



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File No. PR-2007-017

Maxxam Analytics Inc.

v.

Department of Public Works and
Government Services

*Determination and reasons issued
Thursday, September 20, 2007*

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

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

BETWEEN

MAXXAM ANALYTICS INC.

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.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Hélène Nadeau
Hélène Nadeau
Secretary

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STATEMENT OF REASONS

1. On May 11, 2007, Maxxam Analytics Inc. (Maxxam) 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 a procurement (Solicitation No. E60SQ-060002/B) by the Department of Public Works and Government Services (PWGSC) on behalf of the Canadian Food Inspection Agency (CFIA) for services relating to the testing for chemical residues on foods.
2. Maxxam alleged that PWGSC improperly applied undisclosed criteria, or criteria not defined in the procurement documentation, when evaluating its bid and, as a result, improperly disqualified its bid.
3. On May 22, 2007, the Tribunal informed the parties that it had accepted the complaint, 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 There were three requests to intervene—by the University of Guelph on May 30, 2007, CANTEST LTD. on June 8, 2007, and JR Laboratories Inc. on June 12, 2007. The Tribunal granted all three requests—on May 30 and June 8 and 19, 2007, respectively. On June 18, 2007, PWGSC submitted the Government Institution Report (GIR). On June 27, 2007, CANTEST LTD. advised the Tribunal that it adopted and agreed with the submissions in the GIR. On June 29, 2007, JR Laboratories Inc. advised the Tribunal that it supported the submissions found in the GIR. On July 6, 2007, Maxxam 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 Request for a Standing Offer (RFSO) that is the subject of the complaint was made available through MERX³ on February 5, 2007, with an amended due date for the receipt of bids of March 12, 2007. It was issued by PWGSC, on behalf of the CFIA, for chemical residue testing in and on food products on an “as and when requested” basis with regard to eight distinct food groups. The RFSO anticipated the issuance of multiple standing offers, to be in force until March 31, 2009, with an option to renew each standing offer for an additional one-year period. It specified that, for the eight food groups covered by the RFSO, the top three bidders in regard to a particular food group would be recommended for the issuance of a standing offer for that food group. If a bidder was found to be in the top three in different groups, then only one standing offer, which would include multiple food groups, would be issued to that bidder. Bidders were not required to bid on all eight groups.

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

6. The RFSO contained the following clauses that are relevant to the complaint:

ANNEX "A"

PREPARATION OF OFFERS

...

It is requested that Bidders submit their offer in three parts (A, B and C) . . . :

Part A - Technical Offer (with no reference to price): **5** copies and an electronic copy in PDF format submitted on a Compact Disc, memory stick, etc. An e-mail attachment is not acceptable.

...

The offer will be evaluated solely on its content. Except as otherwise specifically provided in this solicitation, Canada will evaluate the Bidder's offer solely based on the documentation provided as part of the offer.

...

Background for Technical Offer:

... The CFIA recogni[z]es that the commercial laboratories may not be equipped exactly as CFIA laboratories and thus it is not the requirement of the CFIA that the Bidder's SOP [Standard Operating Procedure] follow exactly the details provided in the reference. In order to permit the potential Bidders to develop their own tailored SOPs, while still respecting the technical needs of the CFIA, the following guidance is provided.

...

ANNEX "B"

MANDATORY REQUIREMENTS AND SELECTION METHOD

MANDATORY REQUIREMENTS

At bid closing time, the Bidder must comply with the following Mandatory Requirements and provide the necessary documentation to support compliance.

Any offer which fails to meet the following Mandatory Requirements will be deemed non-responsive and will not be given further consideration. Each requirement should be addressed separately.

General

...

3. The Bidder must offer analytical tests (methods) accredited by the Standards Council of Canada [SCC] in its Program Speciality Area for Agriculture & Food Products.

To demonstrate accreditation by the SCC:

3.1) For each test offered, the Bidder must summarize the accreditation that either has been posted on the SCC website or has been approved by the SCC prior to posting. In the summary, the Bidder must identify the Standard Operating Procedure (SOP) by title and provide a controlled copy of that SOP.

...

7. On February 28, 2007, PWGSC issued amendment No. 4 to the RFSO, which included the following question and answer relating to controlled copies of SOPs:

10) Question

... Should we submit the controlled copy of each SOP as an attachment to Copy 1 of Part A of the proposal while all other copies of Part A of the proposal have uncontrolled copies of the same SOPs?

Answer to Question # 10

The CFIA requires a single controlled copy in order to carry out the technical evaluation. The copies submitted with the remaining 4 submissions could be normal photocopies of those controlled copies.

8. According to PWGSC, six suppliers submitted proposals by March 12, 2007.

9. During the evaluation phase, on March 22, 2007, PWGSC sent a letter to Maxxam, requesting clarification regarding two statements that appeared in the SOPs that it had submitted. The letter stated the following:

...

Each item below contains in part a set of words contained in your company's bid. The two sets of words appear to be contradictory:

1) Each test Standard Operating Procedure (SOP) offered in your company's bid apparently has a watermark of "Controlled Document" and a covering page with the following at the top of the page: "Controlled Document Issued by QA [Quality Assurance] on _____" (different dates are inserted).

2) However, each test covering page also contains the following wording: "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION. ANY PRINTED COPY OF THIS DOCUMENT IS CONSIDERED AN UNCONTROLLED COPY, UNLESS STAMPED "CONTROLLED COPY" AND INITIALED AND DATED BY A QA REPRESENTATIVE."

Please provide me with your written explanation concerning the apparent contradiction between these two sets of words in your company's bid

10. On March 26, 2007, Maxxam responded as follows:

... Regarding the wording on the test covering page "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION. ANY PRINTED COPY OF THIS DOCUMENT IS CONSIDERED AN UNCONTROLLED COPY, UNLESS STAMPED "CONTROLLED COPY" AND IN[I]TIALLED AND DATED BY A QA REPRESENTATIVE.", the following applies:

As Corporate QA Manager of Maxxam Analytics, I confirm that all the Standard Operating Procedures submitted to Public Works and Government Services Canada were controlled and issued by our QA Specialist according to the dates indicated in the header on the cover of each document.

I confirm that this header "Controlled Document issued by QA on _____" is the equivalent of initialing and dating in our quality system. An Excel spreadsheet is available upon request that indicates the distribution of these password, protected documents and the QA staff member who issued them.

...

11. On April 30, 2007, PWGSC issued five standing offers. By letter dated April 30, 2007, PWGSC advised Maxxam that its bid had been found non-responsive regarding the submission of controlled copies of SOPs and, in accordance with the terms of Annex “B” of the RFSO, had been set aside from further consideration. On May 2, 2007, Maxxam requested a debriefing, which PWGSC provided by letter dated May 7, 2007, which read as follows:

...

1) ... Your company’s bid did not provide controlled copies of SOPs. My letter to your company dated April 30, 2007 advised that your company’s bid was considered non-compliant and therefore could not be accepted.

2) Your company’s response of March 26, 2007 did not point to any evidence in the bid to support there being a “controlled copy” for each test SOP. The wording in the response was considered to be “bid repair”.

...

12. On May 11, 2007, Maxxam filed its complaint with the Tribunal.

TRIBUNAL’S ANALYSIS

13. 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 case, are the *Agreement on Internal Trade*,⁴ the *North American Free Trade Agreement*⁵ and the *Agreement on Government Procurement*.⁶

14. Subsection 506(6) of the *AIT* provides 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.

15. Article 1015(4) of *NAFTA* provides as follows:

...

(a) to be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation ...

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

4. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <http://www.ait-aci.ca/index_en/ait.htm> [AIT].

5. *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].

6. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm> [AGP].

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

(a) To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation

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

17. Maxxam claimed that PWGSC had enough information in its possession to determine that Maxxam submitted controlled copies of its SOPs. It also submitted that a reasonable and fair-minded person looking at the SOPs would have concluded that they were properly identified and watermarked as controlled copies. It submitted that, based on arbitrary and undisclosed criteria, the CFIA technical authority decided that its documents should not be deemed “controlled”. Maxxam noted that, in the GIR, PWGSC provided evidence⁷ that PWGSC’s own officers explored, with the CFIA, the possibility of Maxxam’s proposal having included controlled copies, but that the CFIA representative disagreed with any such suggestion.

18. Maxxam submitted that the RFSO contained no specific provision explaining what constituted a controlled copy of an SOP. Maxxam noted that, in the GIR, PWGSC provided references to five examples of what it had deemed to be “acceptable” controlled SOPs. Maxxam noted that none of these examples had all the elements of a date, initials or a stamp marking it as a “controlled document”, which PWGSC stated Maxxam needed to provide.⁸ This, according to Maxxam, demonstrates that PWGSC very clearly held it to a different and arbitrary standard.

19. Maxxam submitted that its electronic documents reflected the objectives to be attained by having a controlled document, but that the CFIA considered it merely to be a “tracking tool”. Maxxam argued that its electronic documents contained the following:

- an electronic QA signature on the first and second pages, stating the official date of issue and the most current version of the SOP
- tables which provide information about “Document Control”; “Reasons for Change” with the dates of changes, particulars of the changes or revisions; “Approval” status which shows the individual who approved the changes, and the date of same; and “Document History”
- on the face of the SOP itself, a watermark in which “controlled document” appears diagonally across each page of the SOP.

20. Maxxam submitted that the CFIA representative found the watermark insufficient and appeared to prefer the use of a stamp physically affixed to the controlled version hard copy. Maxxam also noted that, based on the CFIA’s comments,⁹ the CFIA favourably considered the other laboratories’ use of different coloured ink or paper to differentiate between controlled and uncontrolled copies. Maxxam submitted that there was nothing in the RFSO regarding the manner of identifying a controlled copy, i.e. watermark vs. physical stamp, nor was there anything regarding different ink or paper colours. It argued that each PDF¹⁰ file version of its SOPs was a controlled copy and that it provided five controlled copies, all printed from the

7. GIR, Exhibits 5, 9.

8. Confidential Exhibit 16 of the GIR provided a copy of an e-mail in which the CFIA representative explained to the PWGSC officer how the controlled copy of other companies’ SOPs differed from the copies these bidders had each submitted as part of their proposals. There were no actual copies of the other bidders’ SOPs included with the GIR, only the written explanation from the CFIA.

9. GIR, confidential exhibit 16.

10. Adobe Systems’ Portable Document Format, e.g. filename.pdf.

original PDF file with an associated distribution list, not just one controlled copy and five photocopies. It submitted that the required controlled copy was presented, in its proposal, in a separate binder labelled "Original". It also submitted that bidders should have been able to expect that PWGSC would understand the format and properties of documents found in the PDF format stipulated for responding bidders, including the "Properties" pages and the documents proper.

21. Maxxam submitted that it had also included its *Quality Manual* as part of its proposal. It claimed that the manual included information pertinent to its internal processes, SOPs and QA process, including descriptions of the electronic manner in which its process is administered. Maxxam argued that, if PWGSC had reviewed its *Quality Manual* as part of its evaluation, it would have found that Maxxam's response of March 26, 2007, was consistent with information already found in its proposal and should not have been considered "bid repair".

22. Finally, Maxxam submitted that, in accordance with Annex "B" of the RFSO, laboratories were required to provide proof of accreditation by the SCC first and then further demonstrate compliance with the analytical tests accredited by the SCC by providing controlled copies of the SOPs. Maxxam submitted that, as a starting point, the authoritative accrediting body's certification provides confirmation that the laboratory's process, including document control, conforms to industry standards. It noted that the CFIA did not even look at Maxxam's SCC certification of its quality system.¹¹ Maxxam submitted that its system had been reviewed and accepted by the SCC. It claimed that ignoring this very key element was a serious breach of the evaluation methodology that significantly prejudiced Maxxam and, in turn, the procurement process.

23. Maxxam alleged that, due to the difficulties of applying the terms of the RFSO to electronic documents, i.e. that the RFSO contains a latent ambiguity as far as the requirement for controlled copies is concerned, it ought therefore to be construed liberally in favour of those parties submitting electronic copies in fulfilment of the requirement.

24. For these reasons, Maxxam requested that the issued standing offers be terminated and that all the bids, including its own, be re-evaluated. In the alternative, it requested that it be awarded its lost profit or lost opportunity to profit as well as bid preparation costs. It also requested that the Tribunal award it its complaint costs and that PWGSC communicate publicly to all bidders and the CFIA that Maxxam did satisfy all technical requirements of its bid and would be included in the standing offer.

25. PWGSC, on the other hand, submitted that the RFSO was structured so that, regarding SOPs, bidders were not required to meet a specific format, but each was left to establish its own protocol for the creation and display of controlled copy status regarding each of its documents. It claimed that the onus was on each bidder to submit documents that were reasonably self-evident as controlled copies or to provide PWGSC with direction as to the protocol used where it was not self-evident. PWGSC submitted that it acted reasonably in determining that the SOPs forming part of Maxxam's proposal did not meet the protocol for controlled copies, as set out by Maxxam itself in those very SOP documents.

26. PWGSC submitted that each of Maxxam's hard copy SOP documents contained a statement that read as follows: "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION. ANY PRINTED COPY OF THIS DOCUMENT IS CONSIDERED AN UNCONTROLLED COPY, UNLESS STAMPED 'CONTROLLED COPY' AND INITIALLED AND DATED BY A QA REPRESENTATIVE". It

11. GIR, confidential exhibit 10.

acknowledged that the SOPs all had the phrase “Controlled Document Issued by QA on 2007-02-08”¹² on them and that the pages containing the details of Maxxam’s testing methodology each have a diagonal phrase “Controlled Document” on them. It submitted that these statements form part of the photocopy and are neither handwritten, typed, stamped or otherwise distinctly endorsed on the photocopy. Given this, PWGSC submitted that the evaluators judged that the statement “Controlled Document Issued by QA on 2007-02-08” could not reasonably be considered “initialling”, since the QA representative was not identified and the statement formed part of the photocopy, as opposed to an independent endorsement. It also submitted that the diagonal marking “Controlled Document” was part of the photocopy and not “stamped”, as required by Maxxam’s own protocol.

27. PWGSC submitted that its request for Maxxam to explain the apparent contradictions discussed in the above paragraph was not satisfactorily resolved by Maxxam’s letter of March 26, 2007. It submitted that the response merely provided PWGSC with information about Maxxam’s QA system including its position that the header “Controlled Document Issued by QA on _____” was the equivalent of “initialling and dating”. PWGSC submitted that, if Maxxam had been able to point to some statement or direction found in its bid that resolved the contradiction, it would have been considered. It submitted that the evaluators properly concluded that Maxxam’s statements were not a part of the initial bid and would constitute “bid repair” if accepted.

28. PWGSC took note of Maxxam’s alternative argument that it should have understood that Maxxam was submitting the controlled copies in electronic format, as part of the electronic copy of its bid, and that embedded in the electronic text of each SOP, i.e. in the “properties” feature, was information sufficient for PWGSC to conclude that the documents could be considered controlled copies. In response, PWGSC submitted that nothing in Maxxam’s bid materials advised that controlled copies were to be found in the electronic format and that any subsequent comment to that effect, either in Maxxam’s letter of March 26, 2007, or as part of this complaint, would be considered “bid repair” and inadmissible. PWGSC submitted that, in circumstances where the controlled copy status is not evident, the onus was on the bidder to provide adequate indications to PWGSC of that status and the supporting protocol. PWGSC argued that the burden was not on it to divine such status on its own and attempt to re-construct a protocol from a properties page of a PDF file.

29. With respect to documents in electronic form, PWGSC submitted that it has no objection in principle to the use by a supplier of a system incorporating electronic signatures to designate documents as controlled copies. PWGSC added that, in such a case, the onus is on the bidder to clearly provide, in its bid response, some reasonable indication of the use and nature of its electronic signature system for this purpose. However, PWGSC stated that, in this case, Maxxam provided no such direction and that, although Maxxam made reference to its *Quality Manual* in its bid documentation, the manual is a high-level corporate statement which provides no details on how the corporate QA goals are to be functionally fulfilled on a day-to-day basis, nor does it refer to an electronic system for the issuance of controlled copies of SOPs. PWGSC also argued that at no point in its bid documentation did Maxxam indicate that it was submitting the required controlled copies in electronic format. In fact, according to PWGSC, Maxxam marked one of the five print copies of its bid, including print copies of the SOPs, as “Original”, and the disc containing the electronic version of the bid materials was *not* so marked, nor did it carry any indication of any priority or other particular status.

12. As part of the complaint, Maxxam submitted a single representative example of the multiple SOPs that formed part of its proposal. PWGSC agreed, in the GIR, that the SOP could be considered as such. The only difference, regarding the issue at hand, is that the date of issuance changed depending on the SOP. The representative SOP was issued on “2007-02-28” but, with respect to the other SOPs submitted as part of Maxxam’s proposal, different dates appeared in the statement “Controlled Document Issued by QA on _____”. Otherwise, all SOPs contained identical wording regarding the controlled status.

30. Based on the above, PWGSC submitted that Maxxam's allegations were without merit and should be dismissed. It did not request its costs for responding to the complaint.

31. The Tribunal has stated, in previous determinations, that it will not 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 proposal, 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.¹³

32. As stated above, Maxxam submitted that, in accordance with Annex "B" of the RFSO, laboratories were required to provide proof of accreditation by the SCC first and then further demonstrate compliance with the analytical tests accredited by the SCC by providing controlled copies of the SOPs, in other words, follow a two-step procedure. The Tribunal disagrees with this argument and finds that section 3 of Annex "B" of the RFSO required that, in order for a bidder to be awarded a standing offer, it had to demonstrate to PWGSC that its analytical tests or methods were accredited by the SCC in the relevant speciality area for agriculture and food products by summarizing the accreditation, including the identification of the particular SOP by title, and by providing a controlled copy of the SOP. In the Tribunal's view, whether this could be characterized as a one- or two-step procedure is irrelevant; what is critical is that the procedure included various mandatory elements, and the failure to provide any one of them would be fatal to the satisfaction of the overall requirement.

33. Also as stated above, Maxxam alleged that, due to the difficulties of applying the terms of the RFSO to electronic documents, the RFSO contained a latent ambiguity as far as the requirement for controlled copies is concerned and ought therefore to be construed liberally in favour of those parties submitting electronic copies in fulfilment of the requirement. The Tribunal disagrees with the argument. The RFSO clearly and expressly left it to the bidding parties to define and set their own standards for controlled copies.

34. The Tribunal therefore considered the following question, stated by the parties in two different ways:

- (1) Did Maxxam meet the terms of the RFSO with respect to the submission of controlled copies of its SOPs? (PWGSC's version); and
- (2) Did PWGSC act inappropriately in refusing to accept the SOPs as controlled documents, or did it do so on the basis of undisclosed criteria? (Maxxam's version).

35. In the first place, it is the Tribunal's view that the *Quality Manual* provides, among other things, the general protocols for document management and control within Maxxam. The Tribunal finds that it does not however provide a clear-cut answer with regard to the status of any one particular document. It is presumably for that reason that a document that may potentially be issued under controlled conditions includes the following statement: "ANY PRINTED COPY OF THIS DOCUMENT IS CONSIDERED AN UNCONTROLLED COPY, UNLESS STAMPED 'CONTROLLED COPY' AND INITIALLED AND DATED BY A QA REPRESENTATIVE". The nature of that statement is significant. The Tribunal considers that it does not merely state the minimum conditions for the document to be considered controlled; it explicitly states that a document that does not satisfy those conditions is *not* controlled.

13. *Re Complaint Filed by K-W Leather Products Ltd.* (3 September 2002), PR-2002-012 (CITT); *Re Complaint Filed by Polaris Inflatable Boats (Canada) Ltd.* (23 June 2003), PR-2002-060 (CITT); *Re Complaint Filed by Excel Human Resources Inc. (operating as excellTR)* (25 August 2006), PR-2005-058 (CITT); *Re Complaint Filed by The Impact Group* (14 June 2006), PR-2005-050 (CITT).

36. In the Tribunal's view, the documents in question satisfy the requirement to be stamped "CONTROLLED COPY" even though the wording differs, in that the cover sheet has a header that includes the words "Controlled Document" [emphasis added] and each page of the SOP bears an electronic watermark that reads "Controlled Document". In addition, the date of issuance appears in the header of the cover sheet. However, the document is not initialled by a QA representative; the only designation is the generic initialism "QA". Therefore, only two of the three conditions required by Maxxam itself for the document to be considered controlled have been satisfied. The Tribunal is of the view that PWGSC had no discretion but to conclude that, on the basis of Maxxam's own standards, each allegedly controlled SOP must, in Maxxam's own words, be "considered an uncontrolled copy".

37. The Tribunal acknowledges that these terms apply specifically to printed copies of the documents in question. However, it does not see persuasive evidence on the record that the electronic versions of the same documents offer an unequivocal assurance of control either. Among other things, the offer of a spreadsheet "on request" to allow evaluators to trace the approval of a document to a specific QA representative was late and, if submitted, would have constituted bid repair, an unacceptable modification to Maxxam's proposal. While the Tribunal would have preferred that PWGSC, in its March 22, 2007, letter, expressly request Maxxam to confine itself to information contained in its proposal, the Tribunal does note that the RFSO advised bidders that proposals would be evaluated based solely on the information contained therein:

ANNEX "A"

PREPARATION OF OFFERS

...

A - TECHNICAL OFFER

...

The offer will be evaluated solely on its content. Except as otherwise specifically provided in this solicitation, Canada will evaluate the Bidder's offer solely based on the documentation provided as part of the offer.

...

ANNEX "B"

MANDATORY REQUIREMENTS AND SELECTION METHOD

MANDATORY REQUIREMENTS

At bid closing time, the Bidder must comply with the following Mandatory Requirements and provide the necessary documentation to support compliance.

...

38. The Tribunal believes that PWGSC properly viewed all new information provided in Maxxam's March 26, 2007, response as an attempt to modify Maxxam's original proposal and properly chose not to take it into consideration.

39. The Tribunal believes it is worth emphasizing that the standards against which the definition of "controlled copies" of SOPs were measured were internal to Maxxam and do not appear to be imposed by any other body or organization. In particular, contrary to Maxxam's allegation, they were not imposed by the evaluators of Maxxam's bid. Rather, they came from Maxxam's bid documents themselves in the form of the sample text quoted in paragraph 26 above. It was incumbent upon Maxxam, as with all other bidders, to ensure that its own standards were not only in step with the current reality of document management, but that the bid left no doubt about those internal standards being met as well.

40. The Tribunal concludes that PWGSC was correct to conclude that Maxxam did not submit documents that were, beyond question, “controlled copies” and that, therefore, Maxxam failed to satisfy a mandatory requirement of the RFSO. Finally, the Tribunal is satisfied that PWGSC did not decide to reject Maxxam’s bid on the basis of undisclosed criteria, but rather did so on the basis of Maxxam’s failure to adhere to its own requirements for controlled documents.

Costs

41. The Tribunal will not award costs in this matter, as none were requested by PWGSC.

DETERMINATION OF THE TRIBUNAL

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

James A. Ogilvy

James A. Ogilvy
Presiding Member