



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File No. PR-2017-050

Vintage Designing Co.

v.

Canadian Museum of History

*Determination and reasons issued
Friday, April 13, 2018*

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IN THE MATTER OF a complaint filed by Vintage Designing Co. 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

VINTAGE DESIGNING CO.

Complainant

AND

THE CANADIAN MUSEUM OF HISTORY

**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.

The Canadian International Trade Tribunal awards no costs to either party.

Peter Burn

Peter Burn

Presiding Member

Tribunal Panel:	Peter Burn, Presiding Member
Support Staff:	Dustin Kenall, Counsel
Complainant:	Vintage Designing Co.
Government Institution:	Canadian Museum of History
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Intervener:	Orkestra Marketing Inc.

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STATEMENT OF REASONS

1. On February 5, 2018, Vintage Designing Co. (Vintage) filed a complaint under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ regarding a Request for Standing Offers (Solicitation No. CMH-2532) (the RFSO) by the Canadian Museum of History (CMH) for graphic and web design services for publications and corporate products.
2. Vintage raises five main grounds of complaint:
 - the RFSO was improperly posted on the subscription-based MERX website instead of buyandsell.gc.ca, the federal government's free electronic tendering service;
 - the RFSO was designed to favour incumbent design firms;
 - the CMH unfairly evaluated Vintage's proposal due to its bias against sole proprietors and non-incumbents and based on an undisclosed criterion requiring bidders to submit sample work incorporating the CMH's own brand and ignoring evidence of experience in the proposal;
 - the CMH improperly advised Vintage's owner-operator during a debriefing that she should have submitted new, uncompensated design work (speculative work) incorporating the CMH's brand; and
 - the CMH only provided Vintage's owner-operator a debriefing by telephone and not, as she preferred, in person.
3. As a remedy, Vintage requests that its proposal be re-evaluated fairly and that Vintage be awarded a standing offer; or that the RFSO be cancelled and reissued under a fairness monitor with terms more advantageous to non-incumbents. Vintage also seeks its bid preparation costs and its costs incurred in bringing this complaint.
4. For the reasons that follow, the Canadian International Trade Tribunal (the Tribunal) finds that the complaint is not valid.

BACKGROUND

5. The CMH published the RFSO on October 26, 2017, on MERX, a private, subscription-based website for posting public- and private-sector tenders.
6. The RFSO contemplated awarding standing offers to up to ten bidders for work on an as-required basis for a term of two years with an option to extend for an additional two years.²
7. On October 31, 2017, Vintage's owner e-mailed the CMH requesting a free copy of the solicitation documents. The CMH refused, stating that it was entitled as a Crown corporation to publish them on MERX and was not obliged to provide them through the federal government's free electronic tendering system, buyandsell.gc.ca.³
8. Vintage filed its proposal by the bid closing date of November 16, 2017.

1. R.S.C., 1985, c. 47 (4th Supp.) [*CITT Act*].
2. Exhibit PR-2017-050-19, Exhibit 1 at 52, Vol. 1.
3. Exhibit PR-2017-050-19A (protected), Exhibit 8, Vol. 2.

9. The RFSO evaluation was based on mandatory requirements, rated requirements, and pricing.

10. The rated requirements were divided between the evaluation of a written proposal (Phase 1) and an interview (Phase 2). Phase 1 was broken down into “experience” (biography, CV, etc.), worth 20 points; “design portfolio” (samples of recent design work), worth 25 points; and “quality control” (procedures for employees and sub-contractors), worth 5 points.

11. The experience requirement at Annex 2, article 2.0(1), reads as follows:⁴

Provide a brief biography and CV of each designer in the firm, putting emphasis on related fields of expertise.

- Education, including formal design and all other relevant training
- Experience, highlighting design work for museums, art galleries and cultural institutions
- Clearly demonstrate professional skills in the following software, preferably on a Mac platform: Microsoft Office (Word, Excel, PowerPoint and Outlook) and Adobe Creative Suite CS6 and up (Photoshop, Illustrator, InDesign).

12. The design portfolio requirement at Annex 2, article 2.0(2), reads as follows:⁵

Provide a link to the Designer’s portfolio showing recent work (selected work created within the last five years). Portfolio examples should include examples of exhibition graphic design projects of similar scope as that of the Museum’s projects.

Using **Form 4 - Qualification Statement**, provide detailed information of **3 projects** drawn from the Designer’s portfolio. The projects should be of similar scope as that of the Museum’s projects, as described in **Annex 1**.

- **One (1)** project should be a book containing approximately 100 to 200 pages, and
- **Two (2)** other projects, which should have a similar scope as that of the Museum’s projects. These projects may include (but are not limited to) the following suggestions:
 - o Graphic design for print publication
 - o Print and web versions of a brochure, newsletter, report or magazine
 - o Promotional/marketing materials
 - o Original illustrations, infographics or charts
 - o Web or HTML email campaign

13. The quality control requirement at Annex 2, article 2.0(3), reads as follows:⁶

Describe the quality control procedures for internal employees as well as for any work provided by subcontractors.

Some of the procedures we are looking for are how the Designer intends to:

- keep the project on time
- stay within budget
- keep track of rounds of revisions

4. Exhibit PR-2017-050-01 at 21, Vol. 1.

5. *Ibid.*

6. *Ibid.* at 21-22.

- incorporate design revisions
 - keep client apprised of any questions or changes
 - ensure project continuity in the event of employee absences
 - proofread in both official languages
14. To obtain an interview, bidders needed to obtain at least 35 out of 50 points on their written proposal. To be evaluated on pricing (Phase 3), they needed 14 out of 20 points on their interview.⁷
15. All proposals were evaluated by four evaluators who individually assessed each proposal and then collectively reached consensus scores.⁸
16. Vintage's proposal met the mandatory requirements but did not proceed past the evaluation of its written proposal because it did not receive the minimum required points to advance to Phase 2.
17. The CMH notified Vintage on January 25, 2018, that it would not be awarded a standing offer. Vintage's owner requested an in-person debriefing, but the CMH only agreed to one by phone, which took place on February 3, 2018.
18. Vintage's owner alleges that the CMH informed her during the debriefing that she was unsuccessful because none of her portfolio pieces met the Museum's requirements that the samples demonstrate skill presenting the Museum's brand.
19. On February 5, 2018, Vintage filed this complaint with the Tribunal.
20. On March 5, 2018, Orkestra Marketing Inc. (Orkestra), one of the successful bidders on the RFSO, sought leave to intervene, which was granted on March 7, 2018.
21. The CMH filed its Government Institution Report (GIR) on March 15, 2018.
22. Vintage filed its comments on the GIR on March 22, 2018. Orkestra filed its comments on the GIR on March 27, 2018.

TRADE AGREEMENTS

23. Crown corporations are covered institutions under the terms of the *Canadian Free Trade Agreement*,⁹ as are graphic and web design services procured at a minimum value of \$500,000.¹⁰ Accordingly, the *CFTA* is applicable to the present RFSO.

7. Exhibit PR-2017-050-19, Exhibit 1 at 59, Vol. 1.

8. Exhibit PR-2017-050-19A (protected), Exhibit 7, Vol. 2.

9. *Canadian Free Trade Agreement*, online: Internal Trade Secretariat <<https://www.cfta-alec.ca/wp-content/uploads/2017/06/CFTA-Consolidated-Text-Final-Print-Text-English.pdf>> (entered into force 1 July 2017) [*CFTA*].

10. Although the RFSO did not state an estimated procurement value, the CMH did not argue in this proceeding that the Tribunal lacked jurisdiction because the monetary threshold was not met.

ANALYSIS

24. 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* specifies that the Tribunal must determine whether the procurement was conducted in accordance with the requirements set out in the applicable trade agreements, which in this case is the *CFTA*.¹¹

Whether the RFSO Should Have Been Posted on Buyandsell.gc.ca Instead of MERX

25. Although this was not a ground of Vintage's initial complaint, the CMH raised in its GIR that Vintage had objected to the RFSO being posted to MERX instead of buyandsell.gc.ca, given the cost of acquiring a subscription to access tender documents at the former's website.

26. Vintage ultimately obtained a copy from MERX and did not pursue the issue at that time.

27. A complainant has 10 working days from the date on which it first becomes aware, or reasonably should have become aware, of its ground of complaint to either object to the government institution or file a complaint with the Tribunal. If a complainant objects to the government institution within the designated timeframe, the complainant will have 10 working days to file a complaint with the Tribunal after it has actual or constructive knowledge of the denial of relief by the government institution.¹²

28. As Vintage did not raise any objection with the Tribunal within 10 days of the CMH refusing its request that the RFSO be posted on buyandsell.gc.ca or otherwise freely supplied to her, this could not be considered a timely ground of complaint, even had it been raised in the complaint.

29. Nevertheless, it is worth noting that the CMH's duties under the *CFTA* require, among other things, that:

- it "shall publish a tender notice for each covered procurement on one of the tendering websites or systems designated by its Party" (Article 506(1)), i.e. buyandsell.gc.ca, which is the government of Canada's official electronic tendering service under the trade agreements.¹³
- "[a]ll tender notices shall be available to suppliers free of charge";¹⁴ and
- it "shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders."¹⁵

Whether the RFSO's Requirements Discriminated in Favour of Incumbents

30. Vintage's owner alleges that the RFSO contains terms revealing a bias against sole proprietors and non-incumbents. She observes that article 4.0 of Part 2 requires that bidders "[p]rovide information detailing your experience and qualifications, including examples of the most recent contract you worked on relevant to this type of project." She argues that this clause is prejudicial to a company without prior work experience

11. *Canadian International Trade Tribunal Procurement Inquiry Regulations*, S.O.R./93-602 [*Regulations*].

12. Section 6 of the *Regulations*.

13. Article 506(1) of the *CFTA*. The CMH did not submit any evidence of MERX being designated by Canada as a tendering website or system for Crown corporations.

14. Article 506(5) of the *CFTA*.

15. Article 509(7) of the *CFTA*.

with the CMH. She alleges of the RFSO generally that “[i]t is implied throughout this document that one should be able to have design examples like the type of work that is done at the museum”;¹⁶ and as such it “was constructed specifically to retain current suppliers and not really add unless someone had previous museum portfolio pieces within the last two years”.¹⁷ She concludes that a “small company would not have a chance unless they either were a subcontractor and had examples or had worked for one of our National museums”¹⁸

31. The CMH argues that any complaints about the terms of the RFSO itself are time-barred because they were not raised within 10 working days of the publication of the RFSO.

32. The Tribunal’s case law confirms that objections to the terms and requirements of solicitation documents must be raised within 10 working days of their publication—suppliers may not simply wait until the results of a procurement competition are in before raising an objection.¹⁹ No such objections were made within 10 working days of the publication of the RFSO. Therefore, this ground of complaint is untimely.

33. Regardless, even if the ground of complaint were timely, the Tribunal’s case law makes clear that government institutions have a broad discretion to define experience requirements in procurements so long as they constitute legitimate operational requirements. The Tribunal has explained the following:²⁰

... a procuring entity is entitled to express any real and reasonable needs that it may have and is under no obligation to compromise its legitimate operational requirements to accommodate a bidder’s particular corporate circumstances.

... there is not necessarily anything inherently discriminatory in the tendering procedures where bidders are on an unequal footing going into the bidding process. . . . competitive advantages for certain suppliers could be created as a result of incumbency or any number of other business factors. Thus, if a bidder is at a disadvantage, it does not necessarily follow that the tendering procedures used by PWGSC are discriminatory. For this reason, the fact that the requirement for a specific type of equipment is onerous and could be more burdensome for certain potential suppliers than others is not sufficient to conclude that the tendering procedures are discriminatory.

34. Article 503(5)(f) of the *CFTA* prohibits “requiring prior experience if not essential to meet the requirements of the procurement”. The RFSO rated requirements provided that portfolio samples of recent design work “should include examples of exhibition graphic design projects of similar scope as that of the Museum’s projects”. This provision does not render a proposal non-compliant for submitting non-museum pieces. It only indicates that prior experience in projects of similar scope may have received higher scores. Accordingly, this aspect of the point-rated design criteria did not constitute a requirement of prior

16. Exhibit PR-2017-050-01 at 66-67, Vol. 1.

17. Exhibit PR-2017-050-22, Vol. 1.

18. *Ibid.*

19. *IBM Canada Ltd. v. Hewlett Packard (Canada) Ltd.*, 2002 FCA 284 (CanLII) at paras. 20 and 28; *Futura Workwear Safety Tech Inc.* (7 June 2017), PR-2016-011 (CITT) at para. 13; *Primex Project Management Ltd.* (22 August 2002), PR-2002-001 (CITT) at 10.

20. *Almon Equipment Limited v. Department of Public Works and Government Services* (3 January 2012), PR-2011-023 (CITT) at paras. 27-28. See also *Air Tindi Ltd.* (8 September 2011), PR-2011-026 (CITT) at para. 18 (refusing to initiate inquiry because government institution was “entitled to express any real and reasonable needs that it may have had”) and *3775356 Canada Inc.* (15 August 2011), PR-2011-018 and PR-2011-019 (CITT) at para. 21 (refusing to initiate inquiry based on unsupported allegation of discrimination against small businesses and based on right of procuring entity to establish reasonable parameters of procurement).

experience in CMH projects.²¹ The complainant submitted no evidence or reasons for the Tribunal to conclude that this was not a legitimate operational requirement of the CMH. Indeed, the indication that points would be allocated, under the design portfolio requirement, to bids for providing examples of projects similar in scope to past projects of the CMH is a relevant barometer for the scope of expected future work requirements.

35. Accordingly, the Tribunal finds that this ground of complaint is not valid.

Whether the CMH's Evaluation Demonstrated Bias against Sole Proprietors and Non-Incumbents

36. Vintage's owner alleges that the evaluation of her proposal demonstrated bias against sole proprietors and non-incumbents. She notes that one of the evaluators deducted points under the quality control heading due to the fact that only one person would be able to review documents. She describes the evaluators' comments regarding her portfolio samples as unjustified and "petty", a pretextual veneer for their bias. She challenges the expertise of one of the evaluators (who also acted as the CMH contact representative for the procurement) in assessing graphic design, based on his representation that he was only "the procurement person". She spends considerable time objecting to the nature of the debriefing, which she felt was rushed, one-sided and too focused on procedures rather than substance. Finally, she argues that comparing her submitted samples to those of other bidders who submitted samples related to museum work is "like calling a banana an apple and wondering why it doesn't taste like apple crisp."²²

37. The CMH denies that the evaluators were biased. It argues that Vintage has identified no concrete evidence or examples of bias in the evaluation itself. On the contrary, it submitted confidential information relating to the evaluation in which the CMH exercised its discretion under the mandatory requirements of the RFSO in favour of allowing Vintage to participate in the procurement, demonstrating a lack of bias towards Vintage.

38. As noted above, the trade agreements afford government institutions wide discretion in setting experience requirements so long as they reflect legitimate operational needs and are not deliberately discriminatory. In particular, Article 503(5)(f) of the *CFTA* prohibits "requiring prior experience if not essential to meet the requirements of the procurement".

39. Evaluators' scores are not second-guessed by the Tribunal unless unreasonable.²³ The Tribunal has consistently held that "it will only interfere if the evaluators have wrongly interpreted the bounds of a requirement, have not applied themselves to the evaluation, have ignored vital information in the bid, have considered undisclosed criteria, or have otherwise conducted the evaluation in a way that is procedurally unfair."²⁴

40. Vintage has not, as the law requires, identified any concrete evidence of bad faith or bias, rather than mere supposition, supporting its allegation that the evaluation of its proposal was performed in a

21. If the RFSO had contained a requirement as to prior experience, this could have raised a question of compliance with Article 503(5)(f) of the *CFTA*, i.e. whether such a requirement was essential to meet the requirements of the procurement. However, as indicated, a complaint on grounds relating to the terms of the RFSO itself would have been time-barred.

22. Exhibit PR-2017-050-22, Vol. 1.

23. *High Criteria Inc v. Department of Public Works and Government Services* (16 April 2014), PR-2013-039 (CIIT) at para. 19.

24. *Ibid.*

deliberately biased manner intending to favour other suppliers over it.²⁵ Further, nothing in the scoring sheets of the individual evaluators reveals any bias.

41. Vintage disagrees with the evaluator's scores but does not identify any basis for finding them unreasonable rather than simply, in its opinion, incorrect. The CMH reasonably determined that quality control could be affected by the number of employees available at a supplier to review documents. As for the alleged lack of expertise of one evaluator, the trade agreements do not require that evaluation teams be staffed only by experts in the goods or services being procured, although some familiarity is obviously preferable.

42. Finally, while Vintage's analogy regarding the comparison of her proposal to others' is well-articulated, it is irrelevant to the fundamental issue, which is that the CMH was entitled to set its point-rated requirements as it wished. The Tribunal has long held the following:²⁶

an invitation to tender is not necessarily discriminatory if the bidders are not on an equal footing when they participate in a bidding procedure. Some competitive advantages for certain suppliers over others may arise from the fact that a company holds a contract or intellectual property rights, or from other commercial factors.

43. The fact that samples from similar projects for other museums or cultural or art institutions may have received higher scores is not by itself indicative of bias.

44. Accordingly, the Tribunal finds that this ground of complaint is not valid.

Whether Evaluation was Based on Undisclosed Criterion or Otherwise Ignored Evidence

45. Regarding points lost under the experience heading, Vintage's owner alleges that the CMH improperly deducted points because it found that Vintage was not proficient in Adobe Creative Suite or Microsoft Office. She argues this was an unreasonable finding given that these software tools are industry standard and given that she had already filed with her proposal a certification form stating that she had the software.

46. The CMH maintains that it reasonably determined that Vintage lacked the necessary experience given that the RFSO's language required proposals to "clearly demonstrate professional skills" in the above software in a submitted biography and curriculum vitae (CV).

47. The Tribunal finds that the CMH's decision was reasonable. The RFSO required the proposal to "clearly demonstrate professional skills" in a submitted biography and CV. Vintage's owner's CV does reference Adobe Creative but not Microsoft Office. Her proposal does not specifically address and substantiate experience regarding either software. The Tribunal has consistently held that to demonstrate experience, a bidder must do something more than simply state they meet the requirement.²⁷ No such evidence exists here. Further, there is no evidence that the evaluators behaved unreasonably given the heightened standard requiring bidders to "clearly demonstrate" their skills. Therefore, the Tribunal finds that this ground of complaint is not valid.

25. See, for example, *Paul Pollack Personnel Ltd. O/A The Pollack Group Canada v. Department of Foreign Affairs and International Trade* (11 January 2013), PR-2012-021 (CITT) at para. 36.

26. *Almon Equipment Limited v. Department of Public Works and Government Services* (3 January 2012), PR-2011-022 (CITT) at para. 41.

27. See, for example, *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. 26.

48. Regarding points lost under the design portfolio heading, Vintage's owner alleges that the CMH told her that her first and second portfolio pieces were unacceptable because they were not museum publications and/or did not include the CMH's own brand. She essentially argues that the CMH applied these as undisclosed criteria resulting in a lower score, even though the RFSO only required that the pieces submitted be "of similar scope as that of the Museum's projects".

49. CMH disputes that Vintage lost points because its pieces were not museum pieces, relying on the evaluators' scoring sheets. Vintage responds that the score sheets contain no time stamps and, thus, might have simply been filled out later after the complaint with the Tribunal was filed.

50. The Tribunal finds that the scoring sheets support the CMH's decision. All of the evaluation sheets contain the evaluators' individual comments in support of their individual score as well as a record of the consensus score for each of the three criteria. All but one of the evaluation sheets are dated (by hand). The score sheets also contain general instructions to reviewers providing scoring criteria, from zero points for "[n]o relevant response or simple statement of compliance with no substantiation to merit its consideration" to full points for "[r]esponse is excellent and exceeds the requirements".²⁸ In no consensus evaluation for any requirement did the complainant receive zero points.

51. While some of the evaluators' comments refer to the complainant's lack of experience regarding cultural, arts or other museum projects, this was experience specifically identified as relevant under article 2.0 of Annex 2 of the RFSO. None of the evaluators' sheets reference the complainant's lack of prior work at the CMH specifically or the lack of a sample portfolio incorporating the CMH's brands and logos. The Tribunal does not infer bad faith or bias on the part of evaluators or procurement officers absent material evidence thereof rather than mere supposition or insinuation.²⁹ Therefore, the Tribunal finds that this ground of complaint is not valid.

Whether Request to Submit Speculative Work Was Improper

52. Vintage alleges that the CMH stated during the debriefing that Vintage could have submitted speculative work in its proposal to score higher on the evaluation. Vintage cites to publications of the Registered Graphic Designers Association of Ontario and the Society of Graphic Designers of Canada opposing requests for speculative work as unprofessional.

53. The CMH denies making any such representation, stating that its representative merely stated, in response to a question from Vintage's owner as to how she could improve her chances in future government procurements, that she could develop a demo website to display a work product unconstrained by her clients' limited budgets. Vintage insists that the suggestion was with regard to creating speculative work for the CMH for this RFSO.

54. The Tribunal need not determine the exact thrust of the challenged suggestion because it is legally irrelevant. The *CFTA* contains no provision prohibiting government entities from requesting suppliers to provide speculative work. The closest provision regulating this type of conduct is Article 503(5)(f) of the *CFTA*, which provides that government entities should not design procurements "requiring prior experience if not essential to meet the requirements of the procurement". However, requiring prospective suppliers to provide speculative work is not synonymous with requiring prior experience. Moreover, this RFSO does

28. Exhibit PR-2017-050-19A (protected) at 50, Vol. 2.

29. See, for example, *Almon Equipment Limited* (19 October 2011), PR-2011-033 (CITT) at para. 14.

not, at least on its face, make prior experience providing graphic and web design services to the CMH essential. Therefore, the Tribunal finds that this ground of complaint is not valid.

Whether the CMH Should Have Provided a Debriefing in Person

55. Vintage alleges that one of the amendments to the RFSO informed bidders that in-person debriefing would be offered.

56. The CMH maintains that the terms of the RFSO and its amendments unambiguously state that the format of the debriefing is at the CMH's discretion.

57. The *CFTA* imposes the following requirement regarding debriefing:

Article 516: Transparency of Procurement Information

Information Provided to Suppliers

1. A procuring entity shall promptly inform participating suppliers of its contract award decisions, and, on the request of a supplier, shall do so in writing. Subject to Article 517, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the procuring entity did not select its tender.

58. The *CFTA* does not specify that government institutions must provide in-person debriefing.

59. Article 5.0 of Part 1 of the RFSO reads as follows:³⁰

DEBRIEFING

Debriefing shall be offered to Proponents on written request only, and provided such request is received by the Museum within (10) days from award date. These sessions can be conducted by either telephones conference or personal meeting, at the option of the Museum. Written summaries of the debriefings and evaluation scores are not provided.

60. Moreover, Question No. 12 to Addendum No. 1 of the RFSO, published before the RFSO bid closing date, reiterated that an in-person debriefing would only be "at the option of the Museum".³¹ Thus, the RFSO did not grant bidders a right to an in-person debriefing.

61. Therefore, this ground of complaint is both invalid and untimely.

DECISION

62. For the above reasons, the Tribunal finds the complaint is not valid.

COSTS

63. Normally, the successful party is entitled to its reasonable costs incurred in relation to the Tribunal's proceeding. However, the CMH did not seek its costs in the GIR. The Tribunal typically will not award costs where they are not sought.³² Therefore, the Tribunal awards no costs to either party.

30. Exhibit PR-2017-050-19, Exhibit 1 at 48, Vol. 1.

31. *Ibid.*, Exhibit 3 at 197.

32. *1091847 Ontario Ltd. v. Department of Public Works and Government Services* (27 January 2011), PR-2010-071 (CITT) at para. 38; *Foundry Networks* (16 November 2001), PR-2000-060 (CITT).

DETERMINATION OF THE TRIBUNAL

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

65. The Tribunal awards no costs to either party.

Peter Burn

Peter Burn
Presiding Member