



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2016-048

TPG Technology Consulting Ltd.

*Decision and reasons issued
Thursday, December 29, 2016*

IN THE MATTER OF a complaint filed pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C., 1985, c. 47 (4th Supp.).

BY

TPG TECHNOLOGY CONSULTING LTD.

AGAINST

THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT SERVICES

DECISION

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

Jean Bédard

Jean Bédard
Presiding Member

STATEMENT OF REASONS

1. Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,² a potential supplier may file a complaint with the Canadian International Trade Tribunal (the Tribunal) concerning any aspect of the procurement process that relates to a designated contract and request the Tribunal to conduct an inquiry into the complaint. Subsection 30.13(1) of the *CITT Act* provides that, subject to the *Regulations*, after the Tribunal determines that a complaint complies with subsection 30.11(2) of the *CITT Act*, it shall decide whether to conduct an inquiry into the complaint.
2. TPG Technology Consulting Ltd. (TPG) filed the present complaint with the Canadian International Trade Tribunal (the Tribunal) on December 21, 2016.
3. TPG's complaint concerns Solicitation No. A0414-145921/A (the RFP) for the provision of Task-based Informatics Professional Services for Aboriginal Affairs and Northern Development Canada, which was issued by the Department of Public Works and Government Services (PWGSC) on December 14, 2015.
4. TPG submits that PWGSC improperly determined that TPG's proposal failed to meet Mandatory Requirement 9 (M9) of the RFP, which required that the individual proposed by the bidder to fill the Business Analyst (BA) Level 3 position "have a minimum of 6 years [of experience] as a Business Analyst directly supervising, assigning work packages and mentoring junior and intermediate level Business Analysts."³
5. TPG's proposal addressed requirement M9 regarding junior-level BAs. However, it did not substantiate how TPG's proposed resource had experience managing *intermediate-level* BAs (rather than only junior-level BAs). As such, the Tribunal will not interfere with the evaluation because it is reasonable, and therefore finds that the complaint fails to disclose a reasonable indication that a trade agreement has been breached. The Tribunal will not initiate an inquiry into this matter.

RFP EVALUATION

6. The RFP closed on February 10, 2016. On October 21, 2016, PWGSC requested TPG to provide clarification as to how its proposed BA Level 3 resource met requirement M9. BA Level 3 was the highest level for Business Analysts to be supplied under the RFP. M9 required that "[t]he Bidder's proposed resource . . . have a minimum of 6 years [of experience] as a Business Analyst directly supervising, assigning work packages and mentoring junior and intermediate level Business Analysts."⁴
7. On October 25, 2016, TPG responded, referring PWGSC to details regarding its resource's four applicable prior projects. These projects were identified in the completed requirements chart that TPG included in its proposal.⁵ The experience relied upon from the projects was described and substantiated in a detailed (over 20 pages) resume included in TPG's proposal.⁶ In the resume, each of these four projects had the same two bullets under a heading repeating the language of M9. The first bullet read: "Conducted

1. R.S.C., 1985, c. 47 (4th Supp.) [*CITT Act*].
2. S.O.R./93-602 [*Regulations*].
3. Complaint, Appendix B at 10.
4. Complaint, Appendix B at 10.
5. Complaint, Appendix B at 17-18.
6. Complaint, Appendix B at 26-50.

strategy sessions with other Business Analysts and Developers to determine work structure breakdowns and work package assignments”. The second bullet read: “Mentored, supervised and guided *junior* Business Analyst resources on the development of Use Cases / Use Case Models” [emphasis added].⁷

8. PWGSC notified TPG of its disqualification on the grounds that TPG had failed to meet M9 on December 1, 2016.⁸ On December 2, 2016, TPG emailed PWGSC asking: “Can you please advise us as to why the substantiation we provided for Stream B with regards to [how TPG’s proposed BA Level 3 met] M9 was not accepted and what the evaluation team based their decision on?”⁹ On December 7, 2016, PWGSC emailed in response: “specifically, the bid failed to demonstrate the experience at the *intermediate* level” [emphasis added].¹⁰ TPG emailed a reply on December 8, 2016, stating that it “objects to the decision and the response provided”.¹¹ PWGSC emailed back on December 12, 2016, simply reiterating that TPG’s “bid failed to meet the mandatory requirement”.¹² TPG then wrote another email on December 15, 2016, stating it was “formally objecting to the Crown’s decision and the response provided”.¹³

TRIBUNAL’S ANALYSIS

9. The Tribunal finds that the complaint is timely. TPG’s email dated December 8, 2016, explicitly objected to the decision of PWGSC and to the information PWGSC provided in response to TPG’s email dated December 2, 2016 (which had simply requested information but had not explicitly objected to PWGSC’s decision). PWGSC denied relief to the December 8, 2016, objection on December 12, 2016. TPG’s email dated December 15, 2016, merely reiterated its earlier objection, and, thus, did not trigger or restart any applicable deadlines for filing with the Tribunal.

10. As TPG’s email dated December 8, 2016, objecting to PWGSC was sent within 10 working days of its notification of disqualification, and as its complaint to the Tribunal was filed within 10 working days of PWGSC’s denial on December 12, 2016, of TPG’s objection, the complaint is timely under subsections 6(1) and (2) of the *Regulations*.¹⁴

11. However, the Tribunal finds that TPG has failed to allege any facts that, even assuming them to be true, would support a finding that PWGSC has breached any potentially applicable trade agreement.¹⁵ In

7. Complaint, Appendix B at 10-11. In its clarification to PWGSC, TPG transformed the M9 language from a heading into a bullet. Thus, in the clarification submission, the first bullet is the M9 language itself, and the second and third bullets are the former first and second bullets as found in the resume.

8. Complaint, Appendix A. Note that the results letter is dated November 30, 2016, but the email from PWGSC enclosing it is dated December 1, 2016.

9. Complaint, Appendix A at 3.

10. Complaint, Appendix A at 2-3.

11. Complaint, Appendix A at 2.

12. Complaint, Appendix A at 1-2.

13. Complaint, Appendix A at 1.

14. Subsection 6(1) of the *Regulations* provides that a complaint shall be filed with the Tribunal “not later than 10 working days after the day on which the basis of the complaint became known or reasonably should have become known to the potential supplier.” Subsection 6(2) of the *Regulations* states that a potential supplier who has made an objection to the relevant government institution, and is denied relief by that government institution, may file a complaint with the Tribunal “within 10 working days after the day on which the potential supplier has actual or constructive knowledge of the denial of relief, if the objection was made within 10 working days after the day on which its basis became known or reasonably should have become known to the potential supplier.”

15. The Tribunal notes that section 1.2(e) of the RFP, not filed by TPG but available on the government’s official electronic tendering service Web site buyandsell.gc.ca, states that it is covered, *inter alia*, by the *Agreement on Internal Trade*, the *North American Free Trade Agreement*, and the *Agreement on Government Procurement*. RFP, s .1.2(e), online: https://buyandsell.gc.ca/cds/public/2015/12/14/25f3812dd93cebf70d084af355f8658/ABES.PROD.PW_ZM.B616.E29695.EBSU000.PDF. Further, PWGSC’s letter dated November 30, 2016, to TPG confirms that the three contracts resulting from the RFP have a monetary value of over \$1 million each, well over the monetary thresholds of the applicable trade agreements for the required services. Complaint, Appendix A.

fact, the evidence provided in TPG's complaint unequivocally confirms that PWGSC correctly determined that TPG failed to demonstrate in its proposal how it met M9.

12. TPG has not identified, either in its proposal itself or its subsequent clarification provided to PWGSC, how its proposed BA Level 3 resource had experience, as M9 required, "directly supervising, assigning work packages and mentoring junior *and intermediate level* Business Analysts" [emphasis added]. The proposal (and TPG's clarification email, which simply gathered in one place for ease of reference and then reiterated relevant parts of the proposal) only mentions the proposed resource's experience vis-à-vis *junior* BAs. TPG has not identified to either PWGSC or to the Tribunal any part of its proposal that states (much less substantiates) that its proposed BA Level 3 resource had any experience supervising intermediate-level BAs. That requirement was clearly disclosed in the RFP and part of the responsibilities for BA Level 3 resources.¹⁶ It was incumbent upon TPG to substantiate how its proposed resources met the RFP requirements. Section 3.2(a)(iii) of the RFP reads as follows:¹⁷

Substantiation of Technical Compliance: The technical bid must substantiate the compliance with the specific articles of Attachment 4.1, which is the requested format for providing the substantiation. The substantiation must not simply be a repetition of the requirement(s), but must explain and demonstrate how the Bidder will meet the requirements and carry out the required Work. Simply stating that the Bidder or its proposed solution or resources comply is not sufficient. Where Canada determines that the substantiation is not complete, the Bidder will be considered non-responsive and disqualified. . . .

13. On its face, nothing in TPG's proposal indicates compliance with M9. PWGSC evaluators came to that conclusion as well. In the Tribunal's view that conclusion is reasonable. The Tribunal will therefore not interfere with the evaluation.

DECISION

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

Jean Bédard
Jean Bédard
Presiding Member

16. RFP, s. 5.1.3(F), p. 39, providing that "[t]he Business Analyst - Level 3 tasks include, but are not limited to, the Business Analyst Level 2 tasks above and the following: i. Lead, assign work packages to and mentor business analysts (level 1, level 2 or both)." Online: https://buyandsell.gc.ca/cds/public/2015/12/14/25f3812dd93cebfe70d084af355f8658/ABES.PROD.PW__ZM.B616.E29695.EBSU000.PDF.

17. Complaint, Appendix B at 10. Note that TPG's complaint mis-cites this as section 3.1, while the copy posted on buyandsell.gc.ca identifies this as section 3.2.