



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File No. PR-2016-035

Agence Gravel Inc.

v.

Department of Public Works and
Government Services

*Determination and reasons issued
Thursday, January 26, 2017*

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IN THE MATTER OF a complaint filed by Agence Gravel 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

AGENCE GRAVEL INC.

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 valid.

Pursuant to subsections 30.15(2) and 30.15(3) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal recommends, as a remedy, that the Department of Public Works and Government Services finish the evaluation and award the standing offer to the bidder that submitted the responsive offer with the lowest evaluated price, within 60 days of the issuance of these reasons.

Pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal awards Agence Gravel Inc. its reasonable costs incurred in preparing and proceeding with the complaint, which costs are to be paid by the Department of Public Works and Government Services. In accordance with the *Procurement Costs Guideline*, the Canadian International Trade Tribunal's preliminary indication of the level of complexity of the complaint is Level 2 and its preliminary indication of the amount of the cost award is \$2,750. 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, pursuant to article 4.2 of the *Procurement Costs Guideline*. The Canadian International Trade Tribunal reserves jurisdiction to establish the final amount of the award.

Daniel Petit
Daniel Petit
Presiding Member

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STATEMENT OF REASONS

INTRODUCTION

1. On September 16, 2016, Agence Gravel Inc. (Agence Gravel) 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 standing offers (RFSO) (solicitation No. M8500-14R086/A) issued by the Department of Public Works and Government Services (PWGSC) on behalf of the Royal Canadian Mounted Police (RCMP).
2. The RFSO was for the supply of firearm suppressors to the RCMP's Emergency Response Teams. The closing date for the solicitation was February 4, 2016.
3. On September 6, 2016, PWGSC announced to the bidders that it was cancelling the RFSO process because the bid validity period had expired without the evaluation being completed or a standing offer being awarded.
4. Agence Gravel alleges that this cancellation of the RFSO is contrary to the provisions of the solicitation and caused it injury. PWGSC denies this, alleging that it allowed the period for the acceptance of bids to expire because of an administrative error made in good faith, and that in accordance with the provisions of the solicitation, it was authorized and indeed required to cancel the process in such circumstances.
5. As a remedy, Agence Gravel asks that it be awarded the contract. In the alternative, Agence Gravel claims the costs related to preparing the bid.
6. For the reasons that follow, the Tribunal finds that the complaint is valid.

PROCEEDING BEFORE THE TRIBUNAL

7. On September 20, 2016, the Tribunal decided to inquire into the complaint, having determined that 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*.²
8. The Tribunal conducted an inquiry in accordance with sections 30.13 to 30.15 of the *CITT Act*.
9. On October 11, 2016, PWGSC filed a motion asking the Tribunal to end the inquiry on the basis that it did not have jurisdiction to conduct an inquiry. The Tribunal denied the motion on November 10, 2016.
10. On November 25, 2016, PWGSC filed a government institution report (GIR), pursuant to section 103 of the *Canadian International Trade Tribunal Rules*,³ and Agence Gravel filed its submissions on the GIR, pursuant to section 104 of the *Rules*, on December 12 and 15, 2016.
11. On December 21, 2016, PWGSC requested permission to file the affidavit of Ms. Jenny Yu, the PWGSC officer responsible for the RFSO (standing offer authority), in response to Agence Gravel's

1. R.S.C., 1985, c. 47 (4th Supp.) [*CITT Act*].
2. S.O.R./93-602 [*Regulations*].
3. S.O.R./91-499 [*Rules*].

arguments criticizing PWGSC for not filing an affidavit in support of its allegations. PWGSC also requested permission to make brief additional submissions on the questions of the onus of proof and *res judicata*. The Tribunal allowed PWGSC's request, as it considered it to be in the interests of an effective resolution of this matter. Agence Gravel had the opportunity to file reply submissions, which it did on January 5, 2017.

12. Having received no requests in this regard and having found that the information on the record was sufficient 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 on the record.

JURISDICTION TO CONDUCT AN INQUIRY INTO THE COMPLAINT

13. As mentioned above, on October 11, 2016, PWGSC filed a motion pursuant to section 24 of the *Rules* requesting that the Tribunal dismiss the complaint on the basis that it does not have jurisdiction to conduct an inquiry. PWGSC submitted that the complaint does not relate to a "designated contract", since the question of whether a designated contract exists is considered at the time the complaint is filed and, in this case, the RFSO had been cancelled *before* the complaint was filed.

14. Agence Gravel submitted that, to the extent that the complaint deals with the allegedly illegitimate manner in which PWGSC ended the RFSO process, the remedy sought should involve the decision to cancel the procurement process being declared null, and that the complaint arose in the context of the procurement process for a designated contract (contract that is proposed to be awarded). Agence Gravel argued that accepting PWGSC's position would mean that a government entity could simply cancel a procurement process, arbitrarily and without valid reasons, to oust the Tribunal's jurisdiction. Agence Gravel added that the facts alleged by PWGSC regarding the context surrounding the cancellation are not relevant to the jurisdictional issue.

15. In denying PWGSC's motion on November 10, 2016, the Tribunal stated that it would provide its reasons at the same time as its reasons on the merits of the complaint. These reasons are as follows.

16. Pursuant to subsection 30.11(1) of the *CITT Act*, "[s]ubject to the regulations, a potential supplier may file a complaint with 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."

17. Pursuant to subsection 30.13(1) of the *CITT Act*, "[s]ubject to the regulations... the Tribunal... shall decide whether to conduct an inquiry into the complaint..." Subsection 7(1) of the *Regulations* sets out certain conditions that must be met in respect of the complaint in order for the Tribunal to conduct an inquiry. In particular, this subsection provides that "[t]he Tribunal shall, within five working days after the day on which a complaint is filed, determine whether... (a) the complainant is a potential supplier; [and] (b) the complaint is in respect of a designated contract..."

18. The term "designated contract" is defined in section 30.1 of the *CITT Act* as "a contract for the supply of goods or services *that has been or is proposed to be awarded by a government institution* and that is designated or of a class of contracts designated by the regulations"⁴ [emphasis added]. In this case, the relevant issue is whether the complaint concerns a procurement process in respect of a contract that is *proposed to be awarded*.

4. A contract prescribed by regulation or that is in a prescribed class is, in sum, a contract under one of the trade agreements listed at subsection 3(1) of the *Regulations*, a condition that is met in this case.

19. Sections 30.1 and 30.11 of the *CITT Act* do not allow the Tribunal to embark on an at-large inquiry into the procurement processes of the government.⁵ However, the Tribunal is of the opinion that these sections are not intended to deprive the Tribunal of jurisdiction to inquire into a complaint regarding a specific aspect of a procurement process.

20. The *cancellation* of a procurement process relating to a designated contract is an integral aspect of that process and, as such, must comply with the requirements of any trade agreements that may apply. That the cancellation of a process, the corollary of which is the absence of a contract award, is subject to the obligations in the trade agreements is notably evident from Article 1015(4)(c) of the *North American Free Trade Agreement*.⁶ By stipulating that the government entity shall award the contract to the supplier whose tender is the most advantageous in terms of the specific evaluation criteria “unless the entity decides in the public interest not to award the contract”, this article limits the circumstances in which a government entity may decide to cancel a process and not award the contract. Although *NAFTA* does not apply in this case, all trade agreements require that the procedures set out in the solicitation documents be followed,⁷ including those relating to the termination of a process.

21. Accepting PWGSC’s position that the Tribunal cannot inquire into a complaint unless it was filed *before* the government decided to cancel the procurement process would amount to concluding that the Tribunal can never examine the question whether the cancellation of a process complied with the requirements of the applicable trade agreements, including the question whether the entity decided “in the public interest not to award the contract”, a requirement expressly set out in *NAFTA*. Indeed, such complaints are necessarily brought *after* a cancellation, since it is the cancellation that generates the facts underlying the ground of complaint.

22. The Tribunal finds that this was not the intention of Parliament when it vested it with the power to conduct inquiries on “*any* aspect of the procurement process”⁸ [emphasis added]. Moreover, there are several precedents where the Tribunal conducted inquiries into complaints dealing specifically with the cancellation of a government procurement process.⁹

23. Accordingly, when a complaint discloses a reasonable indication that the cancellation of a procurement process was not permitted under the relevant trade agreements, it relates to an aspect of the procurement process followed in respect of a designated contract.

24. Furthermore, the Tribunal agrees with Agence Gravel’s interpretation in that, in a case such as the one before us where it is precisely the cancellation of the process that is at issue, the complaint essentially concerns a designated contract that, *were it not for the alleged violation of the trade agreements*, would be proposed to be awarded within the meaning of section 30.1 of the *CITT Act*.

5. *Novell Canada Ltd. v. Canada (Minister of Public Works and Government Services)*, 2000 CanLII 15324 (FCA) at para. 5.

6. *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, online: Global Affairs Canada <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/text-texte/toc-tdm.aspx?lang=eng>> (entered into force 1 January 1994) [*NAFTA*].

7. For example, Article 506(6) of the *Agreement on Internal Trade*.

8. Subsection 30.11(1) of the *CITT Act*.

9. See, for example, *Service Star Building Cleaning Inc.* (12 February 1999), PR-98-031 (CITT) [*Service Star*]; *Cifelli Systems Corporation* (21 June 2001), PR-2000-065 (CITT) [*Cifelli Systems*]; *Carsen Group Inc. (Re)*, 1995 CanLII 6952 (CA CITT); *Conair Aviation Ltd. (Re)*, 1996 CanLII 7886 (CA CITT); *Équipement Industriel Champion Inc. (Re)*, 1996 CanLII 7885 (CA CITT).

25. This situation is analogous to certain cases where the Tribunal's jurisdiction was challenged on the basis that the complainant was not a "potential supplier", when the ground of complaint itself concerned an alleged error in the procurement process that prevented the complainant from being considered as such. To be valid, a complaint must be filed by a "potential supplier", which is defined in section 30.1 of the *CITT Act* as "a bidder or prospective bidder". In that context, the Tribunal decided that a "potential supplier . . . is one that would have or could have been a bidder, *were it not for the alleged restrictive nature of the procurement processes*"¹⁰ [emphasis added]. Similarly, Agence Gravel alleges in this case that, were it not for the alleged illegitimate cancellation of the procurement process, there would have been a designated contract that is proposed to be awarded.

26. For these reasons, the Tribunal has jurisdiction to conduct an inquiry into the complaint.

27. The Tribunal adds that it also agrees with Agence Gravel that the circumstances surrounding the cancellation are not relevant to whether the Tribunal has *jurisdiction* to deal with this issue. These circumstances are relevant, at the filing stage, to the question whether the complaint discloses a reasonable indication that the procurement has not been conducted in accordance with the applicable trade agreements.¹¹ If the complaint is accepted for inquiry, these circumstances then relate to the substantive issue into which the Tribunal must inquire to determine whether or not the cancellation complied with the relevant trade agreements.¹²

28. The Tribunal notes that, in the GIR, PWGSC again submits that the Tribunal does not have jurisdiction to conduct an inquiry because the complaint does not concern a designated contract. In a Tribunal proceeding, it is unusual for new arguments to be raised at the GIR stage with regard to an issue already decided by an order on a motion in accordance with section 24 of the *Rules*. In any event, nothing in the GIR would have led the Tribunal to a different conclusion.

VALIDITY OF THE COMPLAINT

29. Subsection 30.14(1) of the *CITT Act* provides that the Tribunal shall limit its considerations to the subject matter of the complaint. After conducting an inquiry, the Tribunal determines whether the complaint is valid on the basis of the criteria and procedures established by the *Regulations* for a designated contract. Under section 11 of the *Regulations*, the Tribunal determines whether the procurement was conducted in accordance with the requirements set out in the applicable trade agreements, in this case, the *Agreement on Internal Trade*.¹³

10. *COGNOS Incorporated* (23 August 2002), PR-2002-004 (CITT) at 11; *Flag Connection Inc. v. Department of Public Works and Government services* (3 September 2009), PR-2009-026 (CITT) at para. 19. See also *Canada (Attorney General) v. Enterasys Networks of Canada Ltd.*, 2011 FCA 207 (CanLII) at paras. 10, 13, 16.

11. In accordance with paragraph 7(1)(c) of the *Regulations*.

12. There could also be cases where the circumstances indicate that the complaint is trivial, frivolous or vexatious or is not made in good faith, in which case the Tribunal could decide not to conduct an inquiry into the complaint or decide to cease conducting an inquiry, in accordance with subsection 30.13(5) of the *CITT Act*. However, once again, the question whether a complaint is trivial, frivolous or vexatious and whether the Tribunal should exercise its discretion to cease conducting an inquiry is separate from the question whether the Tribunal has *jurisdiction* to conduct an inquiry.

13. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<http://www.ait-aci.ca/agreement-on-internal-trade/>> [AIT]. Concerning the other trade agreements mentioned in section 3 of the *Regulations*, even though the RCMP is a federal entity to which these agreements apply, the agreements do not cover the goods in issue. See, for example, Annex 1001.1b-1, Section A, article 2, and Section B, List of Certain Goods of *NAFTA*.

30. Agence Gravel's complaint is based on one ground: the RFSO was cancelled for an illegitimate reason—the expiry of the bid validity period—contrary to its provisions. Agence Gravel claims that PWGSC should have awarded it the contract in the circumstances, as it was the lowest compliant bidder.

31. The analysis of this matter begins with an examination of the circumstances of the cancellation on September 6, 2016.

Circumstances of the cancellation on September 6, 2016

32. As stated above, PWGSC issued the solicitation in question on December 14, 2015. It concerned the award of a standing offer for a period of three years, with two one-year option periods.

33. The solicitation closed on February 4, 2016. Agence Gravel's bid was among 11 proposals received before the stated deadline.

34. According to the explanations given in the GIR, on March 7, 2016, the evaluation committee determined that eight proposals met the mandatory requirements; those proposals were submitted for the first phase of the technical evaluation, which was completed on April 1, 2016.

35. The GIR also states that, on April 28, 2016, PWGSC asked the offerors that had submitted the three lowest proposals to provide samples within 30 days. This request was made pursuant to article 4.2 of the RFSO, which stated that the contracting authority would ask the lowest compliant offeror to provide a sample for evaluation.

36. PWGSC explains in the GIR that, “for efficiency and to save time” [translation], it asked the three lowest bidders for samples at the same time. However, none of the three was able to respond to the request before the deadline.

37. Meanwhile, Agence Gravel contacted the standing offer authority several times to ask about the progress of the evaluation. Agence Gravel was informed that the evaluation was still pending.¹⁴

38. On June 7, 2016, in response to another question from Agence Gravel, the standing offer authority reassured the complainant, stating as follows:

You can be assured the Basis of Evaluation (ie. Request for Samples, Performance Testing, etc) provisions are conducted in accordance with the terms and conditions stipulated in the solicitation.

As you can tell from the solicitation document, the evaluation process for this requirement consist of a lengthy Technical Evaluation and is currently pending¹⁵.

39. According to the explanations in the GIR, on June 14, 2016, the standing offer authority calculated the offer validity period.

40. The offer validity period refers to subsection 5(4) of document 2006 (2015-07-03) Standard Instructions – Request for Standing Offers – Goods or Services – Competitive Requirements¹⁶ (Standard

14. Complaint, Exhibit P-8.

15. Complaint, Exhibit P-8.

16. Available on line: <https://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual/1/2006/19>. In its GIR at Tab 18, PWGSC included a more recent version of this document. According to article 2.1 of the RFSO, it is the 2006 (2015-07-03) Standard Instructions – Request for Standing Offers – Goods or Services – Competitive Requirements that was incorporated into the RFSO.

Instructions), which was incorporated by reference pursuant to article 2.1 of the RFSO. That provision reads as follows:

05 (2014-09-25) Submission of offers

...

4. Offers will remain open for acceptance for a period of not less than 60 days from the closing date of the RFSO, unless specified otherwise in the RFSO. Canada reserves the right to seek an extension of the offer validity period from all responsive offerors in writing, within a minimum of 3 days before the end of the offer validity period. If the extension is accepted by all responsive offerors, Canada will continue with the evaluation of the offers. If the extension is not accepted by all responsive offerors, Canada will, at its sole discretion, either continue with the evaluation of the offers of those who have accepted the extension or cancel the RFSO.

41. Article 2.1 of the RFSO provides that the 60-day period was to be replaced with a period of 180 days for the purposes of the RFSO.

42. Also on June 14, 2016, according to the GIR and the standing offer authority's affidavit, having made the calculation, the standing offer authority noted in the file that the 180-day validity period extended to September 26, 2016.¹⁷ The GIR includes a photograph of a cover page from a file with the notation "Bid validity expires Sep 26/16".¹⁸

43. On June 15, 2016, PWGSC asked Agence Gravel and the other four remaining bidders to provide three samples of firearm suppressors for testing.

44. Agence Gravel delivered the samples within the 30-day deadline (i.e. no later than July 15, 2016), as required. Two other bidders were also able to meet this deadline.

45. The GIR also states that, on August 3, 2016, the standing offer authority asked the evaluation committee how the sample evaluation process was progressing. The next day, she received an answer from the evaluator stating that he had just returned from vacation and hoped to finish the evaluation by the end of the following week.¹⁹

46. On August 12, 2016, the evaluator sent his evaluation report to the standing offer authority. The evaluation report itself was not provided to the Tribunal, but the evaluator's email accompanying it indicated the following: "Only the sample from Agence Gravel Inc. met all the criteria."²⁰

47. However, the GIR explained that these reports did not constitute the final evaluation. The evaluation was to be discussed at a meeting between PWGSC and the RCMP. According to the GIR, "the complainant seemed to meet the evaluation criteria for the samples, but some questions remained outstanding"²¹ [translation].

48. This meeting was to take place on August 30, 2016, since the RCMP evaluation authority was away from the office until August 22, 2016. It was specified in the standing offer authority's affidavit that the

17. GIR, para. 17 and Tab 6; standing offer authority's affidavit, para. 13.

18. GIR, Tab 6.

19. GIR, Tab 10.

20. GIR, Tab 11.

21. GIR, para. 23.

purpose of the meeting was to enable PWGSC and the RCMP to discuss the results and reach a final evaluation.²²

49. On August 30, 2016, before the meeting between PWGSC and the RCMP, the standing offer authority met with her supervisor to discuss the RFSO and another procurement process that PWGSC was conducting on the RCMP's behalf. It was at this point that the two PWGSC employees realized that the validity period for the bids received in response to the RFSO had already expired.

50. The standing offer authority's affidavit indicates the following with respect to this discovery:

At the meeting, we noted that the expiry date of the bid validity period for both these processes (noted on the file) was September 26, 2016, however their respective requests for standing offer were not issued on the same date. The process that was subject of this complaint had actually begun before the other. We then suspected an error and questioned the actual expiry date of the process that is the subject of this complaint.

It was only during this meeting that we realised that the bid validity period in the process which is the subject of the present complaint had in fact expired on August 2, 2016, and not on September 26, 2016, as was noted in the file.

When calculating the bid validity period of the tenders and recording the date on its file, I confused the process that is the subject of this complaint with the other process entitled « RCMP - Precision Firearms Optics ».

In fact, on the other physical file, September 26, 2016, was also recorded in a handwritten note, per the photograph of the cover of this file. Both processes were designed to meet the needs of the same client, the RCMP, and were both part of a new national program initiative for military rides. In addition, both records had the same internal file number 73422 (the two were distinguished only by volume numbers) and were at the same stage, at the same time - the evaluation stage of samples.²³

51. On September 6, 2016, PWGSC sent an email to the bidders to inform them that the RFSO process had been cancelled because the acceptance period for offers had expired without a standing offer being issued. The email from PWGSC read as follows:

This is to advise that the Request for Standing Offer M8500-14R086/A for Firearm Suppressors to the Royal Canadian Mounted Police Regina Armoury will be cancelled by Public Works and Government Services Canada (PWGSC) as the acceptance period for the offers have expired and evaluation has not been conclusive before a standing offer can be issued.²⁴

52. On September 7, 2016, Agence Gravel objected to the cancellation.

53. On September 8, 2016, PWGSC responded to Agence Gravel's objection in the following terms:

PWGSC became aware on August 31, 2016 that the bid validity period of 180 days from the bid closing date had lapsed on August 2, 2016. As the acceptance period for all offers had expired, no award could be made on the current solicitation and therefore Canada invoked its right to cancel the RFSO at any time. PWGSC acted in accordance with the Terms and Conditions provided within the Request for Standing Offer.²⁵

22. Standing offer authority's affidavit, paras. 17, 19.

23. Standing offer authority's affidavit, paras. 21-24.

24. GIR, Tab 7.

25. GIR, Tab 15.

54. In the same email, PWGSC referred to the following provision of the Standard Instructions:

11 (2007-11-30) Rights of Canada

Canada reserves the right to:

- a. reject any or all offers received in response to the RFSO;
- b. enter into negotiations with offerors on any or all aspects of their offers;
- c. authorize for utilization any offer in whole or in part without negotiations;
- d. cancel the RFSO at any time;
- e. reissue the RFSO;
- f. if no responsive offers are received and the requirement is not substantially modified, reissue the RFSO by inviting only the offerors who submitted an offer to resubmit offers within a period designated by Canada; and
- g. negotiate with the sole responsive offeror to ensure best value to Canada.

55. On September 9, 2016, Agence Gravel reiterated its objection through its counsel. It also stated that it was prepared to extend the validity period of its bid by an additional 180 days.

56. Agence Gravel filed its complaint with the Tribunal on September 16, 2016.

Positions of Parties

Agence Gravel

57. Agence Gravel submits that PWGSC's decision to cancel the RFSO is unlawful and violates the contract between the parties. It argues that one of PWGSC's obligations under the RFSO is to award the contract to the lowest compliant bidder, unless PWGSC invokes the privilege clause provided for in section 11 (2007-11-30) of the Standard Instructions.

58. According to Agence Gravel, PWGSC did not invoke the privilege clause, instead terminating the RFSO process for an invalid reason—the expiry of the bid validity period as a result of its own “turpitude” [translation].²⁶ According to Agence Gravel, subsection 5(4) of the Standard Instructions, relating to the bid validity period, is a condition stipulated for the benefit of the bidders, and the lowest compliant bidder in particular. This being the case, it is not open to PWGSC to alter the purpose of subsection 5(4) of the Standard Instructions by causing a delay and invoking its own “turpitude” [translation] to free itself from its obligations under the RFSO.

59. Moreover, Agence Gravel submits that, to the extent that subsection 5(4) allows Canada to request an extension of the bid validity period, PWGSC, to act in good faith, should have asked for the extension, especially given that the sole compliant bidder, Agence Gravel, had indicated to PWGSC that it was prepared to extend the validity period of its bid.

60. Agence Gravel adds that PWGSC may not, after the fact, improve its position by invoking the privilege clause at section 11 of the Standard Instructions, since the conduct of a party must be analyzed in light of the right it chose to exercise and not in light of provisions invoked at a later date. Agence Gravel

26. Comments on the GIR, para. 53.

adds that, if it were to proceed with a new solicitation, PWGSC would be breaching the principle of equality among bidders, since the details of Agence Gravel's bid are now known.

61. In response to the GIR, Agence Gravel argues that the evidence indicates that it was the lowest compliant bidder. It submits that, in this case, the burden of proof is reversed, as PWGSC has control of the relevant information, and that PWGSC has not proven the facts on which its arguments are based, particularly the fact that the cancellation of the RFSO resulted from a good faith error. In response to the filing of the standing offer authority's affidavit, Agence Gravel argued that it contradicted the documentary evidence indicating that Agence Gravel has been evaluated to be the sole compliant bidder.

PWGSC

62. PWGSC submits that the cancellation of the RFSO was legitimate. It argues that the right to cancel a bid solicitation is a fundamental right, which was, in this case, incorporated into the RFSO by section 11 of the Standard Instructions.

63. PWGSC also submits that the cancellation in this case did not result from bad faith or irrelevant considerations. PWGSC is of the view that it had no choice but to cancel the RFSO given that the bid validity period had expired before the evaluation could even be completed, on account of an administrative error committed in good faith in calculating the bid validity period.

64. PWGSC adds that because the evaluation process had not yet been completed, it cannot be said that Agence Gravel would have obtained the standing offer if the RFSO had not been cancelled. In any case, even if Agence Gravel had been the lowest compliant bidder, it could not have been awarded the standing offer, since, according to PWGSC, pursuant to subsection 5(4) of the Standard Instructions, an offer made after the expiry of the bid validity period where an extension has not been requested before its expiry is "unlawful" [translation].²⁷

Analysis

65. The Tribunal will begin by considering the errors committed by PWGSC in this case. It will then comment on subsection 5(4) of the Standard Instructions, given the central role of that provision in the decision to put an end to the process. Finally, it will determine whether the cancellation in this case was authorized under the RFSO and PWGSC's obligations pursuant to the *AIT*.

Errors Committed by PWGSC

66. The Tribunal finds that the facts stated by PWGSC regarding the circumstances leading to the cancellation describe a surprising and unacceptable situation. PWGSC allowed the bid validity period to expire through a series of errors and delays of its own making, that could in all likelihood have been avoided by carrying out its procedures with reasonable diligence.

67. First, the calculation (that would later prove to be mistaken) of the bid validity period does not seem to have been verified at any point. The GIR and the standing offer authority's affidavit both refer to the erroneous date on the cover page of the RFSO file. Apparently, at no time was the file opened for the purpose of verifying the deadline.

27. PWGSC relies on the Tribunal's decision in *StenoTran Services Inc. and Atchison & Denman Court Reporting Services Ltd.* (15 April 2016), PR-2015-043 (CITT) [*StenoTran*] at paras. 33-48.

68. The Tribunal fully understands that errors in calculation are easy to make. However, this fact indicates that basic diligence would have required *one* or *more* verifications of the calculations performed, especially given the potential consequences of the expiry of the bid validity period.

69. Similarly, the Tribunal notes the standing offer authority's statement to the effect that the confusion resulted from the fact that two files involved the same client, the RCMP, and procurement processes that overlapped in time. The Tribunal also notes that the two similar files bore the same number assigned by PWGSC and the same client name, and that they were only differentiated through their volume numbers. In other words, the situation was conducive to confusion.

70. Furthermore, the Tribunal notes that, on several occasions, the process described by PWGSC seems to have suffered delays caused by the holidays of individuals participating in the evaluation, which once again is indicative of less-than-optimal planning in the RFSO process.

71. Finally, the most flagrant fact is perhaps that the bid validity period was not calculated until June 14, 2016, the *131st day following the bid solicitation closing date of February 4, 2016*. This means that PWGSC waited until the 131st day out of the 180 available days following the bid solicitation closing date before even establishing the schedule according to which it was supposed to conduct and conclude the RFSO.

72. These processes, when examined globally, do not show reasonable diligence in the management of the RFSO with a view to complying with the strict procedures established by PWGSC itself, which the bidders were, in the Tribunal's view, entitled to expect.²⁸

73. The Tribunal has already had the opportunity to state that "suppliers' proposals must also be reviewed with diligence and thoroughness. After all, potential suppliers invest a significant amount of their own corporate resources to try to offer the government the best possible proposals under risky competitive conditions."²⁹ In the Tribunal's opinion, this duty of diligence and thoroughness applies equally to the procedural aspects of a procurement.

74. At the very least, in requesting the submission of bids, the government is offering to consider the bids it receives.³⁰ This implies, in the Tribunal's view, that there is a reasonable expectation that the government institution will consider the bids on the merits (regardless of the outcome of the process) and will not allow them to expire through its own lack of reasonable diligence. In this case, PWGSC does not seem to have given itself reasonable means to conduct the RFSO in compliance with all of its provisions, particularly the bid validity period.

28. Indeed, such processes are not in accordance with PWGSC's own guidelines to its officers concerning the bid validity period and its extension. The *Supply Manual* published by PWGSC indicates the following:

"5.90. Extending the Bid Validity Period

a. Bids will remain open for acceptance for a period of 60 days (30 days for construction), from the closing date of the bid solicitation, unless otherwise indicated in the bid solicitation (see *Standard Acquisition Clauses and Conditions Manual*, (SACC) Standard Instructions 2003, 2006, and 2008). *Contracting officers must carefully assess the potential for extended bid evaluation periods and indicate in the bid solicitation the modified period for bid acceptance. Contracting officers must also carefully monitor events during the bid evaluation period and contract approval process in order to award the contract before the bid acceptance period has expired. Expiry of bid acceptance periods before contract award should thus become an exceptional circumstance*" [emphasis added].

29. *Canadian Computer Rentals* (3 August 2000), PR-2000-003 (CIIT).

30. *Double N Earthmovers Ltd. v. Edmonton (City)*, [2007] 1 SCR 116, 2007 SCC 3 (CanLII) at para. 2.

75. That said, there is nothing in the evidence that suggests that the employees concerned had bad intentions or treated a bidder in an iniquitous or preferential manner. Although Agence Gravel argues that PWGSC's real motivations could have been financial, this allegation is not supported by the evidence and remains speculative.

Comments Concerning Subsection 5(4) of the Standard Instructions

76. PWGSC also contends that, once the offers expired, it had no choice but to cancel the process. It relies on the Tribunal's decision in *StenoTran*. A few nuances in this regard should be noted.

77. In *StenoTran*, the government entity let the bids expire without seeking an extension in accordance with the procedure set out in subsection 5(4). The Tribunal found that if the Courts Administration Service (CAS), the government institution, wanted to award a contract after the end of the offer validity period, it had to seek an extension within a minimum of three days before the end of that period because that is the procedure indicated in subsection 5(4) of the Standard Instructions. Because the CAS did not follow this procedure and awarded contracts *after* the offer validity period, the Tribunal found that it was in breach of subsection 5(4).

78. In *StenoTran*, the Tribunal also found that the fact that the CAS, after the end of the bid validity period, asked all bidders whether their offers remained valid *did not negate* the fact that it failed to follow the procedures expressly developed and set out for an extension of the bid validity period under subsection 05(4).

79. As noted above, PWGSC was in breach of the duty to evaluate in a diligent manner, once it let the bids expire for lack of due diligence and having failed to seek an extension pursuant to subsection 5(4). Furthermore, PWGSC argues that, because it did not respect the "essential formality"³¹ [translation] of the extension procedure set out in subsection 5(4), it had no choice but to cancel the RFSO.

80. Nevertheless, the Tribunal questions PWGSC's interpretation of *StenoTran* inasmuch as that decision impacted the options available to PWGSC in this case. In fact, the Tribunal recognized in that decision that the negative effect on the integrity of the procurement process caused by the failure to follow the extension procedure set out in subsection 5(4) *could*, depending on the circumstances, be mitigated in a practical manner, and that the irregularity could, all in all, remain a minor technical error in the procurement process:

51. . . . Under the terms of the RFP, CAS had the right to ask bidders for an extension of the period of validity of their bids, following a specific procedure set out in subsection 05(4) of the Standard Instructions. *CAS did not ask bidders for an extension in accordance with that procedure. However, it did so some time later, on October 9, 2015, and all bidders, including StenoTran, accepted to extend their offers. Thus, the only breach in this case is that the extension was requested after the initial 60 days, contrary to the procedures prescribed in subsection 05(4).*

52. Other than the lack of transparency and the uncertainty that ensued as a result of CAS not following the prescribed extension procedure, there is no indication that CAS ultimately treated any bidder unfairly and no evidence that the process was unfair or uncompetitive in a broader sense. In the Tribunal's view, on the particular facts of this case, this procurement has in substance been conducted on a competitive basis. *CAS's breach was a technical breach with a limited impact on the integrity of the procurement process.*³²

[Emphasis added]

31. GIR, para. 58.

32. See also *Nicolet Instrument Canada Inc. v. Canada (Supply and Services)*, 1993 CanLII 5293 (CA CITT).

81. In this case, there is no indication that PWGSC explored the possibility of requesting an extension from all compliant bidders once its error was discovered. Yet, *so long as it was done fairly for all bidders*, this approach could have been a practical way to minimize the effect of PWGSC's errors on the integrity of the process.

82. In the Tribunal's opinion, an extension request would have been appropriate, especially in light of the evidence indicating that Agence Gravel seemed to have submitted the sole responsive bid. Even accepting PWGSC's position that the evaluation was not definitive and still had to be confirmed, PWGSC could have then contacted the remaining compliant bidders to ask whether they would agree to extend their bids, leading to, as appropriate, one or the other of the ensuing procedures set out in subsection 05(4).

Was the Cancellation of the RFSO on September 6, 2016, Authorized by the RFSO and the AIT?

83. The *AIT* does not contain any provisions that expressly deal with the circumstances under which a federal entity may end a bidding process.³³ However, the *AIT* requires federal entities to perform procurement procedures in accordance with the conditions stated in the solicitation documents.³⁴

84. The issue here is whether PWGSC was allowed, pursuant to section 11 of the Standard Instructions, to cancel the RFSO in the above circumstances.

85. In this regard, the Tribunal rejects Agence Gravel's argument that PWGSC is precluded from pleading the privilege clause in section 11 of the Standard Instructions because, in its initial message to bidders on September 6, 2016, PWGSC instead cancelled the RFSO on the ground that the bid validity period had ended.³⁵

86. At no time did PWGSC claim that its decision to cancel the RFSO was motivated by any consideration other than the expiry of the bids. The cancellation announcement on September 6, 2016, did not refer to section 11 of the Standard Instructions, but neither did it invoke any other provisions of the RFSO. It simply gave the bidders notice of the cancellation and briefly indicated the reason for the cancellation. The Tribunal therefore does not interpret this announcement as a waiver by PWGSC in respect of section 11.

87. In addition, PWGSC referred to section 11 as early as September 8, 2016, in response to an objection dated September 7 by Agence Gravel. Because PWGSC's response provided a little more detail on its position, it was not unreasonable for section 11 to be raised at that time. There was no unreasonable delay in the position taken by PWGSC. The position taken by PWGSC in its GIR also reiterates the same points as those to which it referred on September 6 and 8, 2016. The case law on which Agence Gravel

33. As mentioned previously, other trade agreements do contain such provisions, for example, *NAFTA*, of which paragraph 1015(4)(c) reads as follows: "unless the entity decides in the public interest not to award the contract, the entity shall make the award to the supplier that has been determined to be fully capable of undertaking the contract and whose tender is either the lowest-priced tender or the tender determined to be the most advantageous in terms of the specific evaluation criteria set out in the notices or tender documentation." The Tribunal will not comment here on the ambit of paragraph 1015(4)(c) of *NAFTA*.

34. Subsection 506(6) of the *AIT* provides as follows: "The 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." This implies the obligation for the government institution to award contracts in accordance with the criteria set out in the tender documents. *AmeriData Canada Ltd.* (9 February 1996), PR-95-011 (CITT).

35. Comments on the GIR, paras. 40-45.

relies³⁶ is based on completely different sets of facts. As a result, the Tribunal finds that PWGSC is not precluded from invoking the privilege clause under section 11.

88. As stated above, section 11 reserves PWGSC the right to “cancel the RFSO at any time”. By its terms, section 11 therefore reserves PWGSC the broad right to, among other things, cancel an RFSO process at any time. Furthermore, in submitting an offer, bidders agreed to the terms, as provided in section 2.1 of the RFSO. That acceptance included the inherent risk that PWGSC could choose to cancel the RFSO and not award any standing offer.

89. Like any other clause, a privilege clause must, however, be considered in harmony with the rest of the provisions in the contract between the parties, and in light of its purpose and commercial context.³⁷ In the regulatory context of the trade agreements, the clauses should also be interpreted in light of Canada’s obligations under the trade agreements.³⁸

90. In *M.J.B. Enterprises Ltd. v. Defence Construction (1951)*, the Supreme Court of Canada stated, although in *obiter dictum*, that the discretion not to award a contract is “presumably important to cover unforeseen circumstances”.³⁹

91. Furthermore, a review of the authorities on the general law of procurement, including those on which PWGSC relies in this case, indicates that the rights exercised under such privilege clauses must be exercised consistent with the other obligations of the contract, which often includes the obligation to treat bids fairly and consistently, in good faith and not based on irrelevant considerations.⁴⁰ PWGSC accepts that the right to cancel the RFSO had to be exercised legitimately, that is, in good faith, and not based on irrelevant considerations.⁴¹ In this regard, apart from its general position that subsection 5(4) is stipulated for the benefit of bidders and according to which PWGSC cannot invoke its own error to release itself from its obligations, Agence Gravel did not comment on the limitations or the interpretation of the privilege clause.

92. In the Tribunal’s view, similar considerations apply to the interpretation of section 11 of the Standard Instructions in the context of an RFSO and under the regime of the *AIT*, which undoubtedly require fair and equal treatment of bidders. Also, in this regulatory environment, the Tribunal is of the opinion that the scope of the right to cancel an RFSO can also be assessed in light of the purpose of the regulatory regime of the *AIT*. The Federal Court of Appeal established that these purposes, that is, fairness

36. *Lapointe-Boucher c. Mutuelle-vie des fonctionnaires*, J.E. 96-2041 (QCCA); *Tracy Plate Shop Inc. c. Continental Insurance Co.*, (1980) C.S. 903; *The Continental Insurance Company c. Tracy Plate Shop Inc.*, (1987) R.R.A. 176 (QC CA); *Placements Gervais inc. c. Citadelle (La), compagnie d’assurances générales*, 2006 QCCS 3694; *Neosoft Technologies Inc.* (5 August 2009), PR-2008-061 (CITT) at paras. 23, 25, 26.

37. *Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)*, [2010] 1 SCR 69, 2010 SCC 4 (CanLII) at para. 64.

38. *Lincoln Landscaping Inc.* (16 September 2016), PR-2016-018 (CITT) at para. 20.

39. [1999] 1 SCR 619, 1999 CanLII 677 (SCC) [*M.J.B. Enterprises*] at para. 47.

40. *M.J.B. Enterprises*, para. 44; *Martel Building Ltd. v. Canada*, [2000] 2 SCR 860, 2000 SCC 60 (CanLII), para. 89. See, for example, *Glenview Corp. v. Canada (Minister of Public Works)*, [1990] F.C.J. No. 480 [*Glenview Corp.*]; *Silex Restorations Ltd. v. Strata Plan VR 2096*, (2004), 35 B.C.L.R. (4th) 387, 2004 BCCA 376 [*Silex Restorations*]; Paul Emmanuelli, *Government Procurement*, 3rd ed., at 566; *Confédération des Caisses populaires et d’économie Desjardins du Québec c. Services informatiques DecisionOne*, 2003 CanLII 29394 (QC CA); *Roxboro Excavation inc. c. Québec (Procureur général) (Ministère des Transports)*, 2015 QCCS 2829 (CanLII), paras. 46-48.

41. GIR, paras. 35, 47, 59. PWGSC relies on numerous decisions based on the *Civil Code of Québec* and its general notion of good faith.

to competitors in the procurement system, competition among bidders, efficiency and integrity in the procurement system, represented paramount considerations in the evaluation of the procurement procedures of the federal government.⁴² In fact, the purpose of the *AIT*, as indicated in Article 501, is to ensure that the process is fair, competitive and transparent, and that public resources are used optimally.⁴³

93. Finally, it is generally accepted, both in the general law of procurement and in the case law of the Tribunal, that cases where the exercise of the right to cancel a procurement process would be *appropriate* normally include those where unforeseen circumstances arise, such as where it is belatedly discovered that the specifications are inadequate. In fact, in such situations, cancellation of the process is usually viewed as preserving the equality of bidders and the integrity of the process.⁴⁴

94. The Tribunal considered the elements of the GIR and the standing offer authority's affidavit in light of these principles.

95. The Tribunal finds that, in the circumstances, the cancellation was not authorized by the right to cancel reserved under section 11, interpreted in the context of the entire RFSO and the obligations of the federal government under the *AIT*. The situation cannot be considered a case of unforeseen circumstances as mentioned in the case law because it is the result of a lack of due diligence on the part of PWGSC in its procedures. This resulted in an error that cannot be considered unforeseeable. It is an inexcusable error that does not legitimately provide recourse to the rights under section 11.

96. The Tribunal recognizes that there are many possible unforeseen circumstances that may justify the cancellation of a bidding process. However, the Tribunal finds that the parties could not have intended that a provision such as section 11 would allow the government to release itself from any obligation it had to bidders regardless of the type of procedure it used, leading directly to the unforeseen circumstance. Ultimately, the fact that PWGSC did not make reasonable efforts to respect a procedure that it itself imposed does not constitute a valid reason for cancellation under section 11.

97. In other words, the government's discretion under section 11 is modulated by its obligations to consider bids with a minimum degree of diligence. This minimum was not respected in this case.

98. Accepting that the discretion reserved under section 11 can cover the lack of a fundamental diligence in the management of an RFSO would be inconsistent with the commercial reality that, as recognized in the case law,⁴⁵ often requires bidders to prepare bids at great cost. Furthermore, accepting that a federal entity can release itself from its obligations to bidders even in cases of an inexcusable error caused by its own lack of due diligence is an interpretation unlikely to promote integrity and confidence in the procurement system and, at the end of the day, unlikely to result in the procurement of good quality goods and services at minimum expense.

42. *Canada (Attorney General) v. Almon Equipment Limited*, 2010 FCA 193 (CanLII) at paras. 22-23. See also article 501 of the *AIT*.

43. Article 501 of the *AIT* reads as follows: "establish a framework that will ensure equal access to procurement for all Canadian suppliers in order to contribute to a reduction in purchasing costs and the development of a strong economy in a context of transparency and efficiency." See also *Cougar Aviation Ltd. v. Canada (Minister of Public Works and Government Services)*, 2000 CanLII 16572 (FCA) at para. 18.

44. *Silex Restorations*, paras. 48-51; *Glenview Corp.; M.J.B. Entreprises*, para. 47; *Installation Globale Normand Morin & Fils Inc.* (21 August 1998), PR-98-002 (CITT); *Cifelli Systems; Service Star; Wescam Inc.* (7 May 2001), PR-2000-064 (CITT); *PowerWright Atlantic Inc.* (13 April; 2007), PR-2006-053 (CITT). Agence Gravel made no comments on the authorities concerning this matter cited in the GIR.

45. *M.J.B. Entreprises*, para. 41.

99. Furthermore, the option to cancel in this instance was apparently chosen without having considered other possible measures, which could have mitigated the impact of PWGSC's errors on the integrity of the RFSO, according to the established case law of the Tribunal, and particularly in light of the evidence indicating that Agence Gravel was possibly the sole compliant bidder. This option should have, at the very least, been explored before PWGSC resorted to the drastic measure of cancellation in response to what may have been, after all, a technical deficiency with no impact on the integrity of the RFSO process.

100. Accordingly, in this case, the cancellation in the circumstances does not fall within the scope provided for in, and authorized by, section 11. PWGSC is therefore in breach of its obligations under the RFSO.

REMEDY

101. Having found Agence Gravel's complaint to be valid, the Tribunal must recommend a remedy.

102. In recommending an appropriate remedy, the Tribunal must consider all the circumstances relevant to the procurement, in particular those set out in subsection 30.15(3) of the *CITT Act*, namely, the seriousness of any deficiencies in the procurement process, the degree to which the complainant was prejudiced, the degree to which the integrity and efficiency of the competitive procurement system was prejudiced, and whether the parties acted in good faith.

103. Agence Gravel requests that the standing offer be awarded to it, as the lowest compliant bidder. In its complaint, Agence Gravel alternatively sought compensation for the costs of preparing its bid.

104. PWGSC did not file any submissions as to a remedy.

105. The Tribunal has determined that the cancellation of the RFSO in this case does not fall within the scope of section 11 of the Standard Instructions. The seriousness of the prejudice to the integrity and efficiency of the competitive procurement system is measured here in terms of the waste of resources of all of the parties involved caused by the process employed by PWGSC in this case. As already indicated above, there is no indication of bad faith on the part of any of the parties concerned.

106. The Tribunal takes note of the email dated August 12, 2016, from the evaluator, Mr. Richard Poaps, to the standing offer authority, indicating that he had finished evaluating the samples and had concluded that "[o]nly the sample from Gravel Agency Inc. met all the criteria."⁴⁶

107. However, the Tribunal has no evidence before it to cast doubt on PWGSC's statement, supported by the affidavit of the standing offer authority, according to which the evaluation results were not final, "as they were to be discussed and reviewed at a meeting between the contracting authority, PWGSC and the technical authority, represented by the RCMP."⁴⁷ The standing offer authority described this meeting as a "review meeting." In addition, there is nothing in the evaluation method set out in the RFSO (notably in section 4.2 to which Agence Gravel referred) that would be incompatible with such a meeting being held.

108. The Tribunal finds that the most appropriate remedy in this case is one that would seek to place Agence Gravel, to the extent that is possible, in the situation in which it would have found itself had PWGSC not let the bids expire as a result of a lack of due diligence and not cancelled RFSO for that reason, and that would also restore the integrity and efficiency of the RFSO process.

46. GIR, Tab 11.

47. Standing offer authority's affidavit, para. 17.

109. Given the particular circumstances of this case and the framework set out in section 30.15 of the *CITT Act*, the Tribunal considers it appropriate to recommend that PWGSC finish the evaluation and award the standing offer to the bidder that submitted the responsive offer with the lowest evaluated price, within 60 days of the issuing of the reasons of the Tribunal.

110. It goes without saying that the Tribunal's recommendation does not affect or prejudice any future complaint that Agence Gravel may file were it to find that the evaluation undertaken following the Tribunal's recommendation is not consistent with the requirements of the *AIT*.

COSTS

111. The Tribunal awards Agence Gravel its reasonable costs incurred in preparing and proceeding with the complaint. In determining the amount of the cost award in this 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.

112. The Tribunal's preliminary determination is that the level of complexity of this complaint is Level 2 provided for in Annex A of the *Guideline*. The RFSO involved relatively simple products. The issue here was of medium complexity, regarding a question that called for the evaluation of a number of provisions of the RFSO. The complexity of the proceedings was medium, given that it gave rise to a motion on jurisdiction, to additional submissions to those provided for in sections 103 and 104 of the *Rules* and the application of the extended 135-day timeline.

113. Accordingly, pursuant to the *Guideline*, the Tribunal's preliminary determination of the amount of the cost award is \$2,750.

DETERMINATION

114. Pursuant to subsection 30.14(2) of the *CITT Act*, the Tribunal determines that the complaint is valid.

115. Pursuant to subsections 30.15(2) and 30.15(3) of the *CITT Act*, the Tribunal recommends, as a remedy, that PWGSC finish the evaluation and award the standing offer to the bidder that submitted the responsive offer with the lowest evaluated price, within 60 days of the issuance of these reasons.

116. Pursuant to section 30.16 of the *CITT Act*, the Tribunal awards Agence Gravel its reasonable costs incurred in preparing and proceeding with the complaint, which costs are to be paid by PWGSC. In accordance with the *Guideline*, the Tribunal's preliminary indication of the level of complexity of the complaint is Level 2 and its preliminary indication of the amount of the cost award is \$2,750. 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, pursuant to article 4.2 of the *Guideline*. The Tribunal reserves jurisdiction to establish the final amount of the award.

Daniel Petit
Daniel Petit
Presiding Member