



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DETERMINATION AND REASONS

File No. PR-2017-009

Smith Vigeant architectes inc. +  
ABCP architecture

v.

Parks Canada Agency

*Determination issued  
Thursday, August 3, 2017*

*Reasons issued  
Monday, August 14, 2017*

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IN THE MATTER OF a complaint filed by Smith Vigeant architectes inc. + ABCP architecture 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**

**SMITH VIGEANT ARCHITECTES INC. + ABCP ARCHITECTURE** **Complainant**

**AND**

**PARKS CANADA AGENCY** **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 in part. Each party will bear its own costs.

Jason W. Downey  
Jason W. Downey  
Presiding Member

The statement of reasons will be issued at a later date.

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Complainant: Smith Vigeant architectes inc. + ABCP architecture

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## STATEMENT OF REASONS

1. On May 9, 2017, Smith Vigeant architectes inc. + ABCP architecture, from Québec, Quebec (SVA + ABCP), filed a complaint with the Canadian International Trade Tribunal (the Tribunal), under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*,<sup>1</sup> concerning a Request for Standing Offers (RFSO) (Solicitation No. 5P301-16-0005) issued by the Parks Canada Agency (Parks Canada) regarding the provision of heritage architecture services for project work on Parks Canada historic sites and heritage buildings.
2. On May 16, 2017, the Tribunal decided to conduct an inquiry into the complaint, having determined that 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>2</sup>
3. The Tribunal inquired into the complaint, as required under sections 30.13 to 30.15 of the *CITT Act*.
4. For the following reasons, the Tribunal finds that the complaint is valid in part. In short, the evaluation of SVA + ABCP's proposal was problematic because the evaluators applied undisclosed criteria. However, SVA + ABCP's proposal did lack some information needed to meet the mandatory requirements of the RFSO. Consequently, the Tribunal will not recommend any remedy and each party will bear its own costs in connection with the inquiry.

## SUMMARY OF COMPLAINT

5. SVA + ABCP's complaint can be summarized as follows:
  - The terms "related", "and", "or" and "cumulative" found in mandatory requirement 3.1.5 of the RFSO lack clarity because they are not defined in the RFSO.
  - The evaluators unfairly concluded that SVA + ABCP's proposal did not demonstrate that the proposed personnel, in particular resources No. 1, 3 and 8, possessed the experience called for in mandatory requirement 3.1.5 of the RFSO:
    - i. By adopting a narrow interpretation of the terms mentioned above as well as the terms "built heritage" and "heritage value";
    - ii. By basing their evaluation on criteria that were more stringent or not disclosed in the RFSO documents.
  - The evaluators did not have the necessary tools, such as an evaluation grid, to evaluate the proposals, and they lacked the French language skills needed to provide a fair evaluation of SVA + ABCP's proposal.
6. As a remedy, SVA + ABCP requests the re-evaluation of its bid.

## PROCUREMENT PROCESS

7. On December 21, 2016, Parks Canada invited architectural firms with strength in heritage conservation projects to submit proposals in response to the RFSO before the January 31, 2017, 2:00 p.m. (EST) closing date. The closing date was then extended to February 2, 2017, at 2:00 p.m., as shown on Amendment No. 1.

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

8. On the RFSO closing date, Parks Canada had received 14 bids, including SVA + ABCP's proposal.
9. On February 28, 2017, Parks Canada sent SVA + ABCP a letter (hereinafter "the Parks Canada refusal letter") indicating that its bid had been deemed non-responsive because, *inter alia*, it did not meet mandatory requirement 3.1.5 "Consultant Team Minimum Qualifications".<sup>3</sup>
10. On March 1, 2017, Dany Blackburn, Senior Associate Architect at SVA + ABCP, sent an email to Sheldon Lalonde, Contracting Authority at Parks Canada, requesting a review of SVA + ABCP's proposal and feedback from Parks Canada.<sup>4</sup> That same day, following a telephone conversation between Mr. Blackburn and Mr. Lalonde, Mr. Blackburn sent Mr. Lalonde an email indicating that SVA + ABCP "formally object[ed] that [its] proposal had been deemed non-responsive based on the grounds cited"<sup>5</sup> and that he would wait for the manager to return to obtain additional information regarding requirement 3.1.5.
11. On March 2, 2017, during a telephone conversation between Dominic Lachance, member of the Parks Canada Evaluation Board, and Mr. Blackburn, Mr. Lachance revealed the reasons for rejecting SVA + ABCP's proposal.
12. Not satisfied with the reasons for rejection disclosed during this conversation, Mr. Blackburn sent Mr. Lalonde an email that same day, indicating that he objected to the reasons for rejection.<sup>6</sup> In particular, he alleged that the terms of reference of the RFSO were not clear and that SVA + ABCP's proposal was deemed inadequate by the Evaluation Board. In addition, he asked what remedies were available to challenge Parks Canada's rejection of SVA + ABCP's proposal.
13. On March 17, 2017, not having received a response from Parks Canada, Mr. Blackburn sent Mr. Lalonde a letter requesting that the evaluation of SVA + ABCP's proposal be reviewed.
14. Parks Canada then reviewed the evaluation of SVA + ABCP's proposal performed by the Evaluation Board. As part of the review, there were several telephone and email discussions between Pascal Lessard, Senior Advisor at Parks Canada's National Contracting Services, and Mr. Blackburn.
15. On April 26, 2017, Mr. Lessard, on behalf of Parks Canada, confirmed the evaluation performed by the Evaluation Board and that the rejection of SVA + ABCP's proposal had been upheld.<sup>7</sup> Specifically, Mr. Lessard indicated that for the three proposed personnel resources who were deemed not to have met the mandatory criteria, the Evaluation Board had been unable to credit the number of years of experience for the projects that included a heritage component, as required in the RFSO, because this had not been demonstrated in SVA + ABCP's proposal.
16. On May 9, 2017, SVA + ABCP filed the present complaint with the Tribunal.

## PROCEEDINGS OF THE COMPLAINT

17. On May 16, 2017, the Tribunal informed the parties that the complaint had been accepted for inquiry because it met the requirements of subsection 30.11(2) of the *CITT Act* and the conditions set out in subsection 7(1) of the *Regulations*.

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3. Exhibit PR-2017-009-08A at 410, Vol. 1B.

4. *Ibid.* at 413.

5. Exhibit PR-2017-009-01A at 241 of 581 in the PDF document, Vol. 1.

6. Exhibit PR-2017-009-08A at 416, Vol. 1B.

7. *Ibid.* at 485, Vol. 1B.

18. That same day, the Tribunal also issued an order to postpone the award of the contract, in which it ordered Parks Canada to postpone the award of all contracts involving the solicitation at issue until the Tribunal had ruled on the validity of the complaint.

19. On June 16, 2017, Parks Canada filed its Government Institution Report (GIR) with the Tribunal in accordance with section 103 of the *Canadian International Trade Tribunal Rules*.<sup>8</sup>

20. On June 22, 2017, SVA + ABCP filed its submissions on the GIR. On June 29, 2017, Parks Canada asked the Tribunal for permission to file additional submissions about SVA + ABCP's submissions. The Tribunal agreed to Parks Canada's request and SVA + ABCP did not file any submissions in response.

21. Given that the information on the record was sufficient to determine the merits of the complaint, the Tribunal decided that an oral hearing was not necessary and ruled on the complaint based on the written record.

## ANALYSIS

22. 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.

23. 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>9</sup> the *North American Free Trade Agreement*<sup>10</sup> and the *World Trade Organization Revised Agreement on Government Procurement*.<sup>11</sup>

24. 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. For instance, Article 1013(1) of *NAFTA* provides as follows:

1. Where an entity provides tender documentation to suppliers, the documentation shall contain all information necessary to permit suppliers to submit responsive tenders . . . . The documentation shall also include:

. . .

(h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders . . . .

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8. SOR/91-499.

9. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<https://www.cfta-alec.ca/agreement-on-internal-trade/>> [AIT].

10. *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://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/fta-ale/index.aspx?lang=eng>> (entered into force 1 January 1994) [NAFTA].

11. *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).

25. Similarly, Article 506(6) of the *AIT* provides that “[t]he tender documents shall clearly identify the requirements of the procurement, the criteria that will be used in the evaluation of bids and the methods of weighting and evaluating the criteria.”

26. The applicable international trade agreements further stipulate that, to be considered for contract award, a tender must conform to the essential requirements set out in the tender documentation and require that procuring entities award contracts in accordance with the criteria and essential requirements specified in the tender documentation. For instance, Articles 1015(4)(a) and (d) of *NAFTA* provide as follows:

4. An entity shall award contracts in accordance with the following:

(a) to be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation . . . .

. . .

(d) awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation . . . .

27. As mentioned above, Parks Canada found that *SVA + ABCP*’s bid did not comply with the mandatory requirement 3.1.5 of the *RFSO* because for three of the proposed resources (personnel No. 1, 3 and 8) it did not specify their experience nor the nature or duration of this experience.

28. For its part, *SVA + ABCP* maintains that the evaluators misinterpreted certain terms not defined in mandatory requirement 3.1.5 and that they applied them too stringently or that they applied undisclosed criteria. According to *SVA + ABCP*, this incorrect evaluation led to the conclusion that its proposal did not demonstrate that proposed resources No. 1, 3 and 8 met the requirements of the *RFSO*.

29. The Tribunal notes that it typically accords a large measure of deference to evaluators in their evaluation of proposals. In *Excel Human Resources Inc. v. Department of the Environment*,<sup>12</sup> the Tribunal confirmed that it “will interfere only with an evaluation that is unreasonable” and will substitute its judgment for that of the evaluators “only when the evaluators have not applied themselves in evaluating a bidder’s proposal, have ignored vital information provided in a bid, have wrongly interpreted the scope of a requirement, have based their evaluation on undisclosed criteria or have otherwise not conducted the evaluation in a procedurally fair way.”<sup>13</sup>

30. In this case, mandatory requirement 3.1.5 stipulates the following criteria for resources No. 1, 3 and 8:

***SRE : SUBMISSION REQUIREMENTS AND EVALUATION***

. . .

**SRE 3 SUBMISSION REQUIREMENTS AND EVALUATION**

. . .

**3.1.5 Consultant Team Minimum Qualifications**

For the purposes of this Standing Offer, the titles and mandatory minimum qualifications of proposed key personnel shall be as follows (see Appendix D, sec.3 for a sample table):

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12. (March 2, 2012), PR-2011-043 (CITT) at para. 33.

13. Also in *Joint Venture of BMT Fleet Technology Ltd. and NOTRA Inc. v. Department of Public Works and Government Services* (5 November 2008), PR-2008-023 (CITT) at para. 25, the Tribunal indicated that “PWGSC’s determination will be considered reasonable if it is supported by a tenable explanation, regardless of whether or not the Tribunal itself finds that explanation compelling.”



***Personnel/service classification #1:***  
**Person managing the Consultant's services to PCA**

This personnel/service classification is to be occupied by a person who meets or exceeds the following requirements:

- A senior member of the Proponent team who has the legal authority to bind the Proponent, and a proven ability to work collaboratively and effectively with clients;
- Minimum ten (10) years of related experience on heritage architecture and built heritage projects; and
- A current member of the Proponent's staff and part of the Proponent's firm.

...

***Personnel/service classification #3:***  
**Intermediate Conservation Architect**

- An architect, licensed to practice architecture in the provinces and/or territories where the Required Services will be provided; and
- Minimum six (6) years of directly related professional experience as a Licensed Architect on heritage architecture and built heritage projects in, or relevant to, the Canadian context.

...

***Personnel/service classification #8:***  
**Contract Administrator / Construction Reviewer**

- Persons who have minimum six (6) years of construction inspection experience, including minimum three (3) years of direct construction supervision experience on heritage projects / built heritage projects with a cumulative construction value of least \$3M.

[Italics in original, underlining added for emphasis]

31. In addition, the RFSO specified that only responsive technical proposals (those that meet all mandatory requirements set out in section 3.1 "Mandatory Requirements" of the RFSO) would then be evaluated based on the rated requirements listed in section 3.2 of the RFSO;<sup>14</sup> it was a two-step evaluation. Unless the mandatory requirements were satisfied, it was mentioned that the bidders' proposal would be deemed non-responsive and that no further evaluations would be performed.<sup>15</sup>

32. Also, the RFSO stipulated that it was up to the bidder to request clarification on the requirements contained in the RFSO, if necessary, "as early as possible" prior to filing its proposal.<sup>16</sup>

33. Parks Canada maintains that if SVA + ABCP had concerns regarding a lack of clarity in the terms of mandatory requirement 3.1.5 of the RFSO, it was incumbent upon SVA + ABCP to ask Parks Canada for clarification during the bid solicitation period.

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14. Sections 3.2 and 3.3 of the RFSO (Exhibit PR-2017-009-08A at 118 and 123, Vol. 1B).

15. Section 3.1 of the RFSO (Exhibit PR-2017-009-08A at 115, Vol. 1B).

16. General Instructions 8(1) and 10(2)(a) of the RFSO (Exhibit PR-2017-009-08A at 25, Vol. 1B).

### Interpretation of the Term “Related”

34. According to SVA + ABCP, the lack of clarity in the terms of mandatory requirement 3.1.5 became apparent only when Parks Canada disclosed the reasons in support of the rejection of its proposal. More specifically, SVA + ABCP alleges that at the March 2, 2017, debriefing session, Parks Canada told it that the term “related” meant that the projects submitted for personnel No. 1 had to be “consecutive” – an allegation that Parks Canada did not contradict in the context of this inquiry.<sup>17</sup>

35. Because the term “related” is not defined in the RFSO, the Tribunal considered its ordinary meaning, which is “joint, linked, tied, akin” and “that is closely associated with something else”<sup>18</sup> [translation].

36. Furthermore, the English version of the RFSO uses the term “related experience” for “*expérience connexe*”. The Tribunal is of the view that the ordinary meaning of this term, considered in the context of requirement 3.1.5 of the RFSO, cannot reasonably be interpreted as meaning that the experience had to be acquired through “consecutive” projects.<sup>19</sup> Consequently, the Tribunal accepts that SVA + ABCP could not have known, prior to filing its proposal, that the evaluators would interpret this criterion in this manner. In this regard, the Tribunal finds that the evaluators applied an undisclosed criterion in their evaluation of SVA + ABCP’s proposal.

### Interpretation of the Term “Built Heritage”

37. Although SVA + ABCP admits that the term “built heritage” was defined in paragraph 1 (“Abbreviations and definitions”) in the “Required Services (RS)” section of the RFSO,<sup>20</sup> it argues that the Evaluation Board adopted a “different” and/or “more stringent” interpretation than the definition.<sup>21</sup>

38. In the reasons for rejection and, to a greater extent, in the GIR, Parks Canada maintains that SVA + ABCP’s proposal did not demonstrate that the projects submitted for the resources at issue were all related to buildings “older than 40 years of age,” contrary to what is mentioned in section 2.3 of the RFSO (“Overview of Sites Covered by this Standing Offer”).<sup>22</sup>

39. SVA + ABCP argues that “the diversity of our resources allows us to easily implement the categories of projects listed in section 2.4 [Categories of Projects Covered by this Standing Offer] . . . where it is clearly indicated that building extensions and work on historic landscapes could be performed under the resulting contract mandate”<sup>23</sup> [translation].

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17. Exhibit PR-2017-009-01A at 2, Vol. 1B; Exhibit PR-2017-009-10 at para. 23, Vol. 1C; Exhibit PR-2017-009-08 at para. 20, Vol. 1B.

18. *Le Nouveau Petit Robert de la langue française*, 2009, s.v. “*connexe*” (related).

19. The ordinary meaning of the term “consecutive” is: “Things that follow one another immediately in time, or (less comm.) space or in a notional order” [translation]. *Le Nouveau Petit Robert de la langue française*, 2009, s.v. “*consécutif*” (consecutive).

20. Exhibit PR-2017-009-08A at 70, Vol. 1B.

21. *Ibid.* at 421.

22. Section 2.3 of the RFSO stipulates the following: “The buildings and built heritage resources subject to this Standing Offer are in most instances older than 40 years of age, and include (but are not limited to): Administration buildings such as offices, warden offices, administrative facilities; Residential buildings such as houses, cabins, bunkhouses; . . .”

23. Exhibit PR-2017-009-08A at 421, Vol. 1B.

40. The Tribunal does not agree with either party with respect to the relevance of sections 2.3 and 2.4 to the interpretation of mandatory requirement 3.1.5.

41. The term “built heritage” is specifically defined in the RFSO as follows: “Built Heritage means the historic physical built environment and landscapes – in whole or in part – which can include individual buildings (or groups of buildings), structures, monuments, installations &/or remains that holds heritage value.”<sup>24</sup>

42. For their part, sections 2.3 and 2.4 describe sites covered by this Standing Offer as an “[o]verview of sites covered”. In the present case, they do not constitute additional criteria for interpreting mandatory requirement 3.1.5.

43. That the sites covered by the Standing Offer are, in most cases, older than 40 years of age is irrelevant for the purposes of evaluating mandatory requirement 3.1.5, because this quantitative threshold was not included in the criteria of requirement 3.1.5, nor was it mentioned in the definition of “built heritage” in the RFSO.

44. Essentially, in evaluating SVA + ABCP’s proposal, the evaluators introduced a minimum 40-year threshold in this definition based on the general description of the sites covered in subsection 2.3.

45. In light of the specific definition of “built heritage” and the criteria set out in mandatory requirement 3.1.5. of the RFSO, the Tribunal finds that it was not reasonable for the evaluators to interpret this term as requiring sites older than 40 years of age in the evaluation of SVA + ABCP’s proposal. This once again constitutes the application of an undisclosed criterion.

46. That said, to satisfy the criteria of mandatory requirement 3.1.5., it was incumbent upon SVA + ABCP to demonstrate, *in its proposal*, how the proposed resources satisfied the criteria of mandatory requirement 3.1.5.

47. In the context of this inquiry, SVA + ABCP could not simply rely on the categories of projects listed in section 2.4 to assert that its proposed personnel resources actually had the experience needed for the required services. As will be discussed below, the Tribunal is not convinced that SVA + ABCP discharged its burden to demonstrate that its proposal met requirement 3.1.5.

### **Interpretation of the Term “Heritage Architecture”**

48. SVA + ABCP further argued that there was a difference between the term “built heritage” and the term “heritage architecture,” which is one of the criteria for personnel No. 1 and 3. However, its complaint did not elaborate on how these two terms differ or how this influenced the evaluation of its proposal.

49. The Tribunal notes that, contrary to the definition of “built heritage,” the term “heritage architecture” was not defined in the RFSO. Although the criteria in mandatory requirement 3.1.5. for personnel No. 1 and 3 stipulated that the proposed resources had to have a “[m]inimum [X] years of . . . experience on *heritage architecture* and *built heritage* projects . . .” [emphasis added], only one of the two types of acceptable projects was clearly defined in the RFSO.

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24. *Ibid.* at 70.

50. As such, for personnel No. 8, SVA + ABCP had to demonstrate that the proposed personnel resource had a “minimum six (6) years of construction inspection experience, including minimum three (3) years of direct construction supervision experience *on heritage projects / built heritage projects...*” [emphasis added], without the term “heritage projects” having been defined.

51. In this regard, the Tribunal recognizes that it could be difficult for the bidders to distinguish between the two types of acceptable projects. Nevertheless, given that SVA + ABCP did not ask Parks Canada for clarification during the bid solicitation period,<sup>25</sup> and there is no indication that the lack of clarity in the terms “heritage architecture” or “heritage projects” only became apparent when Parks Canada disclosed the reasons for rejecting its proposal, nothing on the record indicates that Parks Canada’s evaluation was unreasonable with respect to the application of these terms.

### **Interpretation of the Other Terms That Allegedly Lacked Clarity**

52. With respect to the other terms in the RFSO to which the complaint referred—“and”, “or”, “cumulative” and “heritage value”—SVA + ABCP did not explain why these terms lacked clarity, in what respects the evaluators allegedly adopted a different interpretation of the ordinary meaning of these terms (or, in the case of the term “heritage value”, from the definition in the RFSO<sup>26</sup>), or how the interpretation adopted by the evaluators was allegedly prejudicial to the evaluation of its proposal.

53. The Tribunal is of the view that there is nothing in the record that could establish that the evaluators incorrectly interpreted these terms in their evaluation of SVA + ABCP’s proposal with respect to mandatory requirement 3.1.5.<sup>27</sup>

54. The Tribunal would also like to point out that, in response to the allegation that the evaluators lacked the French language skills required to perform a fair evaluation of SVA + ABCP’s proposal, Parks Canada confirmed that the maternal tongue of the three committee members is French.<sup>28</sup>

### **SVA + ABCP’s Onus to Demonstrate That It Met the Requirements of the RFSO**

55. Fundamentally, the Tribunal is not convinced that Parks Canada was unreasonable in determining that SVA + ABCP’s proposal did not comply with mandatory requirement 3.1.5. In fact, SVA + ABCP’s proposal did not describe the type of projects specifically listed for each of the three proposed personnel resources in respect of which its proposal was deemed non-responsive.

56. Nevertheless, SVA + ABCP maintains that some other personnel resources, for which it submitted the experience in the same manner as for personnel No. 1, 3 and 8, were deemed responsive. The Tribunal does not consider this argument as a valid basis for finding that the resources at issue should have been accepted.

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25. This means that such grounds for complaint would not meet the timelines prescribed in the *Regulations*.

26. In the RFSO, the term “heritage value” is defined as follows: “Heritage value means the aesthetic, historic, scientific, cultural, social or spiritual importance or significance for past, present or future generations. The heritage value of an historic place is embodied in its character-defining materials, forms, location, spatial configurations, uses and cultural associations or meanings.” See Exhibit PR-2017-009-08A at 70, Vol. 1B.

27. Otherwise, if SVA + ABCP had concerns regarding a lack of clarity of these terms as they appeared in the RFSO documents, it should have requested clarification from Parks Canada during the bid solicitation period.

28. See the letter dated June 29, 2017, to the Tribunal from Marie-Josée Bertrand, Legal Counsel for Parks Canada.

57. As indicated in Parks Canada's denial of relief,<sup>29</sup> it was only for personnel No. 1, 2 and 3 that the RFSO required a specific number of years of directly related professional experience as a Licensed Architect on heritage architecture and built heritage projects in, or relevant to, the Canadian context.

58. The evaluators determined that SVA + ABCP had not demonstrated that proposed personnel No. 1 (Mr. Veilleux) and 3 (Mr. Smith) possessed the experience required by the RFSO. The proposal only presented for each a general list of project names in which the resource would have acquired some relevant experience. There were no descriptions of these projects, nor was the proposed resource's role or time spent fulfilling this role on the projects mentioned.

59. For instance, in the case of Mr. Smith, his "significant projects" sheet indicated "in progress" for two of the projects and a single year was listed for each of the others. Even assuming that he had worked in the required role for a full year (which cannot be determined based on the brief information provided), the total duration of the projects listed would only amount to five years,<sup>30</sup> which does not meet the minimum six-year threshold of demonstrated experience.

60. In comparison, although SVA + ABCP's proposal provided limited information for its personnel No. 2, Mr. Gagné, and the other personnel, the evaluators were nevertheless able to determine that he had 10 years of required experience, taking into account the information in section 3 of SVA + ABCP's proposal, which included more details concerning the various projects in which Mr. Gagné participated.<sup>31</sup> With respect to Mr. Veilleux and Mr. Smith, the Tribunal notes that such information had not been provided anywhere in the proposal.

61. The RFSO did not require experience in heritage architecture and built heritage projects for personnel No. 4, 5, 6 and 9.

62. With respect to personnel No. 8, Mr. Vigeant, the RFSO required a minimum of six years of construction inspection experience, including a minimum of three years of direct construction supervision experience on heritage projects or built heritage projects whose cumulative value was at least \$3 million.

63. Neither the list of projects nor the guidance text in Mr. Vigeant's sheet showed the required inspection or direct supervision experience.

64. In the absence of these types of relevant details, it was not unreasonable for Parks Canada to find that SVA + ABCP's proposal did not demonstrate that the personnel at issue possessed the experience in the roles and for the durations required to meet the criteria set out in mandatory requirement 3.1.5.

65. Also, the Tribunal rejects SVA + ABCP's argument that Appendix D, which did not state any minimum subrequirements, was the only form to be completed with respect to the criteria for each of the personnel listed in requirement 3.1.5.

66. The RFSO and the documents relating to the RFSO clearly indicate that Appendix D was available to potential bidders as an indication. The first paragraph of mandatory requirement 3.1.5 identifies Appendix D as a "sample." Furthermore, in the document entitled "Questions and answers #2," answer 17

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29. Exhibit PR-2017-009-08A at 485, Vol. 1B; see also the letter dated June 29, 2017, to the Tribunal from Marie-Josée Bertrand, Legal Counsel for Parks Canada.

30. Exhibit PR-2017-009-08A at 347, Vol. 1B.

31. *Ibid.* at 360-374.

states that “Annex D is provided solely as a guide to assist in identifying your team in SRE (Submission Requirements and Evaluation) 3.1.4 and 3.1.5.”<sup>32</sup>

67. In Appendix D, Table 3 is entitled “Example of Experience Table” and indicates the following: “For details on this format, please see item 3.1.5 of SRE.”<sup>33</sup> Thus, it was expressly stated that Table 3 of Appendix D was provided for illustrative purposes only. As a result, Appendix D did not diminish the bidder’s onus to submit a proposal that complied with all the mandatory requirements set out in the RFSO.

### Conclusion of Complaint Analysis

68. Consequently, the Tribunal finds that the complaint reasonably indicates that Parks Canada breached the provisions of the applicable commercial agreements with regard to the application of criteria that included the terms “related experience” and “built heritage” in its evaluation of SVA + ABCP’s proposal. Thus, the complaint is valid in part.

### REMEDY AND COSTS

69. As a remedy, SVA + ABCP requests the re-evaluation of its bid.

70. In recommending the appropriate remedy, the Tribunal must consider all the circumstances relevant to the procurement in question, including those set out in subsection 30.15(3) of the *CITT Act*.

71. Although the Tribunal has found that the complaint is valid in part, it is of the view that the actions of Parks Canada did not cause prejudice to SVA + ABCP or to the integrity of the procurement process.

72. Aside from the fact that Parks Canada applied two undisclosed criteria in its evaluation of personnel No. 1, 3 and 8 submitted in SVA + ABCP’s proposal, the Tribunal is of the opinion that its proposal would still have been properly rejected for the other reasons indicated by Parks Canada.

73. More specifically, as discussed above, SVA + ABCP’s proposal did not demonstrate that proposed personnel resources No. 1, 3 and 8 possessed the minimum experience required because essential information, such as the description of the project on which they had worked, their roles and the duration of those roles, was missing.

74. Despite the absence of definitions for some terms of reference in the RFSO, as discussed above, the Tribunal finds that the RFSO was clear with respect to the required years of experience and roles for personnel No. 1, 3 and 8. In addition, it was clear that, to be considered responsive, “[t]he proposal must meet all of the mandatory requirements set out in the Request for Standing Offer.”<sup>34</sup>

75. It was incumbent upon the bidders to “provide a comprehensive and sufficiently detailed proposal that will permit a complete evaluation in accordance with the criteria set out in this [RFSO].”<sup>35</sup> In the Tribunal’s opinion, SVA + ABCP’s proposal was deficient because simply listing projects therein did not

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32. *Ibid.* at 294.

33. *Ibid.* at 144.

34. General Instruction 7 of the RFSO; Exhibit PR-2017-009-08A at 25, Vol. 1B.

35. General instruction IG 10(2)(e) of the RFSO; Exhibit PR-2017-009-08A at 26, Vol. 1B.

demonstrate the qualifications required by the RFSO. Consequently, it was reasonable that its proposal did not advance to the next step of the evaluation, the rated requirements step.<sup>36</sup>

76. It is well established that, when evaluating a proposal, the government institution must limit itself to the information contained in the proposal. Evaluators simply cannot depend upon extraneous knowledge or information when it is a mandatory requirement of the RFSO that such information be submitted.<sup>37</sup> Thus, bidders are required to explicitly draw connections between information provided in their bid and the mandatory requirements in the RFSO to ensure that evaluators understand and appreciate how their bids are compliant.<sup>38</sup>

77. In all fairness to the other bidders, the Evaluation Board could not have conducted its own research for each proposed personnel resource at issue or considered other information submitted after the RFSO closing date, as suggested by SVA + ABCP. The Tribunal would like to clarify that this does not necessarily mean that the proposed resources at issue lacked experience, but that the required experience was simply not demonstrated in SVA + ABCP's proposal.

78. In light of the above, the Tribunal is not convinced that the evaluators unfairly concluded that SVA + ABCP's proposal did not demonstrate that proposed resources No. 1, 3 and 8 met the criteria of mandatory requirement 3.1.5 of the RFSO. Thus, the Tribunal does not find it useful to recommend that SVA + ABCP's proposal be re-evaluated, as requested.

79. As a result, having regard to the evidence submitted and the circumstances of this case, the Tribunal has decided not to recommend any remedies. Given that each party prevailed on some issues, the Tribunal will not award costs incidental to the proceedings to either party in this case.

#### **DETERMINATION OF THE TRIBUNAL**

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

81. Each party will bear its own costs.

Jason W. Downey  
Jason W. Downey  
Presiding Member

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36. Contrary to SVA + ABCP's allegation, the RFSO specifically stipulated that the Evaluation Board was responsible for the evaluation of mandatory requirements because "responsive proposals are reviewed, evaluated and rated by a PCA Evaluation Board in accordance with the criteria, components and weight factors set out in the [RFSO]." General Instruction 9(1)(c) of the RFSO; Exhibit PR-2017-009-08A at 26, Vol. 1B.

37. *Unisource Technology Inc. v. Department of Public Works and Government Services* (13 December 2013), PR-2013-027 (CITT) at para. 16.

38. *Madsen Diesel & Turbine Inc. v. Department of Public Works and Government Services* (26 June 2014), PR-2014-018 (CITT) at para. 30; *Tyco Integrated Security Canada, Inc. v. Department of Public Works and Government Services* (13 September 2013), PR-2013-006 (CITT) at para. 29.