



Ottawa, Thursday, June 13, 2002

**File No. PR-2001-069**

IN THE MATTER OF a complaint filed by Macadamian Technologies Inc. under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47;

AND FURTHER TO 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 subsection 30.14(2) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal determines that the complaint is not valid.

Ellen Fry  
Ellen Fry  
Presiding Member

Michel P. Granger  
Michel P. Granger  
Secretary

Date of Determination and Reasons: June 13, 2002

Tribunal Member: Ellen Fry, Presiding Member

Investigation Officer: Peter Rakowski

Counsel for the Tribunal: Marie-France Dagenais

Complainant: Macadamian Technologies Inc.

Counsel for the Complainant: Zai Sarkar

Intervener: Deloitte Consulting

Counsel for the Intervener: Mark S. Hayes

Government Institution: Department of Public Works and Government Services

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

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## STATEMENT OF REASONS

### COMPLAINT

On March 15, 2002, Macadamian Technologies Inc. (Macadamian)<sup>1</sup> filed a complaint with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*.<sup>2</sup> The complaint concerns the procurement (Solicitation No. 08324-010373/B) by the Department of Public Works and Government Services (PWGSC) of an outsourced multilingual solution for the international gateway component of the Canada site for the Department of Foreign Affairs and International Trade (DFAIT).

The international gateway component of the Canada site<sup>3</sup> was launched in January 2001. The gateway is intended to provide access to Government of Canada programs and services provided to, or directed at, those who are neither citizens nor residents of Canada. It will offer a subset of the information on the Canada site in languages other than English and French.

Macadamian made four grounds of complaint, of which one was accepted for inquiry by the Tribunal. Macadamian alleged that its solution is the only solution that meets the technical requirements of the Request for Proposal (RFP).

Macadamian requested, as a remedy, that a proof-of-concept demonstration of the two solutions offered be conducted. In the event that both solutions are deemed satisfactory, a re-evaluation of the bids should be conducted by independent evaluators on the basis set out in the complaint. In the alternative, Macadamian requested full compensation for its lost profits.

The complaint 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 Regulations*.<sup>4</sup> On March 27, 2002, the Tribunal informed the parties that the complaint had been accepted for inquiry, but was limited to the ground of complaint described above. On April 2, 2002, PWGSC informed the Tribunal that a contract in the amount of \$263,059.50 had been awarded to Deloitte Consulting (Deloitte). On April 22, 2002, PWGSC filed a Government Institution Report (GIR) with the Tribunal in accordance with rule 103 of the *Canadian*

1. Macadamian is represented in the matter by Universal Solutions Inc. (Universal), a subcontractor on this solicitation.
2. R.S.C. 1985 (4th Supp.), c. 47 [hereinafter CITT Act].
3. At [www.canadainternational.gc.ca](http://www.canadainternational.gc.ca).
4. S.O.R./93-602 [hereinafter Regulations].

*International Trade Tribunal Rules*.<sup>5</sup> On April 23, 2002, the Tribunal informed the parties that Deloitte had been granted intervener status in the matter. On May 6, 2002, Macadamian filed comments on the GIR with the Tribunal. On May 15, 2002, PWGSC filed additional submissions with the Tribunal in response to Macadamian's comments and, on May 24, 2002, Macadamian filed its comments in response.

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 December 14, 2001, PWGSC received a requisition from DFAIT for the procurement of an outsourced multilingual solution for the international gateway component of the Canada site and the option for two additional years of service and maintenance and future expansion of the gateway.

On December 24, 2001, the RFP and a Notice of Proposed Procurement were published on MERX.<sup>6</sup> The firms that were qualified under the "Information and Professional Services (IPS) Stream" of the Government On-Line supply arrangement, including Macadamian and Deloitte, were invited to submit proposals. The closing date for the submission of proposals was January 21, 2002. Macadamian and Deloitte submitted proposals.

On February 4, 2002, letters were sent to the bidders by facsimile advising that the RFP was cancelled because none of the bids received were deemed compliant. The letters also informed the bidders that a new solicitation would be issued shortly to the bidders that had originally submitted proposals.

On February 5, 2002, the new solicitation was sent to Macadamian and Deloitte. The closing date for the submission of proposals was February 11, 2002.

The RFP includes the following provisions relevant to this case:

### 1.1 Introduction

In order to ensure a consistent message, and to control the availability of documents and information, the Gateway is seeking an outsourced solution which would permit human review of the translated text **prior to publication on the website**. Accordingly, the Gateway is seeking a Globalisation Bidder to provide a service featuring rapid turnaround, multi-language capabilities, as well as site and site component quality assurance, approval, and release capabilities for all projects.

### 2.4 Localisation

Some elements/content of the website will be common to a number of sites, including Mission websites, whilst others will be specific to a particular location. The solution must include a facility for localisation - specifically, linguistic differences which, if not considered, would lead to inaccurate information, or inappropriate messages.

The Bidder must have browser-based facilities and an environment which will allow it to localise the web site and its components, and to build the localised destination language web site. The site should include all website components, including:

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

6. Canada's Electronic Tendering Service.

1. Text objects, including body texts, background texts, embedded texts, and metadata text
2. Graphic objects
3. Buttons and pictures
4. Internal and external objects and page links.

#### **2.4.1 Database Records**

The Bidder must have the facilities and the environment to localise the current Canada International database records components and build the localised destination language database records and their components, including:

1. Text objects, including body texts, background texts, embedded texts, and metadata text
2. Graphic objects
3. Buttons and pictures
4. Internal and external objects and page links.

#### **2.6 Change and Content Management**

In order to synchronise web content and maintain currency of information, the solution must be able to monitor changes to the main English/French website, and identify when new documents or information have been added to the areas identified as part of the third language subsets. These documents must then be translated and sent to the person or agency nominated to review the translation as part of the publication process.

The Bidder must have facilities and systems to:

1. Deliver the pre-released version of the destination sites to the Gateway
2. Allow Gateway review of pre-released versions
3. Allow Gateway staff to modify, make changes to pre-released versions.
4. Handle modifications and 'push' approved changes to the customised lexicon
5. Allow Gateway approval of pre-released versions.

##### **2.6.1 Post to a Designated Site**

The Bidder must have the facilities and systems to:

1. Post and publish the destination language website in the Gateway's designated FTP [file transfer protocol] site or through direct delivery (electronic or physical) to the customer, through the exchange facilities outlined in 2.6.10, above.

##### **2.6.5 Dynamic Destination-Source Website Synchronisation**

The Bidder shall have facilities and systems, at both the presentation and data layers of the Gateway websites and subsites, to:

1. Automatically identify the changes to the destination sites
2. Automatically capture the changes to the destination sites
3. Automatically update the destination site in the Gateway environment
4. Perform quality assurance check on the localised changes and websites
5. Provide the same quality assurance checks and facilities to the Gateway
6. Ensure the destination site(s) synchronised with the source site at predetermined intervals.

##### **2.6.6 Service Management**

The Bidder shall have facilities and systems, at both the presentation and data layers of the Gateway websites and subsites, to:

1. Capture automatically and post all identified changes at the source language website. This will include dates and times, and must identify the type, and volume, of data downloaded and uploaded.
2. Capture automatically and post all identified changes made to the destination language website(s). This will include dates and times, and must identify the type, and volume, of data downloaded and uploaded
3. Provide web service and web access to Gateway staff to view and print the statistics
4. Create and provide standard web-based reports indicating site operations and services provided.

#### **2.6.12 System Access and Data Exchange Capability**

The Bidder shall have the facilities and systems to interface to and exchange data electronically with multiple pre-determined FTP sites at pre-determined dates and times, to include:

1. Electronic exchange of the Gateway's source/destination web programs
2. Electronic exchange of the Gateway's source/destination pre-determined database records
3. Electronic exchange of all other objects in the Gateway's source/destination FTP sites
4. Track accesses and data exchanged
5. Provide web-based access to Gateway staff to monitor status and statistics for data exchanged.

#### **2.11 Service Levels**

The Bidder must have the facilities and systems to provide service at the following levels for Gateway project orders:

1. Project turnaround time for Websites of up to 100 pages in up to 5 languages each shall be processed, reviewed, and returned to the Gateway for approval and publication within five (5) business days.
2. Site change turnaround time for changes of up to 25 pages in up to 5 languages each shall be processed, reviewed, and returned to the Gateway for approval and publications within 24 hours, or one (1) business day.

### **3.0 Deliverables**

In order to demonstrate a multilingual presence on the site in as timely a manner as possible, and in order to fully evaluate the effectiveness of the globalisation solution for foreign languages, the **first deliverable shall be a prototype foreign language site**. This site will be developed in a language or languages nominated by the Gateway, and shall contain translated elements including, but not limited to, the Gateway elements, HTML pages, and other documents as specified.

If performance and results are not satisfactory to the Gateway and its related stakeholders, and the Bidder is unable to address concerns to the satisfaction of the Gateway and its related stakeholders, **the Gateway reserves the right to terminate the project after completion of the first deliverable.**

#### **3.1 First Deliverables – Phase I and Phase II**

The first deliverable estimated for March 31, 2002, will offer a sample of subsites which accommodate breadth (for ease of navigation) as well as depth (for richness of content). Phase I (breadth) shall include a sampling of the top two or three levels of the Gateway, to include the 'splash' and home page for each language site in Spanish, Portuguese, German and Simplified Chinese. . . .

Phase one must also include translation/globalisation/localisation of all elements, including but not limited to, navigation buttons, FAQ files, embedded text and graphics, HTML, XML and ASP files, and some database records or .pdf files.

Two proposals were received by PWGSC in response to the new solicitation, one each from Macadamian and Deloitte. On February 11, 2002, PWGSC forwarded copies of the bidders' technical proposals to DFAIT for evaluation.

On February 13, 2002, DFAIT advised PWGSC that the technical evaluation was completed and that both proposals submitted in response to the RFP had been evaluated as being compliant. Macadamian scored 89 points out of 100; Deloitte scored 82 points out of 100.

Deloitte was evaluated as having the lowest cost-per-point proposal. On February 25, 2002, a contract was awarded to Deloitte. Macadamian was informed of the results that same day.

PWGSC indicated in the GIR that Deloitte has successfully delivered Phase I of the contract.

## **POSITION OF PARTIES**

### **Macadamian's Position**

Macadamian submitted that it is fully aware of all competitive solutions available in the marketplace today that offer multilingual solutions and that its solution is the only existing solution that can meet all the specific requirements in the manner requested in the RFP. Specifically, it submitted that no other solution can provide an outsourced method for handling the web-based management of multilingual websites, especially processing content automatically from a database and content stored in linked websites, automatically processing changes and updates from both databases and linked sites, and automatically delivering updates to specific destinations as requested. Macadamian submitted that its solution was developed after two and a half years of research into this particular area by its subcontractor, Universal, with the support of the National Research Council of Canada.

Macadamian submitted that the RFP was for a proposal on two phases of the project, Phases I and II. Separate proposals and prices were submitted for each phase. However, it submitted that the GIR indicates that only Phase I has been delivered. In these circumstances, Macadamian queried whether a contract for Phase II has also been awarded and, if not, on what basis the price/point evaluation was done.

Macadamian further submitted that the response provided in the GIR with respect to Deloitte's fulfilment of the technical requirements described in section 2 of the RFP does not address all the requirements of that section or all the technical issues raised in the complaint. Addressing a number of specific items,<sup>7</sup> Macadamian submitted that the GIR does not indicate that Deloitte's proposal included a point-for-point response for each requirement of section 2 of the RFP. In addition, it submitted that the responses provided are broad statements subject to interpretation and relate vaguely to the specific items requested.

Macadamian submitted that PWGSC's response in the GIR is insufficient to prove that Deloitte's solution is capable of meeting the requirements of the RFP.

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7. Macadamian's response to the GIR dated May 6, 2002, at 03.

Macadamian submitted that PWGSC cannot be expected to be objective about assessing its own work. Therefore, Macadamian asked that PWGSC either substantiate its response with facts that address each of the items listed in section 2 of the RFP or have an independent authority do so.

### **PWGSC's Position**

With respect to Macadamian's allegation that only its solution can meet a number of requirements of the RFP, namely, section 2.4 - Localisation; section 2.4.1 - Database Records; section 2.6 - Change and Content Management; section 2.6.1 - Post to a Designated Site; section 2.6.5 - Dynamic Destination-Source Website Synchronisation; section 2.6.6 - Service Management; section 2.6.12 - System Access and Data Exchange Capability; and section 2.11 - Service Levels, PWGSC submitted that there is no merit to this contention.

PWGSC submitted that the RFP requires that the solution provide rapid turnaround, identify changes, capture them automatically, localize the content to the selected destination languages and update all changes to all destination sites on a regular and ongoing basis. It submitted that Deloitte's solution meets these requirements. However, PWGSC submitted that this is only one aspect of the requirement. The RFP also requires the proponent to provide an approach and methodology regarding all aspects of the work involved in the production and maintenance of foreign language destination sites, as well as change management and monitoring of such sites, co-ordinating not only technical aspects but also translation services.

Addressing the technical aspect of the solution, PWGSC submitted that Deloitte has proposed a technical solution that utilizes proprietary technology developed by WebViews Inc. under the trademark "Inter-Language Paradigm<sup>TM</sup>", which establishes a "Language Transparent Operating Environment<sup>TM</sup>".

PWGSC submitted that Deloitte's solution has the automated capabilities that, according to Macadamian, form the critical elements of the technical solution, in that it provides an outsourced method for handling web-based management of multilingual websites, is automated to detect and process changes rapidly from database and linked websites, and is capable of automatic delivery and updates to specific destinations as requested.

Addressing, in turn, the specific provisions of the RFP enumerated above,<sup>8</sup> PWGSC submitted that Deloitte's proposal satisfactorily addresses all these provisions and that this conclusion is further supported by the information submitted by WebViews Inc. that was included in Deloitte's proposal.

PWGSC submitted that Macadamian has provided no evidence in support of its allegation that Deloitte's technology does not satisfy the requirements of the RFP. It requested its costs for defending the complaint.

Finally, PWGSC submitted that only one contract was awarded to Deloitte for deliverables under three phases, Phase III being optional, and that the value of the contract awarded to Deloitte was lower than Macadamian's bid price.

### **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. Furthermore, at the conclusion of the inquiry, the

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8. GIR, section III, paras. 1-15, and Exhibit 13 (protected).



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 applicable trade agreements, which, in this instance, are the *North American Free Trade Agreement*<sup>9</sup> and the *Agreement on Internal Trade*.<sup>10</sup>

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. Article 506(6) of the AIT stipulates that tender documents shall clearly identify the criteria that will be used in the evaluation of bids.

Macadamian submitted that it intended to challenge every aspect of Deloitte's technical proposal and that the specific items raised in its complaint were only examples. Therefore, Macadamian argued, PWGSC had to justify not only the specific points raised in its complaint but every aspect of Deloitte's technical proposal. In the Tribunal's opinion, the onus is on Macadamian to describe fully and completely, in the complaint, its grounds of complaint, and the mere raising of questions is not sufficient to properly document a ground of complaint. The full and complete documentation of the grounds of complaint is essential for the Tribunal to determine whether there exists a reasonable indication of a breach and, if so, to frame the subject matter of the inquiry. In addition, the government is entitled to know the precise allegations against which it must defend.

More specifically, Macadamian alleged that its solution is the only one that can meet the mandatory requirements of the RFP. Therefore, Macadamian submitted, because Deloitte proposed a different solution, PWGSC and DFAIT must have made an error in declaring Deloitte's proposed solution compliant with the requirements of the RFP.

The Tribunal finds that this allegation is without foundation.

The Tribunal has carefully reviewed the evidence and submissions of the parties, including section III of the GIR and Exhibit 13, which contains excerpts from Deloitte's proposal. The Tribunal is satisfied with PWGSC's submissions that, based on the evidence on the record, Deloitte's proposal, in PWGSC's view, addressed the items in dispute. Furthermore, there is no evidence on the record that shows that, in evaluating Deloitte's proposal, DFAIT and PWGSC applied criteria and methods other than those set out in the RFP. PWGSC and DFAIT were properly charged with the responsibility of evaluating the proposals. Absent clear evidence of serious deficiencies in the evaluation of Deloitte's proposal, the Tribunal will not interfere with the judgement of the evaluators.

Macadamian submitted that the fact that PWGSC indicated in the GIR that Phase I of the project had been successfully delivered suggests that a separate contract was awarded for each phase of the project, contrary to the RFP. The Tribunal is satisfied by PWGSC's submissions that only one contract, which includes three phases, was awarded.

The Tribunal does not award PWGSC its costs for defending the complaint.

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9. 32 I.L.M. 289 (entered into force 1 January 1994) [hereinafter NAFTA].

10. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<http://www.intrasec.mb.ca/eng/it.htm>> [hereinafter AIT].

**DETERMINATION OF THE TRIBUNAL**

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

Ellen Fry  
Ellen Fry  
Presiding Member