



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

ORDER AND REASONS

File No. PR-2016-001

The Access Information
Agency Inc.

v.

Department of Global Affairs

*Order and reasons issued
Wednesday, June 8, 2016*

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IN THE MATTER OF a complaint filed by The Access Information Agency 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 filed by The Access Information Agency Inc. requesting an order directing the Department of Global Affairs and the Department of Public Works and Government Services to produce certain documents.

BETWEEN

THE ACCESS INFORMATION AGENCY INC.

Complainant

AND

THE DEPARTMENT OF GLOBAL AFFAIRS

**Government
Institution**

ORDER

The Canadian International Trade Tribunal grants the motion in part.

The Canadian International Trade Tribunal orders the Department of Global Affairs and, if applicable, the Department of Public Works and Government Services to file the following documents with the Canadian International Trade Tribunal, at the latest June 15, 2016:

- the scoring documents, including the scoring tables developed or used by the member or members of the evaluation committee;
- all scoring supplements developed or used by the member or members of the evaluation committee;
- the guidelines or any explanation developed or used by the member or members of the evaluation committee with regard to the evaluation of the evaluation criteria;
- the raw scoring sheets or evaluation notes of each evaluator;
- the minutes, memoranda or any written notes produced further to the evaluators' meetings and relating of the evaluation of bids;
- any other document not mentioned above and relating to the evaluation of bids with respect to the procurement in question in the complaint, unless such document has already been filed;
- the missing documents at tab 8 of the Government Institution Report, in particular the letter informing MaxSys Staffing & Consulting that it was not awarded the contract and the letter informing LRO Staffing that it was awarded the contract;
- the missing documents at tab 7 of the Government Institution Report relating to the evaluation of bids, if applicable, submitted by MWCO and GSI International Consulting Group;
- the missing documents at tab 6 of the Government Institution Report, in particular the bids, if applicable, submitted by MWCO and GSI International Consulting Group;
- the missing pages at tab 1 of the Government Institution Report.

Furthermore, the Canadian International Trade Tribunal orders the Department of Global Affairs and, if applicable, the Department of Public Works and Government Services to provide the identity and contact information at work of the evaluators.

The Access Information Agency Inc. shall file its comments on these documents and this information, if applicable, at the latest June 20, 2016.

If the documents required to be filed or if the comments contain information that the Department of Global Affairs, The Access Information Agency Inc. or, if applicable, the Department of Public Works and Government Services wish to be kept confidential, they shall be filed in accordance with subsection 46(1) of the *Canadian International Trade Tribunal Act*.

The parties are required to serve each other and file with the Canadian International Trade Tribunal simultaneously.

Jean Bédard
Jean Bédard
Presiding Member

STATEMENT OF REASONS

1. On April 6, 2016, The Access Information Agency Inc. (AIA) 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 concerning a request for availability issued by the Department of Global Affairs (GAC) on March 9, 2016, referenced as “DCP Advanced Privacy ATIP Officer – May 2, 2016”. The request for availability was issued pursuant to a standing offer for temporary help services in the National Capital Region for the purpose of issuing a call-up to one of the companies holding a standing offer. The requested services were for a consultant specialized in dealing with access to information and privacy requests.
2. AIA’s alleged grounds of complaint accepted for inquiry are as follows:
 - (1) AIA’s bid was not properly evaluated, notably because GAC used undisclosed evaluation criteria;
 - (2) GAC neglected to provide AIA with explanations regarding the evaluation of its proposal and did not provide AIA with information concerning the characteristics and advantages of the winning bid;
 - (3) GAC did not have the right to cancel the request for availability and to issue a new one.
3. On May 26, 2016, AIA filed a motion requesting the following orders:
 - (a) ordering GAC to abide by its obligations under the *Agreement on Internal Trade*² and to disclose all documents in its possession with regard to the procurement process titled “DCP Advanced Privacy ATIP Officer – May 2, 2016”;
 - (b) ordering the Department of Public Works and Government Services (PWGSC) to disclose all documents in its possession with regard to the procurement process titled “DCP Advanced Privacy ATIP Officer – May 2, 2016”;
 - (c) ordering GAC to disclose all documents in its possession with regard to the follow-up to the procurement process titled “DCP Advanced Privacy ATIP Officer – May 2, 2016”, as described in Exhibit 12 filed by AIA.
4. GAC filed its comments on the motion on May 31, 2016, and AIA filed its comments in reply on June 1, 2016.
5. Pursuant to subsection 17(2) of the *CITT Act*, the Tribunal may order the production of documents or pertinent information that relates to the issues before it. This type of order allows the Tribunal to obtain and examine the documents or information for the exercise of its jurisdiction, which, in an inquiry concerning a procurement process, involves determining the validity of the grounds of complaint.
6. Having examined the parties’ comments, the Tribunal is of the opinion that the orders requested by AIA are too broad in the context of a Tribunal inquiry concerning a procurement process. The government institution has an obligation to provide all relevant documents in its possession in order to help the Tribunal in the exercise of its jurisdiction. Having said this, the complainant, in its motion, also had an obligation to

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

2. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<http://www.ait-aci.ca/agreement-on-internal-trade/>> [*AIT*].

identify the documents that seem to be missing and which it believes are necessary for it to state its complaint. In this case, the initial arguments underlying AIA's motion were not precise enough to show the relevance of the requested documents with regard to determining the grounds of complaint under inquiry or developing a recommendation by the Tribunal, if applicable, of an appropriate remedy. Nevertheless, AIA did present some useful precisions in its comments in reply, which now allow the Tribunal to grant AIA's motion in part.

7. Furthermore, the Tribunal reiterates that the relevance of documents or information concerning the grounds of complaint is a separate issue from the one regarding the scope of GAC's substantive obligations under the trade agreements that are raised by the grounds of complaint, including its obligations in relation to providing information to non-winning bidders. Therefore, the Tribunal cannot, in the context of this order, "order GAC to abide by its obligations under the *AIT*" [translation]. AIA's arguments regarding the scope of GAC's obligations concern the basis of its complaint. These issues will be decided by the Tribunal at the conclusion of its inquiry. Therefore, for the purposes of this order, the Tribunal has not taken into account those arguments. For these reasons, this decision does not pre-determine the Tribunal's decision on the merits with regard to the validity of the grounds of complaint or its possible recommendation of a remedy.

8. The Tribunal concludes that the documents and information mentioned below could shed light on the grounds of complaint and help with a recommendation, if applicable, for remedy and must be provided by GAC or, if applicable, PWGSC, by the deadlines set by the Tribunal:

- the scoring documents, including the scoring tables developed or used by the member or members of the evaluation committee;
- all scoring supplements developed or used by the member or members of the evaluation committee;
- the guidelines or any explanation developed or used by the member or members of the evaluation committee with regard to the evaluation of the evaluation criteria;
- the raw scoring sheets or evaluation notes of each evaluator;
- the minutes, memoranda or any written notes produced further to the evaluators' meetings and relating to the evaluation of bids;
- any other document not mentioned above and relating to the evaluation of bids with respect to the procurement in question in the complaint, unless such document has already been filed;
- the missing documents at tab 8 of the Government Institution Report (GIR), in particular the letter informing MaxSys Staffing & Consulting that it was not awarded the contract and the letter informing LRO Staffing that it was awarded the contract;
- the missing documents at tab 7 of the GIR relating to the evaluation of bids, if applicable, submitted by MWCO and GSI International Consulting Group;
- the missing documents at tab 6 of the GIR, in particular the bids, if applicable, submitted by MWCO and GSI International Consulting Group;
- the missing pages at tab 1 of the GIR.

9. Furthermore, the Tribunal orders GAC and, if applicable, PWGSC to provide the identity and contact information at work of the evaluators.

10. With regard to AIA's request concerning the documents mentioned in paragraph 3(c) above, the Tribunal notes that GAC provided, with its comments on AIA's motion, two new requests for availability for temporary help services of a consultant specialized in dealing with access to information and privacy requests, issued on May 24 and 27, 2016. The Tribunal also notes that AIA did not reiterate this requested conclusion in its comments in reply.

11. If AIA wishes to file comments on the documents and information provided by GAC under this order or, if applicable, by PWGSC, it must do so at the latest June 20, 2016.

12. If the documents required to be filed or the comments contain information that GAC, AIA or, if applicable, PWGSC wish to be kept confidential, they shall be filed in accordance with sections 46 and following of the *CITT Act*.

13. In light of the foregoing, the Tribunal grants the motion in part.

Jean Bédard
Jean Bédard
Presiding Member