



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2015-062

Helicopter Transport Services  
(Canada) Inc.

*Decision made  
Monday, February 29, 2016*

*Decision issued  
Thursday, March 3, 2016*

*Reasons issued  
Friday, March 11, 2016*

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**

**HELICOPTER TRANSPORT SERVICES (CANADA) 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.

Ann Penner  
Ann Penner  
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 OF THE COMPLAINT

2. The complaint relates to a procurement (Solicitation No. 5P414-150713/A) by the Department of Public Works and Government Services (PWGSC) on behalf of Parks Canada for helicopter charter services.

3. The Request for Proposals (RFP) was issued on January 15, 2016, with a bid closing date of February 4, 2016. Helicopter Transport Services (Canada) Inc. (HTS) submitted a bid prior to the bid closing date.

4. On February 17, 2016, PWGSC sent an email to HTS requesting clarification of an element of its bid. One of the mandatory technical criteria of the RFP, MT 1.1(e), required that the personnel proposed as helicopter pilots “have a minimum of 250 hours flight time in mountainous terrain i.e. within designated mountainous areas . . . .”<sup>3</sup> PWGSC requested that HTS identify where in its bid it had provided this information for one of its pilots. HTS replied that while the pilot had the requisite experience, he had neglected to fill in his hours on the “Pilot Info and Experience” form that HTS submitted as part of its bid. HTS indicated that it would provide the missing information as soon as possible.

5. On February 18, 2016, PWGSC replied that it would not be possible for HTS to provide the missing information and stated that the 250 hours of flight time in mountainous areas must have been demonstrated in the bid as it was submitted. Given that HTS had not provided this flight time information in its bid, PWGSC indicated that HTS would not be awarded a contract. HTS objected to the decision not to award it a contract and requested an in-person debrief.

6. On February 19, 2016, PWGSC conducted a telephone debrief with HTS and reiterated that HTS would not be permitted to submit additional information, and would not be awarded a contract.

7. On February 24, 2016, HTS filed its complaint with the Tribunal. HTS argued that it met the mandatory requirements of the RFP (including MT 1.1(e)), as demonstrated by its written certification that all crew and aircraft proposed as resources were duly qualified as per the RFP.<sup>4</sup> For this reason, HTS argued it should have been permitted to submit the missing information regarding the pilot’s 250 hours of flight time in mountainous terrain, as doing so would simply amount to a clarification of its bid.

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

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

3. The same requirement is found in Annex A, Statement of Work, at clause 5.1(e).

4. Attachment 3 to Part 3 of the RFP (Bid Preparation Instructions).

8. In support of this position, HTS submitted that the terms of the resulting contract, as set out in the RFP, entitled Parks Canada to audit the proposed crew, and allowed for the replacement of any crew member listed by an equally qualified person.<sup>5</sup> In other words, according to HTS, the terms of the contract allowed bidders to provide information about crew members after bid closing.

## ANALYSIS

9. The sole issue before the Tribunal is whether the information provided by HTS discloses a reasonable indication that the procurement was not conducted in accordance with relevant provisions of applicable trade agreements.

10. In this case, only Article 506(6) of the *Agreement on Internal Trade*<sup>6</sup> applies. It provides that “[t]he tender documents shall clearly identify the requirements of the procurement, the criteria that will be used in the evaluation of bids and the methods of weighting and evaluating the criteria.”

11. Accordingly, the Tribunal must determine whether the complaint discloses a reasonable indication that PWGSC failed to evaluate HTS’s bid in accordance with the requirements of the RFP.

12. The Tribunal finds that PWGSC correctly disqualified HTS’s bid because it failed to meet a mandatory requirement. By its own admission, HTS failed to demonstrate in its bid how one of its pilots met MT 1.1(e), i.e., that the pilot had the requisite 250 hours of flight time in mountainous terrain.

13. In response to HTS’s claim that it should have been allowed to submit required information after bid closing, the Tribunal has consistently found that bidders bear the ultimate responsibility of ensuring that bids comply with all essential elements of a procurement when they are submitted.<sup>7</sup>

14. Furthermore, the Tribunal has repeatedly held that the fairness of a procurement can be put at risk if bidders are allowed to supplement their bids with additional information after the bid closing date. Indeed, the Tribunal has been clear that there is a line between allowing bidders to clarify information already in their bids, and submitting new information after the bid has been submitted. Submitting new information after bid closing constitutes impermissible bid repair.<sup>8</sup>

15. In this case, had HTS been allowed to submit the missing information after its bid had been submitted, it would have effectively modified the bid, thereby crossing the line into impermissible bid repair. PWGSC was therefore correct to refuse this additional information, and within its rights to refuse to award HTS a contract on the grounds that its bid did not meet all of the mandatory requirements of the RFP.

16. Therefore, the Tribunal finds that the information provided by the complainant does not disclose a reasonable indication that the procurement was not conducted in accordance with the trade agreements.

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5. Annex A, Statement of Work, clauses 5.3 and 6.

6. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<http://www.ait-aci.ca/agreement-on-internal-trade/>>.

7. *Info-Electronics H P Systems Inc. v. Department of Public Works and Government Services* (2 August 2006), PR-2006-012 (CITT) at paras. 23, 34; *Mircom Technologies Ltd. v. Department of Public Works and Government Services* (11 July 2006), PR-2006-004 (CITT) at para. 32.

8. For a recent example, see *Raymond Chabot Grant Thornton Consulting Inc. and PricewaterhouseCoopers LLP v. Department of Public Works and Government Services* (25 October 2013), PR-2013-005 and PR-2013-008 (CITT) at para. 45.

**DECISION**

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

Ann Penner \_\_\_\_\_

Ann Penner  
Presiding Member