



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2017-012

StenoTran Services Inc.

*Decision made
Monday, June 12, 2017*

*Decision and reasons issued
Thursday, June 15, 2017*

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

STENOTRAN SERVICES INC.

AGAINST

THE PATENTED MEDICINE PRICES REVIEW BOARD

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.

Peter Burn
Peter Burn
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.

BACKGROUND

2. This complaint by StenoTran Services Inc. (StenoTran) concerns a request for proposal (RFP) (Solicitation No. 170070) for verbatim court reporting services issued by the Patented Medicine Prices Review Board (PMPRB).

3. On April 13, 2017, the PMPRB issued the RFP. The original bid closing date was May 29, 2017. The final bid closing date was June 9, 2017.

4. On May 18, 2017, StenoTran submitted several questions regarding the RFP to the PMPRB. One of the questions related to the weights that were being applied to each of the pricing categories set out in the Pricing Schedule found at Attachment 1 to Part 3 of the RFP. The four pricing categories are as follows:

Table "A1" – Initial Contract (award to 1 year thereafter)³

A	B	C
Item	Requirement	Firm All Inclusive Price (TAXES NOT INCLUDED)
i)	Price per page for original copy and an MS Word document, a PDF document, a digital recording with annotations and the chess clock reports – 1 day delivery	\$
ii)	Price per page for additional copies in excess of i) above – 1 day delivery	\$
iii)	Cancellation charge- may be claimed if the Contractor is notified less than 48 hours (2 business days) prior to the scheduled commencement of a Hearing.	\$
iv)	Recess fee – in cases where a Hearing is terminated sooner than expected, a recess charge may be claimed by the Contractor. Whenever the recess charge is billed, the transcript pages that are	\$

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

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

3. Identical tables are provided for each of the four option periods (Tables A2-A5). The Total Bid Price is the sum of the sub-totals of Tables A1-A5, plus HST (as per Part 4, Section 1.4 – Financial Evaluation).

	produced before the termination of the Hearing will be provided at no additional charge beyond the recess cost.	
Sub-total		\$

5. On June 1, 2017, the PMPRB published responses to all questions posed by potential suppliers. In response to StenoTran's question regarding the weighting system, the PMPRB responded that "the basis of selection is the highest combined rating of technical merit (70%) and price (30%). To establish the pricing score, each responsive bid will be prorated against the lowest evaluated price and the ratio of 30%."⁴

6. On June 2, 2017, StenoTran requested clarification of this response as it did not, in StenoTran's opinion, address the question that was asked. StenoTran also requested a further extension to the bid closing date.

7. On June 6, 2017, the PMPRB responded to StenoTran's request for clarification as follows: "The financial evaluation will be conducted by calculating the Total Bid Price. The pricing score will be established by prorating it against the lowest evaluated price and the ratio of 30%."⁵ StenoTran again requested clarification of this response as, in StenoTran's opinion, it still did not answer the question posed. PMPRB responded that "our basis of selection is the highest combined rating of technical merit and price – it is based on best value."⁶

8. StenoTran replied that the trade agreements require that PMPRB disclose the method that it will use to determine "best value". The PMPRB responded that the criteria that will be used to evaluate the bids are clearly identified in the RFP; specifically, Part 4 of the RFP stipulates that the basis of selection will be the "highest combined rating of technical merit and price".

9. On June 7, 2017, StenoTran filed its complaint with the Tribunal. StenoTran's complaint is that the PMPRB failed to disclose the weighting system it will use to evaluate the financial proposals, in violation of Article 506(6) of the *Agreement on Internal Trade*.⁷

10. According to StenoTran, the cancellation charge and the recess fee should be weighted less than the two price-per-page categories in the evaluation of the Total Bid Price, as the cancellation charge and recess fee are much larger than the regular per-page fees, but are rarely invoked. StenoTran argued that the PMPRB therefore intends to apply a "secret formula" to give the recess and cancellation fees less weight than the regular per-page fees.

11. StenoTran also argued that, if these fees are to be weighted equally, potential suppliers will be compelled to bid zero for the cancellation and recess fees in order to ensure their bid price is not "over-inflated".

12. StenoTran requested, as a remedy, that the PMPRB be ordered to disclose the formula for weighting the bid price calculation and that the bid closing date be extended to five days after the Tribunal renders its decision in this matter. StenoTran also requested an order postponing the award of the contract.

4. Questions and Answers, RFP 170070, at 1.

5. Complaint at 81.

6. Complaint at 88.

7. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<http://www.ait-aci.ca/agreement-internal-trade/>> [AIT].

ANALYSIS

13. For the reasons that follow, the Tribunal has decided not to conduct an inquiry into this complaint.

14. Article 506(6) of the *AIT* requires, in part, 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.”

15. StenoTran’s complaint is framed around its contention that the four pricing elements should be weighted differently in order to ensure that bid prices are not “over-inflated”. Accordingly, StenoTran has assumed that the PMPRB will in fact weight these criteria differently but has refused to disclose what formula it will apply to do so. In other words, StenoTran is assuming that the evaluators will apply undisclosed evaluation criteria in evaluating the bids.

16. The Tribunal finds that there is no basis for StenoTran’s assumption in the terms of the RFP. The structure of the Pricing Schedule set out above indicates that the price will be calculated through a simple mathematical summation of the proposed prices for all four criteria, i.e. all four criteria will be given equal weight. While it is unfortunate that none of the PMPRB’s responses to StenoTran’s question gave this explanation, the terms of the RFP appear clear on their face, and the failure to give an adequate response does not, in and of itself, amount to a violation of the *AIT*.

17. However, should StenoTran’s assumption prove correct and the PMPRB ultimately adopts a different weighting of these four criteria in evaluating the bids, StenoTran or any other potential supplier would be free to file a complaint on the basis that the evaluators applied undisclosed evaluation criteria.

18. Finally, the PMPRB’s reference to the bids being evaluated on the basis of “best value” in its correspondence does not amount to the application of undisclosed evaluation criteria, as this appears to be a description of the basis of selection set out in the RFP, which is the “Highest Combined Rating of Technical Merit and Price”. However, again, should the evaluators adopt another meaning of “best value” that is ultimately applied in the evaluation of the bids, this could form the basis for a future complaint.

DECISION

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

Peter Burn
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Presiding Member