



Ottawa, Wednesday, February 11, 2004

File No. PR-2003-051

IN THE MATTER OF a complaint filed by Marcomm 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 that the Department of Public Works and Government Services make the necessary arrangements to offer Marcomm Inc. one half of the work, by value, that was to be performed under Solicitation No. W4181-020001/01/A. In the alternative, should the Department of Public Works and Government Services decide that this is not feasible, the Canadian International Trade Tribunal recommends that Marcomm Inc. be compensated by an amount equal to one half of the profit that it would have reasonably earned, had it been the sole holder of a standing offer in the solicitation.

Ellen Fry
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Presiding Member

Zdenek Kvarda
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Member

Meriel V.M. Bradford
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Member

Michel P. Granger
Michel P. Granger
Secretary

Date of Determination and Reasons: February 11, 2004

Tribunal Members: Ellen Fry, Presiding Member
Zdenek Kvarda, Member
Meriel V.M. Bradford, Member

Investigation Officer: Michael W. Morden

Counsel for the Tribunal: John Dodsworth

Complainant: Marcomm Inc.

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STATEMENT OF REASONS

COMPLAINT

On September 29, 2003, Marcomm Inc. (Marcomm) 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. W4181-020001/01/A) by the Department of Public Works and Government Services (PWGSC) for the supply and installation of cable distribution systems for voice and data in buildings occupied by the Department of National Defence (DND) within the National Capital Region.

Marcomm alleged that the winning bidder, Bell Canada (Bell), was not compliant with the mandatory requirements of the Request for a Standing Offer (RFSO) and Statement of Work (SOW). More particularly, Marcomm alleged that Bell was non-compliant because its proposed installation and design personnel did not have the required experience with Volition™ cabling products, contrary to the RFSO.

Marcomm requested, as a remedy, that the standing offer issued to Bell be cancelled and instead issued to Marcomm, in its view the only compliant bidder with respect to the mandatory requirements of the RFSO. Alternatively, it requested that it be awarded costs for lost profit or lost opportunity for being denied the opportunity to perform the contract. Marcomm further requested that it be awarded its reasonable bid preparation costs for this solicitation, as well as its complaint costs.

On November 10, 2003, PWGSC filed a Government Institution Report (GIR) with the Tribunal. Marcomm filed its comments on the GIR on November 24, 2003. On December 4, 2003, the Tribunal requested additional information from PWGSC concerning the evaluation of Bell's proposal, specifically:

How did PWGSC assess the compliance of Bell's proposal (in relation to the installers and designers proposed) with the mandatory criterion provided in Annex A, 3.2 a, i. and iii. and Annex A, 3.2 b ii. (specifically with respect to the Revised Table of Materials)? Identify all information that was used by PWGSC in making this assessment and explain the reasoning that led PWGSC to conclude that Bell's proposal was compliant. In your submission, include any supporting documents, such as evaluation assessment notes made at the time of the assessment.

On the same day, PWGSC requested that the Tribunal accept additional comments on Marcomm's comments on the GIR. The Tribunal accepted these additional comments and sent them, along with

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

PWGSC's response to the Tribunal's December 4, 2003, request for information, to Marcomm for comment. Marcomm requested a time extension to file its comments on PWGSC's response to the Tribunal's request for information. The extension was granted, and Marcomm's final comments were provided to the Tribunal on December 17, 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

An RFSO was issued by PWGSC, on behalf of DND, on July 7, 2003, with a closing date of July 22, 2003. The procurement is subject to the *Agreement on Internal Trade*.²

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

56) ...

In addition to the requirements of Annex B, as part of the Technical Proposal, bidders **must** provide a **Corporate Profile** and information on **Level of Effort Capability**.

...

2) **Level of Effort Capability**

...

INSTALLERS

In order to meet the minimum **level of effort capacity** the **bidder must demonstrate** that they have a **minimum of twenty six (26) Installers**, all meeting the minimum qualification criteria detailed in the RFSO including the SOW and SRCL [Security Requirements Check List], on staff or available on short notice (5 working days). Bidders shall provide details **on a minimum of twenty six (26) Installers** [containing] the following information for each installer proposed to demonstrate that the bidder has the capacity to meet the level of effort anticipated:

Information	Details required
INSTALLERS	
Personal name	
Personnel security clearance screening level	
Employer	
Educational qualifications	Identify when and where each Installer has taken the BICSI [Building Industry Consulting Services International] installer's course or equivalent course. (SOW, Annex A, 3.2 a., iv)

2. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<http://www.intrasec.mb.ca/eng/it.htm>> [AIT].

Work Experience	Briefly detail the individuals last 2 years of work experience to demonstrate compliance with the requirements of SOW, Annex A, 3.2 a., i., ii., and iii.: Each work experience shall detail the following: -Start Date; -Duration; -Work performed; and -Responsibilities held.
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DESIGNERS

In order to meet the minimum **level of effort capacity** the **bidder must demonstrate** that they have a **minimum of two (2) Designers**, one (1) of which is a Registered Communications Distribution Designer (RCDD), all meeting the minimum qualification criteria detailed in the RFSO including the SOW . . . Bidders shall provide details **on a minimum of two (2) Designers [containing]** the following information for each designer proposed to demonstrate that the bidder has the capacity to meet the level of effort anticipated:

Information - DESIGNERS	Details required
Personal name	
Personnel security clearance screening level	
Employer	
Educational qualifications	Identify if the designer is a BICSI Registered Communications Distribution Designer (RCDD) . (SOW, Annex A, 3.2, c.)
Work Experience	Briefly detail the individuals last 2 years of work experience to demonstrate compliance with the requirements of SOW, Annex A, 3.2 b., i., ii., and 3.2c: Each work experience shall detail the following: -Start Date; -Duration; -Work performed; and -Responsibilities held.

Under the section on evaluation methodology, the RFSO also stipulated:

57) . . .

(a) Only those proposals which satisfy all MANDATORY requirements detailed herein will be further evaluated.

(b) Point-Rated Evaluation

. . .

(i) Mandatory Criteria:

Bids not meeting ALL mandatory requirements will be eliminated from further consideration. . . .

Article 3.2 of the SOW, found in Annex A to the RFSO, reads, in part, as follows:

The contractor shall provide personnel with specific qualifications in regards to installation and design of cabling technology.

- a. Each Installer provided by the contractor shall have the following four (4) qualifications:
 - i. installation personnel shall be familiar with the installation of all cabling products listed in Attachment 1, Table 5-1 of the SOW;
 - ii. installation personnel shall be familiar with the installation, terminating, splicing and testing of fiber optic cables for inside cable plants;
 - iii. installation personnel shall have a minimum of 1 year of experience in the last two years with the installation of cabling products included in Attachment 1, Table 5-1; and
 - iv. installation personnel shall have taken the BICSI cabling installers course or an equivalent course.
- b. Each Designer provided by the contractor shall have the following qualification:
 - i. design personnel shall have a minimum of 1 year of experience in [the] last two years with the design of cabling projects; and
 - ii. design personnel shall have a minimum of 1 year of experience in the last two years with cabling project designs using the cabling products listed in Attachment 1, Table 5-1.
- c. The contractor shall have on staff a minimum of one (1) designer that is a BICSI Registered Communications Distribution Designer (RCDD). This RCDD qualified rep shall be required to sign and stamp designs produced under this contract when requested by DND.

Annex A, Attachment 1, REV 1, dated June 03 (Table 5-1), lists 305 products, which were grouped into the following categories: "CATEGORY 3 Cable"; "CATEGORY 5 Cable"; "CATEGORY 5E Cable"; "CATEGORY 6 Cable"; "OPTICAL FIBRE" and "OTHER MATERIAL". The specific products that are the subject of this complaint are numbered 182 to 187, they fall under the "OPTICAL FIBRE" category, and are as follows:

182	24 port Volition rack mounted patch panels
183	48 port Volition rack mounted patch panels
184	Optical fibre, Volition patch cord, 62.5/125 um, VF-45 to VF-45 , 2.0 m (red)
185	Optical fibre, Volition patch cord, 62.5/125 um, VF-45 to VF-45 , 2.0 m (yellow)
186	Optical fibre, Volition keyed small format connector (red)
187	Optical fibre, Volition keyed small format connector (yellow)

Three proposals were received, including those from Marcomm and Bell. The third proposal was determined to be non-compliant with respect to a mandatory criterion pertaining to a security requirement.

PWGSC determined that Bell had submitted the lowest-priced responsive proposal and, on August 8, 2003, it issued the standing offer to Bell and informed the other potential suppliers accordingly.

On August 19, 2003, Marcomm attended a debriefing meeting where it was informed that the educational qualifications for all bidders had been evaluated consistently. It was also advised that bidders were required to state their compliance with this mandatory requirement in a compliance matrix and to sign the front page of the solicitation certifying compliance with all mandatory requirements of the solicitation.

On August 21, 2003, Marcomm submitted its notice of objection to PWGSC, alleging that Bell's proposed personnel did not meet the mandatory criteria pertaining to education³ and past experience with respect to installation and design, specifically, regarding Volition™ cabling products. On September 15, 2003, PWGSC responded to Marcomm's objection, denying its request that the RFSO be cancelled. Marcomm filed its complaint with the Tribunal on September 29, 2003.

POSITIONS OF PARTIES

Marcomm's Position

Marcomm's complaint contained two main allegations:

- The RFSO required that a minimum of 26 proposed installers be familiar with the installation of all the cabling products listed in Table 5-1 of the RFSO and have at least one year of experience, within the last two years, with the installation of those products.
- The RFSO required that the 2 proposed designers be familiar with all the cabling products listed in Table 5-1 of the RFSO and have at least one year of experience, within the last two years, with the design of those cabling products.

Marcomm alleged that only it was compliant with all aspects of the above-mentioned mandatory requirements, as only its employees had undergone the Volition™ training courses required by the manufacturer of the products, i.e. 3M Corporation (3M). Marcomm submitted that 3M requires this training before it designates an organization as a "value added reseller" or warrants a project performed by that organization. Marcomm claimed that, in this solicitation, it is the sole bidder so certified by 3M. It submitted that, if other bidders felt that Volition™ products should not have been included in Table 5-1, they could have objected prior to bid closing.

With respect to PWGSC's claim that the RFSO and the SOW cannot be read to mean that installers had to have experience with the installation of *all* cabling products listed in Table 5-1, Marcomm alleged that this interpretation was made by comparing the "experience" requirements of article 3.2 a.iii of the SOW with the "familiarity" requirements of article 3.2 a.i. In effect, according to Marcomm, PWGSC stated that article 3.2 a.iii should be interpreted to mean that installers had to have experience with the installation of some, but not all, of the cabling products listed in Table 5-1. This, Marcomm submitted, would be patently inconsistent with the clear meaning of those requirements and the overall purpose and objectives of the RFSO.

3. Although this notice of objection was included in the complaint submitted to the Tribunal, Marcomm indicated in its comments on the GIR that it was not pursuing this allegation in the complaint.

Marcomm is of the view that, even if article 3.2 a.iii of the SOW were interpreted to mean that installers only had to have experience with the installation of *some* of the cabling products listed in Table 5-1, which Marcomm expressly denied, then Bell still could not be compliant with the mandatory requirements, as its installers were not familiar with the installation of all the cabling products listed in Table 5-1, as required by article 3.2 a.i. Marcomm submitted that, according to the uncontradicted evidence, Bell's installers had not worked with Volition™ cabling products before bid closing.⁴ Therefore, according to Marcomm, if Bell's personnel had not worked with Volition™ products prior to bid closing, it could not claim, in its proposal, its personnel's familiarity with their installation.

Concerning the designers, Marcomm submitted that article 3.2 b.ii of the SOW required that they have one year of experience within the last two years with cabling project designs using the cabling products listed in Table 5-1, which include Volition™ cabling products. In addressing PWGSC's claim that this requirement is not to be interpreted to mean that designers should have experience with *all* the cabling products listed in Table 5-1, Marcomm submitted that, to accept such an interpretation, a person would have to interpret article 3.2 b.ii to mean that design personnel would have had a minimum of one year of experience in the last two with cabling project designs using *some* of the cabling products listed in Table 5-1. Marcomm further submitted that it is illogical to claim that, because that article does not say *all* cabling products, the article means something less than *all* (i.e. some) cabling products.

Marcomm remarked that all bidders were required to indicate, in the compliance matrix, whether they were compliant with the mandatory requirements. Therefore, Marcomm submitted, Bell's bid had to indicate compliance with all the requirements, including section 56 of the RFSO (Technical Proposal). Marcomm alleged that, even though Bell's installers did not have Volition™ experience, it inaccurately claimed that it complied with this requirement.

Marcomm further alleged that PWGSC did not deny Marcomm's assertions that Bell's installers and designers did not have familiarity or experience with the Volition™ products listed in Table 5-1. According to Marcomm, it was only some time after the standing offer was awarded that Bell's installers and designers received training on Volition™ products.⁵

In conclusion, Marcomm stated that compliance with articles 3.2 a.i, 3.2 a.ii and 3.2 b of the SOW is mandatory. They are not rated requirements, and there is no sliding scale to acknowledge bidders whose personnel may have experience with more cabling products than other bidders; a bidder is either compliant or non-compliant with all the mandatory requirements.

PWGSC's Position

PWGSC submitted that there is no mandatory requirement in the RFSO for either educational training in Volition™ products or experience with them.

With respect to the experience requirement, PWGSC submitted that the RFSO required that the bidders' installers have installation training and general familiarity with all the kinds of cabling products listed in Table 5-1, but not actual installation experience with respect to all the cabling products listed. According to PWGSC, 3M's Volition™ rack mounted patch panels, optical fibre patch cords and optical fibre keyed small-format connectors (items 182 to 187 in Table 5-1) comprise only a small percentage of the

4. GIR, Exhibit 14 at 2.

5. See GIR, Exhibit 14.

quantities listed. PWGSC submitted that, when “Annex A, 3.2 a.i and a.iii are read as a package, the requirement is properly interpreted such that installers must have ‘familiarity’ with the installation of all products listed in Table 5-1 but need not have experience with installation of all products.”⁶ With respect to the experience requirement for designers, PWGSC submitted that “the plain wording of Annex A, 3.2 b.i and ii. does not make it necessary for each Designer to have one year of experience in cabling project designs using all the cabling products listed in Table 5-1. This is because the requirement of Annex A, 3.2, b.ii. does not specify that one year of experience is required for all products in Table 5-1 and it certainly does not specify that the experience must include design of cabling projects using Volition™ fibre optic cabling products.”⁷ PWGSC submitted that it and DND intended that the proposed designers and installers have experience with cabling project design and cabling installation respectively, including experience with respect to fibre optic cabling.

In response to the Tribunal’s request for information of December 4, 2003, PWGSC submitted that the “evaluators found Bell’s proposal compliant with respect to its **Level of Effort Capacity** because it was clear from Bell’s proposal that it had the capacity or number of personnel with the proper qualifications to conduct the work required.”⁸ According to PWGSC, the “information provided with respect to each installer was checked by the evaluators to ensure that each proposed installer had the minimum of one (1) year experience in the last two (2) years.”⁹ PWGSC submitted that “Bell’s installers easily met this requirement” and that there “was never a concern that each and every installer specifically enumerate its experience with respect to each and every product set out in SOW Table 5-1, and Bell was not evaluated on this basis, nor was any other Bidder.”¹⁰

PWGSC submitted that the evaluation of all proposals was conducted fairly and in compliance with the RFSO, the SOW and the procurement disciplines of the *AIT*. It further submitted that the standing offer was issued appropriately, that the complaint ought to be dismissed and that the Crown should be awarded its costs.

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 *Canadian International Trade Tribunal Procurement Inquiry Regulations*¹¹ 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, is the *AIT*.

6. GIR, para. 19.

7. GIR, para. 24.

8. PWGSC’s response dated December 8, 2003, para. 7.

9. *Ibid.*, para. 8.

10. *Ibid.*, para. 9.

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

The Tribunal notes that the parties disagree as to whether NAFTA and the AGP apply in this case. Marcomm argued that the procurement should have been considered under Federal Supply Classification (FSC) category 59 instead of FSC category 58, as listed in the procurement documents, and that, therefore, the *AIT*, the *North American Free Trade Agreement*¹² and the *Agreement on Government Procurement*¹³ should all apply. PWGSC noted that the Tribunal had addressed this question in a previous complaint relating to the same procurement and had determined that only the *AIT* applied.¹⁴ Marcomm submitted that the previous case was not accepted for inquiry based, in part, on the fact that the goods and services fell under FSC category 58.

The Tribunal notes that this procurement is being conducted on behalf of DND, which is specifically provided for in Section B of Annex 1001.1b-1 to *NAFTA* and Annex 1, Canada, Appendix I to the *AGP*. Annex 1001.1b-1 to *NAFTA* provides, in part, that all services, with reference to those goods purchased by DND, which are not identified as subject to coverage under Chapter Ten, will be exempt from the disciplines of that chapter. Annex 1, Canada, Appendix I to the *AGP* provides, in part, that the Canadian offer does *not* include the following: all services, with reference to those goods purchased by DND, which are not identified as subject to coverage by the *AGP*. In both agreements, neither FSC category 58 nor FSC category 59 is on the list of products covered for DND. The Tribunal, therefore, finds that the *AIT* is the only trade agreement that applies to this procurement.

Article 506(6) of the *AIT* provides, in part, that “[t]he 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.”

The complaint hinges on the wording and interpretation of the following elements of article 3.2 of the SOW, found in Annex A to the RFSO, which reads, in part, as follows:

The contractor shall provide personnel with specific qualifications in regards to installation and design of cabling technology.

- a. Each Installer provided by the contractor shall have the following four (4) qualifications:
 - i. installation personnel shall be familiar with the installation of all cabling products listed in Attachment 1, Table 5-1 of the SOW;
 - iii. installation personnel shall have a minimum of 1 year of experience in the last two years with the installation of cabling products included in Attachment 1, Table 5-1;
- b. Each Designer provided by the contractor shall have the following qualification:
 - ii. design personnel shall have a minimum of 1 year of experience in the last two years with cabling project designs using the cabling products listed in Attachment 1, Table 5-1.

The Tribunal finds that the wording of article 3.2 a.i of the SOW is clear: the installers must be familiar with the installation of *all* cabling products listed in Table 5-1. The Tribunal notes that PWGSC agrees with this interpretation.¹⁵

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. See Secretary's letter dated August 13, 2003, in File No. PR-2003-038.

15. GIR, para. 19.

The Tribunal is of the opinion that the wording of article 3.2 a.iii of the SOW is not clear; however, the Tribunal considers the best reading of this article to be that experience with the installation of all cabling products in Table 5-1 is not required, in light of the contrast with the wording of article 3.2 a.i, where the word “all” is present. In other words, the article, as written, requires experience with the installation of some cabling products listed in Table 5-1, but not each and every product.

The Tribunal is similarly convinced that the wording of article 3.2 b.ii of the SOW regarding each designer’s experience with “cabling project designs using the cabling products listed” in Table 5-1 does not require the designer to have experience with all the cabling products listed in Table 5-1, because of the absence of the word “all”.

In its response to the Tribunal’s request for information about the compliance of Bell’s bid with respect to the criterion in question, PWGSC wrote, in part:

There was never a concern that each and every installer specifically enumerate its experience with respect to each and every product set out in SOW Table 5-1, and Bell was not evaluated on this basis, nor was any other Bidder. This is why the technical evaluators determined that Bell’s proposal was compliant.¹⁶

PWGSC was not clear as to whether this reference to “experience” meant “Work Experience” as referred to in the RFSO,¹⁷ which includes both familiarity with the installation (article 3.2 a.i of the SOW) and experience with the installation (article 3.2 a.iii) or whether it is only intended to include experience with the installation (article 3.2 a.iii) and is silent on article 3.2 a.i. In any event, PWGSC does not allege that it assessed familiarity with the installation of each of the cabling products listed in Table 5-1. Indeed, the evaluators’ worksheets that were provided by PWGSC have only a single entry, circling either “Yes” or “No”, regarding the assessment of the “Level of Effort Capability” for installers, which includes the criteria of both article 3.2 a.i and article 3.2 a.iii. This is in contrast to the review of the “Corporate Profile” and “Technical Evaluation” criteria, each of which is covered by a checklist in which a number of items are specified and marked as compliant.

Furthermore, the Tribunal notes that the portions of Bell’s bid provided by PWGSC indicated compliance with article 3.2 a.i of the SOW only in general terms and did not address compliance in terms of the specific cabling products listed in Table 5-1.

Accordingly, the Tribunal finds that, despite the clear language of article 3.2 a.i of the SOW, PWGSC did not assess compliance with that article in a manner consistent with the requirements of the RFSO. As a result, PWGSC accepted Bell as a compliant bidder, even though it had not determined that Bell met the criterion set out in article 3.2 a.i.

16. Letter dated December 8, 2003, para. 9.

17. Part 2 at 31.

The Tribunal has expressed a view in the past that, unless the evaluators have not applied themselves in evaluating a bidder's proposal, have ignored vital information provided in a bid, have wrongly interpreted the scope of a requirement, have based their evaluation on undisclosed criteria or have otherwise not conducted the evaluation in a procedurally fair way, the Tribunal will not substitute its judgement for that of the evaluators.¹⁸ In this case, the Tribunal is of the opinion that PWGSC did not apply itself in evaluating article 3.2 a.i of the SOW in a way that would have enabled it to determine whether or not any submission met this mandatory requirement, which was a clear procedural defect.

The Tribunal therefore finds that the complaint is valid with regard to this allegation, because the criterion actually used in the evaluation of the bids with respect to article 3.2 a.i of the SOW was not clearly identified in the tender documents.

Regarding the requirements of articles 3.2 a.iii and 3.2 b.ii of the SOW, the evidence does not indicate any reason for the Tribunal to interfere with the judgment of the evaluators. Therefore, the complaint is not valid with regard to these allegations.

In recommending an appropriate remedy, the Tribunal considered all the circumstances relevant to this procurement, including those outlined in subsection 30.15(3) of the *CITT Act*. The Tribunal did not find that the evidence indicated bad faith on the part of the evaluators. However, the Tribunal does consider that disregarding the plain wording of the criterion in the RFSO is a serious deficiency in the procurement process, one that brings into question the overall integrity of the competitive procurement process.

A standing offer was awarded to Bell in August 2003 for a three-year term and, therefore, it is probable that a large part of the work remains to be performed. However, the procurement that is the subject of this complaint is PWGSC's third attempt to establish a standing offer to get this work done. Given the long and difficult history of this procurement, the Tribunal does not consider that it would be useful, at this stage, to recommend either a re-evaluation of article 3.2 a.i of the SOW or a re-tender of the requirement.

The results of PWGSC's evaluation, although flawed in relation to the requirements of the RFSO, indicate that, in PWGSC's view, the proposals by Bell and Marcomm were both suitable from a technical perspective.¹⁹ Accordingly, the Tribunal recommends that Marcomm be compensated for its lost opportunity, as outlined below.

Given that the complaint is only valid in part, the Tribunal is of the view that each party should assume its own costs in this matter.

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 that PWGSC make the necessary arrangements to offer Marcomm one half of the work, by value, that was to be

18. See *Re Complaint Filed by ACMG Management Inc.* (5 June 2002), PR-2001-056 (CITT); *Re Complaint Filed by Polaris Inflatable Boats (Canada) Ltd.* (23 June 2003), PR-2002-060 (CITT).

19. A third bid was received and evaluated as non-compliant regarding a mandatory criterion pertaining to a security requirement.

performed under Solicitation No. W4181-020001/01/A. In the alternative, should PWGSC decide that this is not feasible, the Tribunal recommends that Marcomm be compensated by an amount equal to one half of the profit that it would have reasonably earned, had it been the sole holder of a standing offer in the solicitation.

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