



Ottawa, Monday, December 22, 2003

File No. PR-2003-047

IN THE MATTER OF a complaint filed by Southern California Safety Institute, Inc. under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47;

AND FURTHER TO a decision to conduct an inquiry into the complaint under subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

DETERMINATION OF THE TRIBUNAL

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

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 Transport develop and implement procedures to ensure that, when requested, pertinent information is given promptly to unsuccessful bidders, as required by Article 1015(6)(b) of the *North American Free Trade Agreement*.

Ellen Fry
Ellen Fry
Presiding Member

Zdenek Kvarda
Zdenek Kvarda
Member

James A. Ogilvy
James A. Ogilvy
Member

Michel P. Granger
Michel P. Granger
Secretary

The statement of reasons will follow at a later date.

Date of Determination: December 22, 2003
Date of Reasons: January 14, 2004

Tribunal Members: Ellen Fry, Presiding Member
Zdenek Kvarda, Member
James A. Ogilvy, Member

Senior Investigation Officer: Cathy Turner

Counsel for the Tribunal: Roger Nassrallah

Complainant: Southern California Safety Institute, Inc.

Government Institution: Department of Transport



Ottawa, Wednesday, January 14, 2004

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IN THE MATTER OF a complaint filed by Southern California Safety Institute, 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*.

STATEMENT OF REASONS

COMPLAINT

On September 22, 2003, Southern California Safety Institute, Inc. (SCSI) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of *Canadian International Trade Tribunal Act*¹ concerning the procurement (Solicitation No. T8080-02-0503) by the Department of Transport (Transport Canada) for the provision of course design, development and delivery.

SCSI alleged that Transport Canada violated the provisions of the *North American Free Trade Agreement*² by conducting an improper evaluation of the proposals of both SCSI and the contract awardee. SCSI submitted that the points awarded to its bid by Transport Canada do not reflect the depth and breadth of its experience directly related to the solicitation. It also submitted that it does not understand the reason for the winning bidder's near perfect score when the backgrounds of each firm and team are compared and contrasted. Additionally, SCSI alleged that the reply received from Transport Canada in response to its bid protest was not "fair", since the reply did not contain an explanation in response to SCSI's specific questions, nor did it adjust any evaluation points awarded.

SCSI requested, as a remedy, that the Tribunal recommend that the bids be re-evaluated by an independent outside group of aviation safety experts. In the alternative, SCSI requested that the procurement be re-tendered with more suitable and clearer specifications and with more objective measures of merit for each evaluation criterion so that the degree of subjectivity is reduced. In the further alternative, SCSI requested that the Tribunal recommend that Transport Canada explain the evaluation results in sufficient detail so that the evaluation makes sense. In addition, SCSI requested that the Tribunal order the postponement of the award of any contract in relation to the solicitation until the Tribunal determined the validity of the complaint.

On September 30, 2003, 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*.³ The Tribunal did not issue a postponement of award order in accordance with subsection 30.13(3) of the *CITT*

1. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].
2. 32 I.L.M. 289 (entered into force 1 January 1994) [*NAFTA*].
3. S.O.R./93-602 [*Regulations*].

Act, since the evidence on file indicated that a contract had already been awarded. On October 6, 2003, Transport Canada informed the Tribunal that a contract had been awarded to Jacques Whitford Environment Limited (Jacques Whitford). On October 22, 2003, Transport Canada filed a Government Institution Report (GIR) with the Tribunal in accordance with rule 103 of the *Canadian International Trade Tribunal Rules*.⁴ SCSI filed its comments on the GIR with the Tribunal on November 3, 2003. On November 19, 2003, the Tribunal requested that Transport Canada provide additional information and documentation. On November 26, 2003, Transport Canada filed the requested information and documentation. SCSI filed its comments on Transport Canada's submission on December 4, 2003.

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

PROCUREMENT PROCESS

A Request for Proposal (RFP) was issued by Transport Canada on May 9, 2003, for the design, development and delivery of a course on safety management systems for Transport Canada. The closing date for the submission of proposals was June 24, 2003. Transport Canada received 11 proposals.

According to Transport Canada, during the technical evaluation, where necessary, letters were sent to certain bidders requesting clarification of their proposals. Following the technical and cost evaluations, Transport Canada sent a letter dated July 31, 2003, to all unsuccessful bidders, including SCSI, informing them that it had accepted Jacques Whitford's proposal.

On August 14, 2003, a telephone debriefing took place between representatives of Transport Canada and SCSI. On August 15, 2003, SCSI sent a letter to Transport Canada requesting instructions on how to file a formal bid protest. On August 20, 2003, Transport Canada provided the required information to SCSI. On August 29, 2003, SCSI submitted a formal written protest to Transport Canada. A representative of Transport Canada responded, in writing, to SCSI's request on September 8, 2003. On September 22, 2003, SCSI filed its complaint with the Tribunal.

POSITIONS OF PARTIES

SCSI's Position

SCSI submitted that, while all three companies on the winning team are clearly competent in their own fields, a review of the information posted on the Web site of each of the companies reveals that none of them shows any evidence of experience or background in the aviation industry or, for that matter, in the transport sector. Moreover, it submitted, a review of the advertisements for courses that these companies have presented shows no course that relates to the development and evaluation of safety management systems in aviation, or human and organizational factors in aviation safety.

SCSI received a total of 125 out of a possible 200 points for rated criterion No. 2 relating to the depth of experience of the bidder's proposed team of designer/developer and instructor resources. It submitted that some of its proposed resources have developed and delivered SCSI courses directly applicable to the criteria described by Transport Canada and that this information was specifically stated in

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

its proposal. SCSI finds it hard to understand losing 75 points compared to the winning bidder, which, according to SCSI, must have scored roughly 196 points on this criterion, without an aviation safety background. In response to Transport Canada's submission in the GIR, SCSI submitted that the RFP does not require that every instructor have experience in "both the development and delivery of the three . . . types of training courses requested." SCSI noted that the RFP requests the development of one training course, not three. SCSI argued that Transport Canada's observation that one of the proposed instructors is unilingual is irrelevant, since the mandatory English and French language requirement is one that SCSI was deemed to have already met. In addition, SCSI submitted that it understood rated criterion No. 2 to be focused on the team and the team composition rather than on each member of the team being able to do all things equally well.

For rated criterion No. 3 relating to project summaries and client references, SCSI received a score of 150 out of a possible 200 points. It submitted that it provided information, beyond that requested, on five key clients that were chosen to reflect the depth and breath of its international approach and reach in aviation safety training. It argued that, since it provided evidence of multi-million dollar contracts with satisfied clients for teaching courses in aviation safety to aviation clients, it does not understand how it lost 50 points on this criterion compared to the winning bidder, which, according to SCSI, could show no experience at the firm level of successfully providing a similar package. Regarding Transport Canada's submission in the GIR that SCSI's proposal did not provide the level of detail required to assess the complexity of the project, SCSI submitted that the RFP called for project summaries, which it provided; however, now it is being penalized for not providing a sufficient level of detail. It argued that there was no level of detail specified in the RFP.

Regarding rated criterion No. 4 relating to proposed project management, SCSI received 130 out of a possible 200 points. SCSI submitted that it evidently lost 70 points for not discussing, at sufficient length, the topics of validation, measuring impact, quality control and backup plans. It further submitted that, since it uses well-known subject matter experts, the issue of quality rarely comes up because it designs "quality in and [has] quality faculty". It argued that it did not see a requirement anywhere in the solicitation for backup plans. In response to Transport Canada's submission in the GIR regarding the Systems Approach to Training (SAT), SCSI submitted that it discussed SAT in its proposal to show that it understood the approach. SCSI also submitted that it stated, in its proposal, that it understood that the validation effort aims to assess the total effects of the training on participants and their job performance. SCSI contended that the process of validation is well known. It submitted that nowhere in the RFP material on criterion No. 4 are "specifics of how the validation/impact phase would be implemented". It argued that, in fact, the word "validation" is not mentioned at all.

For rated criterion No. 5 relating to the bidder's understanding of Transport Canada's requirement, SCSI was awarded 40 out of a possible 50 points. It submitted that, during the telephone debriefing, it was told that it did not fully grasp Transport Canada's requirement, that Transport Canada had sufficient resources and that SCSI's comments about insufficient resources were not correct. SCSI submitted that it did not understand the feedback provided by Transport Canada during the debriefing.

With respect to rated criterion No. 6 relating to familiarity with the Canadian aviation industry, SCSI received 85 out of a possible 100 points. SCSI submitted that there was no clear indication, during the telephone debriefing, as to why its bid lost points in this area. It submitted that it has held special executive courses for Air Canada in risk management and that it has, as members of its Board of Advisors, individuals from various sectors of the Canadian aviation industry. It argued that a review of the Web sites where clients

and courses for the three team members of the winning bidder are described reveals no experience working with Canadian aviation.

In response to Transport Canada's submission in the GIR that the RFP called for training in transportation, not aviation, SCSI submitted that rated criterion No. 5 calls for "particular emphasis" on civil aviation and Transport Canada's desired outcomes with respect to this project. It also submitted that rated criterion No. 6 exclusively calls for experience working with the Canadian aviation industry, in particular in the area of safety management systems.

For rated criterion No. 7 relating to the quality of the proposal, SCSI received 35 out of a possible 50 points. It submitted that, during the telephone debriefing, it received two comments from Transport Canada: (1) the index did not match the contents of the proposal; and (2) the proposal did not use tabs. SCSI acknowledged that its proposal did have a "disconnect" in the index numbering, but that it could not find where the RFP called for tabs.

SCSI submitted that it filed a bid protest and asked Transport Canada specific questions about the evaluation results of its proposal, since it strongly disagreed with the information provided during the telephone debriefing. SCSI does not consider Transport Canada's reply to its bid protest to be "fair", since the reply did not contain any explanation in response to the specific questions, nor did it adjust any evaluation points awarded.

SCSI submitted, in its comments on the GIR, that the RFP specified word limits, in particular rated criteria 4, 5 and 6, and that when word limits are imposed, there is always a question of what to include and what to leave out. For example, SCSI submitted that it was faulted during the telephone debriefing with Transport Canada for not including a "backup plan" in its proposal. SCSI further submitted that it was later faulted in the GIR for not discussing "key issues such as culture shock for inspectors, resistance to new legislation . . . and resistance by inspectors to change in performance of their jobs." SCSI argued that none of these "key issues" were topics identified for discussion in the RFP.

Transport Canada's Position

Transport Canada submitted that the RFP required that proposals be in sufficient detail to enable evaluation. It submitted that SCSI did not challenge the selection criteria or submit any other questions. It also submitted that, in all cases, the technical evaluation committee reviewed only the material required for the technical evaluation, as presented in the proposal. It further submitted that the committee did not seek out or consider any supplementary material or information, such as Web sites, advertisements or sales brochures.

Transport Canada contended that the fact that a technical proposal and a financial proposal were to be submitted in two separate envelopes made it impossible for the technical evaluation committee to assure any result, since the financial proposals were kept separate until the technical points were awarded. Transport Canada submitted that the technical evaluation committee was not biased in the conduct of the evaluations and that there were no favoured instructors. It also submitted that determination of the cost per point was not applied by the technical evaluation committee, but by another group within Transport Canada, and that the successful bidder was virtually unknown to the technical evaluation committee prior to the submission of its proposal.

Transport Canada submitted that SCSI questions the “successful bidder’s lack of aviation safety experience” and focuses on its own training expertise solely in aviation. Transport Canada argued that the RFP stated that training was required in transportation, not aviation, and that this fact was further clarified in the addenda to the solicitation document. Transport Canada argued that aviation experience was an asset, but not a mandatory technical requirement. Transport Canada submitted that Table 2 of Annex 1 to the complaint compares SCSI with the successful bidder on the basis of criteria not requested in the RFP.

With regard to rated criterion No. 2, Transport Canada submitted that bidders were asked to indicate their depth of experience in the development and delivery of training courses relating to safety management systems, risk management and organizational factors. It submitted that SCSI’s proposal identified three instructors and that, while the instructors have training experience, only one of them identified specific experience in both the development and delivery of any of the three types of training courses requested and that the instructor is unilingual. Transport Canada argued that instructor resources listed in the complaint, which were not included by SCSI in its proposal, cannot be given any consideration at this time. Transport Canada also argued that the basis of an individual instructor’s inclusion in the proposal as either a consultant or an employee was not a rated criterion.

With respect to rated criterion No. 3, Transport Canada submitted that bidders were asked to provide written project summaries and to name client references that pertain to the bidder’s current/previous experience in successfully providing a similar package of transportation-related training design, development and delivery services to clients during the past five years. Transport Canada argued that the RFP clearly stated that points would be awarded for this rated criterion on the basis of complexity of the project, quality of the project and project results. Transport Canada contended that, while SCSI’s proposal did describe projects, it did not provide the level of detail required to assess the complexity of the projects or the project results during the evaluation process.

Regarding rated criterion No. 4, Transport Canada submitted that bidders were asked to indicate their proposed project management design, development, quality assurance and client reporting methodologies/approach to be utilized during the project. It further submitted that the RFP clearly indicated the importance of the methodologies/approach being consistent with SAT and with sound project management, quality assurance and client reporting practices. Transport Canada argued that, while SCSI’s proposal did mention all phases of SAT, there was no information on the specifics of how the validation/impact phase would be implemented. Transport Canada submitted that validation is fundamental to the successful delivery of a training program. Additionally, Transport Canada submitted that quality control and quality assurance were difficult to determine.

Transport Canada submitted that it reviewed SCSI’s position regarding rated criterion No. 5 and that allocating an additional 10 points, as requested by SCSI, would not have altered the ranking of its proposal. For rated criterion No. 6, Transport Canada submitted that bidders were asked to describe their knowledge, understanding and level of experience in working with the Canadian aviation industry, with particular emphasis on the issues faced by the industry in safety management systems. Transport Canada argued that SCSI’s proposal did not clearly identify key issues, such as culture shock for inspectors, resistance to new legislation by both the industry and inspectors, and resistance by inspectors to change in the performance of their jobs.

With regard to rated criterion No. 7, Transport Canada submitted that the criterion rated the quality of the proposal and the degree to which it was presented in a clear and logical fashion and in a manner that

facilitated a clear and straightforward evaluation. Transport Canada submitted that SCSI's proposal lacked quality control, in that the table of contents and numbering systems did not match, and that it was difficult to find the required information due to the nature of the document.

Finally, Transport Canada submitted that section "E" of the complaint, "Detailed Statement of Facts & Arguments", leads the reader to believe that the winning bid amount, as stated in the notification letter, was erroneous. Transport Canada submitted that the RFP required that bidders provide fixed unit prices for each of the eight phases of the project, but stated that phases 6, 7 and 8 are at the option of the Minister of Transport to be added "by means of an addendum to the contract". Transport Canada further submitted that, as stated in the RFP, the cost per point is based on the amount tendered for phases 1 to 8 together, that the contract was awarded for phases 1 to 5 only and that the price in the contract is based only on the fixed unit prices for those five phases.

TRIBUNAL'S DECISION

Subsection 30.14(1) of the *CITT Act* requires that, in conducting an inquiry, the Tribunal limit its considerations to the subject matter of the complaint. Furthermore, at the conclusion of the inquiry, 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 Government Procurement*⁵ and *NAFTA*.⁶

Article 1015(4)(d) of *NAFTA* provides that "[a]n entity shall award contracts in accordance with the following: . . . (d) awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation".

Article 1015(6)(b) of *NAFTA* provides that "[a]n entity shall . . . (b) on request of a supplier whose tender was not selected for award, provide pertinent information to that supplier concerning the reasons for not selecting its tender, the relevant characteristics and advantages of the tender selected and the name of the winning supplier."

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

With respect to SCSI's allegation that Transport Canada conducted an improper evaluation of both its proposal and that of Jacques Whitford, the Tribunal applied the principles normally applied to such allegations, as outlined in *Polaris*:⁷

In its complaint, *Polaris* submitted, among other things, that it was not awarded sufficient points in respect of several aspects of its proposal. After having reviewed the evidence on the file, the Tribunal sees no reason to conclude that *Polaris*'s proposal was not evaluated in accordance with the criteria and methodology set out in the solicitation documents or that the evaluators did not apply their minds to these items at the time of the evaluation. In the absence of evidence that the evaluation was not

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

6. As a U.S. supplier, SCSI would not have standing to complain under the *Agreement on Internal Trade*.

7. *Re Complaint Filed by Polaris Inflatable Boats (Canada) Ltd.* (23 June 2003), PR-2002-060 (CITT).

conducted in a procedurally fair manner, the Tribunal normally defers to the judgement of the evaluation team as to the assignment of points for the rated technical requirements.⁸

For the complaint at issue, the evidence does not indicate that Transport Canada failed to follow the criteria and methodology in the RFP or that the evaluators did not apply their minds to these items at the time of the evaluation, that there was bias in favour of Jacques Whitford or against SCSI, or that there was any other procedural error in the evaluation process. Accordingly, the Tribunal does not consider it appropriate to substitute its judgement for that of the evaluation team in relation to the assignment of points for the point-rated technical requirements.

In this regard, the Tribunal notes that SCSI referred to evidence from sources extraneous to its proposal, such as Web sites. While, in limited circumstances, evaluators are permitted to seek the clarification or verification of information contained in proposals, they are generally required to make decisions on the basis of what is contained in the proposals before them.

Furthermore, the Tribunal observes that SCSI focused a considerable portion of its submissions on what it believed Transport Canada should be looking for (whether or not this was provided by the RFP), rather than on the relationship between the requirements set out in the RFP and the way in which its proposal was evaluated. For example, SCSI focused on knowledge and experience relating to aviation. However, of the seven rated evaluation criteria, only criteria Nos. 5 and 6 had requirements that related specifically to aviation, while criterion No. 2 (as bonus points) and criterion No. 3 related to transportation in general.

In addition, the Tribunal notes that SCSI alleges that there are difficulties in the way in which certain terms of the RFP are expressed. However, the *Regulations* require that a complaint be filed with the Tribunal no later than 10 working days after the day on which the basis of the complaint became known or reasonably should have become known to the supplier.⁹ Although the basis of these allegations should reasonably have been known prior to the bid closing date (June 24, 2003), SCSI did not bring them to the Tribunal's attention until September 22, 2003, the date on which it filed the complaint with the Tribunal. Consequently, these allegations were filed too late for inquiry by the Tribunal.

The Tribunal notes that there is a signature missing on page 4 of the "Report of Bid Evaluation Outcomes" submitted by Transport Canada.¹⁰ However, the Tribunal is of the opinion that this omission, whether or not appropriate, is not relevant to SCSI's grounds of complaint.

For the above reasons, the Tribunal finds that Transport Canada did not violate the trade agreements in conducting the evaluation of proposals.

With respect to SCSI's allegation that the reply received from Transport Canada in response to its bid protest was not "fair", the Tribunal is of the view that Transport Canada did not comply fully with the requirements of Article 1015(6)(b) of *NAFTA*. Transport Canada did provide SCSI with the name of the successful bidder, as required by Article 1015(6)(b).

In addition, Transport Canada submitted that SCSI was made aware of the contents of the scoring summary relating to its proposal, which comments on SCSI's scoring for each of the rated technical criteria,

8. *Ibid.* at 6.

9. Section 6 of the *Regulations*.

10. Tab 3 of the additional information filed by Transport Canada on November 26, 2003.

during a telephone debriefing on August 14, 2003.¹¹ The Tribunal notes that SCSI does not dispute this. Therefore, the Tribunal considers that Transport Canada did provide pertinent information, in accordance with Article 1015(6)(b) of *NAFTA* regarding the reasons for not selecting SCSI's proposal.

However, Transport Canada provided almost no information to SCSI concerning "the relevant characteristics and advantages of the tender selected", other than the contract value. SCSI submitted that, during the telephone debriefing, with respect to criterion No. 2 (i.e. experience of proposed team designer/developer and instructor resources), when SCSI asked Transport Canada how the winning team could get so many points on this criterion, given the members' lack of aviation safety background, the response was that "they taught some risk management" and "your Canadian teachers don't have experience". Transport Canada does not dispute this and, based on the evidence, this is the only information concerning the winning bid (whether on criterion No. 2 or any of the other six rated criteria) that was communicated during the telephone debriefing.

Following the telephone debriefing, SCSI sent a 13-page letter to Transport Canada on August 29, 2003, raising a number of issues about the evaluation, much of which related to the relevant advantages of the winning proposal. In response, Transport Canada sent a one-page letter dated September 8, 2003, that in no way addressed the substantive issue of why Jacques Whitford's proposal, and not SCSI's proposal, was selected.

Accordingly, the Tribunal finds that Transport Canada violated Article 1015(6)(b) of *NAFTA* by not providing sufficient pertinent information to SCSI regarding the relevant characteristics and advantages of the tender selected.

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

The Tribunal also notes that Transport Canada had an obligation under rule 103 of the *Rules* to provide the Tribunal with "all other documents relevant to the complaint". Accordingly, the Tribunal asked Transport Canada to provide the worksheets of the individual evaluators. In response, Transport Canada indicated that "[e]valuation sheets created by the individual evaluators were not retained". The Tribunal finds it regrettable that the worksheets were not retained, as they would have been helpful to the inquiry. In this context, Article 1017(1)(p) of *NAFTA* provides that "each Party shall ensure that each of its entities maintains complete documentation regarding each of its procurements, including a written record of all communications substantially affecting each procurement, for at least three years from the date the contract was awarded, to allow verification that the procurement process was carried out in accordance with this Chapter." In this regard, the Tribunal notes that, in *Hewlett-Packard*,¹² the Tribunal found that the destruction of evaluators' worksheets was the basis of a valid complaint.

SCSI requested, as a remedy, that the Tribunal recommend that the bids be re-evaluated by an independent outside group of aviation safety experts or, in the alternative, that the procurement be re-tendered with more suitable and clearer specifications and with more objective measures of merit for each evaluation criterion so that the degree of subjectivity is reduced. In the further alternative, SCSI requested that the Tribunal recommend that Transport Canada explain the evaluation results in sufficient detail so that the evaluation makes sense.

11. Attachment No. 5 to the GIR.

12. *Re Complaint Filed by Hewlett-Packard (Canada) Ltd.* (21 February 2002), PR-2001-030 and PR-2001-040 (CITT).

In recommending a remedy, the Tribunal considered the provisions of subsection 30.15(3) of the *CITT Act*. As discussed above, the evidence did not indicate any deficiency in bid evaluation and, hence, did not indicate any prejudice to SCSi or other interested parties. In these circumstances, it is not appropriate to recommend re-evaluation of the bids or re-tendering of the procurement, as requested by SCSi.

However, the Tribunal considers that the failure to give SCSi the information required under Article 1015(6)(b) of *NAFTA* is serious. In the Tribunal's view, providing information to unsuccessful bidders is an important means of demonstrating the integrity of the competitive procurement system. Given the fact that considerable information concerning the bid evaluation has been provided in the course of the Tribunal's inquiry, the Tribunal does not consider it necessary to recommend that Transport Canada provide any further information to SCSi at this point. However, it is important for Transport Canada to ensure that it complies with Article 1015(6)(b) when it responds to requests from bidders in the future.

Accordingly, the Tribunal recommends that Transport Canada develop and implement procedures to ensure that, when requested, pertinent information is given to unsuccessful bidders, as required by Article 1015(6)(b) of *NAFTA*.

DETERMINATION OF THE TRIBUNAL

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

Pursuant to subsections 30.15(2) and (3) of the *CITT Act*, the Tribunal recommends, as a remedy, that Transport Canada develop and implement procedures to ensure that, when requested, pertinent information is given promptly to unsuccessful bidders, as required by Article 1015(6)(b) of *NAFTA*.

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