



Ottawa, Monday, April 28, 2003

File No. PR-2002-047

IN THE MATTER OF a complaint filed by Brisk Corporation pursuant to 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 pursuant to 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

Susanne Grimes
Susanne Grimes
Acting Secretary

Date of Determination and Reasons: April 28, 2003

Tribunal Member: Richard Lafontaine, Presiding Member

Senior Investigation Officer: Daniel Chamaillard

Counsel for the Tribunal: Dominique Laporte

Complainant: Brisk Corporation

Government Institution: Department of Public Works and Government Services

Counsel for the Government Institution: Bernard Letarte



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STATEMENT OF REASONS

COMPLAINT

On December 13, 2002, Brisk Corporation (Brisk) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*.¹ The complaint concerns the procurement (Solicitation No. W0106-01Z303/A) by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence (DND) for the supply, installation and maintenance of automatic dispensing equipment for dishwasher detergent and kitchen cleaning products and for the supply of these products at Valcartier, Quebec, and vicinity.

Brisk alleged that it had been prejudiced in the bid evaluation process by PWGSC and that the contracting authority had used its influence so that Sani-Plus inc. (Sani-Plus), the successful bidder in this case, could have its products tested and be awarded the standing offer, even though that company's bid was not responsive and did not meet the mandatory requirements of the Request for a Standing Offer (RFSO). Brisk further alleged that PWGSC's contracting authority was in collusion with Sani-Plus management.

Brisk requested, as a remedy, the postponement of the award of the standing offer, the cancellation of the RFSO and a new bid evaluation.

On December 18, 2002, the Tribunal notified 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*² and made an order to postpone the award of any contract in respect of the procurement until it determined the validity of the complaint.

On January 15, 2003, the Tribunal granted Sani-Plus, at the latter's request, intervenor status in this matter. On January 17, 2003, PWGSC requested that the Tribunal rescind its postponement of award order of December 18, 2002. On January 21, 2003, the Tribunal rescinded the said order after considering the reasons given by PWGSC in support of its request.

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

On February 4, 2003, PWGSC filed a Government Institution Report (GIR) with the Tribunal pursuant to rule 103 of the *Canadian International Trade Tribunal Rules*.³ On March 5, 2003, pursuant to rule 104, Brisk filed its comments on the GIR with the Tribunal.

On March 10, 2003, the Tribunal asked PWGSC to clarify certain information provided in the GIR. On March 13, 2003, PWGSC filed additional information with the Tribunal.

On March 17, 2003, Sani-Plus filed with the Tribunal its comments on certain issues which involved it in this matter. On March 18, 2003, Brisk filed additional comments on the information provided by PWGSC and Sani-Plus. On March 19, 2003, the Tribunal decided not to allow PWGSC's request to file additional comments in response to Brisk's comments of March 5, 2003.

On April 3, 2003, in order to clarify certain specific points about the information received on March 13, 2003, the Tribunal asked PWGSC to answer two more questions. On April 7, 2003, PWGSC filed the requested information with the Tribunal and, on April 8, 2003, Brisk filed its comments. With the Tribunal's permission, Sani-Plus also filed comments in reply, and Brisk in turn filed comments on April 11, 2003. Despite PWGSC's objections regarding the filing of Brisk's comments, the Tribunal decided to accept them, giving them the weight that these comments deserved.

While, at one point, the Tribunal considered the possibility of holding a hearing in this matter, it decided, based on the information on the record and taking into account the answers to its questions, that there was sufficient information on the record to determine the validity of the complaint. The Tribunal therefore decided that a hearing was not required and disposed of the complaint on the basis of the information on the record.

PROCUREMENT PROCESS

On September 6, 2002, PWGSC published a Notice of Proposed Procurement in respect of the RFSO on MERX, Canada's Electronic Tendering Service. The purpose of the RFSO was to obtain a standing offer valued at approximately \$240,750 for the period from November 1, 2002, to October 31, 2005. The RFSO stated that bidders had until October 16, 2002, to submit their bids, this date being later extended to October 23, 2002.

The Notice of Proposed Procurement stated, *inter alia*, that the procurement was subject to the *North American Free Trade Agreement*,⁴ the *Agreement on Government Procurement*⁵ and the *Agreement on Internal Trade*.⁶ The "Basis of Selection" section of the RFSO states that the lowest-priced responsive bid will be recommended for issuance of a standing offer.

The RFSO contains several provisions relevant to this case. The "Site visit" section of the RFSO states as follows:

An optional visit to the main Valcartier Base kitchen (Building 505) has been arranged to show the equipment currently used and give tenderers a good understanding of the base's needs. No visits to the other sites are planned.

The site visit will be held on **September 24th, 2002 at 09h00**.

3. S.O.R./91-499 [*Rules*].

4. 32 I.L.M. 289 (entered into force 1 January 1994) [*NAFTA*].

5. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/gpr-94_01_e.htm> [*AGP*].

6. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<http://www.intrasec.mb.ca/eng/it.htm>> [*AIT*].

It also states that bidders are to confirm their attendance by contacting the contracting authority.

The “Evaluation method” section of the RFSO states, in part, as follows:

1. Bids will be evaluated as follows:

d) among qualifying bids, the one offering the lowest overall price for the estimated quantities and firm price/place setting (**articles 1 to 6, inclusively**) and the estimated quantities and firm price/litre (**articles 7 to 19, inclusively**), over the three-year period. One offer will be issued further to this call for tenders. **Note: The evaluation will be based on the price/place setting and price/litre, but the offer issued will specify price/container.**⁷

The “Trial period for verifying number of place settings” section of the RFSO reads as follows:

To verify the number of place settings specified in a bid, a minimum three-day (3) trial period for products offered by the lowest bidder will be performed before the offer is awarded to the lowest bidder. This trial will be limited to items 1 to 8 inclusively of Appendix «A». The bidder shall be available and provide the necessary support during the trial period.

The Crown reserves the right to reject any bid that does not successfully pass this trial period.

Four suppliers, including Brisk, participated in the September 24, 2002, visit. Sani-Plus was not among the group of suppliers that were present. A DND representative and PWGSC’s contracting authority were present.

According to PWGSC, following a communication that took place some time after September 24, 2002, between PWGSC and Sani-Marc inc. (Sani-Marc), a potential supplier, the contracting authority granted the latter permission to visit the main Valcartier kitchen on October 3, 2002. According to the information from Sani-Plus, one of its representatives accompanied Sani-Marc during the October 3, 2002, visit as a supplier of specialized products for Sani-Marc.⁸ However, the contracting authority was not present during that visit.⁹

During the period for filing bids, several changes were made to the RFSO. Five bids were received, three of which met the mandatory requirements of the RFSO: those of Brisk, Sani-Plus and Ecolab. No bid was submitted by Sani-Marc.

PWGSC calculated the prices submitted by these bidders for the 19 products covered by the RFSO and determined that Sani-Plus had submitted the lowest bid. In accordance with the provisions of the RFSO, DND conducted trials of the Sani-Plus products over a three-day period to verify the accuracy of the numbers stated in the bid. According to PWGSC, the results of these trials confirmed that Sani-Plus’s proposal was the lowest. That company was therefore awarded the standing offer on November 29, 2002.

On December 3, 2002, PWGSC notified Brisk that the standing offer, with an estimated value of \$199,786, covering the period from December 1, 2002, to November 30, 2005, had been awarded to Sani-Plus.

On December 13, 2002, Brisk filed its complaint with the Tribunal.

7. Amended version of October 18, 2002.

8. Comments by Sani-Plus, April 10, 2003.

9. Response by PWGSC, March 13, 2003.

POSITION OF PARTIES

PWGSC's Position

According to PWGSC, this complaint contains numerous allegations disputing the manner in which the tendering process was conducted and the bids evaluated. Brisk alleged, *inter alia*, that the contracting authority was in collusion with Sani-Plus and had attempted, in a number of ways, to favour that company over Brisk. PWGSC argued that these allegations were unfounded and that a number of them were frivolous and vexatious.

Regarding Brisk's allegation that the contracting authority had wanted to obtain a trial period for the products of one of its competitors with its equipment, PWGSC stated that the contracting authority had simply inquired, in preparing the bid documents, whether the three-day trials stipulated in the RFSO could be conducted with the equipment in place at the time in the kitchen.

As for Brisk's allegation that there was collusion between the contracting authority and Sani-Plus regarding the manner in which the latter had obtained the bid documents, PWGSC stated that Sani-Marc had obtained the RFSO and then sent it to Sani-Plus. It maintained that the contracting authority was informed of the manner in which Sani-Plus obtained the RFSO only in mid-December 2002. PWGSC also pointed out that a bidder was under no obligation to obtain the bid documents from MERX.

With respect to Brisk's claims about the permission given Sani-Marc to visit the site on October 3, 2002, PWGSC maintained that, since the period for filing bids was still open, the contracting authority had merely accommodated Sani-Plus in allowing it to visit the main Valcartier kitchen on October 3, 2002, as it would have done for any other potential bidder not present at the September 24, 2002, visit. It also stressed that this visit was optional and that Sani-Plus had been treated exactly as the other potential bidders had been treated during the September 24, 2002, visit.

Concerning the allegations of interference by the contracting authority during the trial period for the Sani-Plus products, PWGSC maintained that the contracting authority had never been involved in conducting these trials. Only once these trials had been completed did the contracting authority approach DND to ask if certain parameters should not have been changed, and it did so during a conversation to verify how the trials had been conducted.

Regarding Brisk's allegation that Appendix "A" to Sani-Plus's bid did not meet the mandatory requirements of the RFSO, PWGSC argued that Brisk was mistaken. According to PWGSC, the trademark, code, size and price in Appendix "A" to the standing offer awarded to Sani-Plus (with incorrect descriptions of products 7 and 8) had been deleted from the document sent to Brisk on December 4, 2002. This document contained only the non-confidential elements of Appendix "A" to Sani-Plus's bid. PWGSC argued that Appendix "A" to Sani-Plus's bid fully met the requirements of the RFSO.

In response to Brisk's allegation that Sani-Plus was not the lowest bidder, PWGSC maintained that the bids had been evaluated in accordance with the requirements of the RFSO and that the trials had confirmed that Sani-Plus's bid was the lowest-priced responsive bid received. PWGSC further argued that, even assuming that Brisk's bid was lower than that of Sani-Plus for products 1 to 6 listed in Appendix "A," its overall bid price for the 19 products was higher. It therefore maintained that Brisk's claim in this regard was unfounded and that the overall price provided by Sani-Plus for the 19 products was lower than that of Brisk.

PWGSC asked the Tribunal to award it the costs with respect to this case, given the frivolous and vexatious nature of certain allegations made by Brisk in the complaint.

Sani-Plus's Position

Sani-Plus argued, first and foremost, that there was no connection between anyone on the Sani-Plus team and the contracting authority. It further argued that it had participated in the site inspection of October 3, 2002, but had not instigated this visit. According to Sani-Plus, Sani-Marc had obtained permission to visit the site from the contracting authority and had conducted the site inspection along with Sani-Plus. Sani-Plus also claimed that Sani-Marc had contacted Sani-Plus on October 1, 2002, to ask it to be present at the site visit on October 3, 2002, to assist in its capacity as a specialist. It also maintained that, at the time, it still did not have the RFSO in its possession.

Brisk's Position

Brisk argued that it was prejudiced in the evaluation process and that the contracting authority had used its influence to allow Sani-Plus to obtain a trial period for its products and the award of this contract. Brisk also argued that the standing offer was awarded to Sani-Plus despite the fact that its bid did not comply with the requirements of the RFSO. It also stated that it believed that the contracting authority was in collusion with Sani-Plus.

Brisk claimed, *inter alia*, the following: (1) before publication of the RFSO, the contracting authority attempted to obtain a trial period for the products of a competitor by wanting to use, without Brisk's knowledge, the latter's dispensing equipment already in place; (2) although the standing offer was awarded to Sani-Plus, nowhere was it stated on MERX that Sani-Plus had obtained the bid documents; (3) the Sani-Plus representatives were allowed to examine the site and the equipment on October 3, 2002, in the absence of the contracting authority, even though the latter had in fact informed the bidders present at the September 24, 2002, visit that any communication with the contracting authority must be made in writing; (4) in several instances, the required information was not in Appendix "A" to the RFSO used by Sani-Plus to bid and therefore the appendix did not comply with the mandatory requirements; (5) despite the non-compliance of Sani-Plus's bid, the contracting authority had authorized a trial period for its products during which the contracting authority interfered by attempting to change certain parameters of the trials; and (6) once the trials were completed, the contracting authority attempted to intervene by requesting a second trial period, stating that the first period had not been conclusive. Finally, Brisk claimed that, as a last resort, PWGSC had awarded the standing offer to Sani-Plus, since DND had refused to agree to a second trial period. Moreover, DND had warned PWGSC that a fifth extension of the previous standing offer was out of the question.

In its comments on the GIR, Brisk pointed out, with respect to the October 3, 2002, visit by Sani-Plus, that it disagreed with PWGSC when the latter stated that Sani-Plus had not been shown favouritism during that visit. On the contrary, Brisk claimed that the contracting authority had shown favouritism to Sani-Plus in authorizing the visit, without the contracting authority being present to control the information obtained. It further alleged that Sani-Marc was likely only Sani-Plus's instrument with respect to the visit. Brisk also questioned the reasons given to explain the absence of Sani-Marc or Sani-Plus from the September 24, 2002, visit since Sani-Marc had received the RFSO through MERX on September 6, 2002, that is, 19 days prior to the visit. Moreover, Brisk stated that Sani-Plus never removed the dispensing equipment after the three-day trial period, which proved, in its view, collusion between Sani-Plus and the contracting authority. Regarding the document entitled Appendix "A" sent by PWGSC on December 4, 2002, Brisk commented that it contained inaccurate descriptions of articles 7 and 8 and

deviated from the original articles of the RFSO. It also pointed out a major discrepancy between the overall estimated price of \$199,785.96 mentioned on December 3, 2002, by PWGSC and the amount of \$213,771.02 shown in the standing offer authority documents. According to Brisk, this discrepancy taints the credibility of the evaluations made by PWGSC.

Finally, in its comments regarding the Tribunal's questions of March 10, 2003, to PWGSC, Brisk questioned Sani-Plus's ability to meet certain mandatory requirements of the RFSO.

DETERMINATION OF THE TRIBUNAL

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, in this case, the *AIT* and *NAFTA*.

Article 506(6) of the *AIT* and Articles 1008(1)(a), 1015(4)(a) and 1015(4)(d) of *NAFTA* are relevant to this case.

Article 506(6) of the *AIT* stipulates, in part, that the tender documents shall clearly identify the requirements of the procurement and the criteria that will be used in the evaluation of bids.

Pursuant to Article 1008(1)(a) of *NAFTA*, tendering procedures shall be applied in a non-discriminatory manner. Article 1015(4)(a) of *NAFTA* stipulates that, to be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and have been submitted by a supplier that complies with the conditions for participation. Pursuant to Article 1015(4)(d), awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation.

In this case, the Tribunal can confine the various grounds of the complaint raised by Brisk to two main issues:

- (1) Was there collusion between PWGSC and Sani-Plus or favouritism shown by PWGSC with respect to the procurement process?
- (2) Did PWGSC properly evaluate Sani-Plus's bid and determine that it met the mandatory requirements of the RFSO?

In examining the issue of whether there was collusion between PWGSC and Sani-Plus or favouritism shown by PWGSC with respect to the procurement process, the Tribunal will deal first with Brisk's allegation that the contracting authority, before publication of the RFSO, had attempted to obtain a trial period for the products of a competitor by wanting to use Brisk's dispensing equipment. It does not believe that this allegation shows any favouritism whatsoever by PWGSC for one of the bidders. The Tribunal in fact considers plausible the explanation given by PWGSC that it considered using the equipment already in place for the trial period and that it wanted to know if this was possible. In any event, the Tribunal points out that the use of Brisk's equipment during a possible trial period was not one of the requirements of the RFSO. Moreover, it points out that, when the use of the equipment in place was being considered, the list of potential bidders was not yet known.

Brisk also said that Sani-Plus never removed its dispensing equipment installed during the three-day trial period. That Sani-Plus's dispensing equipment was not removed after the trial period in November 2002 is not, according to the Tribunal, an indication of collusion between PWGSC and Sani-Plus, as Brisk claims in its comments on the GIR. The Tribunal points out that Sani-Plus had then submitted the lowest bid and that this was confirmed during the trial period. It therefore does not see what reasons would warrant, upon completion of the trials, the removal of Sani-Plus's equipment.

Still with respect to the first issue, Brisk argued that, although the standing offer had been awarded to Sani-Plus, nowhere was there any mention on MERX that the latter had obtained the bid documents. According to the Tribunal, it is not a mandatory requirement that these bid documents be obtained through MERX. The Tribunal does not agree that obtaining the bid documents by a means other than MERX is evidence of support of an allegation of favouritism or collusion in this case. The Tribunal does not believe that a supplier must be on the list of those requesting documents in order to participate in a procurement process, as Brisk seems to think in its comments on the GIR.

However, it is the Tribunal's view that PWGSC acted contrary to the applicable trade agreements in allowing, as it did, the site visit by Sani-Plus on October 3, 2002. The RFSO provided for an optional visit on September 24, 2002, of which several suppliers took advantage. In allowing the October 3, 2002, visit without notifying all potential suppliers, PWGSC acted contrary to the provisions of the RFSO, which mentioned only one site visit. However, nothing prevented PWGSC from amending the RFSO and allowing another site visit. In so doing, PWGSC would have given other suppliers the opportunity to accompany Sani-Marc or Sani-Plus during the visit of the main kitchen, while ensuring transparency.

It is true that the reason given by PWGSC for allowing the site visit by Sani-Plus seems, at the least, tenuous. PWGSC admits having "accommodated" Sani-Plus, as it would have any other potential bidder that had not participated in the September 24, 2002, visit. As the tendering period was still open, PWGSC granted this request. However, although the visit authorized for Sani-Marc and Sani-Plus was contrary to the provisions of the RFSO, the Tribunal is not convinced that this is reason to conclude there was collusion between Sani-Plus and PWGSC. In fact, the Tribunal has no reason to conclude that such permission would have been denied to another bidder that had not had an opportunity to participate in the September 24, 2002, visit. The optional nature of the visit should also be considered; its purpose was to show the equipment used and give bidders a good understanding of the needs. The Tribunal cannot reasonably believe that, having had the opportunity to visit the DND kitchen in the absence of the contracting authority, Sani-Plus could have derived any advantage or obtained privileged information of such a nature as to give it an advantage over another bidder. In the Tribunal's view, this non-compliance with the requirements of the RFSO is therefore much more likely to be attributed to a lack of care or rigour by PWGSC than to the preferential treatment or collusion suggested by Brisk. Moreover, the Tribunal is not convinced that any business arrangements that may have existed between Sani-Marc and Sani-Plus are relevant in this case.

The Tribunal also agrees that the questions and answers set out during the two visits of the main kitchen were of minor importance and does not believe that they should have been conveyed via MERX to all potential suppliers, whether listed at the time or not.

Finally, still regarding the first issue, the Tribunal is not convinced that there was undue interference by PWGSC during or following the three-day trial period. The Tribunal considers it reasonable to think that the purpose of the exchange between PWGSC and DND about the methodology used to conduct the trials or the possibility of conducting further trials was merely to try to correct certain deficiencies that arose during the trial period or simply to question the validity of the methodology used in this case. The evidence clearly shows that Sani-Plus conveyed its dissatisfaction to the contracting authority after the trial period,

during which several factors may have placed it at a disadvantage. In any event, according to Brisk itself, the question of a second trial period ended with DND's refusal to proceed. The Tribunal also points out that, following the trials conducted by DND, Sani-Plus was still the lowest bidder. In other words, any undue interference by PWGSC, even if there was any, would ultimately have been of no consequence.

The Tribunal is therefore of the view that the evidence provided by Brisk is clearly an insufficient basis for its allegations of collusion against PWGSC. It points out that, in order to bring such allegations, which may well put in doubt the integrity of the government representatives targeted, one must put forward credible evidence. Supposition or suspicions are clearly not enough. It is regrettable that Brisk thought it appropriate to proceed with such allegations, given the patent lack of evidence. The Tribunal points out, however, that the lack of rigour and transparency shown by PWGSC in its handling of the matter of the site visit did not help. It should also be noted that PWGSC's response to the Tribunal's second question of April 3, 2003, could have better explained PWGSC's reasons for allowing Sani-Marc to visit the site on October 3, 2002, since it now appears that the visit was, at the outset, possibly for the benefit of Sani-Marc, not Sani-Plus. Finally, the Tribunal does not have sufficient evidence to show that PWGSC's decision to allow Sani-Marc and Sani-Plus to visit the site on October 3, 2002, without first amending the RFSO, was owing to anything more than a lack of care and rigour by PWGSC.

With regard to the second issue, the Tribunal finds no fault with the manner in which the bids were evaluated. It has no reason to believe that Sani-Plus did not meet the mandatory requirements of the RFSO in every respect. The Tribunal can understand that Brisk has suspicions in this regard, since the information provided to it by PWGSC on December 4, 2002, might have led one to think otherwise. It agrees that this information was incorrect and points out that the confidential information¹⁰ that is available to it shows that the proposal submitted by Sani-Plus was in fact properly completed. The Tribunal does not think that PWGSC deliberately tried to conceal the relevant information in the extract that it provided to Brisk on December 4, 2002. What did it stand to gain in doing so? As for the questions raised by Brisk in its comments of March 18, 2003, to the effect that Sani-Plus might not be able to meet certain mandatory requirements of the RFSO, besides the fact that the time periods for filing such a complaint had, in its view, expired, the Tribunal has no reason to believe that this is the case. It points out that it need not, in the circumstances, require evidence of this. The onus is on Brisk to show to the Tribunal's satisfaction that PWGSC did not, in this case, abide by the evaluation criteria of the RFSO. Brisk provided no such evidence.

Moreover, as to the question of the verification of the figures in Sani-Plus's bid, the RFSO provided for a three-day trial period to verify the number of place settings indicated in the bid. In addition, it stated that "[t]he Crown reserves the right to reject any bid that does not successfully pass this trial period." Even though the Crown was to verify the products offered by the lowest bidder before awarding the standing offer, the Tribunal believes that the Crown had the discretion to reject a bid when the number of place settings was not confirmed by the trials stipulated in the RFSO. The Tribunal also believes that it would have been difficult for PWGSC not to reject a bid that, following the trials, was no longer the lowest.

In this case, the Tribunal notes that the least favourable results still show a significant difference in the overall price in favour of Sani-Plus over Brisk, whether based on the price/place setting or the price/litre. The Tribunal believes that these results would have favoured Sani-Plus even more, had it not been for the errors that occurred during the trials of its products. It points out that the RFSO shows that the offer issued will specify the price/container. Thus, according to Exhibit 20 included with the GIR, the standing offer was awarded to Sani-Plus for an amount of \$199,785.96. Adding 7 percent, the amount became \$213,771.00.

10. Counsel who have filed a declaration and undertaking with the Tribunal have access to protected exhibits.

The Tribunal points out that, according to the instructions in the RFSO, the GST is a separate item. The Tribunal therefore accepts that this last amount includes GST and that there is no reason to believe that PWGSC and its counsel “are juggling the numbers.”

Therefore, although there are discrepancies between the results of the trials and the figures provided by Sani-Plus in its bid, the Tribunal accepts PWGSC’s conclusion that they were not such as to invalidate Sani-Plus’s bid.

In light of the foregoing, the Tribunal is of the view that PWGSC acted contrary to the provisions of the RFSO with respect to the site inspection by Sani-Marc and Sani-Plus on October 3, 2002. However, the Tribunal is not convinced that there was collusion between Sani-Plus and PWGSC with regard to the procurement process in question. Any accommodation from which Sani-Plus may have benefited with regard to the visit of the main kitchen was, according to the Tribunal, of no consequence. The Tribunal again points out that suspicions or suppositions are not evidence in support of allegations. Also, PWGSC’s memory lapses concerning certain exchanges with the parties show a lack of care on its part in not keeping records of telephone communications, but they, by no means, show that there was collusion between Sani-Plus and PWGSC about the procurement.

The Tribunal is therefore of the opinion that the complaint is valid in part.

In light of all the factors set out in subsection 30.15(3) of the *CITT Act*, the Tribunal finds that the seriousness of the irregularities in this procurement process and the extent of the prejudice caused to Brisk and to the integrity of the award mechanism do not warrant any of the remedies set out in subsection 30.15(2). Nor is it convinced that, in this case, doubt ought to be cast on PWGSC’s good faith. The Tribunal points out that the procurement in question could have been more rigorously conducted, especially with regard to the procedures surrounding the site inspection. Further, it does not consider that this state of affairs merits recommending remedial action. In this case, the Tribunal’s remarks suffice in this regard.

Each of the parties will bear its own costs.

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