Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File No. PR-2016-062

Slenke Inc.

v.

Infrastructure Canada

Determination and reasons issued
Tuesday, July 18, 2017

Canada

TABLE OF CONTENTS

IN THE MATTER OF a complaint filed by Slenke 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

SLENKE INC.	**Complainant**

AND

INFRASTRUCTURE CANADA	**Government Institution**

DETERMINATIONS

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 (3), the Canadian International Trade Tribunal determines that Infrastructure Canada should compensate Slenke Inc. for its lost opportunity in the solicitation at issue. The Canadian International Trade Tribunal recommends that the parties negotiate the amount of compensation and, within 30 days of the date of this determination, report back to the Canadian International Trade Tribunal on the outcome of the negotiations.

Should the parties be unable to agree on the amount of compensation, Slenke Inc. shall file with the Canadian International Trade Tribunal, within 40 days of the date of this determination, a submission on the issue of compensation. Infrastructure Canada will then have 7 working days after receipt Slenke Inc.'s submission to file a response. Slenke Inc. will then have 5 working days after the receipt of Infrastructure Canada's reply submission to file any additional comments. The parties are required to serve each other and file with the Canadian International Trade Tribunal simultaneously.

Pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal awards Slenke Inc. its reasonable costs incurred in bringing the complaint, which costs are to be paid by Infrastructure Canada. In accordance with the *Procurement Costs Guideline*, the Canadian International Trade Tribunal's preliminary indication of the level of complexity for this complaint is Level 1, and its preliminary indication of the amount of the cost award is $1,150. If any party disagrees with the preliminary indication of the level of complexity or the preliminary indication of the amount of the cost award, it may make submissions to the Canadian International Trade Tribunal, as contemplated by article 4.2 of the *Procurement Costs Guideline*. The Canadian International Trade Tribunal reserves jurisdiction to establish the final amount of the award.

Serge Fréchette
Serge Fréchette
Presiding Member

Tribunal Panel:	Serge Fréchette, Presiding Member
Support Staff:	Rebecca Marshall-Pritchard, Counsel
Complainant:	Slenke Inc.
Counsel for the Complainant:	Hamza Warraich
Government Institution:	Infrastructure Canada
Counsel for the Government Institution:	Lorne Ptack

Please address all communications to:

The Registrar
Secretariat to the Canadian International Trade Tribunal
333 Laurier Avenue West
15th Floor
Ottawa, Ontario K1A 0G7

Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: citt-tcce@tribunal.gc.ca

STATEMENT OF REASONS

SUMMARY OF COMPLAINT

1. On March 7, 2017, Slenke Inc. (Slenke) 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 Proposal (RFP) (Solicitation No. INFC-2016-20) by Infrastructure Canada (IC) for the provision of a secure file-sharing system.

2. Slenke argued that it should have been awarded the resulting contract because, in its view, it was fully compliant with the requirements of the RFP. In addition, Slenke alleged that IC breached the applicable trade agreements by not evaluating Slenke's bid in accordance with the criteria stated in the RFP.

3. As a remedy, Slenke requested that the bids be re-evaluated and that it be awarded the contract. It also sought costs related to this inquiry.

4. The Tribunal accepted the complaint for inquiry on March 8, 2017, as 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]

5. For the reasons set out below, the Tribunal finds that the complaint is valid.

PROCUREMENT PROCESS

6. On December 21, 2017, IC issued the RFP, with a closing date of February 1, 2016.

7. On January 13, 2017, Slenke posed the following question to IC: "On Page 44, Annex 'E' Certifications, [a]re you just looking for us to sign Annex 'E' in the space provided at the end of the document in order for us to certify the items listed in the document?"

8. In response, on January 17, 2017, IC posted the following answer: "Yes, a signature will be required in order to attest the bidders understanding of the requirements. All Certification requirements enumerated in the RFP must be met before contract award."

9. On March 6, 2017, in response to the Slenke's objection to the contract award, IC wrote the following:

> Yes a signature was required as an attestation to ensure the understanding of the requirement but that did not preclude that details on how the bidder met this criteria was to be provided. It was not sufficient enough to simply acknowledge the criteria.
>
> Furthermore, the RFP's Security Requirements stated that the bidder hold a certain number of designations from the Canadian Industrial Security Directorate, PSPC. Slenke did not provide any proof of these.

10. The Tribunal will address the security requirements issue later in this decision, but it is worth noting that this was the first time in the procurement process that Slenke was notified of any concern with its bid meeting the security requirements.

---

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

11. On January 27, 2017, IC posted its response to Slenke's e-mail response.

12. On March 2, 2017, IC advised Slenke that a contract has been awarded to another bidder, Oproma Inc.

13. That same day, Slenke objected to the contract award to IC via e-mail.

14. On March 6, 2017, IC responded to Slenke's objections by confirming the evaluators' assessment that Slenke failed to demonstrate how it met mandatory criteria (MC) 2, 3 and 4, as set out in the RFP. At this point, IC also indicated that Slenke's bid would also have been deemed non-compliant as it failed to meet the security requirements set out in the RFP.

15. On March 7, Slenke filed its complaint with the Tribunal.

ISSUE AND POSITIONS OF PARTIES

16. The sole ground of complaint in this matter centres on the parties' interpretation of the phrase "bidders must certify" contained in each of the MC 2, 3 and 4 and referenced in Section 4.1.1.1 of Part 4 (Evaluation Procedures), Annex B (Corporate Mandatory Criteria) and Annex E (Certifications). The issue arose not necessarily in respect of the phrase itself, but whether any additional action, aside from certification, was required to satisfy the mandatory technical requirements in question and have a bid declared responsive.

17. In its complaint, Slenke argued that its understanding that all that was required for its bid to be compliant in respect of MC 2, 3 and 4, was for it to certify that it could meet those requirements was further endorsed by the email it received from IC on the matter.

18. In the GIR, IC argued that, if the e-mail from IC was unclear, it was incumbent upon Slenke to seek clarification with IC.

19. In the reply to the GIR, Slenke argued that it ". . . fulfilled the [certification] requirement as it was stated in the RFP and as advised to use by [IC] during the QA period." Slenke submitted further that "[i]t should not be assumed by [IC] that we know their intentions. We can only go by what is provided and asked of us in the RFP."

ANALYSIS

20. Subsection 30.14(1) of the *CITT Act* requires that, in conducting an inquiry, the Tribunal limit its considerations to the subject matter of the complaint. At the conclusion of the inquiry, the Tribunal must determine whether the complaint is valid on the basis of whether the procedures and other requirements prescribed in respect of the designated contract have been observed. Section 11 of the *Regulations* provides that the Tribunal is required to determine whether the procurement was conducted in accordance with the applicable trade agreements.[3]

21. Article 506(6) of the *Agreement on Internal Trade*[4] reads as follows:

---

3. All the trade agreements identified in paragraph 7(1)(c) of the *Regulations* apply to this solicitation.
4. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <http://www.ait-aci.ca/index_en/ait.htm> [*AIT*]. The Tribunal has recognized that this article of the *AIT* encompasses the obligation that the procuring entity use the announced criteria in evaluating proposals. See, for example, *C3 Polymeric Limited v. National Gallery of Canada* (14 February 2013), PR-2012-020 (CITT) at para. 27; *AmeriData Canada Ltd.* (9 February 1996), PR-95-011 (CITT).

> . . . 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.

22. Article 1015(4) of the *North American Free Trade Agreement*[5] reads as follows:

> 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 and have been submitted by a supplier that complies with the conditions for participation;
>
> . . .
>
> (d) awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation . . . .

23. Section 4.1.1.1 of Part 4 (Evaluation Procedures and Basis of Selection) refers bidders to Annex B for details on the mandatory technical criteria. Section 2a) of Annex B states the following:

> **a) Mandatory Technical Criteria**:
>
> Each bid will be reviewed for compliance with the mandatory requirements of the bid solicitation. All elements of the bid solicitation that are mandatory requirements are identified specifically with the words "must" or "mandatory". Bids that do not comply with each and every mandatory requirement will be considered non-responsive and be disqualified. Mandatory evaluation criteria are described in Part 6.

24. All mandatory criteria are set out in Annex B, Table 2 – Corporate Mandatory Criteria. The left column sets out the detail of each MC, while the right column is entitled "Demonstrated Experience" and provides blank space next to each MC for the bidder to complete. MC 2, 3 and 4 state the following:

M2	**Hosting** The Service Provider **must** certify (Part 5) that it can provide secure, fully hosted services from a location on Canadian soil. The Service must be solely owned and operated in Canada (including, as applicable, all joint ventures, consortia and partners). The hosting facility must also reside in Canada as well as any other back-up facilities.
M3	**Service Level Agreement** The Service Provider **must** certify (Part 5) that it can provide the service levels required by Infrastructure Canada as described in Appendix B.
M4	**Bilingualism** The Service Provider **must** certify (Part 5) that it will provide the service in both Canadian French and English languages.

25. Section 3.2 of Annex B (Basis of Selection) provides the following:

> Bids must comply with the requirements of the bid solicitation and meet all mandatory criteria to be declared responsive.

---

5. *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*]. The other trade agreements contain provisions similar to those of *NAFTA*.

> The Service Provider that passes all mandatory criteria and has the highest overall score will be recommended for contract award.
>
> Service Provider Instructions:
>
> (a) To demonstrate that the Service Provider meets the Mandatory Evaluation Criteria for the Project References, use Table 1 – Corporate Project Reference Template. All fields of the table **must** be completed for the bid to be compliant. . . .
>
> (b) All other projects are to be demonstrated in the grids provided in the columns labelled: **Demonstrated Experience** where applicable.
>
> (d) Service Providers should note that when completing the grids, [IC] is evaluating for the specific information that demonstrates experience for any given criterion. . . .
>
> . . .
>
> (f) Proposals that do not meet all of the mandatory evaluation criteria will be given no further consideration and deemed non-compliant.

26. According to IC's position, the RFP required bidders to demonstrate experience in respect of MC 2, 3 and 4, and Slenke failed to do so. A reading of the plain language of Annexes B and E of the RFP leads the Tribunal to conclude that such a position is unreasonable for the reasons that follow.

27. It is well established, and has been continuously reiterated, that the Tribunal is reluctant to substitute its judgment for those of evaluators, save in very specific circumstances.[6] The facts in this matter gave rise to such circumstances, and the Tribunal's intervention is therefore warranted.

28. This matter illustrates the problems that can arise when the language of an RFP is unclear on its face. That is, when the government institution, in drafting the RFP, breaches the applicable trade agreements by failing to ensure that the wording of the solicitation documents clearly sets out the requirements of the procurement. Such an obligation on the government institution is a fundamental tenet of the federal procurement framework and necessary in order for bidders to understand their obligations when preparing responsive bids.

29. The Tribunal finds that it was unclear from the wording in each of M2, M3 and M4 found in Annex B and Annex E (i.e. "**must** certify that it can provide") that bidders were expected to provide details in addition to certification. The "Demonstrated Experience" in Table 2 of Annex B can be distinguished from Tables 3 and 4 of Annex B where the RFP specifies that details should be provided. On a similar, but distinct, note, M1 (although not at issue in this case) specifically instructs bidders to complete Table 1, but does not mention certification to demonstrate relevant experience. While M1 is distinguishable, it nonetheless illustrates that when IC sought specific detail from the bidders, it made that requirement clear in the RFP language. Such was not the case for M2, M3 and M4.

30. The Service Provider Instructions found in section 3.2 of Annex B state that, with respect to Table 1, "(a) . . . [a]ll fields of the table **must** be completed for the bid to be compliant." Then, under (b), the instructions state that "[*a*]*ll other projects are to be demonstrated in the grids provided in the column labelled:* ***Demonstrated Experience*** *where applicable*" [bold in original, italics added for emphasis]. It is not entirely clear which Table this relates to. Moreover, by reading section 3.2 of Annex B and M1 together,

---

6. *Traductions TRD v. Department of Western Economic Diversification* (7 July 2014), PR-2014-004 (CITT) at para. 30; *Vireo Network Inc. v. Department of Public Works and Government Services* (23 April 2014), PR-2013-037 (CITT) at para. 25; *Star Group International Trading Corporation v. Defence Construction (1951) Limited* (7 April 2014), PR-2013-032 (CITT) at para. 26.

bidders are clearly instructed to respond to the minimum eligibility criteria listed in M1 by completing the Table 1 template. By way of contrast, there is no specific instruction in relation to M2, 3, and 4 to use the template in Table 1 or to complete all fields in order to respond; rather, the instructions simply state that bidders "must certify".

31. Slenke did everything it should have done in this case. It found the RFP language unclear, so it sought clarification from the government institution. IC appeared to confirm Slenke's understanding of the RFP's language in the Q&A, and there was consequently no resulting ambiguity for Slenke to resolve with IC until the time of contract award. Slenke could not have known that IC would interpret the language of the RFP in such a manner so as to disqualify Slenke's bid until it was given the debriefing.

32. In reading the evaluation criteria and instructions set out in Annex B, Slenke understood that all that was required for its bid to be considered compliant with each of MC 2, 3 and 4 in Annex B was to provide its certification that it could meet those requirements in Annex E. By phrasing the e-mail to IC as it did, specifically by using the word "just" and referring to the certification of "the items listed in the document", including the same criteria set out in MC 2, 3 and 4,[7] Slenke indicated to IC that its understanding of the RFP was that nothing other than certification was required in order for its bid to be considered responsive in relation to those specific criteria.

33. However, IC failed to appreciate that the language of the RFP was unclear considering what it argues it was intended to mean. Even when it received Slenke's question, it did not acknowledge that the language of the RFP was vague or potentially misleading. Moreover, in its response, IC should have been as clear as possible as to what was required in order for Slenke to submit a responsive bid. For example, IC could have used language similar to that which it used in its denial of relief e-mail: "Yes a signature is required as an attestation to ensure the understanding of the requirement but that does not preclude that details on how the bidder intends to meet each mandatory criterion is to be provided. It is not sufficient enough to simply acknowledge the criteria."

34. IC breached Article 506(6) of the *AIT*[8] by using unclear language in the RFP. Further, IC's response to Slenke's e-mail question did not help to clarify matters. IC did not make even the most basic attempt to probe the meaning of Slenke's e-mail question to it, which would have been easy enough to do early on in the procurement process. As such, IC chose to abdicate its responsibility to consider what was expressed in Slenke's e-mail. In short, IC failed to consider, let alone resolve, the *bona fide* confusion that Slenke set out in its query. The obligation to certify in Annex E echoed the language used to describe MC 2, 3, and 4 in Annex B. As such, it was reasonable for Slenke to conclude that the two annexes were linked and that by satisfying the requirements of Annex E, it would also be satisfying the requirements of Annex B. Accordingly, IC should have been clear in its response to Slenke to not only address Annex E, but also Annex B.

35. In *Alcohol Countermeasures*[9] the solicitation in issue was also unclear. The complainant in that matter took the appropriate action and sought clarification from the government institution. The government institution provided information that led the bidder down a certain, unsuccessful, path that ultimately proved fatal to its bid. Similarly here, Slenke was unsure about language in the RFP, so it sought clarification from

7. The wording of MC 2, 3 and 4 in Annex B mirrored the wording of headings No. 3, 4 and 5 of Annex E.
8. As well as the similar provisions in all the applicable trade agreements that place an onus on government institutions to draft the solicitation documents in a clear manner.
9. *Alcohol Countermeasures Systems Corp. v. Royal Canadian Mounted Police* (24 April 2014), PR-2013-041 (CITT).

IC. IC's response led Slenke to believe that certification was all that was required in order for its bid to be responsive to MC 2, 3 and 4.

36. Slenke did what a responsible bidder should do: bidders can and should avail themselves of their prerogative to pose questions and expect answers from government institutions so as to challenge their assumptions. Indeed, bidders are expected to raise questions in a timely manner if they believe the RFP language to be unclear. As the Federal Court of Appeal stated in *IBM Canada Ltd. v. Hewlett Packard (Canada) Ltd.*, ". . . potential suppliers are required not to wait for the attribution of a contract before filing any complaint they might have with respect to the process. They are expected to keep a constant vigil and to react as soon as they become aware or reasonably should have become aware of a flaw in the process."[10]

37. At the same time, government institutions must be clear when responding to requests for clarification from bidders, as their answers will ultimately inform the interpretation of the RFP language at issue. This is a necessary consequence of the obligation found in Article 506(6). It is not sufficient for a government institution to simply provide a vague or unhelpful answer to a query posed by a bidder and then argue that, if that answer is unclear, it is incumbent upon the bidder to object to the additional lack of clarity.

38. In light of the above, the Tribunal finds that the language of the RFP itself was unclear with respect to MC 2, 3 and 4, and that Slenke's understanding of those criteria was reasonable, especially in light of IC's unclear, and ultimately misleading, response. Accordingly, the Tribunal is justified in substituting its judgment for that of IC in this instance.

39. For the foregoing reasons, the Tribunal finds that the complaint is valid.

REMEDY

40. Having found the complaint to be valid, the Tribunal must now recommend an appropriate remedy to compensate Slenke for the prejudice that it suffered.

41. In accordance with the criteria set out in subsection 30.15(3) of the *CITT Act*, the Tribunal finds that the breach identified above is serious and prejudicial to the integrity and efficiency of the competitive procurement system. The deficiency was not only potentially prejudicial to Slenke but also potentially prejudicial to any other potential supplier that had participated in this RFP process.[11]

42. The Tribunal must consider whether the results of the evaluation process would have been different if IC had applied itself in responding to Slenke's question regarding the ambiguity in the RFP language. On March 2, 2017, Slenke asked IC for a detailed explanation of the evaluation results. Specifically, it asked the following question: "In your response, you've stated that we did not meet Mandatory Criteria M-2, 3, 4 but on pages 17-18 of our bid we certify each of the three mandatory requirements mentioned (Hosting, SLA and Bilingualism). Would you please be able to clarify how the decision that we do not meet the mandatory criteria was reached?"[12]

43. On March 6, 2017, IC informed Slenke that its bid was rejected because it did not provide detail as to how it met each of the mandatory criteria. In addition, IC argues that Slenke's bid would have been rejected in any event as it did not provide proof that it met the security requirements as set out in the RFP.

---

10. *IBM Canada Ltd. v. Hewlett Packard (Canada) Ltd.*, 2002 FCA 284 (CanLII) at para. 20. See also *TPG Technology Consulting Ltd. v. Canada (Public Works and Government Services Canada)*, 2007 FCA 291 (CanLII) at para. 22, *Antian Professional Services* (20 November 2013), PR-2013-022 (CITT) at para. 17.
11. The GIR did not indicate the number of bids received as part of the procurement process.
12. Exhibit PR-2016-062-001, e-mail No. 5 dated March 2, 2017, Vol. 1.

44. Section 1.1 of Part I of the RFP states the following:

> **1.1 Security Requirements**
>
> 1. Before award of a contract, the following conditions must be met:
>
> (a) the Bidder must hold a valid organization security clearance as indicated in Part 6 – Resulting Contract Clauses;
>
> (b) the Bidder's proposed individuals requiring access to classified or protected information, assets or sensitive work sites must meet the security requirements as indicated in Part 6 – Resulting Contract Clauses;
>
> (c) the Bidder must provide the name of all individuals who will require access to classified or protected information, assets or sensitive work sites;
>
> (d) the Bidder's proposed location of work performance and document safeguarding must meet the security requirements as indicated in Part 6 - Resulting Contract Clauses;
>
> (e) the Bidder must provide the addresses of proposed sitess [error in original] or premises of work performance and document safeguarding as indicated in Part 3 - Section IV Additional Information.
>
> 2. Bidders are reminded to obtain the required security clearance promptly. Any delay in the award of a contract to allow the successful Bidder to obtain the required clearance will be at the entire discretion of the Contracting Authority.
>
> 3. For additional information on security requirements, Bidders should refer to the Industrial Security Program (ISP) of public Works and Government Services Canada (http://ssi-iss.tpsgc-pwgsc.gc.ca/index-eng.html) website.

45. Section 6.1 of Part 6 (Resulting Contract Clauses) sets out more detail in respect of the security requirements:

> **6.1 Security Requirements**
>
> 1. The Contractor/Offeror must, at all times during the performance of the Contract/Standing Offer/Supply Arrangement, hold a valid Designated Organization Screening (DOS) with approved Document Safeguarding at the level of **PROTECTED B**, issued by the Canadian Industrial security Directorate, Public Works and Government Services Canada.
>
> 2. The Contractor/Offeror personnel requiring access to PROTECTED information, assets or work site(s) must EACH hold a valid **RELIABILITY STATUS**, granted or approved by the Canadian Industrial Security Directorate (CISD), Public Works and Government Services Canada (PWGSC).
>
> 3. The Contractor MUST NOT utilize its Information Technology systems to electronically process, produce or store PROTECTED information until the CISD/PWGSC has issued written approval. After approval has been granted or approved, these tasks may be performed up to the level of **PROTECTED B**.
>
> 4. Subcontracts which contain security requirements are NOT to be awarded without the prior written permission of CISD/PWGSC.
>
> 5. The Contractor/Offeror must comply with the provisions of the:
>
> a. Security Requirements Check List and security guide (if applicable), attached at Annex D;
>
> b. *Industrial Security Manual* (Latest Edition).

46. In Slenke's comments on the GIR, it addressed the security requirements by submitting that the RFP required that the bidder must possess certain security clearances by the time of contract award—not at bid submission. The language of the RFP implies that the bidder would be required to demonstrate compliance with the security requirements at some later time after bid submission, but before contract award. Indeed, Slenke did possess the necessary security requirements as of March 1, 2017.[13] IC awarded the contract on March 2, 2017, without inquiring of Slenke whether it had been successful in meeting the security requirements.

47. Had IC wanted bidders to possess certain security requirements at the time of bid submission, it should have included such language in the RFP. Moreover, IC did not raise the issue of security requirements in its initial regret letter to Slenke. Nor did IC provide any evidence, such as evaluation notes, that the security requirements factored into its decision to disqualify Slenke's proposal. It is not sufficient for IC to make such allegations in the absence of supporting evidence. For these reasons, the Tribunal considers that, if there had been other significant criteria contributing to IC's decision to reject Slenke's proposal, IC would have indicated them in its regret letter.

48. Based on the information on the record, it is therefore the Tribunal's opinion that if IC had clearly set out the requirements of the procurement in the RFP and if it had applied itself in responding to Slenke's question, IC would have concluded that Slenke's bid was compliant. Even if there was a deficiency with respect to Slenke meeting the security requirement, as IC alleges, the fact remains that this was not a motivating factor in the decision to reject Slenke's proposal, which should have been accepted as compliant on the basis of the language of the RFP. The Tribunal therefore concludes that Slenke suffered prejudice by losing the opportunity to compete for the contract. Although Slenke did not request compensation for lost opportunity, subsection 30.15(2) of the *CITT Act* provides that, where the Tribunal determines that a procurement complaint is valid, it may recommend any remedy that it considers appropriate, including payment of compensation to the complainant in an amount specified by the Tribunal.

DETERMINATIONS OF THE TRIBUNAL

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

50. Pursuant to subsections 30.15(2) and (3) of the *CITT Act*, the Tribunal recommends that IC compensate Slenke for its lost opportunity in the solicitation at issue and that the parties negotiate the amount of compensation and, within 30 days of the date of this determination, report back to the Tribunal on the outcome of the negotiations.

51. Should the parties be unable to agree on the amount of compensation, Slenke shall file with the Tribunal, within 40 days of the date of this determination, a submission on the issue of compensation. IC will then have 7 working days after receipt Slenke's submission to file a response. Slenke will then have 5 working days after the receipt of IC's reply submission to file any additional comments. The parties are required to serve each other and file with the Tribunal simultaneously.

13. Exhibit PR-2016-062-11, at para. 29, Vol. 1A.

52. Pursuant to section 30.16 of the *CITT Act*, the Tribunal awards Slenke its reasonable costs incurred in bringing the complaint, which costs are to be paid by IC. In accordance with the *Procurement Costs Guideline*, the Tribunal's preliminary indication of the level of complexity for this complaint is Level 1, and its preliminary indication of the amount of the cost award is $1,150. If any party disagrees with the preliminary indication of the level of complexity or the preliminary indication of the amount of the cost award, it may make submissions to the Tribunal, as contemplated by article 4.2 of the *Procurement Costs Guideline*. The Tribunal reserves jurisdiction to establish the final amount of the award.

Serge Fréchette
Serge Fréchette
Presiding Member