



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

---

## DETERMINATION AND REASONS

File No. PR-2015-058

Sunny Jaura d.b.a. Jaura  
Enterprises

v.

Department of Public Works and  
Government Services

*Determination and reasons issued  
Thursday, June 9, 2016*

**TABLE OF CONTENTS**

DETERMINATION..... i

STATEMENT OF REASONS ..... 1

    SUMMARY ..... 1

    PROCEDURAL HISTORY ..... 1

    REVELANT PROVISION OF THE RFP ..... 2

    POSITIONS OF PARTIES ..... 3

    ANALYSIS..... 4

        Undisclosed Criteria..... 4

        Reasonableness of Evaluation ..... 5

        Additional Issue..... 6

CONCLUSION ..... 6

COSTS..... 6

DETERMINATION ..... 7

IN THE MATTER OF a complaint filed by Sunny Jaura d.b.a. Jaura Enterprises 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**

**SUNNY JAURA D.B.A JAURA ENTERPRISES**

**Complainant**

**AND**

**THE DEPARTMENT OF PUBLIC 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 Sunny Jaura d.b.a. Jaura Enterprises. In accordance with the *Procurement Costs Guideline*, the Canadian International Trade Tribunal's preliminary indication of the level of complexity for this complaint 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.

Rose Ritcey

Rose Ritcey

Presiding Member

Tribunal Member:	Rose Ritcey, Presiding Member
Counsel for the Tribunal:	Alexandra Pietrzak
Registrar Officer:	Sara Pelletier
Complainant:	Sunny Jaura d.b.a. Jaura Enterprises
Counsel for the Complainant:	Geoffrey Bowman Alexander Baer
Government Institution:	Department of Public Works and Government Services
Counsel for the Government Institution:	Nicole Girard Roy Chamoun Susan Clarke Ian McLeod

Please address all communications to:

The Registrar  
Canadian International Trade Tribunal Secretariat  
333 Laurier Avenue West  
15th Floor  
Ottawa, Ontario K1A 0G7  
Telephone: 613-993-3595  
Fax: 613-990-2439  
E-mail: [citt-tcce@tribunal.gc.ca](mailto:citt-tcce@tribunal.gc.ca)

## STATEMENT OF REASONS

### SUMMARY

1. On February 9, 2016, Sunny Jaura d.b.a. Jaura Enterprises (Jaura) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> concerning a Request for Proposal (RFP) (Solicitation No. W0127-15PO26/A) by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence (DND) for hotel and motel accommodation services.

2. Jaura alleged that PWGSC improperly declared its bid non-compliant with the terms of the RFP. In particular, it argued that the evaluators had incorrectly concluded that the Motel 6 property proposed in its bid did not have a conference room.

3. As a remedy, Jaura requested that the contract award be set aside and re-awarded to it or, in the alternative, that PWGSC compensate it for the lost profit that would have been realized had it been awarded the contract. In addition, Jaura requested that it be awarded its reasonable costs associated with filing the complaint.

### PROCEDURAL HISTORY

4. On December 15, 2015, PWGSC issued the RFP for hotel and motel accommodation services on behalf of DND. The solicitation closed on January 25, 2016.

5. On January 22, 2016, Jaura submitted its bid in response to the RFP.

6. On February 5, 2016, PWGSC advised Jaura that its bid had been deemed non-compliant, as the proposed Motel 6 location did not have a conference room. PWGSC informed Jaura that contracts had been awarded to Holiday Inn Express Twentynine Palms, Best Western Joshua Tree Hotel & Suites and Fairfield Inn & Suites Twentynine Palms.<sup>2</sup>

7. On February 5, 2016, Jaura wrote to PWGSC to object to the contract award. Jaura stated that both properties proposed in its bid (Motel 6 and Holiday Inn Express) had conference rooms that were able to accommodate eight people. As such, Jaura insisted that the contract awards be cancelled and that it be awarded the contract.

8. On February 8, 2016, PWGSC responded that, as part of the technical evaluation, evaluators from DND had contacted Motel 6 and were informed by motel staff that the motel did not have a conference room. PWGSC stated that the contract awards would not be cancelled.

9. On February 8, 2016, Jaura wrote again to PWGSC to object. It argued that the technical evaluators should have been contacted it instead of the staff at Motel 6. It explained that the Motel 6 conference room was not advertised to the public and that, therefore, “. . . when random people phone and ask, they would be told NO, that there [isn't] any meeting space.”<sup>3</sup>

---

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

2. In response to the Tribunal's notice of complaint and inquiry, PWGSC indicated that a fourth contract had been awarded to Rodeway Inn Suites. Exhibit PR-2015-058-10 at 2, Vol. 1.

3. Exhibit PR-2015-058-13, Exhibit 10, Vol. 1.

10. On February 9, 2016, Jaura filed a complaint with the Tribunal.
11. On February 12, 2016, the Tribunal informed the parties that the complaint had been accepted for inquiry, as it met the requirements of subsection 30.13(1) of the *CITT Act* and the conditions set out in subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.<sup>4</sup>
12. On March 8, 2016, PWGSC filed a Government Institution Report (GIR) with the Tribunal in accordance with rule 103 of the *Canadian International Trade Tribunal Rules*.<sup>5</sup>
13. On March 9, 2016, Jaura wrote to request that it be granted an extension of time to file its comments on the GIR in order to seek legal advice.
14. On March 10, 2016, the Tribunal granted Jaura's request for an extension of time to file its comments on the GIR and directed that its comments be due on April 18, 2016.
15. On April 18, 2016, Jaura filed its comments on the GIR.
16. Given that there was sufficient information on the record to fully deliberate and decide upon the complaint, the Tribunal concluded that a hearing was not required and disposed of the complaint on the basis of the written information on the record.

#### REVELANT PROVISION OF THE RFP

17. The complaint relates to the evaluation of the following mandatory criterion in the RFP:

##### ANNEX A

##### Statement of Requirement

...

##### TASKS/REQUIREMENTS

The contractor will provide One Hundred and Forty (140) hotel rooms for up to one hundred and ninety (190) personnel arriving on the 18 Feb and departing on the 08 Mar 2016.

Hotel rooms will consist of the following:

...

- Hotel *must* provide a conference room with table and chairs to accommodate 8 [persons] daily from 1800-2100 hrs.

[Emphasis added]

18. In addition, section 4.2 of the RFP provides as follows:

A bid must comply with all the requirements of the bid solicitation to be declared responsive. The responsive bid with the lowest evaluated price will be recommended for award of a contract.

If no bidders are able to accommodate all groups, more than one contract will be awarded.

---

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

5. S.O.R./91-499.

19. The evaluation team for the solicitation was comprised of evaluators from both PWGSC and DND, and included a Technical Authority (TA) from DND.<sup>6</sup>

## POSITIONS OF PARTIES

20. Jaura argued that PWGSC had improperly found its bid non-compliant with the mandatory requirements, as its bid had expressly stated that conference space “for up to 8 persons with tables and chairs daily from 1800-2100hrs.”<sup>7</sup> was available at both properties.<sup>8</sup> Jaura acknowledged that the evaluators were told that there was no conference space when they called Motel 6.<sup>9</sup> However, it explained that, while conference space was not available to the general public at Motel 6, it had made special arrangements to ensure that a conference room would be available by either using a private room or repurposing a hotel room for that use.<sup>10</sup> It therefore argued that, had the TA contacted it rather than Motel 6, it would have been able to confirm the information in its bid.

21. While Jaura also initially argued that PWGSC improperly found several other bidders to be compliant even though they failed to include a “Declaration of Convicted Offences”<sup>11</sup> in their bids, it later stated it did not intend to pursue those allegations.<sup>12</sup> As such, the Tribunal did not examine those allegations.

22. PWGSC acknowledged that, of all the bids received, only Jaura’s bid offered the full amount of accommodation required over the specific period. However, as part of the evaluation, PWGSC stated that the TA had contacted all the hotel properties offered by bidders in order to verify that the properties were compliant with the terms of the RFP. As part of this process, PWGSC submitted that the TA contacted both the Holiday Inn Express and the Motel 6 listed in Jaura’s bid, and was informed by the representative at Motel 6 that the facility did not have a conference room.

23. Given the response received from Motel 6, PWGSC maintained that it acted reasonably in determining that Jaura’s bid did not comply with the mandatory requirements of the RFP. As no other single bidder was able to offer the full amount of accommodation required, PWGSC stated that it properly awarded contracts to three compliant bidders, as contemplated by section 4.2 of the RFP.<sup>13</sup>

24. In response, Jaura contended that, in evaluating its bid, PWGSC may have used undisclosed criteria to determine what constituted a conference room. While Jaura did not specifically point to any arguments or evaluator comments disclosed by PWGSC, it argued that PWGSC may have rejected its bid because the proposed solution (i.e. converting a hotel room into a conference room) did not conform to an undisclosed definition of what constituted a conference room. If undisclosed criteria were used by PWGSC, Jaura argued that PWGSC breached the terms of the applicable trade agreements.

25. Finally, Jaura maintained that reasonableness was not the correct standard by which to evaluate PWGSC’s determination. It stated that the Supreme Court of Canada had “confirmed that good faith is not a defence to a breach of contract claim.”<sup>14</sup> Given that it had made special arrangements with Motel 6 to convert a hotel room to conference space for the purposes of its bid, Jaura contended that PWGSC’s determination that its bid was non-compliant was incorrect and should be set aside.

---

6. Exhibit PR-2015-058-13A at 2, Vol. 1.

7. Exhibit PR-2015-058-01 at 30, Vol. 1.

8. *Ibid.*

9. *Ibid.* at 12.

10. *Ibid.* at 46; Exhibit PR-2015-058-18 at para. 12, Vol. 1.

11. Section 5.1.1 of the RFP.

12. Exhibit PR-2015-058-18 at para. 21, Vol. 1.

13. As noted above, it appears that an additional contract was subsequently awarded to a fourth bidder.

14. Exhibit PR-2015-058-18 at para. 36, Vol. 1.

## ANALYSIS

26. 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 case, are the *Agreement on Internal Trade*<sup>15</sup> and the *Agreement on Government Procurement*.<sup>16</sup>

27. 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 awarding the contract. It also stipulates that, to be considered for contract award, a tender must conform to the essential requirements set out in the tender documentation and requires that procuring entities award contracts in accordance with the criteria and essential requirements specified in the tender documentation.

28. At the outset, it is important to note that Jaura is mistaken in arguing that reasonableness is not the correct standard by which to analyze PWGSC's actions. It is in fact well settled that a procuring entity will have met its obligations under the trade agreements if it conducts a *reasonable* evaluation that is consistent with the terms provided in the RFP.<sup>17</sup> As noted by the Federal Court of Appeal, the Tribunal's role in a procurement inquiry "... is to decide if the evaluation is supported by a reasonable explanation, not to step into the shoes of the evaluators and reassess the unsuccessful proposal."<sup>18</sup> In carrying out this role, the Tribunal has repeatedly held 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 or have based their evaluation on undisclosed criteria.<sup>19</sup>

### Undisclosed Criteria

29. With respect to Jaura's contention that PWGSC used undisclosed evaluation criteria when determining what constituted a conference room, the Tribunal finds that Jaura's argument is highly speculative. In particular, Jaura stated the following:

[t]he tone of PWGSC's reference to the solution provided by Jaura's proposal ("alleged "conference room") does not tend to support the conclusion that the Jaura proposal was non-compliant. Instead, it tends to support the idea that PWGSC may have had something more particular in mind when it required a "conference room" in the RFP.<sup>20</sup>

---

15. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<http://www.ait-aci.ca/agreement-on-internal-trade/>>.

16. *Revised Agreement on Government Procurement*, online: World Trade Organization <[http://www.wto.org/english/docs\\_e/legal\\_e/rev-gpr-94\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.htm)> (entered into force 6 April 2014).

17. *Vireo Network Inc. v. Department of Public Works and Government Services* (23 April 2014), PR-2013-037 (CITT) at para. 25; *BRC Business Enterprises Ltd. v. Department of Public Works and Government Services* (27 September 2010), PR-2010-012 (CITT) at para. 43; *Global Upholstery Co. Inc. v. Department of Public Works and Government Services* (6 July 2009), PR-2008-052 (CITT) at paras. 40-41.

18. *Saskatchewan Polytechnic Institute v. Canada (Attorney General)*, 2015 FCA 16 (CanLII) at para. 7.

19. *Excel Human Resources Inc. (operating as excellTR) 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.

20. Exhibit PR-2015-058-18 at para. 49, Vol. 1.



However, Jaura does not point to any evidence to support this ground of complaint, which was not brought forward until Jaura's response to the GIR.

30. The Tribunal has previously stated that allegations regarding breaches of the relevant trade agreements must be based on more than speculation.<sup>21</sup> Simply asserting that PWGSC may have used undisclosed criteria, without pointing to any supporting evidence, is not sufficient to demonstrate that the relevant trade agreements have been breached.

31. In addition, while the Tribunal agrees that the RFP does not contain a definition of what constitutes a conference room, there is no evidence that PWGSC applied any criteria to limit what would be considered an appropriate conference room or that Jaura's bid was rejected because the conference room at Motel 6 was considered to be *inadequate*. Rather, both the notes from the TA and the notice of contract award clearly indicate that Jaura's bid was deemed non-complaint because Motel 6 *did not have* a conference room.<sup>22</sup>

32. In light of the foregoing, the Tribunal finds that there is no evidence to support Jaura's contention that PWGSC used undisclosed criteria when evaluating its bid. The Tribunal finds that this ground of complaint is not valid.

### **Reasonableness of Evaluation**

33. Having disposed of the first ground of complaint, the Tribunal must now determine whether PWGSC's determination that Motel 6 did not have a conference room was reasonable. Jaura acknowledged that, upon being contacted by the TA during the evaluation process, the representative from Motel 6 stated that the facility did not have a conference room.<sup>23</sup> Jaura does not take issue with the fact that the evaluators were entitled to perform follow-up checks to verify whether the offered properties had conference rooms under the terms of the solicitation documents.<sup>24</sup> Rather, its contention was that the evaluators ought to have contacted it rather than the representatives of the actual properties being offered.<sup>25</sup>

34. The Tribunal has repeatedly held that the bidder bears the onus of clearly demonstrating that its bid meets the criteria set out in the solicitation documents.<sup>26</sup> Listed at Annex C of Jaura's bid is a section titled "Information and Contacts". It included not only Jaura's name and contact information as the listed bidder but also the name, address, telephone number and Web site address for both the Motel 6 and the Holiday Inn Express properties. All these contacts could therefore have expected to receive verification queries. Jaura's bid did not contain any instructions to indicate that Motel 6 should not be contacted directly to verify the amenities available. If Jaura believed that the TA should not have contacted Motel 6, it was incumbent on it to clearly say so in its bid.

---

21. *1091847 Ontario Ltd.* (24 November 2010), PR-2010-075 (CITT) at para. 6; *Paul Pollack Personnel Ltd. o/a The Pollack Group Canada* (23 September 2013), PR-2013-016 (CITT) at para. 28.

22. Exhibit PR-2015-058-13, Exhibits 7, 9, Vol. 1.

23. Exhibit PR-2015-058-01 at 12 Vol. 1.

24. As noted by PWGSC, the right to verify information in a bidder's proposal was specifically set out in the Standard Instructions, which were incorporated by reference into the RFP. Exhibit PR-2015-058-13A at 9, Vol. 1.

25. Exhibit PR-2015-058-18 at para. 57, Vol. 1.

26. *Samson & Associates v. Department of Public Works and Government Services* (13 April 2015), PR-2014-050 (CITT) at para. 36; *The Masha Krupp Translation Group Limited* (25 August 2011), PR-2011-024 (CITT) at para. 16; *Info-Electronics H P Systems Inc. v. Department of Public Works and Government Services* (2 August 2006), PR-2006-012 (CITT).

35. The issue being clarified was whether each of the specific properties being offered had the conference space required by the RFP on their premises. The Tribunal sees nothing improper in the TA addressing a verification request directly to Motel 6, a listed contact, which would have knowledge of the availability of conference space on its own property. Given the information contained in Jaura's bid and the type of confirmation being sought, the Tribunal finds that the TA acted reasonably in contacting Motel 6 to verify whether it had a conference room.<sup>27</sup>

36. While Jaura subsequently provided additional information to PWGSC alleging that it had made "special arrangements" with Motel 6 to provide conference space, this information was not included in Jaura's bid. The evidence on the record shows that the representative of Motel 6 either was unaware of this "special arrangement" at the time of the TA's verification or failed to inform the TA of it when contacted for verification.

37. Fundamentally, the Tribunal was presented with no evidence to demonstrate that the "special arrangements", if established prior to the bid closing deadline, were made known to PWGSC until February 8, 2016, which was after the bid closing deadline and after the evaluation results had been released.<sup>28</sup> As such, the information was not before PWGSC when it finalized its evaluation of Jaura's bid. Moreover, had PWGSC allowed the introduction of such information, which was not included in Jaura's bid, it would have been allowing bid repair, which is not permissible.

38. Given the foregoing, the Tribunal finds that there is no indication that PWGSC failed to apply itself in evaluating Jaura's proposal, ignored vital information provided in its bid or based its evaluation on undisclosed criteria. The TA acted reasonably not only in contacting Motel 6 directly but also in relying on the information given by Motel 6. The Tribunal therefore will not substitute its judgment for that of PWGSC and finds this ground of complaint not valid.

### **Additional Issue**

39. In its GIR, PWGSC expressed concerns over purported conduct by Jaura in connection with this solicitation.<sup>29</sup> Jaura denied these allegations in its response to the GIR.<sup>30</sup> The Tribunal does not consider these allegations to be relevant to the complaint before it.

### **CONCLUSION**

40. In light of the foregoing, the Tribunal finds that the complaint is not valid.

### **COSTS**

41. 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 Jaura. In accordance with the *Procurement Costs Guideline* (the *Guideline*), the Tribunal's preliminary indication of the level of complexity for this complaint is Level 1, as the procurement was for a basic service, and the complaint

---

27. The Tribunal notes that PWGSC's evidence was that it contacted each of the offered properties to verify the availability of a conference room. Exhibit PR-2015-058-13A at 2, Vol. 1. As such, there is no indication that PWGSC singled out Jaura's bid or treated its bid differently from that of any other bidder.

28. Exhibit PR-2015-058-01 at 44, 46, 48, Vol. 1.

29. Exhibit PR-2015-058-13A at 11, Vol. 1; Exhibit PR-2015-058-13, Attachment 4 at 44, Vol. 1.

30. Exhibit PR-2015-058-18 at para. 23, Vol. 1.

related to the correct evaluation of one mandatory criterion. In addition, the proceedings were straightforward and did not involve complicated procedural issues.

42. As such, the Tribunal's 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.

#### **DETERMINATION**

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

Rose Ritcey  
Rose Ritcey  
Presiding Member