

Ottawa, Wednesday, February 13, 2002

File Nos. PR-2001-029 and PR-2001-032

IN THE MATTER OF two complaints filed by John Chandioix experts-conseils 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 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 finds that the complaint in File No. PR-2001-029 is not valid.

The Canadian International Trade Tribunal further finds that the complaint in File No. PR-2001-032 is valid in part.

Pursuant to subsection 30.15(4) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal awards John Chandioix experts-conseils inc. its reasonable costs incurred in relation to preparing and proceeding with the complaint in File No. PR-2001-032.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

Michel P. Granger  
Michel P. Granger  
Secretary

Date of Determination and Reasons: February 13, 2002

Tribunal Member: Pierre Gosselin, Presiding Member

Investigation Manager: Paule Couët

Counsel for the Tribunal: Michèle Hurteau

Complainant: John Chandioix experts-conseils inc.

Counsel for the Complainant: John B. MacDougall

Intervener: Stéphane Lachapelle Informatique inc.

Government Institution: Department of Public Works and Government Services

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

Ottawa, Wednesday, February 13, 2002

File Nos. PR-2001-029 and PR-2001-032

IN THE MATTER OF two complaints filed by John Chandioix experts-conseils 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 decisions to conduct inquiries into the complaints under subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

## STATEMENT OF REASONS

### COMPLAINTS

On October 1 and 15, 2001, John Chandioix experts-conseils inc. (Chandioix) filed two complaints with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> with respect to Solicitation No. EF116-001498/A of the Department of Public Works and Government Services (PWGSC) for a turnkey automatic translation system from English to French and from French to English of meteorological bulletins for the Meteorology Unit of the Translation Bureau (the Bureau) of PWGSC. The proposed system was to be delivered, integrated, installed and connected to the systems and network used by the Atmospheric Environment Branch (the Branch) of the Department of the Environment (Environment Canada).

In its complaint of October 1, 2001, Chandioix alleged that PWGSC had violated various provisions of the *North American Free Trade Agreement*<sup>2</sup> and the *Agreement on Government Procurement*.<sup>3</sup> In particular, Chandioix alleged: (i) that Mr. Stéphane Lachapelle, President of Stéphane Lachapelle Informatique inc. (SLI), the successful bidder in this case, was not an eligible supplier because he was a former public servant, which put him in conflict of interest within the meaning of the policy of the Treasury Board of Canada,<sup>4</sup> and because he had used information not available to the public; (ii) that the system proposed by SLI is not a “Microsoft Windows” system and, therefore, does not meet one of the mandatory requirements set out in paragraph 2.6 of Appendix “B” to the Request for Proposal (RFP); (iii) that the RFP referred to confidential characteristics instead of defining the Bureau’s requirements and contained an exhaustive list of the functionalities of the METEO system, which was Chandioix’s property. Chandioix further alleges that the Linux system does not meet the mandatory requirements.

Chandioix submits that the RFP must state “or equivalent” and that, in the absence of that phrase, PWGSC was obliged to choose a Windows system in accordance with Article 1007(2)(a) of NAFTA and Article VI(2)(a) of the AGP.

In its complaint of October 15, 2001, Chandioix also alleged that the evaluation of the proposals had been unfair and partial, thus violating the provisions of the trade agreements, including the *Agreement*

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1. R.S.C. 1985 (4th Supp.), c. 47 [hereinafter CITT Act].
  2. 32 I.L.M. 289 (entered into force 1 January 1994) [hereinafter NAFTA].
  3. 15 April 1994, online: World Trade Organization <[http://www.wto.org/english/docs\\_e/legal\\_e/final\\_e.htm](http://www.wto.org/english/docs_e/legal_e/final_e.htm)> [hereinafter AGP].
  4. Conflict of Interest and Post-Employment.

on *Internal Trade*.<sup>5</sup> Chandiooux further complained that the bidders had an opportunity to cheat on the translation test.

Chandiooux alleges that a number of the rated criteria were unfairly evaluated and that the scores were not justified.

With respect to “headers”, Chandiooux alleges that the term “header” was not defined in the RFP and that it referred to Environment Canada’s standards. A counter-evaluation by Chandiooux confirmed that there was no correction in the revision by the Bureau’s translators. Chandiooux contests the given score.

At the debriefing, Chandiooux asked the Bureau’s evaluator what he meant by “region names”. Chandiooux retrieved the names of regions, as given in the translation of each notice, and applied the revision done by the Bureau’s translator. Chandiooux obtained a different score than that given by the evaluator.

With respect to “canned sentences”, this term was not defined in the RFP, but in Appendix “C” to the RFP. For lack of further information, Chandiooux concluded that the translation of “canned sentences” was that of the sentences found in Appendix “C”. The score obtained by Chandiooux after its counter-evaluation differed from that given by the Bureau’s translator.

As to retention of formatting, Chandiooux alleges that the evaluator failed to distinguish between “layout” (presentation of the text) and “format” (set of physical constraints imposed by the communication network). The evaluator was not able to indicate what characters were prohibited by Environment Canada and did not check this aspect. Chandiooux contests the score given by the evaluator.

As to the “macros”, Chandiooux responded “NON-COMPLIANT” to this requirement because the term has a completely different meaning from the one given by the evaluator.

Chandiooux replied that it was impossible to use a commercially available spell checker, but indicated that it could custom design one. Moreover, the financial proposal offered a spell checker as an option. Chandiooux further indicated that, as the evaluator had given a score of zero for the spell checker, Chandiooux was justified in concluding that PWGSC did not wish to use this option. Chandiooux feels that the score is incorrect.

In conclusion, Chandiooux indicated that the evaluation of the rated criteria of the technical proposal was assigned to an evaluator who apparently had not grasped the true meaning of the computer terms on which the scoring depended and that mistakes had been made in the evaluation of its bid.

As a remedy, Chandiooux requested that the contract awarded to SLI be cancelled. In addition, Chandiooux requested that it be awarded the contract and reimbursed for its legal costs and bid preparation costs.

On October 10, 2001, PWGSC informed the Tribunal, in writing, that a two-year contract, in the amount of \$437,844.00, had been awarded to SLI on September 14, 2001. PWGSC further indicated that the contract incorporated three one-year options, each in the amounts of \$240,814.20, \$252,854.91 and \$265,497.65 respectively.

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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].

On October 10 and 24, 2001, the Tribunal informed the parties that the complaint of October 1, 2001, concerning the failure to meet a mandatory requirement of the RFP, and the complaint filed on October 15, 2001, except for the allegation with respect to the translation test, had been accepted for inquiry, as they 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>6</sup>

In its letter of October 10, 2001, the Tribunal indicated that it did not have jurisdiction to hear the complaint concerning the conflict of interest and that it would not inquire into the ground of the complaint that “the RFP listed confidential characteristics rather than client needs” [translation], since that ground was not filed within the time frames specified in the Regulations. In its letter of October 24, 2001, the Tribunal also indicated that it would not inquire into the ground relating to the translation test, since that ground is based on speculations, and that Chandiooux did not show, in any reasonable way, that there was a major flaw in the method used. In the same letter, the Tribunal informed the parties that it had decided to combine the two files and hear the complaints simultaneously, in order to proceed expeditiously in accordance with rule 6.1 of the *Canadian International Trade Tribunal Rules*.<sup>7</sup>

In a letter to the Tribunal dated October 23, 2001, SLI requested intervener status in File No. PR-2001-029. In its letter, SLI requested that certain allegations not be made public in Tribunal publications. In this regard, the Tribunal notes that, under paragraph 16(b.1) of the CITT Act, the Tribunal is to receive complaints, conduct inquiries and make determinations in matters of procurement. The Tribunal’s hearings and inquiries are public, unless a party is able to show the need for an in-camera hearing. Furthermore, under subsection 30.13(2) of the CITT Act, where the Tribunal decides to conduct an inquiry, it shall notify, in writing, the complainant, the relevant government institution and any other party that the Tribunal considers to be an interested party and give them an opportunity to make representations. Consequently, information filed with the Tribunal is public, subject only to sections 43 to 49, inclusive, of the CITT Act, which relate to the disclosure of information.

On October 29, 2001, the Tribunal informed the parties that it had granted SLI intervener status in File No. PR-2001-029. On November 15, 2001, PWGSC requested an extension of the deadline for filing the Government Institution Report (GIR) for a number of reasons, including the highly technical nature of the allegations. On November 16, 2001, the Tribunal granted the extension. On November 22, 2001, PWGSC filed the GIR on both complaints with the Tribunal. On December 5, 2001, Chandiooux filed comments on the GIR with the Tribunal.

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

## **PROCUREMENT PROCESS**

The Bureau has been translating the meteorological bulletins from English to French and from French to English for Environment Canada since 1977. The Bureau sought the services of the private sector to perform the work. At the time, Chandiooux was the only supplier able to do the work. When the contract expired, an exclusive contract was signed with Chandiooux, as a result of which Chandiooux has been providing that service for some 23 years.

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6. S.O.R./93-602 [hereinafter Regulations].

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

Before the year 2000, Chandiooux's system was a DOS system that operated with a keyboard and no mouse. Concerns about the Y2K transition led to the shift to a Microsoft Windows NT system.

On August 24, 2000, at a meeting between PWGSC and the Bureau, the decision was made to seek competitive bids for this requirement. On November 2, 2000, PWGSC received a contract request from the Bureau's Meteorology Unit for the supply, leasing, maintenance and continuous development of an automatic translation system. On November 17, 2000, PWGSC informed Chandiooux that it would be soliciting bids for the translation requirement and that an RFP was being prepared. Chandiooux was also informed that PWGSC would probably want to extend its contract for a few months to cover the bidding period. On March 29, 2001, Chandiooux's contract was extended to September 30, 2001.

On May 22, 2001, a Notice of Proposed Procurement and an RFP were posted on Canada's Electronic Tendering Service (MERX). The closing date was June 27, 2001. Two bids were received: one from Chandiooux and one from SLI.

The RFP includes, in part, the following provisions:

**D.1 EVALUATION**

The **Mandatory** requirements of this RFP are identified specifically with the word "**Mandatory,**" "**(M)**", "**must,**" "essential," "shall," "will," "it is required" and "required," or in a statement covering a section of this document.

**D2.1 BASIS OF SELECTION**

The compliant bid that offers the best overall value for the Crown, based on technical merit and price, that is, the total evaluated price divided by the number of points scored out of a maximum of 400 to calculate the lowest price per point, will be recommended for award.

Appendix "B" to the RFP indicates that the evaluation process will consist of four phases:

**PHASE 1:** Evaluation of mandatory requirements (except system reliability)

**PHASE 2:** Evaluation of rated requirements

**PHASE 3:** Real-time testing of system over a two-week period

**PHASE 4:** Financial evaluation

Paragraph A of Phase 4 indicates that, "[f]or evaluation purposes, the total price includes all items, both optional and not, and years, both optional and not, in accordance with these specifications."

The following paragraphs of Appendix "B" are also relevant:

**2.2 Translation of headers (max. 10 points)**

The Bidder shall indicate whether its system translates at least the headers in warnings (advisories, severe warnings, watches and special bulletins), ice bulletins and synopses.

**2.3 Translation of region names (max. 10 points)**

The Bidder shall indicate whether its system translates at least the region names in warnings (advisories, severe warnings, watches and special bulletins), ice bulletins and synopses.

**2.4 Translation of canned sentences (max. 10 points)**

The Bidder shall indicate whether its system translates at least the canned sentences in warnings (advisories, severe warnings, watches and special bulletins) and ice bulletins.

**2.6 Equipment supplied**

The Bidder shall submit a detailed list of all the equipment it intends to supply to ensure the system runs smoothly and to allow interface with the Environment Canada network, i.e. 10/100 base T Ethernet and use of the TCP/IP Protocol Suite only. It will be the Translation Bureau's responsibility to decide whether the equipment supplied is adequate, after a two-week test of the system. The system shall function in a Windows environment, and the proposed platform shall be recognized as reliable and secure according to industry standards and shall be approved by Environment Canada.

**2.22 Retention of original formatting (max. 10 points)**

The Bidder shall indicate whether its system retains the original formatting, for example in tables.

**2.23 Creation of macros (max. 10 points)**

The Bidder shall indicate whether its system, or the edit module enables the translators to create macros.

**2.24 Spell checker (max. 10 points)**

The Bidder shall indicate whether its system includes a spell checker.

The technical evaluation, phases 1 and 2 (mandatory requirements and rated requirements), was completed on July 18, 2001. Both proposals were found to meet the requirements of the RFP. As stipulated in the RFP, each system was tested over a two-week period, round the clock, to ensure that the systems operated satisfactorily 99 percent of the time. Both were judged satisfactory.

Following the award of the contract to SLI, on September 14, 2001, Chandieux requested a debriefing. On September 21, 2001, Chandieux requested information on the results of the tests conducted on both systems. On September 24, 2001, PWGSC replied to this request. On October 1, 2001, Chandieux filed the complaint in File No. PR-2001-029 with the Tribunal. On October 4, 2001, Chandieux attended a debriefing and, on October 15, 2001, it filed the complaint in File No. PR-2001-032 with the Tribunal.

**POSITION OF PARTIES****PWGSC's Position**Complaint in File No. PR-2001-029

With respect to Chandieux's allegation that SLI's proposal does not meet the requirement of paragraph 2.6 of Appendix "B" to the RFP, PWGSC submitted that Chandieux misinterpreted this requirement. In fact, the proposed system did not have to be a "Microsoft Windows" system, and no provision of the RFP required that the proposed system be such a system. However, given that the proposed system must be integrated, installed and connected to the systems and the network used by the Branch, a requirement had to be included that clearly stated that the proposed system had to be able to operate in a Windows environment to ensure compatibility with Environment Canada's network. PWGSC further stated that requiring a "Microsoft Windows" solution would have imposed a technical restriction contrary to the provisions of the trade agreements, which require performance-based specifications.

PWGSC submitted that the system proposed by SLI is compatible with the Unix and Microsoft Windows platforms. Furthermore, testing clearly demonstrated the reliability and security of the system proposed by SLI.<sup>8</sup>

#### Complaint in File No. PR-2001-032

With respect to Chandioix's allegation that its proposal was not correctly evaluated with regard to six rated criteria, PWGSC submitted that, even if Chandioix's proposal had obtained the maximum score of 400 points for the rated criteria, the result would have been the same because the assessed cost and the cost per item of Chandioix's proposal were higher than those of SLI.

Reviewing each of the rated criteria at issue, PWGSC submitted that:

- the translation of the header, as shown in the example given in paragraph 2.1.5.1.1 of Appendix E to the complaint and Chandioix's response to this requirement in its proposal, runs from the very first letter of the bulletin to the beginning of the forecast. Also, since Chandioix indicated that only the most frequent headers would be translated at the outset, the score was justified;
- the requirement to translate region names is clearly stated in paragraph 2.3 of Appendix "B". No points were awarded for this criterion.<sup>9</sup> Following the complaint, however, PWGSC re-evaluated this criterion and now feels that a score of 2.7 out of 10.0 would have more accurately reflected the value of the response;
- the marginally higher score given by PWGSC for the "canned sentences" criterion of Chandioix's proposal is negligible and has no effect on the outcome of the evaluation of the proposals;
- with respect to retention of formatting, Chandioix's proposal and the evaluation of the system clearly show that the system proposed by Chandioix fails to meet this requirement.<sup>10</sup> PWGSC points out, however, that this was a very important requirement, clearly stated in paragraph 2.22 of Appendix "B". Moreover, tests on the system proposed by SLI showed that its system met this requirement;
- the requirement to create macros stated in paragraph 2.23 of Appendix "B" is clear, as is Chandioix's response in its proposal: "NON-COMPLIANT".<sup>11</sup> In PWGSC's view, Chandioix was fully aware of the correct interpretation of the term "macros" and contests the assertion that, at the debriefing, the evaluator defined the term as the possibility of making a global search-and-replace;
- the spell checker requirement was clearly stated in paragraph 2.24 of Appendix "B", and Chandioix's response in its proposal is clear and in no way subject to interpretation, hence the given score;<sup>12</sup> and
- the financial evaluation of the proposals was carried out by PWGSC, not by the technical evaluators. Chandioix's financial proposal includes a price for a spell checker as an option.

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8. See GIR (confidential), para. 5 at 8; Complainant's Exhibit A-4 (confidential) at 5 of 17.

9. See GIR, para. 14 at 11; Complainant's Exhibit A -7 (confidential).

10. *Supra* note 8, para. 18 at 12; Complainant's Exhibit A -9 (confidential).

11. See GIR (confidential), para. 23 at 14; Complainant's Exhibit A-9 (confidential). See also public complaint (15 October 2001), para. 4.2 at 5.

12. *Ibid.*, para. 27 at 14-15; Complainant's Exhibit A-9 (confidential). See also public complaint (15 October 2001), para. 4.2 at 5.



This price was accordingly taken into consideration in evaluating Chandioux's proposed price.<sup>13</sup>

In conclusion, PWGSC submitted that the quality of the translations produced by the system proposed by Chandioux is not at issue. Essentially, it is price that made the difference between the two bidders.

PWGSC asked that both complaints be dismissed and requested the opportunity to make further submissions with regard to costs.

### **Chandioux's Position**

In its comments of December 5, 2001, on the GIR, Chandioux submitted that all the platforms on the market are theoretically compatible with Environment Canada's network. That format is not defined in the RFP. According to Chandioux, the issue is not what PWGSC meant, but what a bidder might reasonably infer from reading paragraph 2.6 of the RFP. Chandioux further submitted that, in this case, in the absence of the phrase "or equivalent", Windows means Microsoft "Windows" and nothing else. Moreover, according to Chandioux, Linux is not a "Windows environment".

With respect to the evaluation of the bids, Chandioux submitted that PWGSC confused the terms "title block" and "header" in a forecast. Chandioux relied on the definitions of these terms in the *Manual of Standard Procedures for Public Weather Service*.<sup>14</sup> Chandioux further claimed that, PWGSC's opinion notwithstanding, replacing one code with another is a translation operation.

With respect to the translation of region names, Chandioux submitted that not only was the evaluation of this item unreasonable, as PWGSC seems to be admitting, but perhaps even more seriously, the evaluation of a number of rated criteria (130 points out of 400) seems to have been subjected to a faulty methodology, thereby distorting the scores given to the two bidders.

With respect to the canned sentences, Chandioux submitted that the key fact is that the person responsible for the testing did not give the correct score for this criterion, having failed to take into account the list of canned sentences provided in Appendix "C" to the RFP.

With respect to retention of formatting, Chandioux submitted that, in their testing, the evaluators opted for the internal formatting of the system proposed by Chandioux, thus distorting the evaluation. Furthermore, it could not be claimed that the expression "tables, for example" [translation] used by PWGSC in the GIR excludes all other aspects of the formatting as defined by Environment Canada.

With respect to the criterion for macros, Chandioux submitted that the fact that the requirement was clearly stated in the RFP has no bearing on the fact that the person conducting the tests did not know the exact meaning of the term "macro".

With respect to the spell checker, Chandioux submitted that nothing in its response warranted a score of zero for this rated criterion. PWGSC gave no reason to support that decision.

With respect to PWGSC's statement that, essentially, Chandioux's proposed price made the difference, Chandioux submitted that, if the person conducting the test made so many errors on the few

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13. *Ibid.*, para. 29 at 15. See also public complaint (15 October 2001), para. 5 at 6.

14. Chandioux's comments on the GIR, Appendix 6 [hereinafter Manual].

criteria that could be checked in the time allotted by the Tribunal for filing a complaint, one has the right to wonder how many errors there might be in the evaluation of the other rated criteria in its proposal and in the evaluation of SLI's proposal.

To sum up, Chandioix submitted that PWGSC admitted having made certain evaluation errors detrimental to Chandioix, that the arguments advanced by PWGSC in denying other errors were specious, to say the least, and that the score given to SLI was likely no more accurate than that given to Chandioix, in which case, given the contract award procedure, everything depends on whether the error was in SLI's favour or not.

In conclusion, Chandioix submitted that, if it had known that Linux was acceptable to PWGSC, it would have proposed the existing system with a changeover to Linux as the contract proceeded, which would have made possible a considerable reduction in the price of its bid. Chandioix also asked that the Tribunal make recommendations concerning bidders' access to the results obtained by successful bidders, with a view to ensuring fairness and transparency in the tendering process.

### **TRIBUNAL'S DECISION**

Subsection 30.14(1) of the CITT Act requires that, in conducting an inquiry, the Tribunal limit its consideration to the subject matter of the complaint. Also, under subsection 30.14(2) of the CITT Act, the Tribunal must, at the conclusion of the inquiry, 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 relevant trade agreements, in this case, NAFTA, the AGP and the AIT.

Article 1015(4)(d) of NAFTA states, in part, that "awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation". Article XIII(4)(c) of the AGP contains identical provisions. Article 506(6) of the AIT states that "[t]he tender documents shall clearly identify the requirements of the procurement, the criteria that will be used in the evaluation of bids and the methods of weighting and evaluating the criteria."

With respect to Chandioix's allegation that the system proposed by SLI and accepted by PWGSC fails to meet the mandatory requirements of paragraph 2.6 of Appendix "B" to the RFP, the Tribunal finds that this ground of complaint is not valid.

In its comments on the GIR, Chandioix submitted that the issue is not what PWGSC meant, but what a bidder might reasonably infer from reading paragraph 2.6 of the RFP. The Tribunal finds that paragraph 2.6 clearly indicates that any system, Microsoft Windows or any other, that will operate in a Windows environment, meets the requirement of the paragraph and is, therefore, acceptable. It is true that the system proposed by SLI is not, in Chandioix's own words, "a Windows environment". However, the RFP did not require such an environment, but rather that any proposed system be compatible with such an environment and able to operate within it; this was documented and demonstrated by the system proposed by SLI, in PWGSC's opinion. In the circumstances, the Tribunal is of the view that PWGSC acted correctly in accepting the system proposed by SLI as meeting the requirements of paragraph 2.6 of the RFP.

With respect to Chandioix's allegation that PWGSC wrongly applied the criteria set out in the RFP in evaluating six rated criteria in its offer, the Tribunal finds that this ground of complaint is valid in part.

Based on paragraph 2.1.5.1 of the Manual, the Tribunal concludes that PWGSC got the terms “headers” and “title block” confused when applying paragraph 2.2 of Appendix “B” to the RFP and, thereby, undervalued Chandioix’s response to this item.

In addition, with respect to the evaluation of paragraph 2.24 of Appendix “B”, the Tribunal is of the view that, having concluded that the system proposed by Chandioix did not include spell checker software, contrary to what was indicated in its financial proposal, PWGSC was obliged, during the financial evaluation, to reduce Chandioix’s total proposed price by an amount equal to the price bid for the software. The Tribunal finds that PWGSC erred in concluding that, even though Chandioix’s bid did not include a spell checker, the proposed price for such software had to be considered during the financial evaluation. In the Tribunal’s view, PWGSC could not logically conclude that Chandioix was not offering a spell checker in its bid, hence the score of zero for this item, and could not take the price of the software into consideration in calculating the total price of Chandioix’s proposal.

The Tribunal further concludes that the revised evaluation of paragraph 2.3 of Appendix “B” concerning the translation of region names is not wrong. Paragraph 2.3 required at least the translation of the region names in warnings, ice bulletins and synopses. According to the evidence on file, Chandioix did not offer the translation of region names that appeared only a certain number of times a year. Consequently, the Tribunal finds that Chandioix failed to meet this mandatory requirement.

With respect to canned sentences (paragraph 2.4 of Appendix “B” to the RFP), the retention of original formatting (paragraph 2.22) and the creation of macros (paragraph 2.23), the Tribunal finds that these requirements were evaluated in accordance with the provisions of the RFP. The Tribunal is of the view that, with respect to the retention of formatting and macros, Chandioix’s proposal did not meet the requirements of the RFP.

Chandioix questioned the quality and reliability of the evaluation of SLI’s proposal. The Tribunal is of the view that this allegation is based on conjecture and speculations, and, therefore, it will not pursue the matter.

In light of the foregoing, and after a thorough review of all the evidence, the Tribunal concludes that, although Chandioix’s proposal was undervalued in some respects and its price was not adjusted as it should have been, the overall result of the evaluation of the two proposals is not at issue. Moreover, the Tribunal will not recommend the cancellation of the contract awarded to SLI.

Chandioix asked that the Tribunal make recommendations concerning bidders’ access to the results obtained by successful bidders, with a view to ensuring fairness and transparency in the tendering process. The Tribunal notes that Article 1019 of NAFTA, while it is aimed at parties rather than entities, provides a satisfactory description of the kinds of information about successful bidders to which bidders may have access, that is, information on the characteristics and relative advantages of the winning tender and the contract price. The Tribunal is satisfied that, in this case, PWGSC provided Chandioix with the characteristics, advantages and price of SLI’s proposal; in addition, the Tribunal will not be making any recommendations.

## **DETERMINATION OF THE TRIBUNAL**

In light of the foregoing, the Tribunal finds that the complaint in File No. PR-2001-029 is not valid.

The Tribunal further finds that the complaint in File No. PR-2001-032 is valid in part.

Pursuant to subsection 30.15(4) of the CITT Act, the Tribunal awards Chandioux its reasonable costs incurred in relation to preparing and proceeding with the complaint in File No. PR-2001-032.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

Ottawa, Tuesday, July 30, 2002

File Nos. PR-2001-029 and PR-2001-032

IN THE MATTER OF two complaints filed by John Chandioux experts-conseils 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 decisions to conduct inquiries into the complaints under subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

### CORRIGENDUM

The third paragraph of the determination of the Tribunal should have read: “Pursuant to subsection **30.16(1)** of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal awards John Chandioux experts-conseils inc. its reasonable costs incurred in relation to preparing and proceeding with the complaint in File No. PR-2001-032.”

The last paragraph of the statement of reasons should have read: “Pursuant to subsection **30.16(1)** of the CITT Act, the Tribunal awards Chandioux its reasonable costs incurred in relation to preparing and proceeding with the complaint in File No. PR-2001-032.”

By order of the Tribunal,

Michel P. Granger  
Secretary