



Ottawa, Friday, August 18, 2000

**File No.: PR-2000-009**

IN THE MATTER OF a complaint filed by Crain-Drummond Inc. 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 a decision to conduct an inquiry into the complaint under subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

### **DETERMINATION OF THE TRIBUNAL**

Pursuant to section 30.14 of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal determines that the complaint is not valid.

Richard Lafontaine  
Richard Lafontaine  
Presiding Member

Michel P. Granger  
Michel P. Granger  
Secretary

Date of Determination: August 18, 2000

Tribunal Member: Richard Lafontaine

Investigation Officer: Paule Couët

Counsel for the Tribunal: Marie-France Dagenais

Complainant: Crain-Drummond Inc.

Government Institution: Department of Public Works and Government Services

Counsel for the Government Institution: Suzan D. Clarke  
Christianne Laizner

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## STATEMENT OF REASONS

On May 29, 2000, Crain-Drummond Inc. (Crain-Drummond) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> concerning the procurement (Solicitation No. 45866-000001/A) by the Department of Public Works and Government Services (the Department) of printing services and insertion services required by Statistics Canada for the 2001 Census.

Crain-Drummond alleged that several items claimed by the Department to be missing from its proposal were, in fact, included in its proposal. As well, the Department demonstrated a general lack of knowledge and understanding of the quality control approach that Crain-Drummond advanced in its proposal, resulting in low scores being attributed at the time of bid evaluation. But for these actions, Crain-Drummond submitted, its proposal would have been successful. Crain-Drummond requested, as a remedy, to be awarded the contract or to be compensated in lieu thereof.

On June 2, 2000, the Tribunal informed the parties that the complaint had been accepted for inquiry, as it met the requirements of subsection 30.11(2) of the CITT Act and the conditions set out in subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.<sup>2</sup> On July 6, 2000, the Department filed a Government Institution Report (GIR) with the Tribunal in accordance with rule 103 of the *Canadian International Trade Tribunal Rules*.<sup>3</sup> On July 18, 2000, Crain-Drummond filed comments on the GIR with the Tribunal.

Given that there was sufficient information on the record to determine the validity of the complaint, the Tribunal decided that a hearing was not required and disposed of the complaint on the basis of the information on the record.

## PROCUREMENT PROCESS

On April 10, 2000, a Request for Proposal (RFP) for this solicitation was published on Canada's Electronic Tendering Service (MERX) with a closing date of April 25, 2000.

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1. R.S.C. 1985 (4th Supp.), c. 47 [hereinafter CITT Act].
  2. S.O.R./93-602[hereinafter Regulations].
  3. S.O.R./91-499.

The RFP included the following provisions:

## **SECTION 2: BASIS OF SELECTION**

### **Stage 2: Rated Requirements (as detailed in Section 5)**

...

To qualify, a proposal must achieve a minimum of 70% (350 points) for the criteria which are subject to point rating. Proposals scoring less than 70% will not be given further consideration.

Rated Requirement R.1 of the RFP, "Approach, Methodology and Work Plan -500 points", reads:

This section must outline the comprehensive approach to be followed in completing all aspects of the Scope of Work. A detailed quality control plan, production plan and contingency plan must be provided for each requirement task specified under the Scope of Work. Sufficient detail is to be provided to allow a complete understanding of how the work is to be carried out and will ensure that the specifications, standards and delivery schedules will be adhered to. [Emphasis added]

Rated Requirement R.1.1 of the RFP, "Quality Control Plan" reads, in part:

The proposal should outline the general approach, tasks and standards and specifications proposed to complete all aspects of your Quality Control Plan which demonstrates an understanding and compliance with Quality Assurance Strategy Plan attached as Section 4.

Five proposals were received in response to this solicitation, including one from Crain-Drummond. On May 1, 2000, the evaluation team met to finalize the evaluation of proposals, which had been commenced by means of individual evaluations on April 27, 2000. On May 2, 2000, the Department advised Crain-Drummond, by facsimile, that its proposal was deemed non-responsive for failing to meet the minimum score of 350 points for rated requirements (Crain-Drummond achieved a score of 346.25 points, i.e. 90 for its quality control plan, 156.25 for its production work plan and 100 for its contingency plan). The facsimile also informed Crain-Drummond that a contract for this requirement had been awarded to St. Joseph Printing, National Paper Goods and Postal Promotions Ltd., a joint venture, at an estimated value of \$2,452,497 (GST extra). On May 16, 2000, Crain-Drummond met with the Department for a complete debriefing and, on May 29, 2000, it filed this complaint with the Tribunal.

## **POSITION OF PARTIES**

### **Department's Position**

The Department submitted that Crain-Drummond was correctly evaluated for rated requirements and that it failed to achieve higher scores because of the generic nature of its proposal and the proposal's lack of responsiveness to the specific requirements of the RFP. The Department argued that Crain-Drummond had submitted the same quality control plan in response to three other separate RFPs which closed on the same day, each with a different statement of work and quality assurance strategy.

Furthermore, the Department submitted that it is the obligation of the bidder to submit a proposal that is clear, which directly responds to the requirements of the solicitation and which is organized in such a manner that evaluators can locate all the information and understand its relevance to the RFP. The Department added that, where the Tribunal is satisfied that the procurement has been carried out in a procedurally fair manner, the Tribunal should not substitute its evaluation for that of the evaluators.

The Department also made extensive and detailed submissions in response to the “Summary of Assessment” that Crain-Drummond attached to its complaint and which set out Crain-Drummond’s specific objections to the evaluation of its proposal by the Department.

With respect to Crain-Drummond’s assertion that a “quality expert” should have verified the quality control plan that it submitted in order to properly assess its value, the Department submitted that the RFP did not indicate that the quality control plan submitted would be assessed by an independent expert. Since Crain-Drummond did not object to this alleged shortcoming of the RFP at the bidders’ conference or at any time prior to the closing date for the submission of proposals, the Department submitted that the time period under the Regulations to complain about this alleged shortcoming had long expired. The Department also indicated that the evaluation team did have the required expertise to conduct the evaluation of proposals.

### **Crain-Drummond’s Position**

Crain-Drummond submitted that the net score of 69 percent that its proposal was awarded for rated requirements is not representative of its entire bid, is indefensible in several aspects and should have been significantly higher.

Specifically, Crain-Drummond submitted that its proposal clearly complied with the RFP requirements and that it demonstrated an understanding of all quality control and assurance issues. Crain-Drummond argued that, in several instances, its proposal went beyond the requirements of the RFP, to a point where its proposal clearly should not have been disqualified. Crain-Drummond annexed to its comments on the GIR a list of specific comments that can be summarized, for the main part, as follows: (1) the quality control plan that it submitted with its proposal was established specifically for this proposal; (2) although the Department may have followed the evaluation methodology set out in the RFP, Crain-Drummond retains the privilege to request that the Tribunal review the assessment made by the evaluation team; (3) it is irrelevant to this complaint that three other quality control plans were submitted for different proposals since the dispute is over the solicitation at issue; (4) a narrative description of the quality control plan was not required since the format of the quality control plan met International Organization for Standardization (ISO) 9002 requirements and was audited and certified by a registrar; (5) the inclusion of certain documents allegedly missing would have provided no additional valuable information to the evaluation team; (6) the mention in the RFP of electronic equipment, such as densitometres, was not required to meet the requirements of the RFP; (7) there was inconsistency in marking on the part of the Department; and (8) the project manager’s capacity to perform her duties, as stated in her resume, was responsive to the requirements of the RFP, with the project manager’s role being part of her regular function of coordinator.

Crain-Drummond recognized that the methodology followed by the evaluation team may conform to internal procedures. However, based on impressions that it developed on the occasion of the debriefing, Crain-Drummond submitted that the members of the evaluation team did not seem to understand the difference between the requested quality control plan and a quality assurance system. No member of the evaluation team, Crain-Drummond asserted, was trained or had any experience in evaluating a quality control plan as described in ISO standard 10011, which is the only recognized industry benchmark for such definitions.

### **TRIBUNAL’S DECISION**

Section 30.14 of the CITT Act requires that, in conducting an inquiry, the Tribunal limit its consideration to the subject matter of the complaint. Furthermore, 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 further provides, in part, that the Tribunal is required to determine whether the procurement was conducted in accordance with the *Agreement on Internal Trade*<sup>4</sup> and the *North American Free Trade Agreement*.<sup>5</sup>

Article 506(6) of the AIT provides, in part, that “tender documents shall clearly identify the requirements of the procurement, the criteria that will be used in the evaluation of bids and the methods of weighting and evaluating the criteria”. Article 1015(4)(d) of NAFTA provides that “awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation”.

At the outset, the Tribunal finds that Crain-Drummond’s allegation that the RFP failed to provide that the “quality control plan” would be evaluated by experts is late. In the Tribunal’s opinion, this ground of complaint should reasonably have been known to Crain-Drummond on or about April 25, 2000, when the RFP was made available through MERX. Crain-Drummond did not object to this situation and filed its complaint in this respect on May 29, 2000, only. This date falls outside of the 10-working-day time frame prescribed in section 6 of the Regulations to make an objection and/or to file a complaint.

The Tribunal must determine whether the Department evaluated Crain-Drummond’s proposal according to the criteria and methodology set out in the RFP and whether it applied the criteria and methodology correctly.

The Tribunal finds that the Department acted in a procedurally correct manner on both counts. Not only were the methodology and criteria set out in the RFP used by the Department in evaluating Crain-Drummond’s proposal but they were applied correctly. In the Tribunal’s opinion, Crain-Drummond, in its submission, essentially admitted that the Department, in evaluating its proposal, applied the methodology set out in the RFP. However, Crain-Drummond disagreed with the scores that its proposal received, arguing that the evaluation team failed to comprehend and fully appreciate the worth of its proposal, specifically its quality control plan. The evidence examined by the Tribunal indicates that Crain-Drummond’s proposal failed to secure more evaluation points because the quality control plan that it proposed was not designed to meet the specific requirements of the RFP and because it was not clearly articulated nor fully supported. The Tribunal is satisfied that the Department arrived at this conclusion in a procedurally correct manner, and it will not substitute its evaluation for that of the evaluators.

In the Tribunal’s opinion, the RFP was abundantly clear in Rated Requirements R.1 and R.1.1 that detailed proposals expressly relating to the task at hand had to be submitted. In the Tribunal’s opinion, Crain-Drummond failed to adequately meet this requirement, particularly with respect to its quality control plan relying instead on the fact that the said plan met ISO requirements and was audited and certified by a registrar, as it submitted in its comments on the GIR. Furthermore, Crain-Drummond, in its submission, admitted that certain supporting documents that it cited in its proposal were missing, arguing, in its defence, that the said documents would not have added any valuable information to the proposal or to the Department’s evaluation. At the very least, in this regard, Crain-Drummond should have provided, with its proposal, some explanation for the missing documents. The Tribunal is of the view that, in this instance, potential suppliers were under clear instructions to provide, in their proposals, comprehensive, detailed and complete submissions specifically relating to each and all tasks. In the Department’s judgment, this was not done.

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4. As signed at Ottawa, Ontario, on July 18, 1994 [hereinafter AIT].

5. 32 I.L.M. 289 (entered into force 1 January 1994) [hereinafter NAFTA].

In light of the above, the Tribunal does not find fault with the Department's evaluation of Crain-Drummond's proposal, and specifically with the Department's evaluation of Crain-Drummond's quality control plan.

#### **DETERMINATION OF THE TRIBUNAL**

Pursuant to subsection 30.14(2) of the CITT Act, the Tribunal determines that the procurement was conducted in accordance with the requirements of the AIT and NAFTA and that, therefore, the complaint is not valid.

Richard Lafontaine  
Richard Lafontaine  
Presiding Member