



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DETERMINATION AND REASONS

File No. PR-2017-019

GBCA-MTBA (Joint Venture)

v.

Parks Canada Agency

*Determination and reasons issued  
Tuesday, October 10, 2017*

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IN THE MATTER OF a complaint filed by GBCA-MTBA (Joint Venture) 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**

**GBCA-MTBA (JOINT VENTURE)**

**Complainant**

**AND**

**THE 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 not valid.

Pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal awards the Parks Canada Agency its reasonable costs incurred in responding to the complaint, which costs are to be paid by GBCA-MTBA (Joint Venture). In accordance with the *Procurement Costs Guideline*, the Canadian International Trade Tribunal's preliminary indication of the level of complexity for this complaint case 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.

Rose Ritcey  
Rose Ritcey  
Presiding Member

Tribunal Panel: Rose Ritcey, Presiding Member

Support Staff: Laura Little, Counsel

Complainant: GBCA-MTBA (Joint Venture)

Government Institution: Parks Canada Agency

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## STATEMENT OF REASONS

1. On July 17, 2017, GBCA-MTBA (Joint Venture) (GBCA-MTBA), 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. 5P301-16-0006) 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 in the province of Ontario.<sup>2</sup>
2. On July 17, 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>3</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 not valid.

## SUMMARY OF COMPLAINT

5. GBCA-MTBA alleged that Parks Canada erred in determining that its proposal was non-responsive to a mandatory requirement of the RFSO. Specifically, GBCA-MTBA disagreed with Parks Canada's conclusion that its submission failed to demonstrate that its proposed resource for personnel/service classification No. 8 met the minimum years of experience set out in mandatory requirement 3.1.5. GBCA-MTBA alleged that its proposal should, therefore, have been found to be responsive to the mandatory requirements, which would have allowed it to proceed to the point-rated technical evaluation phase.
6. As a remedy, GBCA-MTBA requested the re-evaluation of its bid.<sup>4</sup>

## PROCUREMENT PROCESS

7. On January 10, 2017, Parks Canada invited architectural firms with strength in heritage conservation project work to submit proposals in response to the RFSO before the February 21, 2017, 2:00 p.m. (EST) closing date. The closing date was later extended to February 23, 2017, at 2:00 p.m.<sup>5</sup>
8. The RFSO specified that bidders must identify a Core Architectural Services Team (CAST) to be comprised of "no fewer than six persons", covering a list of nine specific personnel/service classifications,

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

2. GBCA-MTBA initially filed a deficient complaint on July 7, 2017. On July 17, 2017, GBCA-MTBA filed additional information further to requests made by the Tribunal on July 10 and 12, 2017, pursuant to subsection 30.12(2) of the *CITT Act*. Therefore, in accordance with rule 96(1)(b) of the *Canadian International Trade Tribunal Rules*, SOR/91-499, and subsection 30.11(2) of the *CITT Act*, the complaint is considered to have been filed on July 17, 2017.

3. SOR/93-602 [*Regulations*].

4. In the complaint form that GBCA-MTBA filed with the Tribunal, it indicated that, in addition to the re-evaluation of its bid, it was seeking to be awarded a standing offer in relation to the RFSO.

5. RFSO, Amendment 1 (Exhibit PR-2017-019-017, Vol. 1B at 186 of 326).

who, as a unit, would be available for call-ups under the Standing Offer.<sup>6</sup> The RFSO also set out mandatory requirements including minimum qualifications for each personnel classification.<sup>7</sup>

9. On the RFSO closing date, Parks Canada had received 15 proposals, including that submitted by GBCA-MTBA.

10. GBCA-MTBA's proposal presented a CAST with two resources identified for each classification: one for Western Ontario and one for Eastern Ontario.<sup>8</sup> In its proposal, GBCA-MTBA stated that "[i]n general GBCA (located in Toronto) will take care of the western portion of [Ontario], and MTBA (located in Ottawa) will take care of the eastern portion."<sup>9</sup> The proposal indicated the classification to which each of the CAST resources was assigned and whether they would be operating in Eastern or Western Ontario. For each resource, it also specified the classification(s) for which they would provide a backup role in the other region.<sup>10</sup>

11. According to Parks Canada, the technical evaluation team's initial review of GBCA-MTBA's proposal raised questions regarding GBCA-MTBA's two team structure.<sup>11</sup>

12. On April 5, 2017, Parks Canada requested that GBCA-MTBA clarify its proposal by identifying the "[nine] Primary position holders who will service Ontario as a whole" so that Parks Canada could confirm compliance of the CAST proposed by GBCA-MTBA with the mandatory requirements of the RFSO.<sup>12</sup>

13. That same day, a representative of GBCA-MTBA responded to Parks Canada with a list of the "individuals to be noted as 'prime' team members for each role", including Mr. Fisher for the role of classification No. 8 "Contract Administrator/Construction Reviewer".<sup>13</sup>

14. On May 12, 2017, Parks Canada sent a letter dated May 11, 2017, to GBCA-MTBA advising that the evaluators had found its proposal to be non-responsive because it did not meet the consultant team minimum qualifications under paragraph 3.1.5 of the mandatory requirements of the RFSO.<sup>14</sup>

15. On May 15, 2017, GBCA-MTBA requested a debriefing on specifically what Parks Canada had determined to be non-responsive in its proposal.<sup>15</sup> A debriefing was held, by telephone, on June 14, 2017. Parks Canada explained that GBCA-MTBA's proposal had been found non-responsive with respect to the resource proposed for classification No. 8 "Contract Administrator/Construction Reviewer", i.e. Mr. Fisher, on the basis that the proposal did not clearly demonstrate his compliance with one aspect of the minimum years of experience set out in mandatory requirement 3.1.5.

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6. RFSO, Required Services, subsection 3.1, and Submission Requirements and Evaluation (SRE), paragraph 3.1.4 (Exhibit PR-2017-019-017, Vol. 1A at 91 and 128 of 326).

7. RFSO, Required Services, paragraph 3.1.5 (Exhibit PR-2017-019-017, Vol. 1A at 129 of 326).

8. Attachments to the Complaint, GBCA-MTBA's proposal at 6-8 (Exhibit PR-2017-019-01A, Vol. 1 at 179-181 of 253).

9. Attachments to the Complaint, cover letter of GBCA-MTBA's proposal (Exhibit PR-2017-019-01A, Vol. 1 at 166 of 253).

10. Attachments to the Complaint, GBCA-MTBA's proposal at 7-8 (Exhibit PR-2017-019-01A, Vol. 1 at 180-181 of 253).

11. Parks Canada, Government Institution Report (GIR) at paras. 14-15 (Exhibit PR-2017-019-017, Vol. 1A at 11-12 of 326).

12. Parks Canada, GIR, Exhibit 7 (Exhibit PR-2017-019-017, Vol. 1B at 287-288 of 326).

13. Parks Canada, GIR, Exhibit 7 (Exhibit PR-2017-019-017, Vol. 1B at 287-288 of 326).

14. Attachments to the Complaint, Exhibit PR-2017-019-001, Vol. 1, at 11-12 of 17; Parks Canada, GIR, Exhibit 9 (Exhibit PR-2017-019-017, Vol. 1B at 296-298 of 326).

15. Parks Canada, GIR, Exhibit 10 (Exhibit PR-2017-019-017, Vol. 1B at 300 of 326).

16. On June 14, 2017, GBCA-MTBA wrote to Parks Canada objecting to the conclusion of the evaluation team that its proposal was non-responsive to mandatory requirement 3.1.5 with respect to personnel classification No. 8.<sup>16</sup>

17. On June 30, 2017, Parks Canada wrote to GBCA-MTBA confirming the results of the evaluation of its proposal against the mandatory requirements of the RFSO.<sup>17</sup>

### **PROCEEDINGS OF THE COMPLAINT**

18. On July 17, 2017, GBCA-MTBA filed the present complaint with the Tribunal.

19. On July 18, 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*.

20. That same day, the Tribunal issued an order for Parks Canada to postpone the award of any standing offer or contract in connection with this solicitation until the Tribunal had ruled on the validity of the complaint.

21. On July 27, 2017, Parks Canada notified the Tribunal that two standing offers had been awarded on May 11, 2017, in connection with the RFSO. Parks Canada requested an order rescinding the postponement of award order on the basis that the solicitation was urgent and that a delay in awarding the contract would be contrary to the public interest. On July 28, 2017, the Tribunal rescinded its postponement of award order.

22. One of the standing offer holders, Architecture EVOQ Inc., requested intervener status, which was granted by the Tribunal on August 3, 2017.

23. On August 21, 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>18</sup>

24. On September 6, 2017, GBCA-MTBA filed its comments on the GIR. No submissions were filed by the intervener.

25. 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.

### **RELEVANT PROVISIONS OF THE RFSO**

26. The RFSO included a section on “Submission Requirements and Evaluation”, which stated that bidders were “responsible for meeting all submission requirements”.<sup>19</sup> Under the RFSO, there were

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16. Attachments to the Complaint, Exhibit PR-2017-019-001, Vol. 1, at 13-14 of 17. In this letter, GBCA-MTBA submitted that its proposal included three additional resources that could have been considered in order to meet the requirements for the role of personnel classification No. 8 even though GBCA-MTBA had, ultimately, identified Mr. Fisher as the prime resource for this role in response to Parks Canada’s clarification question. In its complaint filed with the Tribunal, however, GBCA-MTBA focused solely on whether Mr. Fisher complied with the mandatory requirements for personnel classification No. 8 and they did not challenge the conduct of the evaluation or the evaluators’ conclusions with respect to the other resources in its proposal. As discussed below, GBCA-MTBA submitted that Mr. Fisher’s experience, as described in the proposal, was sufficient to satisfy the mandatory requirements for personnel classification No. 8.

17. Attachments to the Complaint, Exhibit PR-2017-019-001, Vol. 1 at 15-16 of 17.

18. SOR/91-499.

19. RFSO, SRE 1, section 1.2 (Exhibit PR-2017-019-017, Vol. 1A at 126 of 326).

mandatory requirements and rated requirements. The RFSO indicated that if a proposal did not meet the mandatory requirements, it would be deemed non-responsive and that no further evaluations would be performed.<sup>20</sup> Only if a proposal met the mandatory requirements would it then be evaluated on the basis of the rated requirements.<sup>21</sup>

27. As mentioned above, the RFSO required bidders to identify a CAST comprised of no fewer than six persons who, as a unit, would be available to provide services across nine classifications, as follows:

### 3.1.4 Consultant Team Minimum Workforce

...

The '*Core Architectural Services Team*' shall be comprised of persons able to undertake the roles and responsibilities of the following personnel service classifications:

- #1: Person managing the Consultant's services to PCA
- #2: Senior Conservation Architect
- #3: Intermediate Conservation Architect
- #4: Conservation Architect
- #5: Senior Architectural Technician / senior Architectural Technologist
- #6: Architectural Technician / Architectural Technologist
- #7: Junior Project Officer
- #8: Contract Administrator / Construction Reviewer
- #9: Conservation Structural Engineer

A description of these personnel/service classifications including minimum qualifications is shown under Section 3.1.5.

28. The minimum qualifications for the relevant classification in this case, No. 8, provided as follows:

### 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):

...

*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]

29. The RFSO did not define "construction inspection" nor "direct construction supervision". However, it defined the word "inspection" as follows:<sup>22</sup>

**Inspection** means a survey or review of the condition of a place and its elements to determine if they are functioning properly; to identify signs of weakness, deterioration or hazardous conditions; and to identify necessary repairs.

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20. RFSO, SRE 3, section 3.1 (Exhibit PR-2017-019-017, Vol. 1A at 128 of 326).

21. RFSO, SRE 3, sections 3.2 and 3.3 (Exhibit PR-2017-019-017, Vol. 1A at 131-137 of 326).

22. RFSO, Required Services, section 1 (Exhibit PR-2017-019-017, Vol. 1A at 84 of 326).



30. The RFSO stipulated that it was the bidder's responsibility to "provide a comprehensive and sufficiently detailed proposal that will permit a complete evaluation in accordance with the criteria set out in the [RFSO]." <sup>23</sup> Furthermore, it was up to the bidder to obtain clarification of the requirements contained in the RFSO, if necessary, "as early as possible" prior to filing its proposal. <sup>24</sup>

## ANALYSIS

31. 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.

32. 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. In this case, the RFSO <sup>25</sup> indicates that the procurement is subject to the provisions of the *Agreement on Internal Trade*, <sup>26</sup> the *North American Free Trade Agreement* <sup>27</sup> and the World Trade Organization *Revised Agreement on Government Procurement*. <sup>28</sup> However, since the *AIT* expressly excludes services provided by licensed architects, <sup>29</sup> the Tribunal will focus its analysis on the relevant provisions of *NAFTA* and the *AGP*.

33. The applicable 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. <sup>30</sup>

34. The 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. <sup>31</sup>

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23. RFSO, General Instructions 10(2)(e) (Exhibit PR-2017-019-017, Vol. 1A at 40 of 326).

24. RFSO, General Instructions 8(1) and 10(2)(a) (Exhibit PR-2017-019-017, Vol. 1A at 39 of 326).

25. RFSO, General Instructions to Proponents, GI 2 (Exhibit PR-2017-019-017, Vol. 1A at 37 of 326).

26. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<https://www.cfta-alec.ca/agreement-on-internal-trade/>> [*AIT*].

27. *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*].

28. *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) [*AGP*].

29. Annex 502.IB of the *AIT* provides, under section 1, that "[a]ll services are covered except the following: (a) services that may, under the applicable laws of the Party issuing the tender, only be provided by the following licensed professionals: . . . architects . . ." In the Tribunal's view, this exclusion is applicable as the mandatory requirements of the RFSO required that "[t]he Proponent must be authorized to provide Architectural services and must include an Architect who is licensed or eligible to be licensed, certified or otherwise authorized to provide the necessary professional services to the full extent that may be required by provincial or territorial law in the location of the Required Services."

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

31. For instance, Articles 1015(4)(a) and (d) of *NAFTA* provide 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 . . . (d) awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation."

35. As mentioned above, Parks Canada found that GBCA-MTBA's proposal did not comply with mandatory requirement 3.1.5 of the RFSO because it did not demonstrate that Mr. Fisher, who GBCA-MTBA had identified as the prime CAST member for personnel classification No. 8, met the mandatory minimum qualifications for that role with regard to six years of construction inspection experience.

36. In their proposal, GBCA-MTBA stated as follows with respect to Mr. Fisher's qualifications for personnel classification No. 8:<sup>32</sup>

As noted under 6. Senior Architectural Technician / Senior Architectural Technologist, [Fisher] (backup - Western Ontario) has more than 15 years of directly related experience with GBCA with the types of architectural projects and services outlined in the RS section of this RFSO, especially as they relate to heritage architecture and built heritage projects in, or relevant to, the Canadian context.

In addition, Darryl is currently part of the Heritage Consultant's team for the Union Station Train Shed Redevelopment and has been *since 2009*. *He reviews work on site*, including extensive mockups, and prepares and issues contract administration documents related to the heritage restoration work. He is responsible for preparing regular reports for Parks Canada, and maintains the heritage database, which tracks the disposition of several thousand artifacts. In this role he works effectively as part of the contract administration team and coordinates regularly with the different disciplines that are part of the team. *The cumulative value of the construction work he has supervised over the past 3 years is in excess of \$4.5M.*

[Emphasis added]

37. The evaluators determined that the above description did not sufficiently demonstrate a "minimum six (6) years of construction inspection experience".<sup>33</sup> In particular, they noted that while the proposal indicated that Mr. Fisher had been "part of the Heritage Consultant's team for the Union Station Train Shed Redevelopment . . . since 2009", this statement was imprecise in that it did not describe what Mr. Fisher's role was since 2009. The phrase "part of the Heritage Consultant's team" could, in their view, mean any number of roles over the course of a project. As well, the evaluators did not interpret the three sentences describing Mr. Fisher's work on the project to mean that these services had been provided by Mr. Fisher since 2009.<sup>34</sup> Therefore, the evaluators concluded that the proposal did not demonstrate that Mr. Fisher's participation in that project team included at least six years of construction inspection experience.<sup>35</sup>

38. The evaluators found no further information in the rest of GBCA-MTBA's proposal that could assist in demonstrating compliance with the mandatory requirements for personnel classification No. 8.<sup>36</sup> For example, Mr. Fisher's curriculum vitae listed several projects, including for the Union Station Train

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32. Attachments to the Complaint, GBCA-MTBA's proposal at 31-32 (Exhibit PR-2017-019-01A, Vol. 1 at 204-205 of 253); Parks Canada, GIR, Exhibit 4 (Exhibit PR-2017-019-017, Vol. 1B at 228-229).

33. As stated above, the mandatory requirements for personnel classification No. 8 were stated as follows in section 3.1.5 of the RFSO: "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."

34. Parks Canada, GIR at para. 37 and Exhibit 13 (Exhibit PR-2017-019-017, Vol. 1A at 22 of 326 and Vol. 1B at 320 of 326).

35. However, the evaluators were satisfied that Mr. Fisher had three years of direct construction supervision experience on heritage projects/built heritage projects with a cumulative construction value of over \$3 million. Since the evaluators' conclusion on this point favoured GBCA-MTBA, it is not for the Tribunal to comment on whether it was reasonable given the information in GBCA-MTBA's proposal. See GIR at para. 36 and Exhibit 13 (Exhibit PR-2017-019-017, Vol. 1A at 22 of 326 and Vol. 1B at 320 of 326).

36. Parks Canada, GIR at paras. 39-41 and Exhibit 13 (Exhibit PR-2017-019-017, Vol. 1A at 23 of 326 and Vol. 1B at 320 of 326).

Shed Redevelopment, but it did not provide start or end dates and the description of Mr. Fisher's role was the same as the above text provided in response to personnel classification No. 8.<sup>37</sup>

39. In reply, GBCA-MTBA submitted that “[t]he only project [Parks Canada] needed to have a year stated on in this case was the [Union Station Train Shed Redevelopment] described on page 31 and 32” of its proposal.<sup>38</sup> It argued that the reference to Mr. Fisher's experience on that project “since 2009” clearly demonstrated that he had eight years of experience (i.e. from 2009 to 2017) that related directly to the role of personnel classification No. 8. According to GBCA-MTBA, the above description of Mr. Fisher's experience was “abundantly clear as to time spent on the project and work carried out on the project all of which confirmed [the] mandatory requirement” was met.<sup>39</sup>

40. The Tribunal typically accords a large measure of deference to evaluators in their evaluation of proposals. In general, the Tribunal will only interfere with an evaluation that is unreasonable<sup>40</sup> 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>41</sup>

41. In addition, it is well established that the bidder bears the onus of establishing that all relevant criteria and requirements have been met in their proposals.<sup>42</sup> In discharging this onus, the focus should be on the substance of the proposal.<sup>43</sup> As set out in the present RFSO, bidders were responsible to provide sufficient detail in their proposals to permit a full evaluation against the stated criteria.<sup>44</sup>

42. Having carefully examined the contents of GBCA-MTBA's proposal, the Tribunal finds that it was reasonable for Parks Canada to conclude that it lacked sufficient detail to allow the evaluators to confirm that Mr. Fisher met the stated criteria of a “minimum six (6) years of construction inspection experience”.

43. None of the projects listed in Mr. Fisher's curriculum vitae provide information on project duration and therefore cannot be used to demonstrate *length* of experience.

44. The only relevant information in GBCA-MTBA's proposal with regard to whether Mr. Fisher has six years of construction inspection experience is the description cited above of Mr. Fisher's work as part of the Heritage Consultant's team for the Union Station Train Shed Redevelopment. There is no dispute that the description demonstrates Mr. Fisher has worked on the project for more than six years (“currently part of” and “since 2009”). However, it is not clear from the description what portion of that time Mr. Fisher worked in a construction inspection role as opposed to other roles. Looking at the responsibilities listed in

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37. Attachments to the Complaint, GBCA-MTBA's proposal (Exhibit PR-2017-019-01A, Vol. 1 at 220 of 253).

38. GBCA-MTBA, Comments on the GIR at 19 (Exhibit PR-2017-019-20, Vol. 1B at 17 of 17).

39. GBCA-MTBA, Comments on the GIR at 18 (Exhibit PR-2017-019-20, Vol. 1B at 16 of 17).

40. As stated by the Tribunal 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 government institution'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.”

41. *Excel Human Resources Inc. v. Department of the Environment* (2 March 2012), PR-2011-043 (CITT) at para. 33.

42. *Samson & Associates v. Department of Public Works and Government Services* (16 July 2015), PR-2015-002 (CITT) at para. 49; *Valcom Consulting Group Inc. v. Department of Public Works and Government Services* (9 July 2014), PR-2013-044 (CITT) at para. 32.

43. *Deloitte Inc. v. Department of Fisheries and Oceans; and Department of Public Works and Government Services* (25 July 2017), PR-2016-069 (CITT) at para. 43.

44. *Supra*, para. 30.

the description, there are some that may fall within the definition of “inspection” of the RFSO<sup>45</sup> (e.g. “[h]e reviews work on site”), while others are not clearly linked to inspection (e.g. “prepares and issues contract administration documents” and “preparing regular reports to Parks Canada and maintains the heritage database”). Without additional information, there is no reasonable basis on which to conclude that Mr. Fisher’s participation in this project involved the required six years of construction inspection experience.

45. As such, the Tribunal sees no basis to conclude that GBCA-MTBA’s proposal provided sufficient detail to demonstrate that Mr. Fisher had six years of construction inspection experience. In this respect, GBCA-MTBA did not discharge its onus of establishing that its proposal was compliant with mandatory requirement 3.1.5 of the RFSO for personnel classification No. 8.<sup>46</sup>

46. The Tribunal finds, therefore, that Parks Canada acted reasonably in concluding that GBCA-MTBA’s proposal was non-responsive to the mandatory requirements and ceasing the evaluation at that stage, without conducting an evaluation of the rated requirements.

47. In light of the foregoing, the Tribunal finds that the complaint is not valid.

## COSTS

48. The Tribunal awards Parks Canada its reasonable costs incurred in responding to the complaint.

49. In determining the amount of the cost award for this complaint 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.

50. The Tribunal’s preliminary indication is that this complaint case has a complexity level corresponding to the lowest level of complexity referred to in Annex A of the *Guideline* (Level 1). The complexity of the procurement was medium, as it involved the provision of heritage architecture services involving a range of activities in relation to project work on Parks Canada historic sites and heritage buildings in Ontario. The Tribunal finds that the complexity of the complaint was low, as the issues were straightforward and dealt with whether Parks Canada properly evaluated GBCA-MTBA’s proposal against one mandatory requirement of the RFSO. Finally, the complexity of the proceedings was low, as the issues were resolved by the parties through documentary evidence and written representations, and a hearing was not necessary.

51. Accordingly, as contemplated by the *Guideline*, the Tribunal’s preliminary indication of the amount of the cost award is \$1,150.

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45. As stated above, for the purposes of the RFSO, the term “inspection” means “a survey or review of the condition of a place and its elements to determine if they are functioning properly; to identify signs of weakness, deterioration or hazardous conditions; and to identify necessary repairs.” See RFSO, Required Services, section 1.

46. While GBCA-MTBA submitted that the description of Mr. Fisher’s experience “relates directly to the role being applied for”, i.e. contract administrator/construction reviewer, this does not assist with demonstrating that the mandatory requirements for that role, as set out in section 3.1.5 of the RFSO, were met in its proposal. In this regard, bidders need to focus on demonstrating clearly in their proposals that the mandatory requirements are met as opposed to setting out the resource’s past experience and leaving it to the evaluators to “connect the dots”.

**DETERMINATION OF THE TRIBUNAL**

52. Pursuant to subsection 30.14(2) of the *CITT Act*, the Tribunal determines that the complaint is not valid.

53. Pursuant to section 30.16 of the *CITT Act*, the Tribunal awards Parks Canada its reasonable costs incurred in responding to the complaint, which costs are to be paid by GBCA-MTBA. In accordance with the *Guideline*, the Tribunal's preliminary indication of the level of complexity for this complaint case 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 *Guideline*. The Tribunal reserves jurisdiction to establish the final amount of the award.

Rose Ritcey

Rose Ritcey

Presiding Member