



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File No. PR-2003-070

CSI Consulting Inc.

v.

Department of Public Works and
Government Services

*Determination and reasons issued
Monday, May 3, 2004*

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IN THE MATTER OF a complaint filed by CSI Consulting 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*.

BETWEEN

CSI CONSULTING INC.

Complainant

AND

**THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT
SERVICES**

**Government
Institution**

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.

Pursuant to subsections 30.15(2) and (3) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal recommends that the Department of Public Works and Government Services compensate CSI Consulting Inc. by an amount equal to one third of the profit that it would reasonably have earned, had it been the successful bidder in Solicitation No. V7587-03-0001/A. Using this as the basis, the Canadian International Trade Tribunal recommends that the parties develop a joint proposal for compensation to be presented to the Canadian International Trade Tribunal within 30 days of the publication of this determination.

Pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal awards CSI Consulting Inc. its reasonable costs incurred in relation to filing and proceeding with this complaint.

Meriel V. M. Bradford

Meriel V. M. Bradford

Presiding Member

Pierre Gosselin

Pierre Gosselin

Member

Zdenek Kvarda

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Member

Susanne Grimes

Susanne Grimes

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STATEMENT OF REASONS

COMPLAINT

1. On December 19, 2003, CSI Consulting Inc. (CSI) and InnoVision Consulting Inc. (InnoVision) 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 concerned the procurement (Solicitation No. V7587-03-0001/A) by the Department of Public Works and Government Services (PWGSC), on behalf of the Department of Human Resources Development (HRDC), for informatics services for the National Secretariat on Homelessness.

2. CSI and InnoVision alleged that PWGSC improperly rejected the proposal submitted by CSI. More particularly, they alleged that PWGSC and HRDC were biased against InnoVision, the incumbent service provider that was a subcontractor to CSI in this solicitation process; that the evaluation criteria were not properly described in the Request for Proposal (RFP); and that the contract was awarded contrary to the criteria set out in RFP.

3. CSI and InnoVision requested, as a remedy, that the awarded contract be set aside and the proposals re-evaluated by an independent third party using an amended evaluation grid. Alternatively, they requested that, if the Tribunal declined to have the contract award set aside, they be awarded damages and reasonable costs in relation to filing the complaint.

4. The Tribunal accepted the complaint on behalf of CSI only, because InnoVision was not an actual or prospective bidder and therefore not a potential supplier, as defined by section 30.1 of the *CITT Act*. The solicitation was open to PWGSC In-Service Support Supply Arrangement (ISS SA) holders only, which did not include InnoVision.

5. On January 28, 2004, PWGSC filed its Government Institution Report (GIR) with the Tribunal. On February 11, 2004, CSI filed its comments on the GIR. On February 24, 2004, PWGSC submitted comments on CSI's comments on the GIR, to which CSI, in turn, responded on March 3, 2004. On February 20, 2004, the Tribunal requested additional information from the parties.

6. PWGSC was asked the following by the Tribunal:

1. Provide an organization chart together with an indication of the number of personnel under Ms. Monica Hourihan's direction.

2. CSI refers to 3 former InnoVision employees who were hired by HRDC. When and by whom was this done? What is the role of each of these employees at HRDC? What are the terms and conditions of their employment? Where were they each working at the time of the preparation of the RFP? At the time of the evaluation of the proposals?

3. Who, if anyone, at HRDC had knowledge that InnoVision was alleging a breach of contract by these former InnoVision employees? When was this information known at HRDC?

4. Where precisely did each of the 4 evaluators of the bids under this procurement fit within the organization of the Government of Canada at the time of the evaluation of the bids for this procurement?

1. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].

7. CSI was asked the following by the Tribunal:
1. What exactly was the role of each of the three InnoVision employees hired by HRDC in relation to the contract which HRDC had with InnoVision prior to this procurement?
 2. What terms of employment are each of the former InnoVision employees alleged by InnoVision to have breached?

8. Both parties responded to these questions on February 27, 2004, and each was then given an opportunity to comment on the responses that the other party had provided. CSI submitted its comments on PWGSC's responses on March 3, 2004; PWGSC did not submit comments on CSI's responses.

9. 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

10. The RFP was issued by PWGSC on September 24, 2003, with a closing date of October 8, 2003. There were four amendments to the solicitation and the bid closing date was extended to October 14, 2003.

11. With respect to information that bidders were required to submit with their proposals, the RFP contained the following provisions:

PART 2 PRESENTATION OF PROPOSAL

2.0 PROPOSAL PREPARATION INSTRUCTIONS

Bidders shall prepare a proposal addressing all the requirements of this RFP

Section I—Technical Proposal

The technical proposal should be concise and should address, but not necessarily be limited to the points that are subject to the mandatory requirements and evaluation criteria of **Annex "D"**, Mandatory Requirements, Evaluation Criteria and Contractor Selection Method, against which the proposal will be evaluated.

It is suggested that Bidders address these mandatory requirements and evaluation criteria in sufficient depth in their proposals.

PART 3 RESULTING CONTRACT CLAUSES

2.0 SECURITY REQUIREMENT

In accordance with Article "E", Security Requirements Check List.

1. The Contractor must, at all times during the performance of the Contract, hold a valid Designated Organization Screening (DOS) with approved Document Safeguarding at the level of PROTECTED B, issued by the Canadian and International Industrial Security Directorate (CIISD), Public Works and Government Services Canada (PWGSC).
4. Subcontracts which contain security requirements are NOT to be awarded without the prior written permission of CIISD/PWGSC.

12. Annex "D" contained the mandatory requirements, the evaluation criteria and the contractor selection method. It provided, in part, as follows:

1.0 EVALUATION PROCESS

To be considered responsive, a bid must:

- a) meet all of the mandatory requirements of this solicitation;
- b) obtain a minimum of 60 percent for R.1, Approach and for Methodology and for R.2, Experience and Expertise of the Proposed Resources; and
- c) obtain a minimum overall technical point rating of 70 percent, based on a total of 224 points for the criteria which are subject to point rating.

Any proposal which fails to meet (a), (b) and (c) above will be deemed as non-responsive and given no further consideration.

R1. Approach and Methodology (Maximum 100 points)

The Bidder should demonstrate its approach and methodology which will be evaluated on the following point rated criteria:

- a) Understanding of the requirement - 20 points max

The Bidder should provide a short introduction with a brief understanding of the need for the project and the objectives of the proposed Work;

- b) Description of the roles and responsibilities of the Team Members - 10 points max.

The Bidder should provide a concise description of the roles and responsibilities of each team member which includes an outline of the interdependencies of the team.

- c) Management of the work, including the approach to scheduling of each task authorization and addressing the tasks and deliverables – 25 points max.

The Bidder should provide a concise description of how the timeframes and objective for deliverables would be met for a task authorization

- e) Method to address quality assurance - 25 points max.

The Bidder should provide a concise description of its method to ensure quality assurance for tasks and deliverables, as they relate to the Statement of Work.

- f) Approach to satisfy time sensitive and urgent requirements of the client – 20 points max.

The Bidder should provide a concise description of . . . how it will ensure that timeframes for sensitive and urgent requirements are adhered to.

13. The following question and answer were included in amendment No. 3, dated October 2, 2003:

Q1. I have a question about teaming for this RFP. Company xyz is qualified to supply resources under all the streams of this bid. We also have protected B status. Company xyz would like to team with another company that is not qualified under HRDC's ISS SA arrangement. Company xyz will, however, be the prime. This company will supply Company xyz with resources which are needed for the project. We would also like to use 2 of their projects under M3 Experience and expertise of the firm. Would this be acceptable.

A1. The entity submitting a proposal must be a qualified ISS SA Holder. For this Request for Proposal, the experience of a sub-contractor is acceptable under criteria M3.

14. Four proposals were received, including the one submitted by CSI. According to PWGSC, one was set aside, as the bidder was not an ISS SA holder for the requisite categories and therefore ineligible to compete under the terms of the solicitation in question. Of the three remaining proposals, PWGSC determined that ITNet Consulting Inc. (ITNet) had submitted the lowest-priced compliant proposal. On

November 17, 2003, PWGSC awarded the contract to ITNet and informed CSI that it had not been successful.

15. Over the next 11 days, there were a number of clarifications and questions exchanged between CSI and PWGSC with regard to the rejection of CSI's proposal, culminating in two pieces of correspondence sent to PWGSC by CSI on November 28 and December 2, 2003. The first, in response to PWGSC's request that CSI document its questions in lieu of a face-to-face debriefing, contained 12 questions relating to the bid evaluation process. The second was a formal notice of objection that alleged that CSI was compliant with all the mandatory requirements and requested that the bids be re-evaluated by an independent third party. On December 5, 2003, PWGSC responded to CSI, stating that PWGSC would not accede to the request for another evaluation and that its assessment of CSI's security situation was correct. CSI filed its complaint with the Tribunal on December 19, 2003.

POSITIONS OF THE PARTIES

CSI's Position

16. CSI's complaint contained the following three main allegations concerning PWGSC/HRDC:

- They failed to ensure that the tendering process allowed equal access to the procurement and did not apply the process in a non-discriminatory manner.
- They failed to ensure that the tender documents clearly identified the requirements of the procurement, the criteria that would be used in the evaluation of the bids and the methods of weighting and evaluating the criteria.
- They failed to award the contract in accordance with the criteria and essential requirements specified in the tender documents.

17. With regard to the allegation of bias, CSI submitted that there were three specific areas that demonstrated the bias against it. The first was that HRDC and PWGSC chose to tender the requirement through the ISS SA instead of through an open competition. CSI submitted that the working relationship between InnoVision and management at HRDC had deteriorated during the final months of a previous contract and that this strained relationship was the reason that the ISS SA was chosen, as HRDC's staff was aware that InnoVision was not an ISS SA holder.

18. The second area, CSI submitted, was that HRDC had hired three of InnoVision's employees within the nine-month period leading up to the solicitation. CSI submitted that these ex-employees, although not directly involved in the procurement process, were in a position to affect the evaluation of the proposals because of their past relationship with InnoVision. It submitted that the low marks that it received on the rated criteria demonstrate this bias, given that the CSI/InnoVision bid had the natural advantage of being the incumbent.

19. The third area, CSI submitted, was that its proposal was originally rejected because PWGSC determined that CSI did not hold the necessary security clearances. CSI maintained that the CSI/InnoVision arrangement was such that all work done in Ottawa, Ontario, would be done by InnoVision, which holds a clearance at a level higher than that required by the RFP. All remaining work would be done by CSI in its Toronto, Ontario, facility, which holds the Designated Organization Screening with approved Document Safeguarding Capability at the level of PROTECTED B, as required by the RFP. CSI submitted that

PWGSC acknowledged the security level of the Toronto office on two separate occasions² and should therefore not have disqualified its proposal on these grounds. According to CSI, if PWGSC had any concerns about where the work was to be performed, it would have been a straightforward matter to ask CSI; however, CSI submitted that PWGSC refused to take this simple step. It submitted that the only information that PWGSC used to conclude that it did not hold the required security clearance was the fact that the bid was submitted by CSI's Ottawa office. It argued that, had the bid been submitted by its Toronto office, PWGSC would have apparently determined that its bid met the mandatory security requirement.

20. With regard to the second allegation, that the detailed evaluation guide (marking guide) did not reflect the RFP requirements concerning rated criterion R1, CSI submitted that the requirement of rated criterion R1 can be briefly described as the requirement to provide a "short introduction" (rated criterion R1.a) or the requirement to provide a "concise description" (rated criteria R1.b, R1.c, R1.e and R1.f) regarding the subject of the respective criterion. CSI submitted that its proposal met these mandatory requirements. It submitted that the marking guide, however, required that additional documents be produced and that there was no mention anywhere in the RFP of these additional documents. It stated that the marking guide mentions a work breakdown (rated criterion R1.a), a risk analysis (rated criterion R1.a), an operational plan (rated criterion R1.b), an integrated schedule (rated criteria R1.c, R1.e and R1.f) and a work plan (rated criteria R1.c, R1.e and R1.f).

21. CSI submitted that PWGSC's argument that these additional documents were merely to provide assistance to the evaluators in assessing the bids is not credible. It submitted that the marking guide provided in the GIR³ clearly states, with respect to a number of criteria, that the bidder's responses must be "supported by" a specific document in order to achieve higher level scores for the specified criterion. It also submitted that the two (out of four) evaluators who did supply written comments provided comments that were cryptic and open to interpretation. It submitted that the evaluators' comments tend to indicate that they were searching for the additional documents referred to in the marking guide.

22. Regarding the final allegation, that the contract was not awarded in accordance with the criteria and requirements specified in the RFP, CSI submitted that, according to the marking guide, the highest score that a bidder could attain without submitting these additional documents was 42 points, well below the 60-point passing mark for rated criterion R1. It submitted that PWGSC therefore failed to award a contract in accordance with the criteria set out in the RFP, as no bidder could have achieved a passing mark based on the evaluation criteria contained in the RFP.

PWGSC's Position

23. PWGSC submitted that:

- CSI's complaint fell far short of meeting the burden of the test for reasonable apprehension of bias;
- CSI's bid was properly evaluated and considered non-responsive when it failed to achieve the necessary 60 percent in the rated criteria R1; and
- the contract was properly awarded in accordance with the evaluation methodology and the requirements of the trade agreements.

2. Complaint, Tab 9, para. 2, and Tab 15, para. 6.

3. GIR, Exhibit 35.

24. PWGSC submitted that the allegation of bias is specious and without merit. It submitted that the procurement was conducted under the ISS SA because this was the most efficient and expeditious procurement vehicle available. PWGSC submitted that InnoVision ordered a bid package through MERX⁴ to join the ISS SA when it was initially established, but chose not to apply.⁵

25. Concerning the three former employees of InnoVision, PWGSC submitted⁶ that none of the three individuals in question played any role in the subject procurement process. It attached, as Exhibit 6 to the GIR, a memorandum from the contracting officer to the bid evaluators regarding the confidentiality of the bid evaluation, as well as possible conflict of interest implications. The names of the evaluators listed in Exhibit 6 do not match any of the names that CSI submitted as former employees being able to influence the bid evaluation.

26. PWGSC submitted that CSI's proposal was properly evaluated and that the alleged "additional documents" were provided as examples within the marking guide. It stated that, in order to provide more assistance to the evaluators, the marking guide provided examples with respect to each scoring level. It offered that the suggested scoring levels found in the marking guide are based on reasonable everyday standards that could be readily anticipated by suppliers. It submitted that the supporting examples provided for each scoring level are similarly based on reasonable concepts that flow logically from the text of the published requirements and could have been readily anticipated by suppliers.

27. Regarding the alleged requirement for a work breakdown (rated criterion R1.a), PWGSC submitted that suppliers could have readily and reasonably anticipated that a response demonstrating a strong understanding of the criterion would incorporate some analytical examination of the required task, e.g. the "work breakdown", as well as an examination of risk considerations, e.g. the "risk analysis". It also submitted that the marking guide did not refer to "a" risk analysis, but to "risk analysis" in general. It submitted that the evaluators' comments on their evaluation sheets⁷ confirm that they were not expecting any additional documents.

28. With respect to the requirement for an operational plan (rated criterion R1.b), PWGSC submitted that any sound description of the nature and operation of a projected organization must include a discussion of the supplier's planning of this organization and how it proposes to make this organization function. It submitted that suppliers could have readily and reasonably anticipated that their responses to rated criterion R1.b should necessarily address their planning for the operations of the organization. It also submitted that the evaluators' comments on their evaluation sheets⁸ confirm that they did not require any additional documents.

29. Concerning the remaining documents, an integrated schedule and a work plan (both noted in the marking guide for rated criteria R1.c, R1.e and R1.f), PWGSC submitted that it is, readily and reasonably anticipated that suppliers address the requirements of these criteria through the use of work planning and scheduling. It also submitted that the evaluators' comments on their respective evaluation sheets⁹ confirm that they did not expect, nor did they require, the production of additional documents. PWGSC submitted that, although one of the evaluators had included the word "plan" in the comments on the evaluation sheet, it

4. Canada's electronic tendering service.

5. GIR, Section III, para. 101.

6. *Ibid.*, para. 106.

7. Confidential GIR, Exhibits 36, 37 and 38.

8. *Ibid.*

9. *Ibid.*

was not in relation to a specific document, but as an overall comment on the bidder's response to that criterion.

30. PWGSC submitted that the evaluation of all proposals was conducted fairly and in conformity with the RFP and that the contract was awarded in accordance with the tender documents. It further submitted that the complaint was without merit and ought to be dismissed and that the Crown should be awarded its costs.

TRIBUNAL'S DECISION

31. 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, 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 *Canadian International Trade Tribunal Procurement Inquiry Regulations*¹⁰ further provides that the Tribunal is required to determine whether the procurement was conducted in accordance with the applicable trade agreements, which, in this case, are the *Agreement on Internal Trade*,¹¹ the *North American Free Trade Agreement*¹² and the *Agreement on Government Procurement*.¹³

Bias

32. Article 501 of the *AIT* reads in part:

[T]he purpose of this Chapter is to establish a framework that will ensure equal access to procurement for all Canadian suppliers in order to contribute to a reduction in purchasing costs.

33. Article VII of the *AGP* reads in part:

Each Party shall ensure that the tendering procedures of its entities are applied in a non-discriminatory manner.

34. Article 1008 of *NAFTA* reads in part:

Each Party shall ensure that the tendering procedures of its entities are . . . applied in a nondiscriminatory manner.

35. In *Prudential Relocation Canada*,¹⁴ the Tribunal set out the test for analysing an allegation of reasonable apprehension of bias as opposed to outright bias, as is the allegation here, in the manner that follows:

In *Cougar Aviation Ltd. v. Canada* [*Cougar Aviation (Minister of Public Works and Government Services)* (28 November 2000), A-421-99 (F.C.A.)], the Federal Court of Appeal found that, under the *AIT*, the Tribunal's jurisdiction was not limited to complaints of actual bias, but also included the adjudication of allegations of reasonable apprehension of bias. The test applied by the Tribunal in order to determine if the circumstances of this case give rise to a reasonable apprehension of bias is the one set out by de Grandpré, J. in his dissenting opinion in *Committee for Justice and Liberty v.*

10. S.O.R./93-602.

11. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<http://www.intrasec.mb.ca/eng/it.htm>> [*AIT*].

12. 32 I.L.M. 289 (entered into force 1 January 1994) [*NAFTA*].

13. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm> [*AGP*].

14. *Re Complaint Filed by Prudential Relocation Canada Ltd.* (30 July 2003), PR-2002-070 (CITT) at 12.

National Energy Board, as affirmed by the Supreme Court of Canada in *Bell Canada v. Canadian Telephone Employees Association* [*Bell Canada*, 2003 SCC 36], which reads as follows:

[W]hat would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it is more likely than not that [the individual], whether consciously or unconsciously, would not decide fairly. [[1978] 1 S.C.R. 369 at 394]

36. Regarding the three specific elements of the allegation of bias in the present matter, the Tribunal finds that:

- the ISS SA was a logical and an acceptable method of tendering the requirement, given the time frames involved, and that the fact that InnoVision was not a holder of the ISS SA did not appear to be a contributing factor in its choice;
- the ex-InnoVision employees who were hired by PWGSC were not involved in the procurement process (a fact acknowledged by CSI in its comments on the GIR) and did not influence the bid evaluation; and
- PWGSC has an established practice in dealing with the review and the granting of security clearances in government procurement and maintains that it was acting in accordance with that practice when it made its decision regarding CSI's proposal.

37. In light of these considerations, the Tribunal, applying the test of an informed person viewing the matter realistically and practically, and having thought the matter through, does not consider it more likely than not that the evaluation would have been conducted unfairly as a result of the foregoing. It is therefore of the view that the circumstances of this case do not disclose a reasonable apprehension of bias, let alone actual bias on the part of PWGSC.

38. This ground of complaint is therefore not valid.

Unidentified Evaluation Criteria

39. Article 506(6) of the *AIT* reads in part:

The tender documents shall clearly identify the requirements of the procurement, the criteria that will be used in the evaluation of bids and the methods of weighting and evaluating the criteria.

40. Article XII(2) of the *AGP* reads in part:

Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders.

41. Article 1013 of *NAFTA* reads in part:

Where an entity provides tender documentation to suppliers, the documentation shall contain all information necessary to permit suppliers to submit responsive tenders.

42. The Tribunal finds that the five additional documents (work breakdown, risk analysis, operational plan, integrated schedule and work plan) specified in the marking guide were not, as argued by PWGSC, simply elaborations of the criteria. Based on the comments noted in the completed evaluation sheets, the Tribunal finds that their inclusion was a requirement for obtaining certain points in the scoring scheme where they are noted in the marking guide. It notes, as a matter of course, that suppliers will look to the RFP, or published evaluation criteria, as their guide to the information that they need to include when they

are preparing their proposals. In this case, the RFP clearly reads, for rated criterion R1, that bidders are to provide “a short introduction with a brief understanding” for rated criterion R1.a and a “concise description” for rated criteria R1.b, R1.c, R1.e and R1.f.

43. The Tribunal firmly believes that contracting authorities have the right and duty to ensure that the taxpayers receive the best value for the money being spent. If, in addition to the other published evaluation criteria, the production of these five documents was what would be required by the evaluation team to assure itself that it was procuring the best service possible, the Tribunal would not interfere with that requirement. However, it could not find any mention in the tender documents of the requirement for bidders to include these documents with their proposals. It finds that requiring the production of the five documents in order to meet the requirements for points as laid out in the marking guide, without giving prior notice to bidders, is unfair and runs contrary to the above-mentioned articles of the trade agreements.

44. The Tribunal therefore finds that this ground of complaint is valid.

Improper Contract Award

45. Article XIII(4) of the *AGP* reads in part:

[Contract] [a]wards shall be in accordance with the criteria and essential requirements specified in the tender documentation.

46. Article 1015 of *NAFTA* reads in part:

[Contract] [a]wards shall be made in accordance with the criteria and essential requirements specified in the tender documentation.

47. Given its decision concerning the unidentified evaluation criteria, the Tribunal also finds that the contract was not awarded in accordance with the terms of the RFP. It is of the opinion that CSI, and possibly the other bidder whose proposal was evaluated, may well have met the rated requirements, if these requirements had been evaluated in accordance with the RFP.

48. The Tribunal therefore finds that this ground of complaint is valid.

Remedy and Costs

49. In recommending an appropriate remedy, the Tribunal has considered all the circumstances relevant to this procurement, including those outlined in subsection 30.15(3) of the *CITT Act*. It did not find any evidence indicating bad faith on the part of any of the parties to this proceeding. However, it does consider that this case deals with a serious deficiency in the procurement process, a deficiency that could bring into question the integrity of the competitive procurement process.

50. While acknowledging that ITNet is fully qualified to perform the work, the Tribunal is not convinced that CSI, or the other bidder whose proposal was not disqualified, was not equally qualified. The Tribunal is satisfied that the evidence before it does not demonstrate bias against CSI or InnoVision. However, it is of the view that the deficiency identified in this procurement at the stage of the evaluation of the rated requirements needs to be addressed by an appropriate remedy. It finds that the evidence relating to the evaluation of the rated requirements and the mandatory security clearance requirement is, at best, inconclusive in terms of determining whether CSI could have won the contract in question. As such, it is of the view that the most appropriate remedy is one that recognizes CSI's lost opportunity to benefit from this contract. To minimize the impact on the work being performed, the Tribunal does not consider that it would

be appropriate, in the circumstances, to recommend a re-tender of the requirement at this stage. However, CSI was prejudiced, as was, conceivably, a third bidder. Had the proposals been evaluated in accordance with the provisions of the RFP, any one of the three bidder's proposals might have been selected as the winning bid. Accordingly, the Tribunal recommends that CSI be compensated for this lost opportunity, as outlined below.

DETERMINATION OF THE TRIBUNAL

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

52. Pursuant to subsections 30.15(2) and (3) of the *CITT Act*, the Tribunal recommends that PWGSC compensate CSI by an amount equal to one third of the profit that it would reasonably have earned, had it been the successful bidder in Solicitation No. V7587-03-0001/A. Using this as the basis, the Tribunal recommends that the parties develop a joint proposal for compensation to be presented to the Tribunal within 30 days of the publication of this determination.

53. Pursuant to section 30.16 of the *CITT Act*, the Tribunal awards CSI its reasonable costs incurred in relation to filing and proceeding with this complaint.

Meriel V. M. Bradford
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Presiding Member

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