of months of experience and should specify whether the resource was full-time or not. This experience should be demonstrated in a clear, precise and concrete manner.

...

Criteria	Evaluation Grid	Max.	Min
<p>...</p> <p>3 – PROPOSED RESOURCES</p> <p>Information that should be provided for each resource category:</p> <ul style="list-style-type: none"> • Academic and professional training • Number of years of experience; and • Main duties. <p>Bidders should submit all of the resources’ resumes.</p>		30	15

28. Moreover, criterion 3 was divided into two sub-criteria: 3.1 (project director) and 3.2 (project lead), each with their own weighted criteria. They read as follows:

Criteria	Evaluation Grid	Max.	Min.
<p>3.1 Project director</p> <p>The Bidder should propose a resource for the position of project director, geomatics or remote sensing.</p> <p>The project director is the person responsible for the completion of various geomatics or remote sensing projects. The project director monitors the progress of the budget, ensures that deadlines are met, assigns various tasks to the resources, takes various specifics into account, ensures quality control and manages conflicts.</p> <p><u>Information that should be provided for each project:</u></p> <ul style="list-style-type: none"> • Title and nature of the project; • Scope of services rendered and desired objectives; • Project start and end dates (enter months); • Detailed and concise description of the project to demonstrate the various elements of the evaluation grid. 	<p><u>i. Project director's experience</u></p> <p>8 points: - has more than 60 months of experience as a project director in geomatics or remote sensing;</p> <p>6 points: - has more than 48 but less than 60 months of experience as a project director in geomatics or remote sensing;</p> <p>4 points: - has more than 24 but less than 48 months of experience as a project director in geomatics or remote sensing;</p> <p>2 points: - has more than 24 but less than 36 months of experience as a project director in geomatics or remote sensing;</p> <p>0 points: - has less than 24 months of experience as a project director in geomatics or remote sensing.</p>	8	
	<p><u>ii. Participation of the project director in applied EO technology development projects using satellite images.</u></p> <p>The project director has participated in a minimum of 6 projects (7 pts); 4 projects (5 pts); 3 projects (3 pts); 2 projects (2 pts) or 1 project (1pt);</p> <p>To be considered, the project must have been completed in the past five years.</p>	7	
<p>3.2 Project lead</p> <p>The Bidder should propose a resource for the position of Project Lead.</p> <p>The project lead is the person responsible completing the technical component of various geomatics or remote sensing projects and ensuring that they run</p>	<p><u>i. University education</u></p> <p>6 points: - has a graduate degree (masters or doctoral) in geomatics or remote sensing or a field related to the analysis and processing of satellite images.</p>	4	

Criteria	Evaluation Grid	Max.	Min.
<p>smoothly in every way. Under the direction of the project director, the project lead effectively coordinates a team of professionals, technicians and subcontractors until the project is completed.</p> <p><u>Information that must be provided for each project:</u></p> <ul style="list-style-type: none"> • Title and nature of the project; • Scope of services rendered and desired objectives; • Project start and end dates (enter months) • Detailed and concise description of the project to demonstrate the various elements of the evaluation grid. 	<p>ii. <u>Experience of the project lead</u></p> <p>6 points: - has over 48 months of experience as a project lead in geomatics or remote sensing;</p> <p>4 points: - has more than 36 but less than 48 months of experience as a project lead in geomatics or remote sensing;</p> <p>3 points: - has more than 24 but less than 36 months of experience as a project lead in geomatics or remote sensing;</p> <p>1 point: - has more than 12 but less than 24 months of experience as a project lead in geomatics or remote sensing;</p> <p>0 points: - has less than 12 months of experience as a project lead in geomatics or remote sensing.</p>	6	
	<p>iii. <u>Participation of the Project Lead in applied EO technology development projects using satellite images</u></p> <p>The project lead has participated in a minimum of 5 projects (5 pts); 4 projects (4 pts); 3 projects (3 pts); 2 projects (2 pts) or 1 project (1 pt);</p> <p>To be considered, the project must have been completed in the past five years.</p>		5

29. On April 1, 2015, the RFP was amended to include the answer to the following question (amendment No. 005):

QUESTION 9: In the evaluation criteria of Section 3. Proposed Resources, we read in the criterion ii of the Project Director and the criterion iii of the Project Lead the following sentence: "To be considered, the project must have been completed in the past five years." Question: Can ongoing projects be considered?

ANSWER 9: No. As specified in the "Information that must be provided for each project", Project start and end dates must be specified. Thus, all the projects submitted by the Bidder must have been completed.

30. Although the GIR did not focus on the obligation of obtaining a pass mark of 15/30 with respect to criterion 3, the RFP clearly stated that, to be declared responsive, a bid “must” obtain the minimum points for each criterion and each group of criteria with a pass mark.¹³ Arctus did not challenge that requirement.

31. It is well established that there is an onus on bidders to demonstrate how their proposals meet the mandatory and rated criteria published in the solicitation documents.¹⁴ This was also specified in the terms of the RFP.¹⁵ In this regard, the Tribunal usually does not impose upon government institutions an obligation to seek clarification from bidders.¹⁶ Also, the 2003 (2014-09-25) Standard Instructions – Goods or Services – Competitive Requirements, which were incorporated by reference into the RFP and were thus an integral part of it, specified that “. . . Canada will evaluate only the documentation provided with a bidder’s bid. Canada will not evaluate information such as references to Web site addresses where additional information can be found”¹⁷

32. It was therefore up to Arctus to show due diligence in preparing its bid to ensure that it met all the mandatory requirements, and the evaluators, other than their discretion to seek clarification, had to base their evaluation on only the information contained in the bid.

33. Furthermore, the Tribunal jurisprudence shows that it consistently accords a large measure of deference to evaluators in their evaluation of proposals. The Tribunal will interfere only with an evaluation that is unreasonable and will substitute its judgment for that of the evaluators only when 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.¹⁸

34. Essentially, the issue in this case is for the Tribunal to decide whether the evaluation of Arctus’ bid by PWGSC was unreasonable, in light of the information included in the bid, because it did not take into account part of the experience of its proposed resources for the positions of project director and project lead.

Project Director (criterion 3.1)

35. As stated above, criterion 3.1.i requires that the proposed resource have a minimum number of months of experience as a project director. Also, the RFP requires that the experience of the proposed resource as project director be demonstrated in a clear, precise and concrete manner or the evaluation team will not consider the resource’s experience.

13. RFP, Part 4 at para. 4.2.1.

14. *Samson & Associates v. Department of Public Works and Government Services* (13 April 2015), PR-2012-012 (CITT) at paras. 28, 36; *Integrated Procurement Technologies, Inc.* (14 April 2008), PR-2008-007 (CITT) [*Integrated Procurement Technologies*] at para. 13.

15. RFP, Part 3 at para. 3.1, Part 4 at paras. 4.1.1, 4.2.

16. *Integrated Procurement Technologies* at para. 13.

17. RFP, Part 2 at para. 2.1. See also section 05 (2014-03-001) Submission of Bids, paragraph 7 of the 2003 (2014-09-25) Standard Instructions – Goods or Services – Competitive Requirements.

18. *Excel Human Resources Inc. v. Department of the Environment* (2 March 2012), PR-2011-043 (CITT) at para. 33.

36. The evaluators found that it was not possible to determine from Arctus' bid that the experience of the proposed resource as project director exceeded the 24 months of experience required to obtain some of the potential eight points in the evaluation grid under criterion 3.1.i.¹⁹

37. The Tribunal is of the opinion that Arctus' bid with respect to criterion 3.1.i lacks clarity. The Tribunal was only able to identify experience in terms of months for four of the projects mentioned under criterion 3.1.i in the bid submitted by Arctus. However, one of the four projects seems to have been disqualified by PWGSC because it was a project that was not completed and thus it could not be considered, in accordance with the response given by PWGSC to question No. 9 in the amendment No. 005.

38. Even though that response, which expressly states that, to be considered, the project must have been completed in the past five years, deals with criterion 3.1.ii, it was not unreasonable, in the Tribunal's opinion, to read it as also applying to criterion 3.1.i. As specified under criterion 3.1, bidders must specify project start and end dates. Therefore, all the projects presented by the bidder (be it under criterion 3.1.i or criterion 3.1.ii) had to have been completed.²⁰

39. The bid also states that the proposed resource directed or is currently directing some other projects but it did not include, as the case may be, a detailed description of the project, the duration of the project, the role of the proposed resource or the number of months of experience the proposed resource worked as project director. The description of the expertise and achievements of the Arctus team also did not demonstrate the specific management experience, as required by the RFP.

40. As a whole, there was nothing before the Tribunal indicating that PWGSC unreasonably determined that the bid did not demonstrate that the proposed resource had at least 24 months of experience as a project director.

41. Regarding criterion 3.1.ii, the evaluators did not award the maximum points to Arctus' bid because it also included a project that was not completed at the time of the bid closing date. As stated above, to be considered, the project had to have been completed—and therefore finished—in the past five years.

42. The Tribunal finds that the complaint has not demonstrated that the evaluation with respect to criterion 3.1 was unreasonable.

Project Lead (criterion 3.2)

43. Arctus' bid lost points under criterion 3.2.ii. The Tribunal must therefore decide whether, given the information in the bid, the evaluators should have reasonably found that Arctus demonstrated that the proposed resource had at least 12 months of experience as a project lead in geomatics or remote sensing, meaning that it should have received more points for criterion 3.2.ii.

44. According to PWGSC, even though Arctus' bid included a certain number of projects in which the proposed resource had participated, it was not possible to determine that the proposed resource had been project lead for them.²¹

19. GIR at para. 40.

20. Also, even if the answer to question No. 9 did not also apply to criterion 3.1.i, the inclusion of the project in question would have only added about four months of experience at the time of the bid closing date; that would not have been enough to increase the points awarded to Arctus' bid under that criterion.

21. GIR at paras. 49-51.

45. The Tribunal finds that the bid did not demonstrate the experience of the proposed resource as project lead in a clear, precise and concrete manner. The response to criterion 3.2.ii describes extensive work experience, but does not specify whether that experience was acquired as a project lead. The information provided is far from sufficient to meet criterion 3.2.ii. As stated, the RFP requires a detailed description of the projects and work in the framework of which the proposed resource acquired his or her experience.

46. Arctus replied to criterion 3.2.iii by providing a description of six projects in which the proposed resource participated, but it once again did not specify whether that experience had been acquired as a project lead. It is therefore difficult to consider that information for the purposes of evaluating criterion 3.2.ii.

Conclusion

47. In summary, the Tribunal finds that Arctus did not demonstrate that PWGSC's evaluation of criterion 3 concerning the experience of the proposed resources was unreasonable. Nothing in the evidence regarding that criterion indicates that the evaluators did not apply themselves in evaluating the bid, that they wrongly interpreted the scope of a requirement, that they ignored vital information provided in the bid or that the evaluation was not conducted in a procedurally fair way. In short, nothing indicates that additional points should have been awarded to Arctus' bid.

48. As a result, Arctus' bid was properly rejected on the ground that it did not attain the required minimum points for criterion 3. Given that Arctus' complaint concerning such a mandatory requirement of the RFP is not valid, Arctus' bid thus remains non compliant and, consequently, it is unnecessary for the Tribunal to rule on the other grounds of complaint.²²

COSTS

49. PWGSC requested that it be awarded its costs incurred in responding to the complaint.

50. The Tribunal awards PWGSC its reasonable costs incurred in responding to the complaint.

51. In determining the amount of the cost award for this complaint case, the Tribunal considered its *Procurement Costs Guideline* (the *Guideline*), which contemplates classification of the level of complexity of cases on the basis of three criteria: the complexity of the procurement, the complexity of the complaint and the complexity of the complaint proceedings.

52. The Tribunal's preliminary indication is that this complaint case has a complexity level corresponding to the lowest level of complexity referred to in Annex A of the *Guideline* (Level 1). The complexity of the procurement was low, as it involved the provision of one type of service. The Tribunal

22. The Tribunal notes that at paragraph 2 of Arctus' comments on the GIR, Arctus admitted that it did not challenge the evaluation criteria during the solicitation period because it was of the opinion that that would have been illusory. Consequently, the ground of complaint that some of the evaluation criteria were allegedly not relevant or improperly weighed was raised late in view of section 6 of the *Regulations*. The *Regulations* require that a potential supplier make its objection or file a complaint within 10 working days after the day on which the basis of the objection or complaint became known or reasonably should have become known to the potential supplier. As a general rule, potential suppliers therefore cannot wait until the end of the procurement process and the awarding of the contract before challenging the procurement criteria. Arctus should have reasonably known and raised any ground of complaint concerning the RFP evaluation criteria during the solicitation period.

finds that the complexity of the complaint was low, as the issues were straightforward and dealt with whether PWGSC properly evaluated Arctus' proposal against two point-rated criteria. Finally, the complexity of the proceedings was low, as the issues were resolved by the parties through documentary evidence and written representations, and a hearing was not necessary.

53. Accordingly, as contemplated by the *Guideline*, the Tribunal's preliminary indication of the amount of the cost award is \$1,150.

DETERMINATION OF THE TRIBUNAL

54. Pursuant to subsection 30.14(2) of the *CITT Act*, the Tribunal determines that the complaint is not valid.

55. Pursuant to section 30.16 of the *CITT Act*, the Tribunal awards PWGSC its reasonable costs incurred in responding to the complaint, which costs are to be paid by Arctus. In accordance with the *Guideline*, the Tribunal's preliminary indication of the level of complexity for this complaint case is Level 1, and its preliminary indication of the amount of the cost award is \$1,150. If any party disagrees with the preliminary indication of the level of complexity or the preliminary indication of the amount of the cost award, it may make submissions to the Tribunal, as contemplated by article 4.2 of the *Guideline*. The Tribunal reserves jurisdiction to establish the final amount of the award.

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