



Ottawa, Tuesday, September 3, 2002

File No. PR-2002-003

IN THE MATTER OF a complaint filed by Polaris Inflatable Boats (Canada) Ltd. 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 section 30.14 of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal determines that the complaint is valid in part.

Pursuant to subsection 30.16(1) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal awards Polaris Inflatable Boats (Canada) Ltd. its reasonable costs incurred in relation to preparing and proceeding with the complaint.

Patricia M. Close  
Patricia M. Close  
Presiding Member

Michel P. Granger  
Michel P. Granger  
Secretary

The statement of reasons will follow at a later date.

Date of Determination: September 3, 2002  
Date of Reasons: September 9, 2002

Tribunal Member: Patricia M. Close, Presiding Member

Investigation Officer: Peter Rakowski

Counsel for the Tribunal: Lynne Soublière

Complainant: Polaris Inflatable Boats (Canada) Ltd.

Intervener: Zodiac Hurricane Technologies Inc.

Government Institution: Department of Public Works and Government Services

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

Ottawa, Monday, September 9, 2002

File No. PR-2002-003

IN THE MATTER OF a complaint filed by Polaris Inflatable Boats (Canada) Ltd. 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*.

## STATEMENT OF REASONS

### COMPLAINT

On April 18, 2002, Polaris Inflatable Boats (Canada) Ltd. (Polaris) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> concerning the procurement (Solicitation No. W8472-01MM02/A) by the Department of Public Works and Government Services (PWGSC), on behalf of the Department of National Defence (DND), in regard to the supply of 40 rigid inflatable boats (RIBs) to be used for sea rescue and man overboard operations.

Polaris alleged that, contrary to the provisions of the *Agreement on Internal Trade*,<sup>2</sup> certain requirements of the solicitation were overly restrictive and contrary to the principles of fair procurement. Specifically, these were: (1) requiring the contractor to submit audited financial statements; (2) requiring the contractor to hold a welding certificate; and (3) requiring the contractor to submit certain information relating to its subcontractors. In addition, Polaris complained that, by requiring the contractor to own the intellectual property rights to the proposed product, PWGSC was continuing to favour a particular supplier and that, thus, the award of this contract was predetermined. Finally, Polaris alleged that PWGSC's failure to extend the time frame for the submission of proposals was unfair and did not provide sufficient time to submit a proposal. Polaris requested, as a form of relief, that the Tribunal hold a hearing on the matter, that PWGSC re-issue the solicitation and that it be awarded financial restitution based on a percentage of the value of the contract.

On April 22, 2002, the Tribunal informed the parties that the complaint had been accepted for inquiry, as it met the requirements of subsection 30.11(2) of the CITT Act and the conditions set out in subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.<sup>3</sup> On April 25, 2002, PWGSC informed the Tribunal, in writing, that a contract in the amount of \$787,495.80 had been awarded to Zodiac Hurricane Technologies Inc. (Zodiac). On May 8, 2002, Zodiac requested that it be granted intervener status. On May 9, 2002, the Tribunal granted intervener status to Zodiac. On May 22, 2002, PWGSC filed a Government Institution Report (GIR) with the Tribunal in accordance with

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1. R.S.C. 1985 (4th Supp.), c. 47 [hereinafter CITT Act].
  2. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<http://www.intrasec.mb.ca/eng/it.htm>> [hereinafter AIT].
  3. S.O.R./93-602 [hereinafter Regulations].

rule 103 of the *Canadian International Trade Tribunal Rules*.<sup>4</sup> On June 17, 2002, Polaris filed comments on the GIR with the Tribunal.

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

## PROCUREMENT PROCESS

On March 1, 2002, PWGSC published on MERX<sup>5</sup> a Notice of Proposed Procurement (NPP) on behalf of the Department of National Defence for the purchase of 40 RIBs with aluminum hulls, for delivery to Victoria, British Columbia, and Halifax, Nova Scotia. The closing date for the submission of bids was April 5, 2002.

The specifications for the RIBs were identified in the NPP and were categorized in terms of load capacity, length overall, beam overall, interior length, interior beam, horsepower rating, cockpit floor area, number of compartments (collar), tube diameter and weight of boat.

The following mandatory requirements were identified in the NPP:

- 1) Previous experience (last 5 years) / proven capability in the fabrication of RIBs.
- 2) Welding certification to CSA standard W47.2M, 1987 Division 1 or 2.1.
- 3) Compliance with requirements of ISO 9001:2000 – Quality Management Systems.

The solicitation called for bidders to offer their best delivery dates for the following:

- Level 1 drawings (no. of weeks after contract award)
- Completion of first article (prototype) boat (no. of weeks after approval of level 1 drawings by technical authority)
- Completion of all 40 production boats (no. of weeks from date of first article approval)
- Completion of level 2 drawings (no. of weeks after date of first article approval)

The Request for Proposal (RFP) required that bidders submit audited financial statements for their two fiscal years immediately prior to the date of their proposals. The relevant RFP provisions relating to this requirement read as follows:

### 8. FINANCIAL CAPABILITY

In order to confirm the Bidders' financial capability to perform the subject requirement, Bidders shall provide with their proposal their audited Financial Statements for their two **(2) Fiscal Years** immediately prior to the date of their proposal. **These statements will provide three (3) years of financial information required for evaluation.** The Financial Statements shall include:

- a) Income Statement;
- b) Balance Sheet;
- c) Retained Earnings;
- d) Auditor's Endorsement;
- e) Notes to Statements.

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

5. Canada's Electronic Tendering Service.

Where audited Financial Statements are not available, Bidders shall provide with their proposal certified Financial Statements for the two (2) Fiscal Years immediately prior to the date of their proposal. These statements shall be **certified by a senior officer of the company** and shall include those items listed above. Where fiscal year-end statements provided in accordance with the above are dated more than three (3) months prior to the date of the proposal, interim Financial Statements which are dated not more than two (2) months prior to the date of the proposal are to be provided. These Statements shall include:

- a) Income Statement – Fiscal year to date.
- b) Balance Sheet.

**Where the Bidder is a division or subsidiary of a company, the aforementioned information of the parent company shall also be provided.**

Canada reserves the right to request additional financial security as a condition of contract award should a bidder's financial capability be at risk.

Article 17 of the RFP reads:

#### **17. WELDING CERTIFICATION**

Bidders must provide with their proposal a copy of **their** current Canadian Welding Bureau certification to CSA Standard W47.2M, 1987 Division 1 or 2.1, "Certification of Companies for Fusion Welding of Aluminum". Bidders must provide evidence of Certification for the current year and maintain certification by the Canadian Welding Bureau until completion of the Contract.

Article 60 of the RFP reads as follows:

#### **60. SUBCONTRACTORS**

The Bidder shall identify in its proposal all subcontractors with whom it has conditionally entered into agreements to perform part of this requirement. The information shall include the name of the subcontractor, location of the place of business, corporate and individual résumés, description of the work assigned and the percentage of work assigned per subcontractor.

The Bidder shall also provide a copy of the agreement that confirms the availability and clearly indicates the commitment of the subcontractor in the event of contract award.

On March 12, 2002, Polaris wrote to PWGSC, indicating that it manufactures a comparable aluminum hull RIB that fully meets the overall specifications. Polaris indicated that the boat was commercially available and included its commercial specification sheet. Polaris requested that PWGSC negotiate the award of a sole source contract with it.

On March 13, 2002, PWGSC replied to Polaris's letter, stating that, since the subject solicitation had not yet closed, PWGSC could not evaluate its product prior to bid closing and suggesting, if the product did meet the requirements, that Polaris submit a bid on the solicitation.

On March 26, 2002, Polaris wrote to PWGSC to object to the following requirements:

- Submission of financial statements of the bidder
- Welding certification of the bidder
- Copies of subcontractor agreements

On March 28, 2002, Polaris again wrote to PWGSC, addressing a number of specific technical requirements and requesting an extension of the deadline for the submission of proposals. On April 2, 2002,

PWGSC issued amendment No. 001, which responded to the objections raised by Polaris in its letter of March 26, 2002. The amendment indicated that the requirements for financial statements and welding certification would remain unchanged. For the purposes of submitting a proposal, the requirement for individual résumés of subcontractor personnel was deleted.

On April 3, 2002, PWGSC issued amendment No. 002, which responded to the technical clarifications requested by Polaris in its letter of March 28, 2002. The date for the submission of proposals was not extended.

On April 3, 2002, Polaris wrote to PWGSC once again, objecting to the requirement to submit financial statements, the requirement that the bidder hold a welding certificate and the requirement to submit information pertaining to subcontractors. Polaris again requested that the closing date be extended.

On April 4, 2002, Polaris sent a facsimile to PWGSC, in which it accepted the responses pertaining to the technical aspects of the solicitation, but reiterated its concerns as outlined in its letter of April 3, 2002. Polaris requested that PWGSC amend the requirements for the submission of financial statements, the bidder holding a welding certificate and the necessity of providing subcontractor information and that it grant a two-week extension to the bid closing date from the time that the contractual requirements have been reissued.

On April 5, 2002, PWGSC wrote to Polaris and stated that there would be no further changes to the mandatory requirements and that, due to the need for the boats by DND and the late timing of Polaris's questions, an extension to the bid closing date would not be granted.

Polaris did not submit a bid. On April 18, 2002, Polaris filed a complaint with the Tribunal. On April 19, 2002, a contract was awarded to Zodiac in the amount of \$787,495.80 (including GST). By letter dated April 22, 2002, the Tribunal notified PWGSC that it had accepted this complaint for inquiry.

## **POSITION OF PARTIES**

### **PWGSC's Position**

PWGSC submitted that the requirement for the submission of financial statements is reasonable and necessary to ensure that the bidder has the financial capability to undertake and complete the work under the contract. According to PWGSC, a reference from a financial institution is not sufficient to enable PWGSC's cost analysts to conduct a financial cost analysis on the bidder, and such a reference would not comply with government contracting policy.

PWGSC also argued that the requirement for a bidder to have the requisite welding certificate is both reasonable and necessary under the circumstances. According to PWGSC, the successful bidder is responsible for the successful completion of the contract, the final product and the overall quality of the work. PWGSC submitted that the prime contractor must therefore possess the knowledge and qualifications necessary to review the subcontracted portion of the work and to perform quality assurance checks of such work. PWGSC further submitted that, in the case of a prototype for an aluminum hull boat, in which the aluminum welding required in the construction of the hull is critically important, it is both reasonable and necessary that the prime contractor be responsible for reviewing, ensuring and guaranteeing that the RIB meets the Crown's specifications and is suitable for its intended purpose. Furthermore, PWGSC submitted that, in its March 26, 2002, communication, Polaris made clear its objection to the mandatory requirement in the RFP for bidders to provide current Canadian Welding Bureau certification. PWGSC also stated that it is

significant that, in this communication, Polaris made it clear that it was unable to provide the mandatory certificate. PWGSC submitted that this statement led its officials to the reasonable conclusion that, if it was not possible to remove the requirement for Canadian Welding Bureau certification, then Polaris would not be able to respond to the solicitation.

In response to Polaris's argument that the requirement to provide subcontract agreements is restrictive, PWGSC claimed that the requirement for the bidder to submit subcontractor information and confirmation of availability and commitment applies only where the bidder has conditionally entered into such agreements.

PWGSC further submitted that its adherence to the 36-day bidding period was reasonable in the circumstances. According to PWGSC, the decision to maintain the bidding period was formulated in the context of the urgency and importance of the DND procurement for sea rescue boats in wartime. According to PWGSC, these boats are intended for use on frigates involved in the current conflict in the Middle East on a rotating basis. PWGSC stated that these frigates are also on routine sea patrol on the Canadian coast and can be involved in rescue operations at any time. Although Polaris's requests for an extension to the bidding period accompanied requests for information and changes to the requirements of the solicitation, no substantive changes to the requirements were possible. PWGSC submitted that, although the initial objection to the requirement for a prototype came 11 days after Polaris obtained the solicitation documents, Polaris's numerous specific requests for changes to the requirements in the RFP and for information came in the final 10 days of the bidding period. PWGSC noted that Polaris's final request for a two-week extension to the bid closing date was made in a communication dated April 3, 2002, two days before bid closing. Finally, after determining that the mandatory requirement for Canadian Welding Bureau certification could not be changed or removed, PWGSC officials concluded that an extension to the bidding period to accommodate Polaris would not, in the circumstances, practically assist Polaris and that it would unnecessarily and unreasonably delay the procurement.

With respect to the aspect of the complaint that deals with the requirement that intellectual property rights be owned by the contractor, PWGSC submitted that it is untimely. PWGSC submitted that the requirement is clearly spelled out in the RFP and in the terms and conditions that are incorporated by reference into and form part of the solicitation. According to PWGSC, the RFP was downloaded by Polaris from MERX on March 1, 2002. PWGSC claimed that Polaris, however, raised no objection with respect to these particular provisions of the RFP until the time of the filing of its complaint. Consequently, PWGSC submitted that, in accordance with subsection 6(1) of the Regulations, the 10-day period for filing a complaint with respect to these provisions of the RFP has long expired and that, therefore, this part of the complaint ought to be dismissed. In the alternative, PWGSC argued that these provisions of the RFP are in strict compliance with Canada's policy on intellectual property and do not contravene principles of fair procurement.

With respect to Polaris's assertion that "[a]ll potential suppliers as contacted" expressed similar views to those of Polaris with respect to the solicitation at issue, PWGSC submitted that there is no evidence whatsoever that Polaris has been authorized to represent the position of any other supplier in this matter. Consequently, PWGSC submitted that such allegations are inflammatory and entirely without merit.

PWGSC concluded by requesting that the complaint be dismissed and that it be awarded its costs.

## **Polaris's Position**

With respect to the first mandatory requirement at issue, Polaris submitted that, while it had no objection to the requirement that PWGSC needs reasonable security regarding a prospective contractor's financial capabilities, the financial statements of a privately owned company are its own intellectual property and, as such, a private company is allowed to ask the Crown agency for assurances on the security of such confidential information or to ask if other commercial forms of providing financial security are acceptable. Polaris submitted that this was of particular concern, since PWGSC had previously, in the course of its responses to clarification questions about the RFP, breached its own rules of disclosure by publicly identifying Polaris as the potential supplier that had asked the question.

With respect to the second mandatory requirement at issue, Polaris stated that it had no objection to providing PWGSC with the requested Canadian Welding Bureau certificate from its selected subcontractor. Polaris submitted that PWGSC should re-evaluate its definition of "reasonable requirement" in light of the existing reality of the industry and PWGSC's lack of success in obtaining larger contracts in Canada for this type of vessel. Polaris submitted that it viewed this requirement as transparently one-sided and blatantly against fair open procurement practice to the benefit (and profit) of a single supplier.

With respect to the third mandatory requirement at issue to provide information relating to subcontractors, Polaris argued that this clause precluded a potential contractor's option to choose a different subcontractor, its location, or place of business, the individuals involved, the work or percentage of work assigned for subcontracting and several other elements which run as far as precluding the option to change entirely the format of its agreement. Polaris further stated that it would have no objection to supplying the requested information upon the award of a contract.

Polaris submitted that PWGSC awarded ongoing contracts over a 12-year period for new vessels for DND, on a sole sourcing service contract basis, using the intellectual property requirement as justification. Polaris submitted that it believed that the current award of this contract was predetermined and that the intellectual property right aspect of the solicitation had been demonstrated to be unfair and in conflict with an open, fair and competitive procurement. According to Polaris, PWGSC's application of "intellectual property rights" is best suited to soliciting computer programs and to apply it to its product would not be appropriate or cost effective.

Polaris submitted that the time limit of 36 days in which to tender a proposal was unfair, in view of the untimely solicitation amendments provided by PWGSC (e.g. the last technical solicitation amendment was made on April 3, 2002, 2 days prior to bid closing). According to Polaris, despite requesting an extension from PWGSC on three separate occasions, PWGSC's failure to grant the request resulted in insufficient time for Polaris to prepare or present its bid by the deadline.

## **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. At the conclusion of the inquiry, the Tribunal must determine whether the complaint is valid on the basis of whether the procedures and other requirements prescribed in respect of the designated contract have been observed. Section 11 of the Regulations 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 AIT.



Polaris alleged that certain mandatory requirements contained in the RFP are unnecessarily restrictive. These requirements are:

- Financial Capability – Polaris objected to the mandatory requirement that it file its financial statements.
- Welding Certification – Since Polaris subcontracts the welding of its aluminum hulls, it asked PWGSC to amend the requirement to permit the welding certificate by its subcontractors.
- Subcontractors – Polaris objected to the mandatory requirement that the bidder identify, in its proposal, all subcontractors with whom it has conditionally entered into agreements to perform part of this requirement.

Polaris's complaint also raised two additional grounds of complaint. The first relates to the requirement that the contractor own the intellectual property rights to any new product created in the course of fulfilling the subject contract, and the second relates to the time limit established for the submission of proposals and PWGSC's refusal to extend that limit.

First, the Tribunal dealt with Polaris's allegation that, as a privately owned corporation, it should not be required to submit its financial statements that are confidential and proprietary. In response to this ground of complaint, PWGSC stated that submission of these statements is necessary to verify that a bidder has the financial capability to undertake and complete the work under the contract. While Polaris requested that PWGSC amend the RFP to accept a written reference from its financial institution attesting to Polaris's past and current good standing, PWGSC maintained that a reference from a financial institution is not sufficient to enable PWGSC's cost analysts to conduct a financial cost analysis on the bidder and that this would not comply with government contracting policy.

The Tribunal notes that paragraph 7 of the RFP, entitled "**BIDDER - INFORMATION ON CAPABILITIES**", states that the bidder will allow Canada to conduct an evaluation, which may include but not be limited to, the bidder's legal status, facilities and technical, financial and managerial capabilities to fulfill the requirements stated in the RFP. The Tribunal is of the view that a requirement for the submission of financial statements is reasonable. The Tribunal agrees with the arguments put forth by PWGSC that the documents are necessary for PWGSC officials to satisfy themselves that bidders have the financial capacity to undertake a contract of the size contemplated under this RFP. The Tribunal is also of the opinion that, while a reference from a financial institution could indicate the status of a bidder's obligations with that particular financial institution, it may not be sufficient to enable PWGSC's cost analysts to determine the extent of all the bidder's assets and liabilities, and it would not provide information with respect to the cashflow and profitability of the bidder. Furthermore, the Tribunal observes that this requirement appears to be standard in many of the RFPs issued by PWGSC. While it sympathizes with Polaris's concerns about the disclosure of its private financial information, the Tribunal is of the opinion that PWGSC is a responsible organization that is very experienced in the custody and protection of business proprietary information. A supplier that wishes to participate in a competition that requires a disclosure of financial information will have to comply or risk being excluded. While there may have been an inadvertent disclosure of the identity of the company that posed questions of clarification, this may have been due to PWGSC's haste to respond to questions submitted at a time when the deadline for the receipt of bids was looming. Accordingly, the Tribunal finds that Polaris's complaint with respect to this particular ground is not valid.

With respect to the second ground of complaint that bidders provide a copy of current Canadian Welding Bureau certification, Polaris indicated in its letter to PWGSC that its aluminum hull welding is

subcontracted and that it, therefore, could not provide a welding certificate in its own name. Polaris did indicate that it could, however, choose several companies as listed by the Canadian Welding Bureau that are certified, pending the outcome and award of the contract. In response, PWGSC submitted that this requirement is reasonable and necessary, since the successful bidder is the entity with which the Crown enters into the contract and which is responsible for the successful completion of the contract, the final product and the overall quality of the work package. PWGSC also submitted that the requirement for a bidder to have a welding certificate in no way restricts the bidder's ability to subcontract the welding portion of the prospective contract.

While the Tribunal accepts PWGSC's argument that it is the prime contractor that is ultimately responsible for the successful completion of the contract, the Tribunal is of the view that the requirement that the prime contractor hold a welding certificate is overly restrictive. If PWGSC and DND can accept that a subcontractor will perform the task of welding, surely certification of the subcontractor is more important. The Tribunal is of the opinion that it is immaterial whether Polaris or one of its subcontractors performed the welding work, as long as Polaris can reasonably demonstrate and certify that the welding and quality control of the welding have been conducted in accordance with the required standard. The Tribunal believes that Polaris's obligation would remain the same whether the welding certificate were in the name of Polaris or one of its subcontractors. Accordingly, the Tribunal determines that this requirement is overly restrictive and that this ground of complaint is valid. It should be noted, however, that, in the Tribunal's opinion, requiring the identification of the proposed subcontractor holding the certificate and the proof of that certificate at the time of bidding would not be unreasonable.

Polaris's third ground of complaint requiring the bidder to identify all potential subcontractors in its proposal was viewed by Polaris as unduly restrictive since it precluded a potential contractor's option to choose a different subcontractor. The Tribunal is of the view that such a requirement is reasonable and normal, given the fact that the contracting authority must satisfy itself that the successful winner of a contract is able to fulfil all the provisions of that contract. In the Tribunal's opinion, a bidder should not be able to change, at its sole discretion, its proposed subcontractors after the award of the contract, since the award may have been based on the experience or qualifications of the subcontractors. Accordingly, the Tribunal finds that this ground of complaint is not valid.

With respect to the requirement that the contractor own the intellectual property rights to the product that it proposes, Polaris has submitted that this requirement is unfair and that it has been used in the past as justification for the sole sourcing of such requirements. PWGSC has submitted that this ground of complaint is out of time. The Tribunal agrees with PWGSC's argument that Polaris knew or should reasonably have known about this ground of complaint upon its inspection of the RFP that it downloaded on March 1, 2002. Polaris did not raise this ground until it submitted its complaint. As such, the Tribunal finds that this ground of complaint was not filed in accordance with the time limits established by subsection 6(1) of the Regulations and is, therefore, dismissed. That being said, the Tribunal is somewhat perplexed as to Polaris's concern in this regard, since the conditions referenced appear to protect the contractor and the Crown in relation to the work performed as a result of the contract and do not appear to create a hindrance to a supplier being able to offer its legitimate products in response to a solicitation.

With respect to the ground of complaint relating to PWGSC's failure to grant an extension of the bid closing date, PWGSC submitted that it decided not to extend the time limit both because of the urgent nature of the requirement and because of the fact that Polaris could not meet the mandatory requirement of providing a welding certificate. Polaris first requested an extension on March 28, 2002, and, on April 4, 2002, asked specifically for a two-week extension from the time the contract specifications were reissued. PWGSC had decided, at that point in time, not to reissue the contract specifications and, therefore, did not

extend the deadline. The original time frame for the submission of proposals was 36 days, which is consistent with the AIT. While there is an onus on bidders to raise objections and request clarifications as early as possible in the bidding process so that the government institution can consider the submissions and communicate its decision to all potential suppliers, there is also an obligation for PWGSC to be reasonable. Although PWGSC acted within its legitimate discretion when it decided not to extend the deadline for the submission of tenders, the Tribunal is of the opinion that competition from other suppliers might have had the effect of shortening the overall delivery time frames. In other words, a small extension to the deadline for the submission of proposals may have been more than compensated for if the extension allowed the government to evaluate a commercially available boat that, according to Polaris, met or was very close to meeting the specifications requested. Nevertheless, the Tribunal is of the opinion that this ground of complaint, given PWGSC's consistency with the AIT, is not valid.

Polaris requested, as a remedy, that PWGSC reissue the solicitation or that Polaris be awarded financial restitution based on a percentage of the value of the contract. The Tribunal notes that it found the complaint valid with respect to only one of the grounds of complaint, and, thus, even if Polaris had been allowed to submit the welding certificate of one of its subcontractors, there would not likely have been time for Polaris to submit a compliant proposal. Thus, the degree of prejudice suffered by Polaris does not warrant upsetting the procurement or recommending monetary compensation. Accordingly and in consideration of subsection 30.15(3) of the CITT Act, the Tribunal will not recommend that the solicitation be reissued or that Polaris be given financial restitution based on a percentage of the value of the contract.

However, the Tribunal does recognize that Polaris incurred costs with respect to the filing of this complaint and will award Polaris its complaint costs.

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

In light of the foregoing, the Tribunal determines that the procurement was not conducted in accordance with the applicable trade agreements and, therefore, that the complaint is valid in part.

Pursuant to subsection 30.16(1) of the CITT Act, the Tribunal awards Polaris its reasonable costs incurred in relation to preparing and proceeding with the complaint.

Patricia M. Close  
Patricia M. Close  
Presiding Member