



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DETERMINATION AND REASONS

File No. PR-2005-058

Excel Human Resources Inc.  
(operating as excellTR)

v.

Department of Public Works and  
Government Services

*Determination and reasons issued  
Friday, August 25, 2006*

Canada

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IN THE MATTER OF a complaint filed by Excel Human Resources Inc. (operating as excellTR) 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**

**EXCEL HUMAN RESOURCES INC. (OPERATING AS EXCELITR)**

**Complainant**

**AND**

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

**Government Institution**

**DETERMINATION OF THE TRIBUNAL**

Pursuant to subsection 30.14(2) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal determines that the complaint is not valid.

Pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal awards the Department of Public Works and Government Services its reasonable costs incurred in responding to the complaint, which costs are to be paid by Excel Human Resources Inc. (operating as excellTR). The Canadian International Trade Tribunal's preliminary indication of the level of complexity for this complaint case is Level 2, and its preliminary indication of the amount of the cost award is \$2,400. If any party disagrees with the preliminary indication of the level of complexity or the preliminary indication of the amount of the cost award, it may make submissions to the Canadian International Trade Tribunal, as contemplated by the *Guideline for Fixing Costs in Procurement Complaint Proceedings*. The Canadian International Trade Tribunal reserves jurisdiction to establish the final amount of the award.

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Serge Fréchette  
Presiding Member

Susanne Grimes  
Susanne Grimes  
Acting Secretary

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## STATEMENT OF REASONS

### COMPLAINT

1. On April 12, 2006, Excel Human Resources Inc. (operating as excelITR) (Excel) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*.<sup>1</sup> The complaint concerned the procurement (Solicitation No. EP341-040191/A) by the Department of Public Works and Government Services (PWGSC) for informatics professional services relating to the support, development and maintenance of applications developed by Canada On-Line Services.

2. Excel alleged that PWGSC did not evaluate its proposal in accordance with the evaluation criteria published in the Request for Proposal (RFP). Specifically, it alleged that its proposal should have received an additional 24 points, which would have given it enough points to have been awarded one of the two contracts pursuant to the RFP.

3. On April 13, 2006, the Tribunal informed the parties that it had accepted the complaint for inquiry, as it met the requirements of subsection 30.11(2) of the *CITT Act* and the conditions set out in subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.<sup>2</sup> On April 20, 2006, in accordance with section 102 of the *Canadian International Trade Tribunal Rules*,<sup>3</sup> PWGSC informed the Tribunal of the contract award winners: TPG Technology Consulting Ltd. (TPG), Spearhead Management Canada Limited (Spearhead) in Joint Venture; and Veritaaq Technology House Inc. (Veritaaq), Spearhead Management Canada Limited Joint Venture (collectively, the Joint Ventures). On April 20, 2006, the Tribunal forwarded this information to Excel. On April 28, 2006, Excel wrote to the Tribunal, alleging that the procurement was not conducted in a fair and transparent manner because PWGSC allowed two proposals by Spearhead (in joint venture with other companies), which could have resulted in the manipulation of rates to achieve low costs for both joint venture bids. On May 1, 2006, the Tribunal informed PWGSC that it was adding Excel's correspondence to the file and requested that PWGSC respond to this allegation in the Government Institution Report (GIR). On May 18, 2006, PWGSC submitted the GIR. On June 13, 2006, Excel submitted its comments on the GIR.

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 written information on the record.

### PROCUREMENT PROCESS

5. The RFP that is the subject of the complaint was for informatics professional services relating to the support, development and maintenance of applications developed by Canada On-Line Services, which is responsible for the management and operation of the primary Internet site of the Government of Canada (GoC) ([www.canada.gc.ca](http://www.canada.gc.ca)) and the management of the public service information resource, Publiservice. It was seeking proposals for personnel in 16 different information technology categories. The RFP indicated that two contracts were to be awarded to the two bidders whose proposals had the "lowest cost per point".

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

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

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

6. The RFP was made available through MERX<sup>4</sup> on June 27, 2005, and the amended due date for the receipt of bids was September 13, 2005. According to PWGSC, 21 bids were received. On March 3, 2006, the evaluation of the proposals was completed, and 4 proposals were evaluated as being compliant. The top 3 proposals were ranked as follows:

	Technical Score	Cost per point
TPG/Spearhead	1429	\$8,833.47
Veritaaq/Spearhead	1418	\$8,935.51
Excel	1392	\$9,037.41

7. On March 6, 2006, contracts were awarded to the top two bidders but, according to PWGSC, the contracts were issued in error to the lead companies of the Joint Ventures, whereas they should have been issued to the Joint Ventures. On March 6, 2006, PWGSC advised Excel, by letter, that contracts had been awarded to TPG and Veritaaq.

8. On March 20, 2006, PWGSC provided a debriefing to Excel. On March 23, 2006, Excel e-mailed an objection to PWGSC, arguing that its proposal should have received an additional 36 points, which would have been enough points for it to have advanced to first or second place. These 36 points related to three separate rated criteria, i.e. rated criteria R.11, R.19 and R.46, which were each worth 12 points.

9. On March 28, 2006, PWGSC responded to Excel and awarded it an additional 12 points for rated criterion R.11. However, PWGSC did not award Excel any additional points for criteria R.19 and R.46. This resulted in Excel receiving a higher technical score and a lower cost per point, but left unchanged the finishing order of the top three bidders:

	Technical Score	Cost per point
TPG/Spearhead	1429	\$8,833.47
Veritaaq/Spearhead	1418	\$8,935.51
Excel	1404	\$8,960.17

10. Annex D to the RFP contains the following information regarding the evaluation of the proposals and the specifics of criteria R.19 and R.46:

...

#### **D.2 Evaluation Criteria**

- (a) Listing experience without providing any supporting data to describe where and how such experience was obtained will result in the experience not being included for evaluation purposes.

...

#### **D.2.2 POINT RATED CRITERIA**

One (1) point will be awarded for each month of experience up to the maximum score identified for each category.

...

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4. Canada's electronic tendering service.

**Web Multi-Media Content Consultant**

RATED REQUIREMENTS	Max. Score	Months Claimed	Reference in Proposal
...			
<b>R.19</b> Experience with GoC Common Look and Feel and Accessibility standards.	12		

...

**Junior Programmer**

RATED REQUIREMENTS	Max. Score	Months Claimed	Reference in Proposal
...			
<b>R.46</b> Experience with GoC Common Look and Feel and Accessibility standards.	12		

...

11. Excel filed its complaint with the Tribunal on April 12, 2006.

**POSITIONS OF THE PARTIES****Excel's Position**

12. Regarding the allegation that PWGSC improperly evaluated its proposal, Excel submitted that its proposal fully met the requirements of rated criteria R.19 and R.46 and that it should have received an additional 24 points and, therefore, been awarded one of the two contracts pursuant to the RFP.

13. Excel submitted that accessibility is one of the standards of the World Wide Web Consortium (W3C) and the Treasury Board (TB) Common Look and Feel (CLF) for GoC Web sites and that both proposed resources had more than 12 months of experience with W3C and CLF. Excel submitted that, by stating that a resource "...ensured [that] W3C Standards and GOL [Government On-Line] CLF guidelines were [met]...",<sup>5</sup> it would be understood that the resource utilized accessibility standard requirements. It submitted that the reference in its proposal to experience with W3C standards encompasses all substandards, including accessibility.

14. According to Excel, PWGSC acknowledged, in its response to Excel's objection,<sup>6</sup> that CLF standard 1.1<sup>7</sup> includes W3C priorities 1 and 2 for accessibility and that it contradicted itself when it stated that W3C priority checkpoints would satisfy the criteria for the proposal. Excel submitted that, by stating that its proposed resources had experience with all CLF standards, W3C priorities 1 and 2 must also have been met and that full points should have been awarded. Excel also submitted that requiring a bidder to list experience with each and every accessibility standard is to impose an evaluation criterion that was not explicitly required by the wording of the RFP. Excel submitted that, if PWGSC were allowed to impose an evaluation requirement based on the usage of undisclosed "key words", it would be impossible for bidders to know what should be identified in their responses to the RFP.

5. Excel's proposal at 155, with regard to rated criterion R.19.

6. Complaint at 7.

7. "All GoC Web sites must comply with W3C Priority 1 and Priority 2 checkpoints to ensure sites can be easily accessed by the widest possible audience." TB policy regarding "Common Look and Feel for the Internet" at [www.tbs-sct.gc.ca/clf-nsi/inter/inter-01-01\\_e.asp](http://www.tbs-sct.gc.ca/clf-nsi/inter/inter-01-01_e.asp).

15. Regarding the ground of complaint relating to Spearhead allegedly submitting multiple bids by reason of its membership in the Joint Ventures, Excel submitted that the issue is not, as PWGSC suggested, whether joint ventures were permitted. Rather, according to Excel, the issue is whether the RFP prevented two joint ventures with a common partner from submitting bids. Excel submitted that article A.17(g) of the RFP, which allowed bidders to submit multiple bids, was deleted by amendment No. 7 to the RFP, which was issued on August 23, 2005.

16. Excel also submitted that a joint venture is not a legal entity and that the RFP recognized this fact by requiring that a bid submitted by a joint venture be accompanied by signatures from all parties to that joint venture. It submitted that article A.18 of the RFP defined a “bidder” and the responsibilities of signatories regarding the submission of bids.

17. Excel submitted that the legal entities that submitted bids are, in the case of the TPG/Spearhead bid, TPG *and* Spearhead and, in the case of the Veritaaq/Spearhead bid, Veritaaq *and* Spearhead. It submitted that, therefore, Spearhead (as the legal entity) submitted two bids, which was not allowed, given the deletion of article A.17(g) from the RFP. Excel argued that the fact that Spearhead joined with another party when submitting two bids did not eliminate or negate the unfairness and manipulation of the bidding process that resulted from allowing more than one bid per bidder. Excel submitted that, in paragraph 34 of the GIR, PWGSC acknowledged that Spearhead would have had knowledge of the pricing of the Joint Ventures, which, according to Excel, was what the deletion of article A.17 was designed to prevent.

18. Excel requested that it be awarded the 24 points relating to criteria R.19 and R.46 and, accordingly, awarded one of the two contracts. In the alternative, it requested compensation for the lost profit that it would have earned had it been awarded a contract, which it submitted as being 23 percent of the total contract value, as well as the costs that it incurred in preparing its proposal. It also requested its complaint costs.

### **PWGSC's Position**

19. Regarding the ground of complaint relating to the evaluation of rated criteria R.19 and R.46, PWGSC submitted that the wording of those criteria required experience with both CLF *and* accessibility standards, as experience with CLF accessibility standards is more specialized than CLF standards in general. According to PWGSC, CLF standards, which were developed by TB to ensure consistency and a “common look and feel” for all GoC information Web sites, are extensive and very detailed, and address numerous Internet Web site design and development issues. It submitted that accessibility standards involve the application of standards to ensure accessibility to Web site information for persons with disabilities requiring assistive technology. It submitted that experienced programmers understand that the application of certain CLF standards actually hinders accessibility and requires specialized experience to balance accessibility standards with other requirements. According to PWGSC, it was for this reason that the evaluators looked for a mention of experience with both CLF standards in general and accessibility standards.

20. PWGSC submitted that, for the Web Multi-Media Content Consultant (R.19) and the Junior Programmer (R.46), Excel's proposal indicated experience with CLF and W3C standards generally, but that there was no specific reference to experience with accessibility standards. It indicated that the RFP contained the same wording in rated criteria R.6, R.15, R.23, R.51 and R.55 and that, unlike rated criteria R.19 and R.46, Excel's responses to these criteria made specific reference to “accessibility standards”, and points were awarded accordingly. PWGSC submitted that, for the two positions in question, Excel's proposal read as follows:



[Web Multi-Media Content Consultant (R.19)]

... ensured CLF compliance ... ensured [that] W3C Standards and GOL CLF guidelines were [met] ... keeping in mind GOL Common Look and Feel Standards<sup>8</sup>

...

[Web Applications Programmer (R.46)]

...

Developed application for the Federal [Government] that followed Treasury Board of Canada web standards that included: Common Look and Feel, W3C, and Government of Canada Security Policies.<sup>9</sup>

PWGSC submitted that it reviewed the proposal, including the individual résumés of the proposed resources, and, as accessibility standards were not mentioned, Excel received no marks for those two criteria.

21. In noting Excel's argument that the proposed resources' experience with W3C standards ought to have satisfied the requirement to specify "accessibility" standards because CLF standard 1.1 explicitly states that "[a]ll GoC Web sites must comply with W3C Priority 1 and Priority 2 checkpoints to ensure sites can be easily accessed by the widest possible audience", PWGSC submitted that, had Excel's proposal specifically referred to W3C priorities 1 and 2, Excel's proposal would have been awarded full marks. It submitted however that there was no indication whatsoever in Excel's proposal that the two resources had experience with W3C priorities 1 and 2, CLF accessibility standards or any other accessibility standards, as required by rated criteria R.19 and R.46. PWGSC submitted that Excel's proposal was properly awarded zero marks for these two criteria.

22. Regarding the allegation that awarding two contracts to joint ventures with a common partner was not conducive to a fair and transparent procurement process, PWGSC submitted that the RFP did not preclude the submission of bids by joint venture bidders and, consequently, the Joint Ventures were permitted to submit bids. PWGSC submitted that there is no basis to conclude that Spearhead had knowledge of other bidders' pricing, other than the pricing of the Joint Ventures and that, therefore, it did not have information that could have advantaged it or the Joint Ventures vis-à-vis the other bidders in the process.

23. According to PWGSC, it did not deliberately withhold information nor provide misinformation regarding the entities that were awarded contracts. It submitted that, because of an error, the contracts were initially awarded only to the lead member of the Joint Ventures and, for that reason, when it advised the unsuccessful candidates of the contract awardees, it did not indicate the proper names of the contract awardees.

24. PWGSC submitted that the complaint should be dismissed and that it should be awarded its costs in this matter. If the Tribunal were to find that the complaint was valid, and given the fact that no work had been performed to date, PWGSC submitted that it does not require the immediate tasking of such work and that the appropriate remedy would be to re-evaluate the compliant proposals based on such direction and criteria as determined by the Tribunal. If, as a result of this re-evaluation, Excel's proposal were found to be one of the two lowest cost-per-point rated proposals, PWGSC submitted that the existing contract with the

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8. Excel's technical proposal at 155.

9. *Ibid.* at 183-84.

second bidder should be terminated and awarded to Excel and that Excel should be awarded its reasonable costs incurred in preparing and proceeding with this complaint.

### TRIBUNAL'S ANALYSIS

25. 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*,<sup>10</sup> the *North American Free Trade Agreement*<sup>11</sup> and the *Agreement on Government Procurement*.<sup>12</sup>

26. Article 506(6) of the *AIT* reads as follows:

... 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.

27. Article 1015(4)(d) of *NAFTA* reads as follows:

(d) awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation . . . .

28. Article XIII(4)(c) of the *AGP* reads as follows:

(c) Awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation.

### **First Ground of Complaint: PWGSC Misinterpreted and/or Misapplied Rated Criteria R.19 and R.46.**

29. In essence, the Tribunal must determine, with respect to this ground of complaint, whether PWGSC applied the proper evaluation requirements and whether, accordingly, Excel should have received points for its responses to rated criteria R.19 and R.46.

30. In conducting such analyses in the past, the Tribunal indicated that it would not intervene in the evaluation process by substituting its judgment for that of the evaluators, unless they had not applied themselves in evaluating a bidder's proposal, had ignored vital information provided in a proposal, had wrongly interpreted the scope of a requirement, had based their evaluation on undisclosed criteria or had otherwise not conducted the evaluation in a procedurally fair way.<sup>13</sup> In other words, if the Tribunal considers that the evaluators have applied themselves adequately to the task of evaluating the submission and applied the evaluation requirements as per the terms of the RFP, it will not substitute its opinion for that of the evaluators.

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10. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <[http://www.intrasec.mb.ca/index\\_en/ait.htm](http://www.intrasec.mb.ca/index_en/ait.htm)> [*AIT*].

11. *North American Free Trade Agreement Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2 (entered into force 1 January 1994) [*NAFTA*].

12. 15 April 1994, online: World Trade Organization <[http://www.wto.org/english/docs\\_e/legal\\_e/final\\_e.htm](http://www.wto.org/english/docs_e/legal_e/final_e.htm)> [*AGP*].

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

31. Rated criteria R.19 and R.46 both relate to the proposed resources' "[e]xperience with GoC Common Look and Feel and Accessibility standards." They both stipulate an identical requirement, which was for the proposal to indicate that each resource had at least 12 months' "[e]xperience with GoC Common Look and Feel and Accessibility standards."

32. The Tribunal must therefore determine whether PWGSC was correct in its application of the evaluation criteria when it required bidders to provide a specific reference to experience with accessibility standards in lieu of simply making reference to experience with more general standards, such as W3C standards.

33. The Tribunal is of the opinion that the language of rated criteria R.19 and R.46 is clear and unambiguous. It requires "[e]xperience with GoC Common Look and Feel *and Accessibility standards*" [emphasis added]. In the Tribunal's opinion, there is no doubt that the plain language of this requirement calls for a separate demonstration of experience in respect of each of the two standards, namely, CLF and accessibility. The use of the conjunction "and" and of the word "standards" (the use of the plural cannot be ignored) clearly indicates that those standards are to be treated separately.

34. This is important in the context of the Tribunal's consideration of whether PWGSC was correct in its application of the evaluation criteria when it required a specific reference of experience with accessibility standards. The Tribunal believes that this course of action is an indication that PWGSC formulated a requirement for experience specific to those standards. In an industry where, according to the record, there appear to be many nuances in technical standards, the reference in an RFP to a particular standard is significant in terms of the meaning of an applicable requirement. In that context, the Tribunal is of the view that the requirements contained in rated criteria R.19 and R.46, as well as in rated criteria R.6, R.15, R.23, R.51 and R.55, were intended to solicit a specific demonstration of experience with "accessibility" standards and that PWGSC was correct in requiring separate specific indications of such experience with those standards. Given that Excel's proposals received marks for rated criteria R.6, R.15, R.23, R.51 and R.55, where experience with those standards was specifically mentioned, there is an indication that Excel understood the need to be specific with respect to such experience.

35. To determine whether or not Excel's submission did meet the "accessibility standard" requirements of rated criteria R.19 and R.46 is a question that would require the Tribunal to substitute its judgment for that of the PWGSC evaluators. As stated above, the Tribunal will not do so save in certain circumstances, which, according to the Tribunal, are not present in this instance.<sup>14</sup>

36. Excel submitted that PWGSC should have considered the reference in its proposal to experience with W3C standards as being the same as experience with accessibility standards. In Excel's opinion, W3C experience necessarily implied experience with W3C accessibility standards. The Tribunal notes that the parties do not agree on this issue, indicating that experience with W3C does not necessarily include the individual requirements of the standards. In that context, the Tribunal is of the view that it therefore was reasonable for PWGSC not to accept a general reference to W3C experience as an indication of experience with accessibility standards.

37. Accordingly, the Tribunal finds that the first ground of the complaint is not valid.

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14. *Ibid.*

**Second Ground of Complaint: PWGSC Improperly Allowed Bids From Two Joint Ventures With a Common Party.**

38. The second ground of complaint raised by Excel is that PWGSC improperly allowed bids from two joint ventures with a common partner, in contravention of the requirements of the RFP.

39. In the Tribunal's opinion, to be successful with this ground of complaint, Excel would have to establish that the submission of bids by two joint ventures with a common partner were prohibited under the terms and conditions of the RFP. Excel alleged that such a prohibition resulted from amendment No. 7 to the RFP. Excel argued that, "[b]y deleting clause A.17(g) via Solicitation Amendment #7, PWGSC acknowledged that the submission of more than one bid per bidder would lead to unfairness in the bidding process . . . ." <sup>15</sup> In support of its argument, Excel noted that the GIR stated that the deletion of article A.17(g) ". . . was in response to a bidder's concern that permitting a bidder to submit several bids with different costs for each one would unfairly increase a bidder's chances of success . . . ." <sup>16</sup>

40. The Tribunal agrees with PWGSC that, ". . . unless the solicitation documents specifically prohibited the submission of bids by bidders with a common Joint Venture partner, [it] could not refuse to accept those Joint Venture Bidder's proposals." <sup>17</sup> The Tribunal also shares the view put forward by PWGSC that the elimination of article A.17 of the RFP did not preclude ". . . the submission of proposals by the two Joint Venture Bidders and, consequently, the two Joint Venture Bidders were permitted to submit proposals." <sup>18</sup> Could it reasonably be inferred, as alleged by Excel, that the deletion of the permissive article A.17 by PWGSC implicitly introduced a prohibition against the submission of more than one bid by joint ventures with a common partner? In the Tribunal's view, this question must be answered in the negative.

41. In examining and understanding the contractual context at issue, the Tribunal believes that the intention that PWGSC did or did not want to express cannot be presumed. It must be found either explicitly in the letter of the RFP, or implicitly in the context under review. The Tribunal does not believe that such an explicit or implicit expression of intention can be found in the evidence in this complaint.

42. Indeed, the Tribunal is of the view that no provision in the RFP created a prohibition against the submission of bids by joint ventures with a common partner.

43. Contrary to what was suggested by Excel, the Tribunal is not persuaded that any statement made in the GIR can be read as an admission that amendment No. 7 was issued because PWGSC agreed that the submission of multiple bids was in any manner inherently unfair. Rather, the Tribunal has no reason to doubt the statement made in the GIR to the effect that ". . . PWGSC officials did not consider that the deletion of RFP A.17 precluded the submission of bids by the two Joint Venture Bidders . . . ." <sup>19</sup>

44. Moreover, the Tribunal believes that, if Excel had any issue or doubt with the RFP explicitly permitting (prior to amendment No. 7) or implicitly forbidding (subsequent to amendment No. 7) multiple bids by one bidder, alone or in joint venture (if bids by two joint ventures with a common partner can even be considered multiple bids), it was incumbent upon Excel to seek clarification or to file an objection at least no later than at a time contemporaneous to the issuance of amendment No. 7, in accordance with section 6

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15. Comments on the GIR at 7, para. 25.

16. GIR, Part III, para. 32.

17. *Ibid.*, para. 31.

18. *Ibid.*, para. 33.

19. *Ibid.*, para. 33.

of the *Regulations*. In any event, in the Tribunal's view, amendment No. 7 was clear, if inconsequential, because it simply deleted an explicit permission without explicitly or implicitly forbidding anything.

45. In addition, the Tribunal does not believe that it was reasonable for Excel to view amendment No. 7 as implicitly, let alone explicitly, creating any prohibition whatsoever. And, ultimately, the Tribunal heard no evidence to suggest that the submission of bids by two joint ventures with a common partner, or specifically by the Joint Ventures, would result, *per se*, in a prejudice to the procurement process or the violation of any provision of the trade agreements.

46. In light of the above, the Tribunal finds no indication that PWGSC did not follow the terms and conditions of the RFP by allowing the Joint Ventures to submit bids. Accordingly, it finds that this ground of complaint is not valid.

### Costs

47. In accordance with the Tribunal's *Guideline for Fixing Costs in Procurement Complaint Proceedings* (the *Guideline*), the Tribunal awards PWGSC its reasonable costs incurred in responding to the complaint.

48. The *Guideline* contemplates classification of the level of complexity of complaint cases based on three criteria: the complexity of the procurement; the complexity of the complaint; and the complexity of the complaint proceedings. The complexity of the procurement was medium, in that it involved a defined service project on an as-required basis. The complexity of the complaint was also medium, in that the issue was an evaluation of rated requirements. Finally, the complexity of the complaint proceedings was low, even though a 135-day time frame was required, as there were no interveners, the parties were not required to submit information beyond the normal scope of proceedings, and there was no need for a public hearing. Accordingly, the Tribunal is of the preliminary view that this complaint case has an overall complexity level corresponding to the medium level of complexity referred to in Appendix A of the *Guideline* (Level 2). As contemplated by the *Guideline*, the Tribunal's preliminary indication of the amount of the cost award is \$2,400. The Tribunal reserves jurisdiction to establish the final amount of the award.

### DETERMINATION OF THE TRIBUNAL

49. Pursuant to subsection 30.14(2) of the *CITT Act*, the Tribunal determines that the complaint is not valid.

50. Pursuant to section 30.16 of the *CITT Act*, the Tribunal awards PWGSC its reasonable costs incurred in responding to the complaint, which costs are to be paid by Excel. The Tribunal's preliminary indication of the level of complexity for this complaint case is Level 2, and its preliminary indication of the amount of the cost award is \$2,400. If any party disagrees with the preliminary indication of the level of complexity or the preliminary indication of the amount of the cost award, it may make submissions to the Tribunal, as contemplated by the *Guideline*. The Tribunal reserves jurisdiction to establish the final amount of the award.

Serge Fréchette  
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Serge Fréchette  
Presiding Member