Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

Ottawa, Friday, July 18, 2003

File No. PR-2002-066

IN THE MATTER OF a complaint filed by Berlitz Canada 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 valid in part.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary

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Date of Determination:	July 18, 2003
Date of Reasons:	July 18, 2003
Tribunal Member:	Richard Lafontaine, Presiding Member
Senior Investigation Officer:	Peter Rakowski
Counsel for the Tribunal:	John Dodsworth
Complainant:	Berlitz Canada Inc.
Government Institution:	Parks Canada Agency
Counsel for the Government Institution:	Sandra Leduc

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STATEMENT OF REASONS

COMPLAINT

On March 5, 2003,[1] Berlitz Canada Inc. (Berlitz) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*.[2] The complaint concerned a Request for Proposal (RFP) by the Parks Canada Agency (Parks Canada) (Solicitation No. 5P420-02-5056) for the provision of language training services.

Originally, Berlitz cited seven grounds of complaint. However, in the additional information filed with the Tribunal, Berlitz indicated that it was withdrawing two of these grounds. The remaining grounds are as follows:

1. The RFP did not properly describe "best value" and the process that would be used to calculate the best value per bidder.
2. The procurement process was not conducted fairly, giving preferential treatment to certain bidders and improperly applying the contractor selection criteria.
3. Questions that were submitted in writing were answered orally by Parks Canada, and those answers were not provided to all bidders equally.
4. The evaluation was done by unqualified evaluators who used subjective criteria not clearly set out in the RFP.
5. Reference checks were not properly completed.

As a remedy, Berlitz requested that it be awarded the contract.

On March 11, 2003, the Tribunal informed the parties that the complaint had been accepted for inquiry pursuant to subsection 30.13(1) of the *CITT Act* and subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.[3] On April 8, 2003, Parks Canada filed a Government

1. The date on which additional information requested by the Tribunal was received.
2. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].
3. S.O.R./93-602 [*Regulations*].

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Institution Report (GIR) with the Tribunal in accordance with rule 103 of the *Canadian International Trade Tribunal Rules*.[4] On May 2, 2003, Berlitz filed its comments on the GIR.

On June 2, 2003, the Tribunal requested additional information related to the derivation of total points for proposals and details (including calculations) as to how Parks Canada determined the "best value" score for the two proposals. On June 9, 2003, Parks Canada responded to the Tribunal's request and, on June 17, 2003, Berlitz filed its comments regarding Parks Canada's response. In a letter dated June 25, 2003, Parks Canada filed another submission with the Tribunal. This submission both responded to new issues allegedly raised by Berlitz in its comments and sought the Tribunal's permission to file this response. The Tribunal decided to accept this new submission. Berlitz filed comments on Parks Canada's final submission on June 27, 2003.

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 16, 2002, a Request for Proposal (RFP) was published on MERX, Canada's Electronic Tendering Service. The bid closing date was set for January 24, 2003.

As stated in the RFP, the purpose of the solicitation was for language training services with the objective of bringing three Parks Canada staff from unilingual English to a "CBC" bilingual French designation, as defined by the Public Service Commission, within one year.

The RFP contains a number of mandatory requirements. Section 7 of the RFP reads, in part, as follows:

> 7.1 Mandatory Requirements
>
> A) Bidders must provide assigned personnel curriculum vitae.
>
> B) Bidders must provide at least two references with different firms and/or individuals where similar training has taken and who may be contacted. Examples of successes and success rates for individuals with similar poor diagnostic indicators is required.
>
> C) Bidders must supply an overall schedule for training completion, student time commitments both in classroom and on their own are to be identified.

The solicitation closed, as scheduled, on January 24, 2003. According to Parks Canada, proposals from three suppliers were received by the bid closing date. All proposals were rated on technical acceptability before the price was considered.

According to Parks Canada, in the course of the evaluation process, the evaluation team determined that one proposal failed to obtain a passing mark and set it aside. The evaluation team then determined that both the IBC Business Consulting Inc. (IBC) proposal and the Berlitz proposal complied with the mandatory requirements. These proposals were then evaluated in accordance with the point-rated criteria set out in the RFP.

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

In terms of total technical points, IBC ranked first with 93.6 points and Berlitz ranked second with 80.1 points. According to Parks Canada, the assessment of best value was based on the best cost per technical point, which was obtained by dividing the proposed price of each bid by its number of technical points. In that calculation, IBC ranked first and was awarded the contract. Language training started on February 4, 2003.

On February 12, 2003, Berlitz was advised by Parks Canada of the outcome of the evaluation process. On February 14, 2003, Berlitz requested a debriefing session by Parks Canada. On February 24, 2003, Berlitz was given a debriefing session on the results of the competitive process. On March 5, 2003, Berlitz filed its complaint with the Tribunal.

POSITION OF PARTIES

Parks Canada's Position

With respect to the allegation that the RFP did not properly describe "best value" and the process used to calculate the best value per bidder, Parks Canada submitted that the RFP was available through MERX on December 16, 2002, that Berlitz submitted a bid on January 24, 2003, and that the Tribunal received the complaint a month later. According to Parks Canada, Berlitz sent two questions in writing to Parks Canada on January 15, 2003, but did not raise the issue of the description of "best value" in the RFP before February 24, 2003; Berlitz ought to have known that it was taking issue with the description of "best value" in the RFP document on January 24, 2003, the day that it submitted its bid. Furthermore, Parks Canada submitted that, in accordance with subsection 6(1) of the *Regulations*, Berlitz should have raised the matter within 10 days of discovering the requirement and, thus, this ground of complaint was not filed in a timely manner and should be rejected.

In the alternative, Parks Canada submitted that the RFP clearly set out "best value" in section 7.3, which reads as follows:

> All proposals will be rated on technical acceptability before the price is considered. The best-value-for-money proposal will be chosen, which may not necessarily be the lowest overall cost proposal.

According to Parks Canada, when read in this context, "best value" is clearly meant to signify best technical acceptability rating, as provided by the rating of the technical requirements set out in the RFP. Parks Canada further submitted that once the evaluation team assessed the technical acceptability of each bid, it considered the prices offered by the bidders and awarded the contract based on the best cost per technical point, which was obtained by dividing the proposed price in each bid by its assigned number of technical points. Thus, according to Parks Canada, there is no substantive basis for Berlitz's allegation that the RFP did not describe "best value".

In response to Berlitz's allegation regarding the fairness of the procurement process, Parks Canada submitted that, despite being asked by the Tribunal to provide specific detail regarding the allegation that certain bidders were given preferential treatment, Berlitz offered no further substantiation of its allegation. Parks Canada submitted that the evaluation process was fair and the selection criteria was properly applied. It claimed that, in order to reduce the degree of subjectivity and the possibility of perceived unfairness in the evaluation of rated requirements, the evaluation items in the RFP were broken down into subitems, which were individually and independently assessed by three evaluators.

According to Parks Canada, the contract was set to run from February 3 to November 1, 2003, and the proposed time frame for the project was approximately 1410 hours per student. Parks Canada submitted that, although Berlitz was proposing less hours than the time frame allotted for the contract, nowhere in Berlitz's proposal did it address how the hours proposed for instruction were realistic or how they would be sufficient to meet the required CBC level. Accordingly, the evaluators were concerned with Berlitz's ability to complete the project in a timely fashion.

Parks Canada submitted that the Tribunal should not substitute its judgement for that of the evaluators. Furthermore, it submitted that, in scoring Berlitz's proposal, one evaluator took into account Berlitz's proposed approach of holding mainly individual classes, a criterion not set out in the RFP. In this section, Berlitz's proposal scored 7 out of 10. Parks Canada submitted that, even if Berlitz's proposal had obtained a perfect score, its revised total for the "Work methods and approach" section would still have remained below the score achieved by IBC. Parks Canada submitted that, since Berlitz gave no other example, there is no merit to the ground that the evaluation process was unfair and that preferential treatment was given.

In response to the allegation that Parks Canada improperly provided answers to certain bidders, Parks Canada submitted that Berlitz did not file this ground in a timely manner. Berlitz sent questions in writing to Parks Canada on January 15, 2003, and Parks Canada provided answers verbally on January 16, 2003. Parks Canada further submitted that Berlitz should have raised this matter, by objection or complaint, within 10 working days after receiving Parks Canada's answers and noticed that the answers were not published. It submitted that, since the Tribunal received the complaint on this issue on February 24, 2003, the complaint is out of time and this ground should be rejected. In the alternative, Parks Canada submitted that Berltiz offered no evidence of its allegation that questions were answered improperly. According to Parks Canada, it is well established that, if an answer given to a potential bidder does not alter or substantially clarify information provided in an RFP, then there is no need to inform other bidders. Accordingly, Parks Canada submitted that there is no substantive basis for the allegation that the answers were not provided equally to all bidders.

In response to the allegation that the evaluation was carried out by unqualified evaluators using subjective criteria, Parks Canada submitted that the facts demonstrate that the evaluation procedure and applicable criteria for this procurement were clearly set out in the RFP. Furthermore, Parks Canada submitted that Berlitz is seeking to have the Tribunal substitute its own judgement for that of the evaluation team in order to obtain a different score. With respect to the allegation that one evaluator improperly calculated that Berlitz's proposal would require additional student training of 900 hours, Parks Canada submitted that Berlitz had misinterpreted the evaluator's finding in that regard. With respect to the further allegation that another evaluator stated that IBC most reflected the 1000 hours of training desired, it submitted that the statement had been made as a result of a misunderstanding of the questions asked at the debriefing session and that the misunderstanding related solely to the debriefing session.

Parks Canada claimed that nothing in the trade agreements requires evaluators to be experts with regard to the proposals submitted and that the only requirement is that evaluators use the criteria set out in the RFP. It submitted that, given that Berlitz provided no substantial and relevant evidence that the criteria were applied subjectively, there is no basis for the allegation that the evaluators used subjective criteria.

With respect to the allegation that Parks Canada did not complete the reference checks required by the RFP, Parks Canada submitted that Berlitz's allegation clearly goes beyond the scope of what is required

under the RFP. It further submitted that, while Berlitz seems to suggest otherwise, nothing in the RFP stipulates that more than two references will be contacted.

In response to a request for additional information from the Tribunal, Parks Canada submitted that the total points for proposals were calculated by adding up the points for the four rated requirements for each of the three evaluators and then adding up all three evaluators' total scores and dividing by three to obtain an average. It submitted that the total for each proposal, as indicated in the GIR, was incorrect. Parks Canada also submitted that it determined best value by dividing the total estimated cost by the total average number of technical points. According to Parks Canada, with respect to the training of three students, Berlitz's cost per student was comparable to that of IBC. With respect to the training of an additional student, Parks Canada submitted that Berlitz's cost was significantly higher than that of IBC. It further submitted that IBC was selected as the winning bidder based on the technical scores of all bidders, as set out in the RFP, and the price offered by each bidder. According to Parks Canada, other than the mandatory requirements, the rated requirements and the cost proposal, as set out in the RFP, no other factors were considered in choosing IBC as the winning bidder.

Parks Canada expressly denied Berlitz's allegation, contained in its letter of June 17, 2003, that the work had not started when the debriefing session was held. Parks Canada submitted that, during the debriefing session, it clearly indicated that the work had already started. It submitted that the RFP clearly stipulated that the project was to begin on or about February 3, 2003, and that the GIR also indicated that the language training program began on February 4, 2003, and is ongoing. Parks Canada further submitted that, following the contract award, the actual date on which the contract work begins is irrelevant to the bidding and evaluation process and, thus, is irrelevant to the substance of this complaint. Accordingly, it submitted that this new allegation should be dismissed by the Tribunal.

In response to Berlitz's allegation, contained in its letter of June 17, 2003, that the time frame of the evaluation process was extremely short, Parks Canada submitted that nothing in the trade agreements prescribes the length of time of evaluation processes following bid closing dates. Furthermore, according to Parks Canada, the evaluation process was fair, sufficient and reasonable in view of the nature of the requirements and the small number of bids received.

According to Parks Canada, section 8 of the RFP clearly set out the bid closing time of January 24, 2003, while January 24, 2003, and section 4 of the RFP provided for the length of the contract by indicating that "[t]he project will begin on or about **February 3, 2003**, and be completed by **November 1, 2003.**" Parks Canada submitted that, having reviewed the RFP prior to submitting its bid, Berlitz ought to have known of that ground at the latest on the day that it submitted its bid. It further submitted that, in accordance with the *Regulations*, Berlitz should have raised the matter within 10 working days from that point in time and, thus, Berlitz did not file this ground in a timely manner.

Berlitz's Position

Berlitz submitted that it disagreed with the conclusions stated in the GIR and that the information provided to the Tribunal is sufficient to prove its case that this contract was unfairly awarded. It submitted that, once the technical aspects were evaluated, it was certain that any qualified evaluator would have given its proposal the highest score. Berlitz further submitted that the generally accepted standard definition of "best value" in the language training industry would be the number of hours needed to reach a specified goal and the hourly rate charged. As the formula that Parks Canada intended to use to calculate best value was

not clearly defined in the RFP, Berlitz based its proposal on standard industry norms for determining best value.

Berlitz submitted that, contrary to Parks Canada's claims, Berlitz is not a disappointed bidder, but feels strongly that this contract was inappropriately awarded for the reasons stated in its complaint. It submitted that, in over 30 years of supplying quality language services to the federal government, this is the only time that it has challenged a contract decision.

Berlitz also indicated that, contrary to Parks Canada's letter of June 9, 2003, section 7 of the RFP does not reference the proposals "on the basis of cost per technical points." Rather, section 7.3 of the RFP reads as follows:

> All proposals will be rated on technical acceptability before the price is considered. The best-value-for-money proposal will be chosen, which may not necessarily be the lowest overall proposal.

Berlitz submitted that it is suspicious of the fact that the points awarded to each firm have changed at such a late stage in the review process, considering the fact that the GIR had already been submitted to the Tribunal. Also, regarding the determination of best value, Berlitz referred to Parks Canada's response in its June 9, 2003, letter that the contract was awarded "based on the best cost per technical point, obtained by dividing the cost of the bid by its number of technical points". According to Berlitz, this formula was not included in the RFP.

Berlitz also indicated that sections 2.3, 2.4, and 2.5 of the RFP clearly stated that three Parks Canada employees required training and that the scope of the work, the description of the project and the objective clearly and solely refer to three Parks Canada employees. The restrictions section also states that Parks Canada is prepared to remove employees from their current roles and responsibilities to allow them to dedicate their work hours fully to French training.

Berlitz further submitted that only at the time of the debriefing session, on "February 25, 2003", did it become apparent that "best value" was open to interpretation. According to Berlitz, the RFP does not properly describe how best value is calculated. According to Berlitz, Parks Canada should have included the actual calculation that would be used to determine best value in the RFP.

TRIBUNAL'S DECISION

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 the inquiry, it 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, is the *North American Free Trade Agreement*.[5]

Article 1008(1)(a) of *NAFTA* provides that each party shall ensure that the tendering procedures of its entities are applied in a non-discriminatory manner. Article 1013(2)(b) provides that an entity shall reply promptly to any reasonable request for relevant information made by a supplier participating in the tendering procedure, on condition that such information does not give the supplier an advantage over its

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

competitors. In addition, Article 1015(4)(d) provides that awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation.

The Tribunal will, in turn, address each of the five grounds of complaint submitted by Berlitz.

Ground 1 alleges that the RFP did not properly describe "best value" and the process used to calculate it. The Tribunal is of the view that this ground of complaint is untimely, as Berlitz knew or reasonably should have known of this ground more than 10 working days before filing its complaint on February 24, 2003. In Berlitz's own words, "the formula Parks Canada intended to use to calculate 'Best Value' was not clearly defined in the RFP". The Tribunal notes Berlitz's submission that the generally accepted standard definition of "best value" would be the number of hours needed to reach a specified goal and the hourly rate charged. However, the Tribunal is of the view that it was incumbent upon Berlitz to seek clarification, particularly given that section 9.1 of the RFP clearly indicates that Parks Canada reserves the right to choose the bid that best meets the requirements of the RFP, which shall not necessarily be the lowest cost proposal. Moreover, section 7.3 of the RFP stipulates that the best-value-for-money proposal may not necessarily be the lowest overall cost proposal. The Tribunal notes that the RFP was published on December 16, 2002, and that Berlitz submitted its bid on January 24, 2003, prior to which time Berlitz knew or reasonably should have known of its ground of complaint with respect to the ambiguous nature of the term "best value". Therefore, in the Tribunal's view, this ground of complaint is out of time pursuant to section 6 of the *Regulations*.

Ground 2 alleges that the procurement process was not conducted fairly, resulting in preferential treatment for certain bidders and the improper application of the contractor selection criteria. The Tribunal is of the view that there is little, if any, evidence to support the allegation of preferential treatment. Furthermore, unless the evaluators have not applied themselves in evaluating a bidder's proposal, have ignored vital information provided in a bid, have wrongly interpreted the scope of a requirement or have based their evaluation on undisclosed criteria, the Tribunal will not substitute its judgement for that of the evaluators.[6] The Tribunal is satisfied that none of these conditions occurred except in the case of one evaluator who, Parks Canada admitted, took into account Berlitz's proposed approach of holding mainly individual classes, a criterion not set out in the RFP. In the case of that specific evaluation, the Tribunal is of the view that Berlitz's proposal was improperly evaluated.

Ground 3 alleges that Parks Canada improperly provided verbal answers to questions that were submitted in writing and did not provide these answers to all bidders equally. The Tribunal is of the view that Berlitz knew or reasonably should have known of this ground of complaint on or about January 16, 2003, when Parks Canada provided verbal answers to its written questions. In this regard, February 24, 2003, was beyond the 10-day limit for filing a complaint under the *Regulations*. In any event, the Tribunal points out that neither the RFP nor *NAFTA* require that answers to questions by a supplier be provided in writing. The Tribunal is also satisfied that, in this case, Parks Canada was under no obligation to publish the answer to Berlitz's question regarding the location for training, as it was either provided in the RFP or in other answers published through MERX. With respect to the question regarding the type of training required, the Tribunal is of the view that the answer provided by Parks Canada (that it had no stated preference) did not require publication. In essence, the answer provided no additional information to what was already included in the RFP nor did it amend the RFP.

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6. See *Re Complaint Filed by ACMG Management Inc.* (5 June 2002), PR-2001-056 (CITT); see also *Re Complaint Filed By Crain-Drummond Inc.* (18 August 2000), PR-2000-009 (CITT).

Ground 4 alleges that the evaluation was done by unqualified evaluators who used subjective criteria not clearly set out in the RFP. The applicable trade agreement stipulates that awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation. The Tribunal is of the view that the RFP does not require that qualified pedagogical personnel be assigned to evaluate the bids. Therefore, in this regard, the Tribunal is of the view that Parks Canada did not breach the applicable trade agreement. Berlitz also alleged that one evaluator gave additional points to the successful bidder because it outlined a step-by-step approach in dealing with the overall schedule referred to in section 5.1 of the RFP. The Tribunal is of the view that it was reasonable for the evaluator in question to take into account the information provided by the successful bidder in this regard. In the Tribunal's view, it was also appropriate for Parks Canada to consider the link between time lines, defined student activities and performance. As for the allegation that Parks Canada took the position that Berlitz's proposal would require an additional 900 hours, the Tribunal notes Park Canada's explanation that it would only be the case if Berlitz's proposal were compared to the successful bidder's proposal. However, the Tribunal is not convinced by Park Canada's submission that none of the evaluators used 1000 hours as a benchmark of desired training time. The Tribunal asks why else would an evaluator make this annotation in the evaluation grid? This evaluator's annotation is also consistent with another evaluator's statement at the debriefing session that the successful bidder's proposal most reflected the 1000 hours of training required. The Tribunal is of the view that this other evaluator correctly interpreted his colleague's notes. Therefore, it is likely that the colleague in question relied in part on this unspecified criterion to assess Berlitz's proposal. To this extent, the Tribunal is of the view that Berlitz's proposal was improperly evaluated. However, there is no evidence that the two other evaluators shared this information prior to the award of the contract. Therefore, based on the evidence before it, including the evaluation grids, the Tribunal is not convinced that the two other evaluators took this unspecified criterion into account when performing their own evaluations of Berlitz's proposal.

Ground 5 alleges that Parks Canada did not properly complete the reference checks required by the RFP. The Tribunal notes that the RFP only required two references. The Tribunal is therefore of the view that Parks Canada was under no obligation to contact more than two references. According to the Tribunal, the RFP did not require that a student that was the subject of a reference continue to be employed by the firm from which the reference was sought, nor did it require that the company have a proficiency testing policy in place or that it have levels of bilingualism similar to those of the Government of Canada. The RFP only required references where similar training had taken place and examples of successes and success rates for individuals with similar poor diagnostic indicators. Similar training does not imply identical levels of bilingualism or an identical CBC designation. The Tribunal is also of the view that conditions warranting that it substitute its judgement for that of the evaluators[7] have not been established in this case and, therefore, it will not do so. As for the number of evaluators required to check the references, the Tribunal notes that the RFP is silent as to how the evaluation process should be conducted in this instance. In principle, the Tribunal is of the view that it is not unreasonable to have one evaluator check references, as it would be impractical to check the same reference three times. Furthermore, it is not intrinsically unfair to have only one evaluator rate the references and have the other evaluators use the same score as alleged by Berlitz. Moreover, the Tribunal notes that Berlitz does not allege that the two other evaluators in this case did not apply their minds to this matter. Therefore, the Tribunal is not convinced that the reference checks were improperly conducted or rated. The Tribunal further notes that Berlitz questioned the qualifications of this evaluator. It also notes that Berlitz has not submitted any evidence in support of this allegation. Moreover, as stated above, the RFP did not require that qualified pedagogical personnel be assigned to the

7. The conditions are outlined above in the section of the decision dealing with ground 2 of the complaint.

evaluation team. Therefore, based on the evidence before it, the Tribunal is not convinced that Parks Canada contravened the applicable trade agreement in this regard.

The Tribunal notes the additional allegations made by Berlitz in its correspondence of June 17, 2003, in which it comments on the additional information provided by Parks Canada in its letter dated June 9, 2003. The Tribunal is of the view that Berlitz's allegation relating to the time taken in the evaluation process is untimely. Moreover, based on the evidence before it, the Tribunal cannot find that there was a breach of the applicable trade agreement in regard to the start date of the contract. The Tribunal also notes the submission by Berlitz that two evaluators awarded an identical score for its proposal and that one of them was not available for comment at the debriefing session on February 25, 2003. In and of themselves, these submissions do not, in the Tribunal's view, amount to a breach of the applicable trade agreement in this case. With respect to the points awarded to Berlitz and IBC, the Tribunal is of the view that the correction made to the GIR by Parks Canada simply rectified a clerical error.

Finally, the Tribunal notes Berlitz's request that it consider the best value proposal where the number of students decreased by one. Although Parks Canada did not provide that calculation, the confidential information on the record allows the Tribunal to conclude that Berlitz's proposal in that instance would have been significantly lower than IBC's. However, as already mentioned, section 7.3 of the RFP indicates that the best-value-for-money proposal chosen may not necessarily be the lowest overall cost proposal. Also, as previously mentioned, section 9.1 of the RFP stipulates that Parks Canada reserves the right to choose the firm that best meets the requirements described in the RFP. It further reiterates that the lowest cost proposal shall not necessarily be chosen. Again, the Tribunal is of the view that, in the circumstances, it was incumbent upon Berlitz to seek clarification of the meaning of "best value". The Tribunal is also of the view that it was reasonable for Parks Canada to award the contract to IBC in light of those two sections. With respect to the technical proposal, the Tribunal notes Parks Canada's submission that, even if Berlitz had obtained a perfect score for rated requirement 1(c) of the RFP Evaluation Grid, its revised total score for the overall section would still have remained below the score achieved by the successful bidder. The Tribunal is of the view that the same would be true had a maximum score been given by any one evaluator in the case of rated requirement 4(a). Moreover, the Tribunal notes that, on the basis of the best cost per technical point, the two bidders were virtually tied overall. Berlitz's cost per technical point was significantly lower in the case of two students being trained; it was significantly higher in the case of four students and comparable in the case of three students. Accordingly, the Tribunal is not convinced that Parks Canada was in breach of the applicable trade agreement in its interpretation of the term "best value".

In light of the foregoing, the Tribunal finds that the complaint is valid in part.

The Tribunal considered all the circumstances relevant to this procurement, including those outlined in subsection 30.15(3) of the *CITT Act*. In the Tribunal's view, the seriousness of any deficiency in the procurement process and the degree to which Berlitz and the integrity and efficiency of the competitive procurement system were prejudiced do not warrant that the Tribunal recommend any of the remedies listed in subsection 30.15(2). Moreover, the Tribunal is not convinced that Parks Canada was not acting in good faith.

Given that the complaint is only valid in part, the Tribunal is of the view that each party should assume its own costs in this matter.

DETERMINATION OF THE TRIBUNAL

Pursuant to subsection 30.14(2) of the *CITT Act*, the Tribunal determines that the complaint is valid in part.

Richard Lafontaine
Richard Lafontaine
Presiding Member