



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File No. PR-2005-050

The Impact Group

v.

National Research Council of
Canada

*Determination and reasons issued
Wednesday, June 14, 2006*

TABLE OF CONTENTS

DETERMINATION OF THE TRIBUNAL.....i

STATEMENT OF REASONS 1

 COMPLAINT 1

 PROCUREMENT PROCESS..... 1

 POSITIONS OF THE PARTIES 2

 Impact’s Position 2

 NRC’s Position 3

 TRIBUNAL’S ANALYSIS..... 5

 REMEDY 8

 DETERMINATION OF THE TRIBUNAL 9

IN THE MATTER OF a complaint filed by The Impact Group 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

THE IMPACT GROUP

Complainant

AND

THE NATIONAL RESEARCH COUNCIL OF CANADA

**Government
Institution**

DETERMINATION OF THE TRIBUNAL

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

Pursuant to subsections 30.15(2) and (3) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal recommends, as a remedy, that the National Research Council of Canada compensate The Impact Group for the costs that it reasonably incurred in preparing its proposal for the subject solicitation. The Impact Group shall file with the Canadian International Trade Tribunal, within 30 days of the date of this determination, a submission concerning the amount of the costs that were incurred. The National Research Council of Canada will then have 7 working days after receipt of this submission to file a reply submission. The Impact Group will then have 5 working days after the receipt of the reply submission to file any additional submissions. The parties are required to file their submissions with the Canadian International Trade Tribunal and serve each other simultaneously.

Ellen Fry
Ellen Fry
Presiding Member

Hélène Nadeau
Hélène Nadeau
Secretary

Tribunal Member:	Ellen Fry, Presiding Member
Research Director:	Marie-France Dagenais
Investigation Manager:	Michael W. Morden
Counsel for the Tribunal:	Dominique Laporte
Complainant:	The Impact Group
Government Institution:	National Research Council of Canada
Counsel for the Government Institution:	David M. Attwater

Please address all communication to:

The Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7

Telephone: (613) 993-3595
Fax: (613) 990-2439
E-mail: secretary@citt-tcce.gc.ca

STATEMENT OF REASONS

COMPLAINT

1. On February 6, 2006, The Impact Group (Impact) 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. 05-22086) by the National Research Council of Canada (NRC) for services relating to the crafting of a corporate strategy.
2. Impact alleged the following: that the NRC did not evaluate its proposal in accordance with the evaluation criteria published in the Request for Proposal (RFP); that the NRC used criteria or factors not included in the RFP to evaluate its proposal; that individuals not familiar with the evaluation criteria evaluated the proposals; and that its bid was not evaluated in its entirety.
3. On February 10, 2006, the Tribunal informed the parties that it had accepted the complaint for inquiry, with the exception of the allegation that individuals not familiar with the evaluation criteria evaluated the proposals, as it met the requirements of subsection 30.11(2) of the *CITT Act* and the conditions set out in subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.²
4. On March 7, 2006, the NRC submitted the Government Institution Report (GIR). On March 20, 2006, Impact submitted its comments on the GIR. On April 4, 2006, the Tribunal requested that the NRC provide additional information regarding Impact's evaluation and the NRC's debriefing regarding Impact's proposal. On April 19, 2006, the NRC provided the requested information. On April 26, 2006, Impact provided the Tribunal with its comments on the NRC's submission.
5. 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, pursuant to paragraph 25(c) of the *Canadian International Trade Tribunal Rules*,³ disposed of the complaint on the basis of the written information on the record.

PROCUREMENT PROCESS

6. The RFP that is the subject of the complaint is for services relating to Phase 3 of a four-phase strategic planning exercise called the Renewal Project. Phase 3 concerns the development of the strategies necessary to realize the vision and achieve the strategic objectives defined in Phase 2. At the time that the RFP for Phase 3 was released, Phase 1 had been completed and Phase 2 was in progress. The RFP was posted on MERX⁴ on October 14, 2005, with a due date for the receipt of bids of November 23, 2005. There were three sets of questions and answers posted on MERX on November 1, 8 and 15, 2005. In order to be considered for contract award, bidders had to meet all the mandatory requirements of the RFP, and their technical proposals had to score at least 70 out of the 100 points in the rated categories. The NRC created a scoring grid, which was not provided to the bidders as part of the RFP, to assist the evaluators in their evaluations of the rated portions of the proposals.

1. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].
2. S.O.R./93-602 [*Regulations*].
3. S.O.R./91-499.
4. Canada's electronic tendering service.

7. The NRC received seven bids, one of which was deemed non-compliant for failing to separate financial and technical information. The NRC's technical evaluation team evaluated the remaining six proposals between November 30 and December 20, 2005. On January 5, 2006, the technical evaluation team leader informed the contracting authority that only one company, Secor, had met the mandatory threshold of 70 points in the rated criteria section. On January 17, 2006, the NRC project authority orally advised Secor that it could commence work on Phase 3 of the Renewal Project.

8. Clause 12.0 of the RFP contained the following security requirements:

...

12.1 Prior to the performance of the obligations under this contract, all personnel that will be involved with the project must be cleared to the security level of **CONFIDENTIAL** as defined in the security policy of Canada.

12.2 Such clearances will be pre-condition to the authorization of any work under any Contract established as a result of this invitation. If the lack of appropriate clearance jeopardizes the contractor's ability to undertake the work required in a timely manner, an alternate contractor will be selected.

9. On January 17, 2006, the contracting authority initiated a security check of the four project personnel proposed by Secor. On January 24, 2006, the contracting authority advised the project authority that Secor had failed to meet the mandatory requirement for security clearances and that the NRC could not proceed with the contract. On February 2, 2006, the NRC informed Secor that its proposal had been found non-compliant. By separate correspondence, on February 2, 2006, the NRC informed all unsuccessful bidders that the solicitation had been cancelled in its entirety.

10. On January 16, 2006, the NRC informed Impact that its proposal had been found non-compliant, as it had failed to meet the mandatory 70-point threshold. It also returned Impact's financial proposal, unopened. Between January 16 and 19, 2006, the contracting authority provided Impact with basic information on the results of the evaluation of its proposal. Impact filed an objection with the NRC concerning its proposal being declared non-compliant and, on January 24, 2006, one of the technical evaluators provided Impact with a telephone debriefing. On January 30, 2006, Impact was advised by e-mail that the solicitation had been cancelled. Impact continued to object to the evaluation of its proposal. On February 1, 2006, the NRC advised Impact that it had reviewed Impact's proposal and it maintained that the proposal had been evaluated fairly.

11. On February 6, 2006, Impact filed its complaint with the Tribunal.

POSITIONS OF THE PARTIES

Impact's Position

12. Regarding the allegation that the NRC did not evaluate its proposal in accordance with the evaluation criteria published in the RFP, Impact submitted that the evaluators received no briefing or instructions on the terms of reference or scoring criteria contained in the RFP and, therefore, could not be expected to assess the proposals accurately. It submitted that logic dictates that the evaluators did not actually take the time to reach a consensus on 20 individual scores (one for each detailed criterion) for each of the 6 qualified proposals, as was stated in the RFP. It submitted that, in all likelihood, the scores were recorded *after* the consensus meeting and were a subsequent rationalization of a discussion of its proposal and not the result of a careful assessment of its proposal against the criteria published in the RFP, or even against the unpublished criteria in the evaluation grid.

13. Impact also submitted that the comments provided by the NRC during its debriefing did not match the points awarded in some instances, e.g. while the NRC stated that it was impressed by the consultants that Impact proposed, it awarded Impact a failing score in the related criterion. Impact asserted that the NRC could not simultaneously have been impressed by the consultants and have awarded it a failing score. Impact submitted that another example of where its score did not accurately reflect the content of its proposal was regarding the requirements for a work plan and time schedule. Impact argued that its plan identified 19 specific tasks and provided start and finish dates for each and the resource who would work on each task; yet, the NRC awarded it a failing score for the proposed plan and schedule. Impact submitted that the assessment is simply not consistent with Impact's detailed plan. Impact submitted that the RFP was essentially based on capabilities and not on methodology, but that the NRC evaluated the bids from a methodology perspective.

14. Regarding the allegation that the NRC used criteria or factors not included in the RFP to evaluate its proposal, Impact submitted that the NRC created the scoring grid after the release of the RFP, that it materially changed the interpretation of the wording of the RFP and that it assigned points in an idiosyncratic way that was never conveyed to bidders. It submitted that the NRC did not reveal the existence of an evaluation grid regarding the distribution of points. It submitted that the bidders only had a narrative RFP with which to work and that they had no idea what weighting would be assigned to any of the detailed criteria.

15. Regarding the allegation that its bid was not evaluated in its entirety, Impact submitted that the NRC, had it opened Impact's financial proposal, would have found information that reinforced certain points made in its technical proposal. Specifically, Impact submitted that, during the debriefing, the NRC informed it that "[t]he panel was impressed by the (consultants) that [Impact] proposed . . . but there was confusion about how they would be involved and when, and just generally how they were part of the project . . ." ⁵ Impact claimed that it had addressed this requirement in its technical proposal and in detail in the cost proposal, which the NRC elected not to review. Impact submitted that ". . . [t]he RFP does not require bidders to indicate the level of effort of each consultant in their technical proposal; this information is required in the cost proposal (*the number . . . of assigned personnel . . . (and) . . . the number of workdays*) . . ." ⁶

16. Regarding compensation, Impact submitted that either the flawed evaluation process or the flawed decision is sufficient on its own to warrant compensation. It also submitted that, regardless of the outcome of the case, no costs should be awarded to the NRC, as it was the lack of an internal NRC route of appeal that required Impact to bring its complaint before the Tribunal.

NRC's Position

17. The NRC submitted that the Tribunal has previously stated that it will only interfere with an evaluation that is unreasonable ⁷ and that, in this case, the evaluators properly applied the evaluation criteria. It submitted that this evaluation required professional judgement and that, because such judgement may be different for different evaluators and to ensure consistency in the evaluation of all proposals, it would be improper and unfair for the Tribunal to second-guess the evaluation of a single bidder's proposal by the team of subject-matter experts. It submitted that the Tribunal has previously stated that ". . . it is important for fairness and equity reasons that all proposals be evaluated by the same evaluators . . ." ⁸

5. Impact's "Summary of Claim" at 4.

6. *Ibid.*

7. *Re Complaint Filed by Northern Lights Aerobatic Team, Inc.* (6 October 2005), PR-2005-004 (CITT).

8. *Re Complaint Filed by Canadian Computer Rentals* (3 August 2000), PR-2000-003 (CITT) at 6.

18. The NRC also submitted that the Tribunal has previously stated that it will defer to evaluators where it is satisfied that they evaluated a proposal in a procedurally fair manner⁹ and that, save for the allegation that Impact should have been awarded more points, Impact has presented no evidence that the proposal was evaluated in anything other than a procedurally fair manner.

19. The NRC submitted that the proposals were evaluated using the criteria expressly stated in the RFP and were rated based on their scoring against those criteria. It submitted that Impact's claim that it used evaluation criteria not included in the RFP was based on comments that were made by a single technical evaluator and are irrelevant to the actual evaluation of the proposal. The NRC submitted that the Tribunal has previously ruled on this matter and that it had stated the following: "... the debriefing having taken place after the decision... cannot be relied upon to justify that decision [to declare a proposal non-responsive]..."¹⁰ The NRC submitted that, although information provided to Impact during its debriefing was irrelevant to the actual evaluation of its proposal, Impact's score was based on the points received during the evaluation and that its scores are correct.

20. The NRC submitted that, in accordance with *Siemens Westinghouse*,¹¹ the evaluation grid produced to assist the evaluators with their marking was reasonably related to, and encompassed by, the express criteria of the RFP. The NRC submitted that the evaluation criteria applied by the technical evaluation team were identical to those stated in the RFP.

21. Regarding the allegation that Impact's proposal was not evaluated in its entirety, the NRC submitted that all bidders were advised, in the questions and answers that were published on MERX on November 8, 2005, of the following:

... The cost proposals remain unopened and in the care of the contracting authority until the technical evaluations have been completed by the evaluation team. Once these results have been submitted and reviewed by the contracting authority only then will the cost proposals be opened....¹²

The NRC submitted that this clearly required the separation of technical and financial information. It submitted that all the information in Impact's technical proposal was considered during the evaluation and that, if Impact required certain information to be considered during that technical evaluation, it was incumbent upon Impact to include it in its technical proposal.

22. The NRC submitted that, if the Tribunal found the complaint to be valid, the most appropriate remedy would be for the NRC to re-evaluate all six proposals that underwent the technical evaluation, having regard to the Tribunal's findings. It argued that only in the event that Impact is found to have submitted the highest-scoring technical proposal should compensation be considered.

23. The NRC requested that the complaint be dismissed and that it be awarded its costs in accordance with the Tribunal's *Guideline for Fixing Costs in Procurement Complaint Proceedings* (the *Guideline*). It also requested that, if the complaint were found to be valid in part, each party be required to bear its own costs. It noted that Impact had not requested costs.

9. *Re Complaint Filed by Mirtech International Security Inc.* (3 June 1997), PR-96-036 (CITT).

10. *Re Complaint Filed by Service Star Building Cleaning Inc.* (22 January 1999), PR-98-027 (CITT) at 5.

11. *Siemens Westinghouse Inc. v. Canada (Minister of Public Works and Government Services)*, [2002] 1 F.C. 292 (CA), para. 43.

12. GIR, Exhibit 3.

TRIBUNAL'S ANALYSIS

24. 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*,¹³ the *North American Free Trade Agreement*¹⁴ and the *Agreement on Government Procurement*.¹⁵

25. 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.

26. 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

27. 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.

28. The Tribunal must consider the following three grounds of complaint: (1) the NRC did not evaluate Impact's proposal in accordance with the evaluation criteria published in the RFP; (2) the NRC used criteria or factors not included in the RFP to evaluate Impact's proposal; and (3) Impact's bid was not evaluated in its entirety.

Grounds 1 and 2 of the Complaint

29. PWGSC communicated the following four general observations to Impact regarding its proposal, during its January 24, 2006, telephone debriefing:

- "Not much information on the approach and methodology for developing the strategy"
- "Panel proposed was very strong but little indication as to their time involvement on the project"
- "Planning schedule was vague"
- "Proposal does not take into account NRC work to date"¹⁶

13. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <http://www.intrasec.mb.ca/index_en/ait.htm> [*AIT*].

14. *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*].

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

16. GIR, para. 64.

30. An affidavit provided by Mr. Jac van Beek, one of the eight technical evaluators, explains how these observations were arrived at and the role they were intended to have, as follows:

...

After a proposal was fully scored, the evaluation team leader canvassed the evaluators for general observations on the strengths and weaknesses of the proposal. Observations were intended to assist the bidder in understanding the overall scoring of its proposal, and to improve its presentation in future solicitations. The observations were not intended as an explanation for any particular score against an evaluation criterion. All recorded observations were agreed upon by the technical evaluation team, and do not reflect the sole views of an individual evaluator.

The evaluation team leader summarized the agreed-upon observations by the evaluation team . . . the team leader prepared an interim report summarizing the observations of the technical evaluation team. The consensus scores, and summary of observations, were delivered to all technical evaluators for their review and agreement.¹⁷

...

31. The Tribunal considers that this clearly indicates that all eight evaluators agreed on these four observations as important points that should be communicated to Impact to help it understand “the overall scoring of its proposal”. The evaluators’ agreement on the four observations occurred as a result of a considered process in which all evaluators were canvassed on their views and subsequently given an opportunity to review the wording of the observations before they were finalized. On January 24, 2006, after the observations had been finalized, Mr. van Beek communicated the agreed-upon observations to Impact.

32. The Tribunal does not normally substitute its judgment for that of the evaluators unless they 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.¹⁸

33. The Tribunal considers that the four observations were not intended to provide Impact with the specifics regarding its loss of points. However, given the importance that the evaluators clearly attached to the observations in explaining the overall scoring, the scoring should have been generally consistent with the observations, if done appropriately.

34. Accordingly, the Tribunal reviewed the scoring to consider whether it was generally consistent with the four observations, using the detailed scoring grid for Impact provided by the NRC as part of the GIR.¹⁹

- First observation: “Not much information on the approach and methodology for developing the strategy”

35. The first observation could reasonably be considered relevant to the scores for “proposed work strategy” and “proposed plan and schedule”. Therefore, a significant proportion of Impact’s loss of points could reasonably have resulted, to some extent, from this observation, and the Tribunal considers that Impact’s score on these elements could reasonably be considered generally consistent with this observation.

17. Affidavit of Mr. van Beek, paras. 5, 6.

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

19. GIR, Exhibit 5.

- Second observation: “Panel proposed was very strong but little indication as to their time involvement on the project”

36. The portion of the observation regarding the time involvement of the proposed resources could reasonably be considered relevant to the scores for “overall team balance”, “proposed work strategy” and “proposed plan and schedule”. Therefore, a significant proportion of Impact’s loss of points could reasonably have resulted to some extent from this observation, and the Tribunal considers that Impact’s score on these elements could reasonably be considered generally consistent with this observation.

37. The portion of the observation that read, “Panel proposed was very strong” could reasonably be considered relevant to the scores for “experience of personnel proposed”, “knowledge and experience in the development of strategies”, “experience in strategic planning with major science organizations” and “knowledge of change management methods and practices”. Therefore, the Tribunal would reasonably have expected a significant positive trend in the scores for these elements. Instead, the scores on these elements show a significant loss of points that is clearly inconsistent with the panel’s consensus view that the panel is very strong. Therefore, it is the Tribunal’s view that, in scoring these portions of Impact’s proposal, the evaluators did not apply the criteria in the RFP and must have been following other, undisclosed criteria.

- Third observation: “Planning schedule was vague”

38. The third observation could reasonably be considered relevant to the scores for “proposed plan and schedule”. Therefore, a significant proportion of Impact’s loss of points could reasonably have resulted to some extent from this observation, and the Tribunal considers that Impact’s score on this element could reasonably be considered generally consistent with this observation.

- Fourth observation: “Proposal does not take into account NRC work to date”

39. The fourth observation could reasonably be considered relevant to the scores for “demonstrating an understanding of the work” and “proposed work strategy”. Therefore, a significant proportion of Impact’s loss of points could reasonably have resulted, to some extent, from this observation, and the Tribunal considers that Impact’s score on these elements could reasonably be considered generally consistent with this observation.

40. In light of the above discussion concerning the portion of the second observation that relates to the strength of the panel, the Tribunal finds that the first two grounds of the complaint are valid.

Ground 3 of the Complaint

41. The third ground of complaint is that Impact’s proposal was not evaluated in its entirety. The RFP requires bidders to submit separate technical and financial proposals, which must fulfil separate and distinct requirements.²⁰ Article 1.1 of the RFP requires that the technical and financial proposals be submitted in separate envelopes. The questions and answers that were published on MERX on November 8, 2005, state the following: “. . . The cost proposals remain unopened and in the care of the contracting authority until the technical evaluations have been completed by the evaluation team” Article 6.1 of the RFP provides the following concerning the technical proposals: “. . . Proposals scoring less than 70 points of 100 points will be considered non-responsive and will be eliminated from further consideration”

20. RFP, para. 6.1 for the technical proposal, para. 7.0 for the financial proposal.

42. In this instance, the NRC evaluated Impact's technical proposal, concluded that it had not scored sufficient points to be responsive and, consequently, did not consider Impact's financial proposal. This process appears to be consistent with the provisions of the RFP (other than in the scoring of the elements relating to the strength of the panel, as discussed under grounds 1 and 2 of the complaint).

43. Therefore, the Tribunal cannot find any indication that the NRC breached its obligations under the trade agreements in this regard and finds that this ground of complaint is not valid.

REMEDY

44. Having found the complaint to be valid in part, the Tribunal must now recommend a suitable means of redressing the harm to Impact as a result of the deficiencies in the evaluation process.

45. In this connection, the relevant part of section 30.15 of the *CITT Act* reads as follows:

(2) Subject to the regulations, where the Tribunal determines that a complaint is valid, it may recommend such remedy as it considers appropriate, including any one or more of the following remedies:

- (a) that a new solicitation for the designated contract be issued;
- (b) that the bids be re-evaluated;
- (c) that the designated contract be terminated;
- (d) that the designated contract be awarded to the complainant; or
- (e) that the complainant be compensated by an amount specified by the Tribunal.

(3) The Tribunal shall, in recommending an appropriate remedy under subsection (2), consider all the circumstances relevant to the procurement of the goods or services to which the designated contract relates, including

- (a) the seriousness of any deficiency in the procurement process found by the Tribunal;
- (b) the degree to which the complainant and all other interested parties were prejudiced;
- (c) the degree to which the integrity and efficiency of the competitive procurement system was prejudiced;
- (d) whether the parties acted in good faith; and
- (e) the extent to which the contract was performed.

(4) Subject to the regulations, the Tribunal may award to the complainant the reasonable costs incurred by the complainant in preparing a response to the solicitation for the designated contract.

46. The Tribunal considers that using criteria not indicated in the RFP is a serious deficiency in the procurement process. This is not a case of misinterpreting the criteria in the RFP; it is clear that the NRC evaluators believed that the proposed panel was strong, but evaluated the relevant criteria on an entirely different basis. The Tribunal believes that such a serious deficiency in evaluation prejudices the integrity and efficiency of the competitive procurement system. The evidence does not indicate whether the evaluators acted in this manner because they did not have an adequate understanding of their responsibilities or because they were acting in bad faith in relation to one or more bidders.

47. It is not clear to what extent Impact and the other bidders are likely to have been prejudiced. The evidence does not indicate whether the deficiency in the evaluation of the personnel criteria was confined to Impact's bid or applied to all the bids. If Impact's bid had been evaluated correctly, Impact could have received enough points to be a responsive bidder and might have been the successful bidder. The scores of other bidders might also have been different if the correct evaluation criteria had been applied. It is also not clear to the Tribunal whether the NRC would have proceeded with the contract if Impact and/or any of the other unsuccessful bidders had been assessed as responsive.

48. However, it is clear that Impact did not receive the evaluation that the RFP indicated it should expect. If Impact had known the criteria that were to be applied, it would presumably have structured its bid differently or decided not to bid at all.

49. In light of the seriousness of the breach of evaluation procedures, the Tribunal considers that an amount equal to 100 percent of the reasonable bid preparation costs incurred by Impact is an appropriate amount of compensation.

50. As Impact did not request its costs, the Tribunal will not award Impact any costs in this matter.

DETERMINATION OF THE TRIBUNAL

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

52. Pursuant to subsections 30.15(2) and (3) of the *CITT Act*, the Tribunal recommends, as a remedy, that the NRC compensate Impact for the costs that it reasonably incurred in preparing its proposal for the subject solicitation. Impact shall file with the Tribunal, within 30 days of the date of this determination, a submission concerning the amount of the costs that were incurred. The NRC will then have 7 working days after receipt of this submission to file a reply submission. Impact will then have 5 working days after the receipt of the reply submission to file any additional submissions. The parties are required to file their submissions with the Tribunal and serve each other simultaneously.

Ellen Fry
Ellen Fry
Presiding Member