



Ottawa, Monday, May 14, 2001

File Nos.: PR-2000-044 and PR-2000-049 to PR-2000-053

IN THE MATTER OF six complaints filed by Polaris Inflatable Boats (Canada) Ltd. under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47;

AND IN THE MATTER OF decisions to conduct inquiries into the complaints under subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

### DETERMINATION OF THE TRIBUNAL

Pursuant to subsection 30.14(2) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal determines that the complaints in file Nos. PR-2000-044, PR-2000-049, PR-2000-051, PR-2000-052 and PR-2000-053 are valid in part. The complaint in file No. PR-2000-050 relates to a solicitation that has been cancelled by the Department of Fisheries and Oceans and, therefore, will not be decided on the merits of the case.

Pursuant to subsections 30.15(2) and (3) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal recommends, as a remedy, that the requirements of the Department of Fisheries and Oceans, including those of the Canadian Coast Guard, for rigid hull inflatable boats contained in solicitation Nos. F1701-000169/A, F5575-000232/A, F2599-002425/A and F3036-00C032/A be reissued according to the provisions of the applicable trade agreements.

The Canadian International Trade Tribunal further recommends that the Department of Public Works and Government Services and the Department of Fisheries and Oceans not exercise the options in the contracts issued to Zodiac Hurricane Technologies Inc. as a result of solicitation Nos. F3059-00AP01/A and F1808-000171/A and, instead, issue new solicitations for the rigid hull inflatable boats covered by the said options in accordance with the applicable trade agreements.

Pursuant to subsection 30.16(1) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal awards Polaris Inflatable Boats (Canada) Ltd. the reasonable costs that it incurred in filing and proceeding with the six complaints.

Zdenek Kvarda  
Zdenek Kvarda  
Presiding Member

Michel P. Granger  
Michel P. Granger  
Secretary

Date of Determination and Reasons: May 14, 2001

Tribunal Member: Zdenek Kvarda

Investigation Manager: Randolph W. Heggart

Investigation Officer: Paule Couët

Counsel for the Tribunal: Michèle Hurteau

Complainant: Polaris Inflatable Boats (Canada) Ltd.

Interveners: MetalCraft Marine Incorporated  
Zodiac Hurricane Technologies Inc.

Government Institution: Department of Public Works and Government Services

Counsel for the Government Institution: Christianne M. Laizner  
Susan D. Clarke  
Ian McLeod



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IN THE MATTER OF six complaints filed by Polaris Inflatable Boats (Canada) Ltd. under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47;

AND IN THE MATTER OF decisions to conduct inquiries into the complaints under subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

## STATEMENT OF REASONS

### COMPLAINTS

On December 29, 2000, and January 4, 2001, Polaris Inflatable Boats (Canada) Ltd. (Polaris), a firm located in British Columbia, filed six complaints with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> concerning solicitation Nos. F1808-000171/A, F5575-000232/A, F2599-002425/A, F3036-00C032/A, F3059-00AP01/A and F1701-000169/A by the offices of the Pacific, Ontario, Quebec and Atlantic Regions of the Department of Public Works and Government Services (the Department) for the supply of six- and seven-metre rigid hull inflatable boats (RHIBs) for the Department of Fisheries and Oceans (DFO) and its constituent, the Canadian Coast Guard (CCG). Together, these solicitations are for the supply of 12 RHIBs in fiscal year 2000-2001 and up to 29 additional RHIBs during the following two fiscal years.

Polaris alleged that, by issuing so many solicitations concurrently and by not allowing sufficient time for bid formulation and delivery of the RHIBs, the Department and the DFO have structured the above-noted solicitations so as to avoid competition and benefit a single supplier, Zodiac Hurricane Technologies Inc. (Zodiac). Polaris also made a number of allegations with respect to each of the above-mentioned solicitations, which are set out below.

Polaris requested, as a remedy, that the Department consult with qualified suppliers to establish acceptable time frames for solicitation responses and for the construction and delivery of the RHIBs. Polaris also requested that the Department limit the current contracts to the supply of those vessels that are currently needed and reissue fair solicitations allowing for realistic response and construction times for any remaining RHIBs required.

On January 4, 2001, the Tribunal informed the parties that the five complaints filed on December 29, 2000, had been accepted for inquiry, as each one 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*.<sup>2</sup> On January 10, 2001, the Tribunal, for the same reasons, did likewise for the sixth complaint filed on January 4, 2001. On January 4, 2001, the Tribunal issued five orders postponing the award of any contract in relation to the first five solicitations until the Tribunal determined the validity of the complaints. On January 8, 2001, the Department informed the Tribunal, in writing, that a contract in the amount of \$323,512, plus GST, had been awarded to Zodiac as a result of solicitation

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

No. F1808-000171/A. On January 9, 2001, the Tribunal issued a postponement of award order for solicitation No. F1701-000169/A. On January 10, 2001, the Tribunal informed the parties that MetalCraft Marine Incorporated (MetalCraft) had been granted intervener status in all six complaints. On January 15, 2001, the Department wrote the Tribunal certifying that the procurement in solicitation No. F3059-00AP01/A was urgent and that a delay in awarding the contract would be contrary to the public interest. Accordingly, on January 16, 2001, the Tribunal rescinded its postponement of award order in relation to this solicitation. On January 26, 2001, the Tribunal informed the parties that Zodiac had been granted intervener status in all six complaints. On February 20, 2001, the Department filed six Government Institution Reports (GIRs) with the Tribunal, one for each solicitation, in accordance with rule 103 of the *Canadian International Trade Tribunal Rules*.<sup>3</sup> On March 5, 2001, MetalCraft filed comments on the GIR with the Tribunal. On March 26, 2001, Polaris filed comments on the GIRs with the Tribunal.

On April 11, 2001, the Tribunal informed the parties, in writing, that a hearing would not be necessary to decide the matter. The Tribunal disposed of the complaints on the basis of the information on the record.

## **PROCUREMENTS**

### **SOLICITATION NO. F1808-000171/A (PR-2000-044)**

This solicitation concerns a requirement of the DFO and the CCG Pacific Region for the supply of four seven-metre RHIBs in fiscal year 2000-2001, with options to procure up to five additional boats in fiscal year 2001-2002. The RHIBs are intended to be used in search and rescue activities on Canada's West coast.

Polaris alleged that, contrary to the provisions of the trade agreements, this solicitation gives obvious unfair advantage to a single Western supplier because it was originally limited to suppliers in Western Canada. Polaris further alleged that the mandatory requirement that the bidder be registered to the ISO 9002,<sup>4</sup> Quality systems – Model for quality assurance in production, installation and servicing (ISO 9002), is too restrictive. Polaris also alleged that to ask bidders on a mandatory basis to offer boats having Safety of Life at Sea (SOLAS) approval, without allowing bidders sufficient time to obtain certification and without providing the industry with advance notice of this requirement, is unfair and contrary to the trade agreements. Furthermore, Polaris alleged that, in this instance, the requirement for SOLAS certification was not justified because such certification was not required in the Request for Proposal (RFP), solicitation No. F5575-000232/A (file No. PR-2000-049).

## **PROCUREMENT PROCESS**

On September 29, 2000, the Department's Pacific Region office received a requisition from the DFO/CCG for the procurement of two RHIBs. This requirement was increased on November 15, 2000, to four RHIBs, with options to procure up to five additional boats over the next fiscal year.

In early November 2000, the Marine Inspection and Technical Services (I&TS) Branch of the Department completed the drafting of Specification 00-RHIB-01 (the Specification). The Specification was based on requirements identified by the DFO/CCG in consultation with the Department. According to the GIR, the Web sites of all known suppliers, including that of Polaris and of the interveners, were reviewed

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3. S.O.R./91-499.

4. International Organization for Standardization.

for information pertinent to the RHIB requirements of the DFO/CCG. However, none of the potential suppliers were directly contacted by I&TS.

According to the GIR, the Specification was further defined and modified for use in the Pacific, Central and Quebec Regions in order to describe a particular configuration of RHIB to be used exclusively as a search and rescue and/or shipborne emergency boat.

On November 29, 2000, a Notice of Proposed Procurement (NPP) and an RFP for this solicitation were posted on Canada's Electronic Tendering System (MERX). The NPP identified the procurement as being subject to the *Agreement on Internal Trade*.<sup>5</sup> The NPP also indicated that the closing date of the solicitation was December 19, 2000. Polaris downloaded the RFP from MERX on November 29, 2000. On December 1, 2000, the Department issued an amendment to the RFP to add the sourcing strategy clause that had been omitted, by mistake, from the original RFP. On December 1, 2000, the Department issued a new version of the RFP, which Polaris received the same day, that mistakenly included the word "Western" in the sourcing strategy clause.

On December 14, 2000, MetalCraft faxed a letter to the Department alleging that, because the Department had issued four RFPs with a closing date of December 19, 2000,<sup>6</sup> there was insufficient time to respond. On December 14, 2000, after the close of business, Polaris faxed a letter to the Department in which it objected to the solicitation being restricted to suppliers in Western Canada and requested that the solicitation be rewritten and reissued with a sufficient bidding period.

On December 15, 2000, the Department responded, by facsimile, to Polaris's objection letter indicating that the procurement process would continue with the same bid closing date, because the DFO's requirement was for delivery of RHIBs prior to the end of the fiscal year. Therefore, it was considered necessary to ensure that the construction period and delivery dates were not jeopardized by a delay in the bid closing date and subsequent contract award. Polaris was also notified that the inclusion of the word "Western" in the sourcing strategy clause was a typographical error that had been amended that same day to ensure that the requirement was not limited to suppliers based in Western Canada.

On December 15, 2000, MetalCraft faxed a letter to the Department objecting to the mandatory requirement for ISO 9002 registration. That same day, the Department, responding in writing to MetalCraft's objection, removed the mandatory requirement for ISO 9002 registration. All bidders were informed of the change. On December 18, 2000, MetalCraft wrote the Department claiming that the short time allowed for the construction of the vessels was unfair. The Department responded to the letter on January 3, 2001.

The Department received one proposal only, from Zodiac, for this solicitation. The proposal was evaluated on December 21, 2000. During the evaluation, the DFO/CCG technical authority received telephone calls indicating that two of the boats in his charge had just been damaged and were now out of service.

On December 22, 2000, the Department received a letter from the DFO/CCG technical authority indicating that, in light of the damage to the boats on December 21, 2000, the ability to conduct search and

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5. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<http://www.intrasec.mb.ca/eng/it.htm>> [hereinafter AIT].

6. The Department noted that only one other solicitation (F5575-000232/A, erroneously referred to as solicitation no. F3036-00C032/A (PR-2000-051) in the GIR) had a December 19, 2000, closing date.

rescue operations was now seriously compromised, making the requirements for new boats or the repair of one of the boats urgent. On January 4, 2001, a contract was awarded to Zodiac. On January 5, 2001, the Department's Pacific Region office was informed of the Tribunal's postponement of contract award order of January 4, 2001.

## **POSITION OF PARTIES**

### **Department's Position**

With respect to Polaris's allegation that the procurement was improperly restricted to suppliers in Western Canada, the Department submitted that the inclusion of the word "Western" in the sourcing strategy clause was a typographical error that it noted and removed immediately upon receipt of Polaris's objection. In addition, the Department submitted that Polaris, being a supplier from Western Canada, does not have a *bona fide* complaint in this respect.

With respect to the ISO 9002 registration issue, the Department submitted that MetalCraft filed an objection with the Department about this requirement, whereas Polaris first raised the matter with the Tribunal notwithstanding that the Department had removed this mandatory requirement and notified all bidders accordingly.

With respect to the mandatory requirement for SOLAS certification, the Department submitted that the RHIBs being procured in this instance were to be used in search and rescue and/or shipborne emergency boat applications. Accordingly, SOLAS approval is a necessary mandatory requirement. Furthermore, the Department submitted that, for several years, Polaris has been aware of the requirement for, and of the procurement by CCG of, SOLAS-approved seven-metre RHIBs. Therefore, the Department argued, Polaris has had ample opportunity to obtain SOLAS certification for its seven-metre boats. The Department also submitted that the requirement for SOLAS approval in the circumstances was not only reasonable but also expected. With respect to the fact that the SOLAS requirement does not exist on all the DFO's requirements for RHIBs and is, therefore, allegedly unjustified, the Department submitted that the absence of such mandatory requirement for SOLAS certification in solicitation No. F5575-000232/A has no bearing on or relevance to the case at hand nor is it pertinent to the issue. While it can be said that the boats required in the solicitations are "similar" in that they are all RHIBs, the Department submitted that the solicitations are for boats with different uses and requirements. The Department submitted that SOLAS certification is a necessary requirement for search and rescue boats and shipborne emergency boats to be used for life-saving purposes. However, the Department argued that the boat required in the Atlantic Region is not a rescue boat, but rather it is to be used primarily for the monitoring and surveillance of fisheries.

In addition, the Department submitted that the DFO/CCG requires SOLAS approval on boats not specifically destined for rescue activity, but which are placed in a pool of boats that will be taken out for applications requiring SOLAS approval. The Department also indicated that, for search and rescue and/or shipborne emergency boat applications, not only does the DFO/CCG require SOLAS approval, but that the International Marine Organization (IMO) and the Transport Canada Marine Safety Branch (TCMSB) also require this certification.

With respect to the time frame to present proposals, the Department submitted that the solicitation afforded 21 days for the presentation of a proposal. The Department submitted that this time period was sufficient and reasonable in view of the nature and complexity of the requirement and the annual operational requirements of the DFO/CCG. Such a time frame, the Department argued, exceeds that stated in the

internal policy.<sup>7</sup> Furthermore, the Department submitted that it acted reasonably when it considered the requests for time extension and granted extensions to the bidding period in three other related solicitations. However, Polaris's objection with respect to the bid closing date in this solicitation was made just a few days before the bid closing date. Moreover, the Department argued that Polaris never requested that the bid period be extended, but that the solicitation be reissued with a new bidding period and delivery schedule. As Polaris did not identify its concerns to the Department within a reasonable time frame, the Department argued that, under those circumstances, it was both reasonable and necessary for it to advise that an extension to the bid closing date could not be granted.

With respect to the time frame allotted for delivery, the Department argued that the 90-day period allotted for delivery was reasonable and exceeded by 30 days the time period for delivery of an RHIB under Polaris's previously held National Master Standing Offer (NMSO), which included similar vessels. Furthermore, the Department held that this time period afforded maximum time to build these vessels given the DFO's annual operational requirements. The Department submitted that the posting of several solicitations for RHIBs in different regions was fair and open and provided suppliers with the possibility of choosing to bid on one or more solicitations. Finally, the Department rebutted Polaris's allegation that the procurements were structured in such a way as to favour one supplier. The Department submitted that, in reviewing Polaris's Web site, Polaris could apparently meet the RFP's technical requirements, with some minor modifications.

### **Zodiac's Position**

On January 23, 2001, Zodiac requested intervener status on the basis that Polaris's allegations that the specifications, requirements and certifications set out in the solicitation were designed to conform to a specific Zodiac product is unsupported by the facts. Zodiac submitted that the specifications for boat dimensions and for the general features are not unique to Zodiac products and, in fact, that numerous features are not currently standard to any of its products.

In its submission of March 2, 2001, Zodiac endorsed the Department's statement of facts and submissions as set out in the GIR. It also requested that a public hearing take place on the merits of the case.

### **Polaris's Position**

Polaris submitted that it is incomprehensible that the Department, whose function and responsibility pertain solely to the procurement of material, would not directly contact potential suppliers for diverse technical information, production capabilities, existing workloads, etc., and would instead simply review existing Web sites.

Polaris submitted that, although the Department stated in the GIR that every effort was made to develop a generic specification that was flexible and permitted options to provide for the participation of a maximum number of potential suppliers, this solicitation was in reality "one of several which were issued almost simultaneously (akin to an avalanche) and which included a deluge of requirements."

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7. *Supply Manual* 7B.210 (12/05/00) states: "The setting of a bid closing date must take into account the level of complexity and the advertising medium required. Sufficient time must be allowed for a supplier to obtain the bid solicitation, and any additional material if applicable, and prepare and submit a bid."  
7B.211 (12/05/00) states: "For procurements that are not subject to NAFTA or WTO-AGP, (whether publicly advertised or not) the bidding period should not be less than fifteen (15) calendar days either from the date the requirement is posted publicly or, in the case of the procurement not publicly advertised, from the date the bid solicitations are released."

With respect to the “Western Suppliers” clause in the original RFP, Polaris queried whether the clause would have remained unchanged had it not been challenged. In addition, Polaris wondered how a whole clause could be the result of a typographical error.

With respect to the SOLAS requirement, Polaris submitted that the Department had never formally informed potential suppliers of this requirement before publishing the current RFP. Polaris submitted that, in this context and given the Department’s knowledge that only certain suppliers had such certification, the Department, by setting out a short period in which to bid, clearly indicated which supplier it expected to bid. Furthermore, Polaris submitted that it does not dispute that SOLAS certification may be required for rescue boats. However, Polaris questioned why identical vessels destined for the same use sometimes required SOLAS certification and sometimes did not, as was the case for solicitation No. F5575-000232/A for RHIBs for the Atlantic Region.

On the time frame issue, Polaris submitted that insufficient time was provided to properly respond to all solicitations, to obtain necessary certification and to supply the vessels by the requested dates. Polaris submitted that the mere fact that only one out of four potential suppliers responded to the solicitation proves the point. In addition, Polaris submitted that for the Department to invoke the AIT to exonerate itself rather than recognize the problem with the time frames is also problematic. Furthermore, Polaris submitted that, as a matter of course, manufacturing time and supply dates are influenced by existing workloads, staff, materials and time. Polaris submitted that, when a demand for supply is imposed in such a manner as to create an impossibility for a smaller manufacturer to respond to a solicitation, the smaller manufacturer is excluded from the competition to the benefit of the larger competitor. When this happens consistently over several years, Polaris submitted, a major problem exists.

Polaris objected to the Department’s statement that, because it had the audacity to challenge the Department and the manner in which it conducts its affairs, Polaris’s current actions were made in bad faith. Polaris asserted that the Department continues to work against Polaris, MetalCraft and others, as well as against fair competition, to the main benefit of a single supplier.

Polaris submitted that the award of a contract to Zodiac, even though the Tribunal had issued a postponement of award order in the matter, is a clear indication of the Department’s bias in favour of Zodiac. According to Polaris, in the circumstances, it might have taken less time and been more cost-effective to repair the two boats than to construct two new ones. If the two vessels were really needed, Polaris added, it would have been more reasonable, if not more credible, to amend the award to two vessels instead of awarding a contract for up to nine boats over the next two-year period for a value close to \$1 million.

Polaris indicated that it shares the views expressed by MetalCraft in its submissions to the Tribunal and adopts these views as part of its own submissions.

### **MetalCraft’s Position**

MetalCraft indicated that it disagreed with a number of paragraphs of the GIR. Specifically, MetalCraft submitted that there is no evidence to support the Department’s assertion that the Department accessed its Web site for information. In any event, MetalCraft submitted that viewing Web sites is insufficient research to determine what suppliers can offer. MetalCraft added that the Department made no effort to include it or its RHIBs in any of the development stages of this RFP. In fact, MetalCraft submitted that it was excluded from those consultations because the Department was only interested in Zodiac’s products.



MetalCraft submitted that the DFO/CCG does not require SOLAS approval on boat purchases for search and rescue applications. In fact, MetalCraft submitted, it has built several search and rescue boats for the DFO/CCG that have not required SOLAS approval. Concerning the IMO resolution, MetalCraft submitted that the resolution is a guideline “for fast rescue boats.” The guideline does not require SOLAS approval or certification, but merely recommends that fast rescue boats comply with certain SOLAS requirements.

MetalCraft further submitted that the time frame to prepare proposals for this RFP was not sufficient, taking into consideration that several RFPs concerning a number of boats had to be addressed simultaneously. As a result, MetalCraft submitted that only the largest supplier could realistically bid on the majority of these RFPs. There was a whole year available to issue the RFPs, but MetalCraft submitted that the Department had waited until the last minute, thereby unfairly favouring one supplier.

Furthermore, MetalCraft submitted that 90 days to construct boats is not enough, considering the number of boats to be built simultaneously. In addition, MetalCraft argued that the Department’s assertion that this construction period is adequate, given that the construction period specified in the former NMSOs for RHIBs was shorter, is irrelevant in the circumstances. The NMSO required that the successful bidder maintain an inventory of vessels, which is not the case here.

Commenting on the Department’s assertion that “the issuance of individual RFPs was the preference” of Polaris, MetalCraft submitted that the RFPs at issue are more accurately described as simultaneous RFPs, not individual ones.

#### **SOLICITATION NO. F5575-000232/A (PR-2000-049)**

This solicitation concerns a requirement of the DFO Atlantic Region for the supply of one 7.00- to 7.49-metre gasoline-powered outboard RHIB constructed of either glass-reinforced plastic or aluminum, in accordance with the specification to be delivered in fiscal year 2000-2001, with an option to purchase up to 12 additional boats by March 31, 2003. The RHIBs are intended to be used in surveillance and enforcement activities of the DFO on Canada’s East coast to ensure the protection of Canada’s coastline fisheries. This solicitation does not require SOLAS certification.

Polaris alleged that, considering the complexity of the requirements, the allotted time for submitting a response to the RFP and for constructing and delivering the boat, by March 31, 2001, does not allow for the participation of more than one potential supplier. Polaris also stated that it is “noteworthy” that the solicitation at issue does not contain a requirement for SOLAS certification, although the procurement is to supply the DFO Eastern customers with boats similar to those currently being solicited elsewhere.

#### **PROCUREMENT PROCESS**

On November 15, 2000, the Department’s Atlantic Region office received a requisition from the DFO for this requirement. On November 28, 2000, an NPP and an RFP were posted on MERX for this requirement. The NPP identified the procurement as being subject to the AIT. The NPP also identified the closing date of the solicitation as December 19, 2000. On November 28, 2000, Polaris downloaded the RFP from MERX. On December 14, 2000, MetalCraft sent a letter to the Department alleging that, because of the issuance of several RFPs by the Department, only one company, Zodiac, would be able to respond. That same day, Polaris sent an objection letter to the Department alleging that the timing of both the issuance and the close of the four RFPs, the volume of information required and the minimal time frame afforded made it impossible for Polaris to respond. Therefore, Polaris requested that the solicitation be reissued to provide

reasonable response and delivery times. On December 15, 2000, the Department answered both Polaris and MetalCraft, indicating that the closing date of the solicitation would not be changed. The Department received three proposals by bid closing date, including one from Zodiac and one each from two other bidders. No proposal was received from Polaris or MetalCraft. According to the GIR, the initial evaluation of the proposals determined that two proposals were compliant with the mandatory requirements of the RFP.

## POSITION OF PARTIES

### Department's Position

In reply to Polaris's allegation that the time afforded potential suppliers to bid on this solicitation was unreasonable considering the complexity and extent of the requirement, the Department submitted that the 22 days afforded bidders to prepare a response in this instance was fair, sufficient and reasonable in view of the nature of the requirement and the annual operational requirements of the DFO, and in accordance with the AIT. In fact, the Department argued, three bidders responded to the RFP and submitted proposals within the time frame provided. The Department further submitted that the 22-day time frame afforded bidders in this instance complies with internal policy (*Supply Manual*, Articles 7B.210 and 211) and is reasonable in the context of the other requirements for RHIBs.<sup>8</sup>

The Department submitted that, although Polaris downloaded the RFP from MERX on November 28, 2000, it did not complain about the time for bidding until December 14, 2000, two working days before bid closing. At that time, Polaris did not request that the bidding period be extended, but rather that the solicitation be reissued with a new bidding period and delivery schedule. This approach, the Department submitted, would have significantly delayed the DFO's requirement. In the Department's submission, Polaris should have conveyed its objection about the time frames in a more timely manner.

With respect to Polaris's allegation that the time frame allotted for delivery of the RHIB was insufficient for the construction of the boat, the Department submitted that the 90-day period provided exceeded by 30 days the time for delivery of the RHIBs under Polaris's previously held NMSO and afforded the maximum time possible in the context of the annual operational requirements of the DFO. Furthermore, the Department submitted that Polaris's Web site indicates that Polaris can manufacture an RHIB of the kind described in the specification, in the time frame provided in the RFP. The Department added that Polaris itself, in the context of industry consultation conducted during the period between November 1999 and the end of January 2000, indicated that the approximate construction time for a 24-foot (7-metre) RHIB is two to three months.

8. This note gives the dates on which the solicitations were posted on MERX and the dates, amended as appropriate, on which the solicitations closed. The number of days each solicitation was open includes the first and the last day of each period.

| <b>Solicitation No.</b> | <b>Solicitation posted</b> | <b>Solicitation closed</b> | <b>Days open</b> |
|-------------------------|----------------------------|----------------------------|------------------|
| F5575-000232/A          | November 28, 2000          | December 19, 2000          | 23               |
| F1808-000171/A          | November 29, 2000          | December 19, 2000          | 22               |
| F2599-002425/A          | December 1, 2000           | January 19, 2001           | 51               |
| F1701-000169/A          | December 18, 2000          | January 4, 2001            | 18               |
| F3036-00C032/A          | December 8, 2000           | January 12, 2001           | 36               |
| F3059-000AP01/A         | December 11, 2000          | January 12, 2001           | 33               |

With respect to Polaris's observation about the absence of a requirement for SOLAS certification in this solicitation and the conclusion derived therefrom that this requirement found in other solicitations for similar boats must therefore be unjustified, the Department submitted that the absence of such a requirement here has no relevance to the requirement for SOLAS certification in other solicitations. The Department argued that Polaris erred in stating that this solicitation required RHIBs "similar" to those solicited in other RFPs. Although all the boats solicited are RHIBs, their similarities end there and their intended use and stated requirement are vastly different, certain RHIBs being for search and rescue, life-saving purposes, while other RHIBs, such as those required in this instance, are to be used in the monitoring and surveillance of fisheries.

### **Zodiac's Position**

Zodiac endorsed the Department's position as set out in the GIR.

### **Polaris's Position**

Polaris reiterated the position that it took in file No. PR-2000-044 above.

### **MetalCraft's Position**

MetalCraft, in the main, repeated the submissions that it made in connection with file No. PR-2000-044. In addition, it submitted that releasing several RFPs at the same time is an attempt to impede competition and unfairly favour one supplier in much the same way as was attempted by the issuance of a single NMSO. MetalCraft argued that the issuance of a number of RFPs concurrently has the same effect as a single NMSO. In this context, MetalCraft queried how many suppliers managed to bid on all RFPs.

### **SOLICITATION NO. F2599-002425/A (PR-2000-050)**

This solicitation concerns a requirement of the DFO Ontario Region for the supply of one seven-metre RHIB, complete with the mounting of government supplied outboard motors, all ancillary equipment and one boat trailer, plus a priced option for up to two additional identical boats to be delivered during the period from December 2000 to March 31, 2002.

The RHIBs were intended to be used by the DFO for use in search and rescue activities on Lake Ontario.

Polaris alleged that this procurement suffered from the same deficiencies as those that it identified previously in relation to solicitation No. F1808-000171/A (PR-2000-044).

### **PROCUREMENT PROCESS**

On December 1, 2000, an NPP and RFP were posted on MERX for this solicitation. The original bid closing date was December 19, 2000, which date, at the request of the bidders, was extended to a final closing date of January 19, 2001. In addition, the delivery date for the RHIBs was extended from March 31, 2001, to April 30, 2001. The Department indicated that such extension of the delivery date was possible because a later delivery date was in accordance with the DFO/CCG's operational requirements, as there would normally not be an ice break-up in Lake Ontario until the month of April, which would allow for the use of the boat.

On January 18, 2001, the solicitation was cancelled. According to the GIR, this decision was based on funding restrictions and unexpected spending priorities on the part of the DFO, which are unrelated to this procurement.

## **POSITION OF PARTIES**

### **Department's Position**

In light of the fact that this solicitation was cancelled on January 18, 2001, and considering that this complaint raised grounds similar to those raised in file No. PR-2000-044, the Department did not provide a full GIR in the matter. However, the Department submitted that any new solicitation for the procurement of RHIBs will be conducted while taking into consideration any recommendations made by the Tribunal in its determination in file No. PR-2000-044, and any relevant recommendations of the Tribunal emanating from any of the other related complaints, i.e. file Nos. PR-2000-049, PR-2000-051, PR-2000-052 and PR-2000-053. For the above reasons, the Department requested that this complaint be dismissed.

### **Zodiac's Position**

Zodiac endorsed the Department's position as set out in the GIR.

### **Polaris's Position**

Polaris reiterated the position that it took in file No. PR-2000-044 above.

## **SOLICITATION NO. F3036-00C032/A (PR-2000-051)**

This solicitation concerns the supply of two seven-metre RHIBs in fiscal year 2000-2001, with an option to purchase up to three additional boats by March 31, 2003. The RHIBs are required by the DFO/CCG for use in search and rescue activities and shipborne emergency boat applications in the Gulf of St. Lawrence and the St. Lawrence River and are to be shipped to the City of Québec, Quebec.

Polaris specifically alleged, in addition to the insufficient time to bid and to deliver the vessels, that the RFP for this solicitation contains an unjustified mandatory requirement that the boats be SOLAS approved, and this without providing the industry with advance notice of such a requirement.

## **PROCUREMENT PROCESS**

On November 21, 2000, the Department's Quebec Region office received a requisition from the DFO for the above-stated requirement. An NPP and RFP for this requirement were posted on MERX on December 8, 2000. The NPP identified the procurement as being subject to the AIT and also identified the closing date of the solicitation as December 27, 2000.

On December 14, 2000, MetalCraft faxed a letter to the Department alleging that there was insufficient time to respond to all four RFPs. That same day, Polaris sent a letter of objection to the Department alleging that the timing of both the issuance and close of the two solicitations issued by the Department's Quebec Region, the two solicitations issued by the Department's Pacific Region and the solicitation issued by the Department's Ontario Region had created a situation such that it was impossible for Polaris to respond. Polaris requested that this solicitation be rewritten and reissued with a sufficient bidding period.

On December 21, 2000, Polaris downloaded the RFP from MERX. On December 22, 2000, the Department issued an amendment to the RFP extending the bid closing date to January 12, 2001. One proposal was received by the Department by bid closing date.

## **POSITION OF PARTIES**

### **Department's Position**

With respect to Polaris's allegation concerning the requirement for SOLAS certification, the Department essentially repeated the submissions that it made on this point in file No. PR-2000-044.

With respect to the issue of the time allotted bidders to submit proposals, the Department submitted that Polaris made its objection in this respect on December 14, 2000, six days after the issuance of the RFP on MERX and, therefore, well in advance of the original bid closing date of December 27, 2000. The Department further submitted that, after considering Polaris's objection and after consulting with the DFO, it amended the bid closing date to January 12, 2001. The Department emphasized that at no time after posting the amendment to the RFP on MERX did it receive any further objection from Polaris or any other bidder with respect to the closing date for submission of proposals in respect of this solicitation. The Department further submitted that the extended closing date to January 12, 2001, afforded 35 days to make a proposal. Therefore, it cannot reasonably be said to have impacted on Polaris's ability to respond to three of the above-noted RFPs, which closed by December 19, 2000, and for which Polaris did not submit a proposal in any event.

With respect to Polaris's allegation that the time allotted in the RFP for construction and delivery of the RHIBs was unreasonably short, the Department essentially repeated its submissions on this point in file No. PR-2000-044 above, in that the time allowed for the construction of the RHIBs was reasonable.

### **Zodiac's Position**

Zodiac endorsed the Department's position as set out in the GIR.

### **Polaris's Position**

Polaris reiterated the position that it took in file No. PR-2000-044 above.

### **MetalCraft's Position**

MetalCraft repeated the submissions that it made in respect of file Nos. PR-2000-044 and PR-2000-049 above.

## **SOLICITATION NO. F3059-00AP01/A (PR-2000-052)**

This solicitation concerns a requirement of the DFO/CCG for the supply of three seven-metre RHIBs in fiscal year 2000-2001, with an option to purchase up to three additional boats by March 31, 2003. The RHIBs are intended for use in search and rescue activities and shipborne emergency boat applications in the Gulf of St. Lawrence and the St. Lawrence River and are to be shipped to the City of Québec, Québec.

Polaris alleged that this procurement suffers from the same deficiencies as those that it raised in relation to solicitation No. F3036-00C032/A (PR-2000-051) above.

## **PROCUREMENT PROCESS**

On November 21, 2000, the Department's Quebec Region office received a requisition for the requirement described above. On December 11, 2000, an NPP and an RFP were posted on MERX. The NPP indicated that the procurement was subject to the AIT and that the closing date of the solicitation was December 29, 2000. On December 14, 2000, Polaris sent a letter of objection to the Department alleging that the time of both the issuance and close of various solicitations issued by the Ontario, Pacific and Quebec Regions, the volume of information required and the minimal time frame made it impossible for Polaris to respond. Polaris requested that the solicitation be rewritten and reissued with a sufficient bidding period. On December 21, 2000, Polaris downloaded the RFP from MERX. On December 22, 2000, the Department issued an amendment to the RFP extending the bid closing date to January 12, 2001. This extended the bidding period to 32 days. On January 12, 2001, one proposal was received. On January 16, 2001, the Tribunal rescinded its postponement of award order and, on January 30, 2001, a contract was awarded to Zodiac.

## **POSITION OF PARTIES**

### **Department's Position**

The Department reiterated the submissions that it made in file Nos. PR-2000-044 and PR-2000-051 above in respect of the issues raised by Polaris in this solicitation.

In addition, the Department submitted that at no time after Amendment 001 to the RFP was posted on MERX on December 22, 2000, did it receive any further objection from Polaris or any other bidder with respect to the closing date for submission of proposals in respect of this solicitation.

### **Zodiac's Position**

Zodiac endorsed the Department's position as set out in the GIR.

### **Polaris's Position**

Polaris reiterated the position that it took in file No. PR-2000-044 above.

### **MetalCraft's Position**

MetalCraft repeated the submissions that it made in respect of file Nos. PR-2000-044, PR-2000-049 and PR-2000-051 above.

## **SOLICITATION NO. F1701-00169/A (PR-2000-053)**

This solicitation concerns a requirement of the DFO for the supply of one six-metre RHIB in fiscal year 2000-2001, with an option to purchase up to four additional boats by March 31, 2002. The RHIBs are intended for use in surveillance and enforcement duties of the DFO on Canada's West coast and are to be shipped to Langley, British Columbia.

Polaris alleged that the time period for submitting proposals is insufficient. Furthermore, Polaris alleged that the specifications set forth in the RFP are biased. As well, Polaris alleged that the time allotted to the successful contractor for delivery of the RHIBs and the issuance of more than one RFP for RHIBs at year end are akin to sole sourcing in favour of its main competitor, Zodiac, are detrimental to Polaris and

constitute a disregard for the findings and recommendations made by the Tribunal regarding the complaint filed by Polaris.<sup>9</sup> Finally, Polaris contended that the Department has applied purchasing practices without consultation, consideration or evaluation of industry input.

## PROCUREMENT PROCESS

On October 31, 2000, the Department's Pacific Region office received a requisition for the requirement described above. According to the GIR, because the Department's Ontario Region had received a requisition from the DFO for similar boats, officials of the two regions, Pacific and Ontario, decided to issue a common RFP document and use an identical specification, Specification WC-RHIB-02, for one six-metre aluminum RHIB to be used in the DFO's Fisheries Conservation and Protection Program. The specification was reviewed and accepted by the DFO on December 14, 2000. On December 18, 2000, an NPP and an RFP for this procurement were posted on MERX. The NPP identified the procurement as being subject to the AIT and indicated that the closing date of the solicitation was January 4, 2001. On December 19, 2000, an amendment to the RFP was posted on MERX removing the mandatory requirement for bidders to be registered to the ISO 9002 and replacing it with a rated evaluation of the bidders' quality management system. On December 18, 2001, Polaris downloaded the NPP from MERX. At no time during the bidding period did Polaris or any other bidder request the Department to extend the closing date for the submission of proposals or submit any questions or seek any changes to the technical specifications or proposed delivery date provided in the RFP. The RFP closed on January 4, 2001, and one bid was received.

## POSITION OF PARTIES

### Department's Position

With respect to Polaris's objection concerning the time period in which to bid in this instance, the Department submitted that there was a fair and reasonable time period allotted for the submission of proposals and it is Polaris's own error in reading the December 18, 2000, NPP on MERX that caused the said period to appear too short. The Department submitted that Polaris, upon realizing its mistake, determined that it could not respond before bid closing and elected to file a complaint with the Tribunal alleging, *inter alia*, that the Department provided insufficient time for the submission of proposals. The Department further submitted that, although the NPP contained a small typographical error referring to solicitation No. F1808-0017/A at the bottom of the page above the procurement officer's name, the NPP also included in two different locations, one on each page of the NPP, in large bold type across the top of the first page of the NPP, the reference to "**one (1) six-metre RHIB**" to be delivered to "**Langley, B.C.**" and solicitation No. "**F1701-000169/A.**" In addition, the Department submitted that the NPP for solicitation No. F1808-000171/A clearly identified seven-metre RHIBs to be delivered to Victoria, British Columbia. The two NPPs, the Department submitted, were clearly distinct and were not misleading. In the alternative, the Department submitted that the time period provided to submit proposals was fair and reasonable and in accordance with the AIT and with internal policy. Furthermore, because no representation of any kind was received from any bidder on this point during the period allotted to present proposals, the Department submitted that there was no opportunity to even consider such a request.

With respect to Polaris's allegation that the specification for this solicitation was biased in favour of Zodiac, the Department submitted that the specification is a generic specification that reflects the various operational needs of the DFO and yet is flexible and permits options to provide the opportunity for participation to the maximum number of potential suppliers. The Department added that Web site addresses

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9. (8 March 1999), PR-98-032 (CITT).

were given for all brand name references and that the procedure for proposing equivalent products was clearly set forth in the RFP.

Furthermore, the Department submitted that this requirement is for one six-metre aluminum RHIB, a product manufactured by Polaris that appears to meet the RFP's technical requirements.

With respect to Polaris's allegation that the Department's actions in this procurement constitute a disregard for the Tribunal's determination in complaint No. PR-98-032, the Department submitted that it complied with the Tribunal's decision and that there is no basis to support this allegation.

With respect to Polaris's allegation that the Department applied purchasing practices without consultation or evaluation of industry input, the Department submitted that it solicited and received the industry's comments between November 1999 and the end of January 2000 on a proposed approach to issue one NMSO for a 7.0- to 7.5-metre RHIB. The Department added that Polaris, along with other suppliers, provided input into the proposed approach and that, in fact, Polaris objected to the proposed award of only one NMSO on the grounds that it would impede competition.

With respect to Polaris's allegation that the time allotted to manufacture and deliver the RHIB was insufficient, the Department submitted that the 90-day time period to construct and deliver the RHIBs provided in the RFP is longer than the 60-day delivery period included in the NMSO that Polaris previously held for RHIBs.

### **Zodiac's Position**

Zodiac endorsed the Department's position as set out in the GIR.

### **Polaris's Position**

Polaris reiterated the position that it took in file No. PR-2000-044 above.

### **MetalCraft's Position**

MetalCraft repeated essentially the same submissions that it made in respect of file Nos. PR-2000-044, PR-2000-049 and PR-2000-051 above.

### **CONCURRENT ISSUANCE OF SEVERAL RFPs FOR RHIBs**

In addition to the above allegations that are specific to one or several of the solicitations at issue, Polaris made a further allegation that relates to all of the above solicitations. Polaris argued that launching many solicitations over a short period of time, all containing insufficient bidding and delivery periods, is unfair and is intended to circumvent the provisions of the trade agreements in favour of a preferred bidder.

### **POSITION OF PARTIES**

#### **Department's Position**

The Department submitted that the posting of several solicitations for RHIBs in different regions provided suppliers with choices for bidding. Suppliers could choose to bid on one or more of the solicitations or just on those that suited their locations or current product lines, thereby maximizing competition.



Furthermore, the Department submitted that the issuance of several RFPs was the preference of Polaris in the context of industry consultations conducted during the period between November 1999 and the end of January 2000 with respect to the Department's proposed approach to issue one NMSO for 7.0- to 7.5-metre RHIBs. In this context, the Department submitted that it is bad faith for Polaris to now object to the issuance of several RFPs, an approach, the Department submitted, that accommodates Polaris's objection to the award of a single NMSO and addresses its concern that competition should be maximized as well as meet the DFO/CCG's particular needs in different regions.

The Department further submitted that, in its comments on the Department's proposed approach to the procurement of 7.0- to 7.5-metre RHIBs, Polaris objected to the proposed requirement for prototype test boats to be constructed for the purpose of fair sea trial evaluation on the basis that the Crown, not bidders, should pay for the manufacture and testing of any prototype boat and that there is no requirement for such prototype testing in these solicitations.

The Department further noted that, in order to accommodate Polaris's objection made during industry consultations to the proposed optional four-year renewal period of a single NMSO, the optional renewal period in the above procurements has been established at less than four years.

The Department requested the opportunity to make further submissions on costs.

### **Polaris's Position**

Polaris submitted that, during the period from March 8, 1999 (the date of the Tribunal's determination in file No. PR-98-032<sup>10</sup>), to December 1999, the Department awarded contracts for over 40 vessels to a single supplier. Polaris contended that the majority of these awards were not posted on MERX and, therefore, were unknown awards and, as such, could not be challenged by other Canadian manufacturers. Regarding the current complaints, Polaris submitted that the Department continues to obstruct its right to compete in a fair and transparent bidding process. This has resulted in continued sustained benefits to a single supplier to the detriment of Polaris.

### **TRIBUNAL'S DECISIONS**

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. Furthermore, at the conclusion of an 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 further provides that the Tribunal is required to determine whether the procurement was conducted in accordance with the requirements of the applicable trade agreements.

The Tribunal determines that the provisions of the AIT and of the *North American Free Trade Agreement*<sup>11</sup> apply to all of the above-mentioned procurements. The estimated value of the RHIBs being procured in each solicitation exceeds the AIT and NAFTA monetary thresholds applicable to the procurement of goods. As well, the vessels being procured are properly classified in a category of goods that are not excluded from the AIT and that are included in NAFTA, when procured on behalf of the DFO, including the CCG.

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10. *Ibid.*

11. 32 I.L.M. 289 (entered into force 1 January 1994) [hereinafter NAFTA].

As a preliminary matter, the Tribunal notes that the Department submitted, with respect to several complaints filed by Polaris, that Polaris generally failed to ask the Department for an extension of time in which to submit proposals. Instead, Polaris requested that the Department reissue these solicitations with a new bidding period and delivery schedule. The Department argued that, because Polaris failed to request an extension of time in which to bid or failed to do so in a manner that afforded the Department the opportunity to respond, it failed to provide the Department an opportunity to consider such requests. For these reasons, the Department submitted that Polaris failed to raise this ground of complaint in a timely manner and, therefore, its complaints, on this point, should not be addressed. The Tribunal is of the view that Polaris clearly communicated to the Department within the prescribed time frames its concerns with the time allotted to bid and to deliver the RHIBs and requested that the situation be remedied. Therefore, the Tribunal will consider these complaints on the merits of each case.

Polaris alleged, with respect to all complaints, that the Department and the DFO provided insufficient time to bid and to deliver the RHIBs. Article 1012(2)(a) of NAFTA provides, subject to a number of circumstances set out in Article 1012(3), which were not invoked by the Department in the instances, that “in open tendering procedures, the period for the receipt of tenders is no less than 40 days from the date of publication of a notice in accordance with Article 1010” of NAFTA. Article 1012(4) of NAFTA further provides that “[a]n entity shall, in establishing a delivery date for goods or services and consistent with its own reasonable needs, take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the time realistically required for production, destocking and transport of goods from the points of supply.” Article 506(5) of the AIT provides that “[e]ach Party shall provide suppliers with a reasonable period of time to submit a bid, taking into account the time needed to disseminate the information and the complexity of the procurement.” Article 504(3)(c) of the AIT prohibits “the timing of events in the tender process so as to prevent suppliers from submitting bids.” Article 504(3)(d) of the AIT prohibits “the specification of quantities and delivery schedules of a scale and frequency that may reasonably be judged as deliberately designed to prevent suppliers from meeting the requirements of the procurement.”

The Tribunal finds that the Department breached the provisions of Article 1012(2)(a) of NAFTA and Article 506(5) of the AIT in conducting solicitation Nos. F1808-000171/A, F5575-000232/A, F3036-00C032/A, F3059-00AP01/A and F1701-000169/A. Therefore, the complaints relating to these solicitations are valid in part. Considering that the Department did not invoke any of the circumstances set out in Article 1012(3) of NAFTA to reduce the 40-day minimum period of notice applicable in the circumstances, the time periods set in the RFPs at issue failed to meet the requirements of NAFTA. The Tribunal observes that the notice periods of the solicitations being considered range from 18 to 33 days and are, in all cases, less than the 40-day period prescribed by NAFTA.

The Tribunal is also of the view that, contrary to the provisions of the AIT, the time periods afforded bidders to submit proposals for the above-mentioned solicitations were not reasonable, given the complexity and diversity of the procurements. In the Tribunal’s opinion, the fact that a number of the solicitations were conducted concurrently made it more difficult for potential suppliers to provide complete and adequate bids within the allocated time frames in the various RFPs.

The Tribunal also finds that, in conducting these solicitations, the Department and the DFO breached the provisions of Article 1012(4) of NAFTA and Articles 504(3)(c) and (d) of the AIT. In the Tribunal’s opinion, the Department has failed to document which reasonable needs required that some 12 RHIBs be procured and delivered over such short time frames, as well as why the acquisition of an additional 29 RHIBs, by means of contractual options, had to be rushed. The Tribunal is of the view that the DFO’s and the Department’s approach in setting out time frames for these solicitations prevented at least

two potential suppliers from meeting the requirements of the procurements. There may not have existed, at the outset, a deliberate strategy by the DFO and the Department to make it difficult for suppliers such as Polaris to provide responsive bids; however, in the Tribunal's opinion, the Department and the DFO were insensitive to the representations made by Polaris and MetalCraft when they indicated to the Department that the issuance of so many solicitations over a short period was causing them difficulty.

Consistent with the specific provisions of the trade agreements and the fulfillment of its own reasonable needs, the government is not obliged, when setting out bidding and delivery time frames, to take into consideration the corporate circumstances (size, capacity, workload, etc.) of each and every potential supplier and to adjust its time frame requirements to accommodate all such circumstances. However, in the Tribunal's opinion, the government must be sensitive to such circumstances and, consistent with its own reasonable needs, accommodate them in setting out time frames in solicitation documents.

Polaris alleged that, in conducting the above-mentioned solicitations, the Department and the DFO, in one or several solicitations, insisted on certain conditions being met (i.e. to be a Western supplier, to be ISO 9200 registered and to obtain SOLAS certification for certain RHIBs), which conditions individually or together were unnecessary in the circumstances and/or contributed to further complicating the solicitations for potential suppliers such as Polaris, thus favouring Zodiac. The Tribunal finds that there is no merit to these allegations. The Tribunal is satisfied that the "Western supplier" issue arose as a result of an inadvertent error that the Department corrected. In addition, Polaris, being a potential supplier from Western Canada, was not prejudiced by the error. The requirement that bidders be ISO 9200 registered was also modified by the Department in response to representations made by bidders and was replaced by a more generic, less onerous quality control requirement. Furthermore, the Tribunal is of the view that the Department and the DFO were not acting unreasonably or in a discriminatory manner when they insisted, in various solicitations, that the RHIBs intended for search and rescue activities be SOLAS certified. In the Tribunal's view, this is a legitimate requirement. In fact, Polaris's objection to this requirement has more to do with the lack of notification and the time afforded bidders to secure such certification than with the requirement for the certification itself.

With respect to Polaris's allegation that the specifications used in these solicitations were biased in favour of Zodiac, the Tribunal finds that there is no evidence on the record to support this allegation. Similarly, the Tribunal finds that there is no foundation to Polaris's allegation that the Department produced misleading information in issuing the NPP for solicitation No. F1701-000169/A. It is a fact that the NPP contains a small typographical error. However, in the Tribunal's opinion, the NPP, when read as a whole, conveys a clear indication of the Department's intention and is not misleading.

Polaris alleged that these solicitations, because they were conducted simultaneously over tight time frames, amounted to a form of sole sourcing to Zodiac. In response, the Department argued that these solicitations were designed to be consistent with the DFO and CCG operational requirements and that they were thus structured, because Polaris objected to the establishment of a single NMSO for all RHIB requirements. The Department argued that procuring RHIBs through several smaller size procurements allows for competition and allowed bidders to tailor their responses to such solicitations in light of their own corporate circumstances. In principle, the Tribunal does not have difficulty with the Department's argument on this point, provided that the time frames set out in each solicitation document meet the notification requirements set out in the applicable trade agreements. Furthermore, the Tribunal is of the view that, in the circumstances, the Department should have taken into consideration the fact that several solicitations would be run almost concurrently. In these instances, it is clear that this was not done and that this contributed to Zodiac being the only potential supplier to submit proposals on all solicitations.

**DETERMINATION OF THE TRIBUNAL**

In light of the foregoing, the Tribunal determines that solicitation Nos. F1808-000171/A, F5575-000232/A, F3036-00C032/A, F3059-00AP01/A and F1701-000169/A were not conducted in accordance with the provisions of the applicable trade agreements and, therefore, the complaints in relation thereto are valid in part. The complaint in file No. PR-2000-050 relates to a solicitation that was cancelled by the Department and is no longer at issue. Therefore, the complaint will not be decided on the merits of the case.

Pursuant to subsections 30.15(2) and (3) of the CITT Act, the Tribunal recommends, as a remedy, that the requirements of the DFO, including the CCG, for rigid hull inflatable boats contained in solicitation Nos. F1701-000169/A, F5575-000232/A, F2599-002425/A and F3036-00C032/A be reissued according to the provisions of the applicable trade agreements.

The Tribunal further recommends that the Department and the DFO not exercise the options in the contracts issued to Zodiac as a result of solicitation Nos. F1808-000171/A and F3059-00AP01/A and, instead, issue new solicitations for the rigid hull inflatable boats covered by the said options in accordance with the applicable trade agreements.

Pursuant to subsection 30.16(1) of the CITT Act, the Tribunal awards Polaris the reasonable costs that it incurred in filing and proceeding with the six complaints.

Zdenek Kvarda  
Zdenek Kvarda  
Presiding Member