



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File No. PR-2003-075

Fleetway Inc.

v.

Department of Public Works and
Government Services

*Determination issued
Wednesday, April 21, 2004*

*Corrigendum issued
Wednesday, May 19, 2004*

*Reasons issued
Wednesday, May 19, 2004*

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IN THE MATTER OF a complaint filed by Fleetway 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

FLEETWAY INC.

Complainant

AND

**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.

Pursuant to subsections 30.15(2) and (3) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal recommends, as a remedy, that the Department of Public Works and Government Services negotiate a contract with Fleetway Inc. in relation to the balance of the work to be performed and, then, terminate the contract awarded to Lancaster Aviation Inc. In addition, the Canadian International Trade Tribunal recommends that Fleetway Inc. be compensated for its lost opportunity in the form of the profit that it reasonably would have made during the time that Lancaster Aviation Inc. held the contract.

Pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal awards Fleetway Inc. its reasonable costs incurred in preparing and proceeding with the complaint, which costs are to be paid by the Department of Public Works and Government Services.

Patricia M. Close
Patricia M. Close
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Susanne Grimes
Susanne Grimes
Acting Secretary

The statement of reasons will follow at a later date.

IN THE MATTER OF a complaint filed by Fleetway 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

FLEETWAY INC.

Complainant

AND

**DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT
SERVICES**

**Government
Institution**

DETERMINATION OF THE TRIBUNAL

CORRIGENDUM

In the English version of the determination, the second sentence of the second paragraph should read: "In addition, the Canadian International Trade Tribunal recommends that Fleetway Inc. be compensated for the lost profit that it reasonably would have made during the time that Lancaster Aviation Inc. held the contract."

By order of the Tribunal,

Susanne Grimes
Acting Secretary

| | |
|---|---|
| Tribunal Members: | Patricia M. Close, Presiding Member James A. Ogilvy, Member Meriel V. M. Bradford, Member |
| Senior Investigation Officer: | Cathy Turner |
| Counsel for the Tribunal: | Roger Nassrallah |
| Complainant: | Fleetway Inc. |
| Counsel for the Complainant: | Vincent DeRose J. Bruce Carr-Harris David Sherriff-Scott |
| Intervener: | Lancaster Aviation Inc. |
| Government Institution: | Department of Public Works and Government Services |
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STATEMENT OF REASONS

COMPLAINT

1. On January 22, 2004, Fleetway Inc. (Fleetway) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ concerning a procurement (Solicitation No. W8484-02FK01/A) by the Department of Public Works and Government Services (PWGSC) for the provision of miscellaneous equipment repair and overhaul services on behalf of the Department of National Defence (DND).

2. Fleetway alleged that PWGSC issued the contract to a company whose bid had been modified improperly as a result of the clarification process conducted during the procurement. Fleetway requested, as a remedy, that the Tribunal recommend that the contract awarded to Lancaster Aviation Inc. (Lancaster) be set aside and terminated, that the award of any contract or task authorization under the solicitation to Lancaster be terminated, that the proposal submitted by Lancaster be declared non-compliant and that the designated contract be awarded to Fleetway. In addition, Fleetway requested its costs incurred in preparing and proceeding with the complaint.

3. On January 30, 2004, 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*.² On February 3, 2004, PWGSC informed the Tribunal that a contract had been awarded to Lancaster. On February 10, 2004, the Tribunal granted intervener status to Lancaster. On February 24, 2004, PWGSC filed a Government Institution Report (GIR) with the Tribunal in accordance with rule 103 of the *Canadian International Trade Tribunal Rules*.³ On March 8, 2004, Fleetway filed its comments on the GIR with the Tribunal. On March 15, 2004, PWGSC requested permission to respond to allegedly new arguments raised in Fleetway's comments on the GIR and, at the same time, provided its response. On March 22, 2004, the Tribunal granted PWGSC's request and sent the response to parties for comment. On March 24, 2004, Fleetway filed its comments with the Tribunal.

4. 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

5. On December 13, 2002, a Notice of Proposed Procurement was published on MERX, Canada's Electronic Tendering Service. The Request for Proposal (RFP) had a bid closing date of January 30, 2003.

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

2. S.O.R./93-602 [*Regulations*].

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

6. The RFP reads, in part, as follows:

14. TECHNICAL PROPOSAL – PART / BINDER 1 (M)

(b) Mandatory Requirements for Technical Proposal (M)

It is **MANDATORY** that the Technical Proposal contain the following:

- iv. **SOW Compliance** – A clear concise statement of the proposal's compliance with **each article of Annex "B" Statement of Work** of this RFP. This statement must consist of one of the two responses identified in the previous paragraph. If applicable the following also applies:
 2. With respect to the SOW (Annex B) only, a narrative in the Bidder's reference material which substantiates the response is to include the precise location in reference material including the title of the document, and the page and paragraph numbers where evidence of meeting the requirement is shown.

An example of the required response format is:

| Article | Response | Description | Reference |
|---------|----------|---|--|
| 6.2.2 | Comply | Establish and maintain a database that shall maintain total cost control; repair costs incurred for each item; sourcing detail described under section called Sourcing, paragraph 7 | Specification Sheet, Page 10, para. 12 |

7. According to PWGSC, two bids were received and, on February 5, 2003, the technical proposals were forwarded to DND for evaluation. On March 7, 2003, PWGSC requested clarification from Lancaster with respect to various aspects of its technical proposal. On March 14, 2003, Lancaster responded to PWGSC's request. On March 21, 2003, the technical evaluation team determined that the two bids submitted were technically compliant. According to PWGSC, it commenced the evaluation of the financial proposals on March 24, 2003. On May 12, 2003, PWGSC requested clarification from Lancaster with respect to various aspects of its financial proposal. On May 21, 2003, Lancaster responded to PWGSC's request. On June 11, 2003, PWGSC requested a second clarification from Lancaster with respect to its financial proposal, and Lancaster provided a response the same day.

8. According to PWGSC, on June 18, 2003, it determined that the proposal from Lancaster was the lowest-priced compliant bid. According to PWGSC, contract award approval was received on November 27, 2003, and a contract was awarded to Lancaster; Fleetway was informed the same day of the results of the evaluation and contract award. On January 12, 2004, PWGSC had a debriefing with Fleetway. On January 22, 2004, Fleetway filed its complaint with the Tribunal.

POSITIONS OF THE PARTIES

PWGSC's Position

9. PWGSC submitted that, in accepting the complaint for inquiry, the Tribunal determined that the RFP provided PWGSC with the right to seek clarification from bidders with respect to information contained in their proposals. It also submitted that the Tribunal, in its letter to Fleetway accompanying its notice of inquiry, indicated that, "even if not explicitly stated in the tender documents, PWGSC is generally permitted to seek clarification or verification of the information contained in proposals provided . . . the proposal being clarified is not modified in any substantive manner." PWGSC submitted that the clarifications obtained with respect to the technical proposal did not constitute improper revisions or

modifications to Lancaster's proposal. It further submitted that it adhered to proper procedures in framing the requests for clarification.

10. PWGSC submitted that the RFP is clear, in that the award of any contract would be based upon the evaluation of the lowest-cost compliant proposal. It submitted that the evaluators had the responsibility to evaluate proposals for compliance with mandatory criteria, that is, for substance and not for form. It further submitted that the process of obtaining clarification and, where necessary, verification of information contained in the proposals is entirely reasonable and fair to all bidders.

11. PWGSC submitted that the specific instruction for Lancaster's appropriate response was set forth in its request in bold print and underlined, and that it clearly indicated that Lancaster was not permitted to add new information by way of response to the clarification request. It further submitted that its letter stated: **"Please indicate the location within your proposal"** where the information requested could be found. It submitted that Lancaster's response did not constitute an improper revision or modification of its proposal.

12. PWGSC submitted that it did not seek clarification with respect to Annex "E" to Lancaster's proposal. It submitted that Lancaster properly completed and certified Annex "E" by initialling each referenced mandatory clause and by executing the signature block as required.

13. With regard to the clarification sought on Lancaster's financial proposal, PWGSC submitted that Lancaster's pricing was highly competitive and, out of an abundance of caution, PWGSC sought to confirm the bid price. It submitted that there was no revision or modification of Lancaster's proposal as a result of the clarification process and that it was very careful to explain to Lancaster that it was not permissible for Lancaster to revise or modify its bid or to add new information that was not contained in the original proposal.

14. In response to Fleetway's comments on the GIR, PWGSC submitted that nothing in the RFP detracts from the evaluators' obligation to evaluate each proposal with diligence and thoroughness and to evaluate all information contained in a bid, even if it is not easy to find or if its nexus to a particular requirement is not readily apparent. PWGSC further submitted that, in this case, the evaluators were certain that all the required information was contained in Lancaster's bid and considered it incumbent upon them to clarify the nexus between the statement of work (SOW) criteria and the precise location of the information in the bid.

15. With respect to the clarifications sought on Lancaster's financial proposal, PWGSC submitted that, in evaluating a bidder's financial proposal, it is particularly important that evaluators understand every element clearly so that there are no areas of potential misunderstanding that could subsequently affect the administration of a contract.

16. Finally, PWGSC submitted that, in accordance with the principles set out by the Federal Court of Appeal in *Canada (Attorney General) v. Georgian College of Applied Arts and Technology*,⁴ the Crown should be awarded its costs in this matter.

Fleetway's Position

17. Fleetway submitted that, on January 12, 2004, during the debriefing with PWGSC, PWGSC confirmed that a 181-day delay in awarding the contract was caused, in part or in whole, by the need to seek

4. [2003] 4 F.C. 525.

clarifications on Lancaster's proposal. Fleetway also submitted that, during the debriefing, PWGSC confirmed that clarifications were sought regarding Lancaster's compliance with the mandatory technical and financial requirements of the RFP, including compliance with Annex "E" to the RFP.

18. Fleetway submitted that there was no point rating included in the evaluation of proposals and that, thus, the evaluation was limited to a review of the proposals to ensure compliance with the mandatory requirements. Fleetway also submitted that the RFP prescribed the minimum information requirements and the format by which bidders were required to demonstrate their compliance. Fleetway argued that, if a proposal did not follow the informational and formatting requirements of the RFP, then it should have been found non-compliant.

19. Fleetway submitted that bidders were required to include, in their reference material, a narrative that indicated the precise location in the proposal where evidence of meeting the requirements could be found. Therefore, Fleetway argued, evaluators should not have needed to seek any clarifications with respect to the location of any information.

20. In *Mechron*,⁵ the Tribunal indicated that it was "of the view that a clarification is an explanation of some existing aspect of a proposal that does not amount to a substantive revision or modification of the proposal."⁶ Fleetway submitted that any clarification of Annex "E" to the RFP would result in a substantive revision or modification of Lancaster's proposal. It submitted that either Annex "E" to Lancaster's proposal included all the necessary information or the proposal should have been found non-compliant. Fleetway contended that, in seeking clarifications of Annex "E", PWGSC modified Lancaster's proposal.

21. In its response to the GIR, Fleetway contended that PWGSC encountered major problems with Lancaster's bid, which clearly did not follow the prescribed mandatory format set out in the RFP and that, through its request for clarification, PWGSC gave instructions to Lancaster for the preparation of its response. Fleetway argued that these instructions were an obvious restatement of the original mandatory requirements of the RFP and that, in substance, PWGSC directed Lancaster to do, in a post-closing document, what it had not done in its bid, that is, to properly complete the article-by-article narrative required by the RFP. Fleetway submitted that this action alone demonstrated Lancaster's failure to comply with the requirements of the RFP. Fleetway further submitted that Lancaster's response to the request for clarification amended its original narrative because it introduced new references to the requisite evidence and indicated where that evidence was located in the bid; it modified its narrative by "correcting" references to requisite evidence that it admittedly misstated or incorrectly identified in its original proposal; and it provided further explanations about how it intended to meet the requirements and how it intended to carry out the work for certain requirements.

22. In response to PWGSC's submission dated March 15, 2004, Fleetway submitted that, according to PWGSC, even if a bidder fails to properly respond to a mandatory requirement, the bid could still be compliant if the requisite information can be located somewhere in the bid. Fleetway submitted that, if this were correct, then PWGSC would have the discretion to ignore or disregard mandatory formatting requirements so long as it could locate the information somewhere within the proposal. Fleetway contended that this caveat is wrong at law and should be rejected by the Tribunal.

23. Fleetway submitted that subparagraph 14(b)iv.2 of the RFP is a mandatory requirement for all bidders to provide a "narrative" setting out the precise location of all the information needed to establish

5. *Re Complaint Filed by Mechron Energy Ltd.* (18 August 1995), PR-95-001 (CITT).

6. *Ibid.*, public version at 9.

compliance with each and every article of the SOW. Fleetway submitted that PWGSC has not denied that subparagraph 14(b)iv.2 is mandatory and that PWGSC argued that the mandatory requirements of that subparagraph do not preclude clarification of the “location of information” within a proposal. Fleetway contended that, according to this approach, where a bidder fails to provide the precise location of evidence in its proposal, it may subsequently provide the precise location of evidence through the clarification process.

24. Fleetway argued that the Crown chose to make it a mandatory requirement that bidders provide a narrative substantiating their response which is to include the precise location in the bidder’s reference material where evidence of meeting the requirement is shown and that, once this requirement had been published and the bid closing date had elapsed, PWGSC was not entitled to ignore or disregard this mandatory requirement. It submitted that mandatory format requirements are included to promote an efficient and fair procurement process and that to now make such requirements enforceable at the discretion of the Crown would bring government procurement into disrepute.

25. Fleetway submitted that PWGSC asserted, in its submission dated March 15, 2004, that the evaluators “were certain” that all the required information was contained in Lancaster’s bid; however, Fleetway contended, this statement is inconsistent with the nature of the clarification questions submitted to Lancaster, as well as the evaluators’ own handwritten notes which confirm that the evaluators could not locate all the required information and were not certain that the bid contained the requisite information.

26. With regard to Lancaster’s financial proposal, Fleetway submitted that it was clear from Lancaster’s response to the clarification questions that it intended to charge “negotiated rates” for any work above certain stated maximum limits and that, in doing so, Lancaster’s proposal was non-compliant with the requirements of the RFP.

TRIBUNAL’S DECISION

27. 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 *Regulations* further provides that the Tribunal is required to determine whether the procurement was conducted in accordance with the applicable trade agreements, which, in this instance, are the *Agreement on Internal Trade*,⁷ the *North American Free Trade Agreement*⁸ and the *Agreement on Government Procurement*.⁹

28. Article 506(6) of the *AIT* provides that, “[i]n evaluating tenders, a Party may take into account not only the submitted price but also quality, quantity, delivery, servicing, the capacity of the supplier to meet the requirements of the procurement and any other criteria directly related to the procurement that are consistent with Article 504. 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.”

7. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<http://www.intrasec.mb.ca/eng/it.htm>> [*AIT*].

8. 32 I.L.M. 289 (entered into force 1 January 1994) [*NAFTA*].

9. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm> [*AGP*].

29. Article 1015(4)(a) of *NAFTA* provides that “[a]n entity shall award contracts in accordance with the following: . . . (a) 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”.

30. Article XIII(4)(c) of the *AGP* provides that “[a]wards shall be made in accordance with the criteria and essential requirements specified in the tender documentation.”

31. Fleetway alleged that Lancaster’s bid was modified improperly as a result of the clarification process conducted by PWGSC and, further, that Lancaster’s original bid should have been declared non-compliant, since it failed to conform to the mandatory format requirements stated in the RFP.

32. Subsection 14(b) of the RFP stated the mandatory requirements for the technical proposals. Paragraph 14(b)iv provides, in part, as follows:

- iv. **SOW Compliance** – A clear concise statement of the proposal’s compliance with **each article of Annex “B” Statement of Work** of this RFP. This statement must consist of one of the two responses identified in the previous paragraph. If applicable the following also applies:
 - 2. With respect to the SOW (Annex B) only, a narrative in the Bidder’s reference material which substantiates the response is to include the precise location in reference material including the title of the document, and the page and paragraph numbers where evidence of meeting the requirement is shown.

33. It is clear from the wording of subsection 14(b) that the “if applicable” in paragraph 14(b)iv above refers to each time the bidder indicates “Comply” as its response to an article of the SOW. Further, as was indicated in the example following subparagraph 14(b)iv.2, a description or narrative was to be provided for each article, indicating how the bid complied with the article, as well as the precise location in the reference material where evidence of meeting the requirement is shown. This was a mandatory requirement. The Tribunal finds, in this case, that the format by which bidders were to submit technical proposals was clear. Proposals were to contain a clear, concise statement of compliance with each article of the SOW and were to include the precise location in the proposal where evidence of meeting the requirements could be found. There appears to be no disagreement between Fleetway and PWGSC on this interpretation.

34. PWGSC stated that evaluators had the responsibility to evaluate proposals for compliance with the mandatory criteria and, further, that this meant an evaluation for substance and not for form. The Tribunal is of the opinion that this interpretation of the mandatory criteria is incorrect. Designating a requirement as mandatory eliminates a discretionary assessment and, thus, the requirement is generally evaluated as a pass or a fail.

35. Lancaster’s bid contains a chart that outlines its compliance with the SOW; however, the Tribunal is of the view that the chart does not contain complete references to the precise location in the reference material where evidence of meeting each individual article of the requirements of the SOW can be found, as required by the mandatory criteria of the RFP. The Tribunal’s view is supported by the fact that PWGSC felt it was necessary to ask Lancaster where certain information could be found in its proposal.

36. PWGSC stated that its evaluators were certain that all the required information was contained in Lancaster’s bid and considered it incumbent upon them to clarify the nexus between the SOW criteria and the precise location of the information in the bid. Based on this reasoning, PWGSC requested Lancaster to provide responses to its clarification questions and instructed Lancaster to indicate “**the location within [its]**

proposal” where the requested information could be found. In addition to asking for the location of the information in its request for clarification, in certain instances, PWGSC also requested “*how*” certain articles complied with the SOW requirements.

37. In the Tribunal’s view, using the information obtained through this clarification went beyond what is permissible and crossed over into bid repair. Not only did PWGSC request references that were supposed to be included in the bid, as indicated in the mandatory requirements related to the statement of compliance, but it also requested an explanation of how such references actually demonstrated compliance with the SOW. PWGSC asked for clarification of numerous mandatory articles under subparagraph 14(b)iv.2. In its March 14, 2003, response to PWGSC’s request for clarification, Lancaster provided specific page and paragraph numbers where its original response addressed the issues. Therefore, the Tribunal is of the view that, in response to the clarification, Lancaster provided information that did not appear in the original proposal. Also, in its March 14, 2003, response, Lancaster corrected certain information originally contained in its proposal, in addition to adding information about how it intended to satisfy the requirement. Therefore, the Tribunal finds that PWGSC ought not to have requested the clarification of Lancaster’s proposal because it was clear that the proposal did not comply with the mandatory format requirements and should have been declared non-compliant. Further, the Tribunal is of the opinion that PWGSC’s use of Lancaster’s responses to the clarification questions in the evaluation effectively modified Lancaster’s original proposal in a substantive manner.

38. It is fundamental to the integrity of the competitive procurement process that the government institution follow the evaluation criteria established in the RFP. PWGSC did not do this, even though the wording of paragraph 14(b)iv of the RFP was clear. In the Tribunal’s view, if a government institution ignores a mandatory requirement, the integrity of the competitive procurement process is severely prejudiced and bidders will likely have no confidence in the impartiality of that process.

39. With respect to the financial proposal, it was mandatory that bidders provide a duly completed Annex “C” entitled “Proposed Basis of Payment” as part of their financial proposals and that bidders quote prices and rates in accordance with the mandatory basis of payment specification detailed in Annex “C”. While Lancaster did include a completed Annex “C” with its proposal, it was not completed in the manner required by PWGSC and, therefore, precipitated a request for clarification which required Lancaster to confirm certain components of its financial proposal relating to the inclusion of fees or costs in the transaction fee. Lancaster’s response did not satisfy the need for the requested clarification which prompted PWGSC to request additional clarification and, in doing so, to set out the exact position that it required from Lancaster in order to find its financial proposal compliant with the RFP.

40. In the Tribunal’s view, this is an even more egregious error. PWGSC appeared to have actually coached Lancaster as to the correct response to the financial question of how Lancaster’s fees and costs schedules should be interpreted to meet the RFP’s financial requirements.

41. In light of the foregoing, the Tribunal determines that Fleetway’s complaint is valid.

42. In recommending a remedy, the Tribunal considered all the circumstances relevant to this procurement, including those outlined in subsection 30.15(3) of the *CITT Act*, and the remedies requested by Fleetway.

43. In this case however, the Tribunal considers that it was clear that Lancaster’s proposal did not meet the mandatory criteria of the RFP in that it did not provide complete references in the required format, as required by subparagraph 14(b)iv.2 of the RFP. Furthermore, as stated above, the Tribunal also considers

the fact that PWGSC appeared to coach Lancaster with respect to its response to Annex “C” to be an egregious error. Accordingly, the Tribunal does not consider it appropriate, in this case, to refer the evaluation of the bids back to the evaluators. The Tribunal is of the opinion that Lancaster’s bid did not comply with the mandatory format requirements. The Tribunal also notes that PWGSC did not seek any clarifications from Fleetway and that Fleetway’s proposal was determined to be both technically and financially compliant.

44. Given that there were only two bidders, Fleetway and Lancaster, and having determined that Lancaster’s proposal should have been declared non-compliant, the Tribunal finds that Fleetway was the only compliant bidder. The Tribunal therefore recommends that the contract with Lancaster be terminated and that a contract for the remaining portion of the work to be performed be awarded to Fleetway. Since Fleetway was the only compliant bidder, the Tribunal further recommends that PWGSC negotiate the price of the contract with Fleetway, in accordance with the provisions in the RFP, specifically sections 19 and 20. The Tribunal also recommends that PWGSC compensate Fleetway for the lost profit that it would reasonably have earned during the time that Lancaster held the contract.

45. Finally, the Tribunal awards Fleetway its reasonable costs incurred in preparing and proceeding with its complaint.

DETERMINATION OF THE TRIBUNAL

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

47. Pursuant to subsections 30.15(2) and (3) of the *CITT Act*, the Tribunal recommends, as a remedy, that PWGSC negotiate a contract with Fleetway in relation to the balance of the work to be performed and, then, terminate the contract awarded to Lancaster. In addition, the Tribunal recommends that Fleetway be compensated for the lost profit that it reasonably would have made during the time that Lancaster held the contract.

48. Pursuant to section 30.16 of the *CITT Act*, the Tribunal awards Fleetway its reasonable costs incurred in preparing and proceeding with the complaint, which costs are to be paid by PWGSC.

Patricia M. Close
Patricia M. Close
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Meriel V. M. Bradford
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Member