



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File No. PR-2008-001

Antian Professional Services Inc.

v.

Department of Public Works and
Government Services

*Determination and reasons issued
Wednesday, July 2, 2008*

TABLE OF CONTENTS

DETERMINATION OF THE TRIBUNAL.....i

STATEMENT OF REASONS 1

 COMPLAINT 1

 PROCUREMENT PROCESS..... 1

 TRIBUNAL’S ANALYSIS..... 2

 Costs 8

DETERMINATION OF THE TRIBUNAL 9

IN THE MATTER OF a complaint filed by Antian Professional Services 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

ANTIAN PROFESSIONAL SERVICES 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.

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 Antian Professional Services Inc. The Canadian International Trade Tribunal's preliminary indication of the level of complexity for this complaint case is Level 1, and its preliminary indication of the amount of the cost award is \$500. 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.

André F. Scott

André F. Scott

Presiding Member

Susanne Grimes

Susanne Grimes

Acting Secretary

Tribunal Member:	André F. Scott, Presiding Member
Director:	Randolph W. Heggart
Investigation Manager:	Michael W. Morden
Investigator:	Josée B. Leblanc
Counsel for the Tribunal:	Georges Bujold
Complainant:	Antian Professional Services Inc.
Intervener:	Colterman Marketing Group Canada
Government Institution:	Department of Public Works and Government Services
Counsel for the Government Institution:	David M. Attwater Susan D. Clarke Ian McLeod

Please address all communications 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 April 2, 2008, Antian Professional Services Inc. (Antian) 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. EP357-070051/C) by the Department of Public Works and Government Services (PWGSC) for the Government of Canada Exhibitions Program (GCEP) for the provision of exhibit management and related personnel services.

2. Antian alleged that the evaluation team incorrectly and negligently evaluated its proposal. Specifically, it argued that the evaluation committee bypassed important information contained in its proposal and used undisclosed evaluation criteria that could not reasonably have been inferred by the bidders. It also submitted that PWGSC, in not requiring certain resources to be bilingual, favoured the incumbent, which Antian claimed had a unilingual English senior project manager. As a remedy, it requested that its entire bid be re-evaluated by a new evaluation committee that was at arms-length from the GCEP. In that event, if it was found that Antian submitted the winning proposal, Antian requested that it be issued the Regional Individual Standing Offer (RISO). In the alternative, it requested that the standing offer be retendered and that if, during the interim, the government was required to use the services of the current winning bidder, it be compensated for the profit that it lost as a result of PWGSC's improper evaluation of its proposal.

3. On April 10, 2008, the Tribunal informed the parties that portions of the complaint had been accepted for inquiry, as they 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 The Tribunal limited its inquiry to the allegation that PWGSC had ignored information contained in Antian's proposal, specifically, relating to rated criteria R1, R4 and R5. The Tribunal determined that Antian's allegation regarding the language requirements of the senior project manager had not been filed within the time limit specified in section 6 of the *Regulations* and that the complaint did not disclose a reasonable indication that PWGSC had used undisclosed criteria to evaluate Antian's proposal. On April 22, 2008, Colterman Marketing Group Canada (Colterman) requested leave to intervene in the proceedings. On April 23, 2008, the Tribunal granted Colterman's request. On May 5, 2006, PWGSC submitted the Government Institution Report (GIR). On May 14 and 15, 2008, Antian and Colterman, respectively, submitted their comments on the GIR. On May 22, 2008, Antian submitted its reply to Colterman's 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 January 28, 2008, with a due date for the receipt of bids of February 19, 2008. It was issued to obtain exhibit management and related services in support of the GCEP. The RFSO anticipated the

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

issuance of a single RISO, to be in force from April 1, 2008, to March 31, 2009, with an option to extend it for two additional one-year periods. The RFSO specified that, to be considered responsive, proposals had to meet all the mandatory requirements of the bid solicitation and meet a specified minimum score for the rated criteria (R1 to R6). The RISO was to be issued to the bidder whose proposal had the highest technical score.

6. According to PWGSC, only Colterman and Antian submitted proposals in response to the RFSO. Both met the mandatory requirements and scored higher than the minimum score necessary for the rated criteria. PWGSC submitted that three technical evaluators independently reviewed and evaluated the proposals between February 21 and 25, 2008, and that, on February 25, 2008, the evaluators met as a group to reconcile their scores. PWGSC submitted that the final evaluation report was signed by the evaluators and contracting authority on February 27, 2008.⁴ On March 11, 2008, PWGSC issued the RISO to Colterman. On the same day, PWGSC advised Antian that it would not be issued the standing offer.

7. On March 20, 2008, Antian attended a debriefing given by PWGSC⁵ and, on April 2, 2008, it filed its complaint with the Tribunal.

TRIBUNAL'S ANALYSIS

8. 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, is the *Agreement on Internal Trade*.⁶

9. The notice of proposed procurement, published on January 28, 2008, categorizes the services in question under Goods and Services Identification Number (GSIN) T002AQ, a sub-category of the general "T" grouping that includes communications, advertising and arts/graphics services, among others. In accordance with Annex 1001.1b-2 of the *North American Free Trade Agreement*,⁷ services classified within the "T" grouping are excluded from coverage under *NAFTA*. Annex 4 of the *Agreement on Government Procurement*⁸ provides a list of the covered Canadian services. The services included in GSIN T002 are not listed in Annex 4 and are therefore not covered by the *AGP*. Annex 502.1B of the *AIT* provides a listing of the services that are not covered by that agreement. Exhibit management/coordination services and/or exhibit personnel services are not listed and are therefore covered by the *AIT*.

10. 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.

-
4. PWGSC included copies of Antian's detailed consensus scoring report and Colterman's scoring sheet with its GIR.
 5. According to the GIR, the debriefing took place on March 23, 2008.
 6. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <http://www.ait-aci.ca/index_en/ait.htm> [AIT].
 7. *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].
 8. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm> [AGP].

11. Antian alleged that, for rated criteria R1, R4 and R5, PWGSC did not evaluate its proposal in its entirety and did not take into account information that, it claimed, was in its proposal and available to the evaluators.

12. PWGSC submitted that the evaluation of proposals involves professional judgment and that it would be improper for the Tribunal to second guess the evaluation of a single bidder's proposal by a team of subject matter experts. It submitted that, even if the Tribunal might have awarded more or fewer points than an evaluation team, it cannot reasonably be interpreted to mean that the evaluation team ignored relevant information in the proposal or otherwise breached the trade agreements. It further submitted that the Tribunal's position has consistently been that it would not substitute its judgment for that of an evaluation team and that it would only interfere with an evaluation that is unreasonable.

13. The RFSO contained the following provision relating to the evaluation of the proposals:

1. Evaluation Procedures

Offers received will be assessed in accordance with the entire requirement of this [RFSO] including the technical and financial evaluation criteria specified below.

...

14. Regarding rated criterion R1, the RFSO provided the following:

R. 1 Understanding (Value 15 points, minimum score 10.5)

Offers should demonstrate an understanding of the implications of the Government of Canada (GC) Communications Policy as it applies to Government of Canada participation in expositions and, specifically the role of the GCEP as it relates to the Communication Policy.

As well, offerors should demonstrate an understanding and the implications of other GC policies that may apply to this requirement.

15. Also regarding rated criterion R1, question and answer 3 from amendment No. 001, issued on February 7, 2008, read as follows:

Q3. In R1 you request Understanding of the implications of the Government of Canada Communications Policy. How many pages are acceptable, or can we refer to TBS Communications guidelines to further enforce our understanding? An explanation can be quite extensive as you can imagine.

A3. We have not specified a number of pages. It has been left up to the offeror. We suggest, however, 1-3 pages.

16. According to Antian, it was informed during its debriefing that it had "cut and pasted information", that it had failed to show how important it was for the Canada Pavilion⁹ to bring government departments together, and that there had been no mention of the Federal Identity Program (FIP).¹⁰

17. Antian submitted that the RFSO, in many instances, specified the font and point size to be used in the proposal and also included limits to the number of pages that bidders could submit in response to most evaluation criteria. It submitted that, therefore, it was implied and assumed, based on PWGSC's response in

9. According to the information filed by Antian, the Canada Pavilion is a component of the GCEP which brings together 5 to 25 departments and agencies of the Government of Canada at major public events and exhibitions across the country in order to inform the public of the various services provided by the Government of Canada.

10. The FIP is a policy requirement of the Government of Canada's Communications Policy pertaining to fairs and exhibitions. See GIR at para. 40.

amendment No. 001, that a minimum of 1 page and a maximum of 3 pages was acceptable in response to rated criterion R1. Antian submitted that it could not synthesize highlights from 17 different subject areas in the Treasury Board of Canada policy, as well as other information, in this limited amount of space. It believed that its response contained as much information as was humanly possible to describe its understanding.

18. Antian submitted that, specifically regarding the FIP, the program was clearly mentioned in the applicable area of its proposal. Antian noted that the wording of rated criterion R1 requires that “. . . offerors . . . demonstrate an understanding and the implications of other GC policies that *may apply* to this requirement” [emphasis added]. Therefore, the words “may apply” were reiterated in its proposal in direct response to what was being requested. Antian also noted PWGSC’s argument that its understanding of other policies was not adequately supported, notably the *Official Languages Act*.¹¹ It noted that, throughout its three pages directly relating to rated criterion R1, as well as other areas of its proposal that were cross-referred in the section for rated criterion R1, it had included multiple references that demonstrated its understanding of this piece of legislation.

19. Antian submitted that its three pages were not read in detail and that important items, which PWGSC believed were missing, were contained in the document and had obviously been missed in the evaluation.

20. PWGSC expressly denied Antian’s allegation that responses had to be limited to three pages. PWGSC submitted that answer 3 of amendment No. 001 suggested a number of pages, but that the ultimate decision of how long a response was to be was left to the bidder. PWGSC also submitted that the evaluators’ comments indicated that they were aware that Antian mentioned the FIP. However, Antian merely mentioned that the FIP *might* apply, without any elaboration as to its implication for the GCEP and its participation in exhibitions, and overlooked the significant obligation that exhibits and display materials *must* conform to certain requirements, including the FIP and the *Official Languages Act*. PWGSC referenced a previous complaint case,¹² in which it submitted that the Tribunal ruled that demonstrating a certain capacity required more than a mere mention that the capacity was possessed. PWGSC submitted that Antian’s score for rated criterion R1 properly reflected the evaluators’ review of the entire portion of Antian’s proposal relating to rated criterion R1.

21. Regarding rated criterion R4, the RFSO contained the following:

R4 Exhibit Site Managers (Value 20 points - minimum score 14) x 3

The Offeror must identify three (3) fully bilingual Exhibit Site Managers who will be responsible for the supervision of exhibit sites. The Offeror must also demonstrate that each proposed individual has successfully completed at least two (2) projects contracted with a minimum of two (2) different government departments or commercial clients during the past five (5) years in providing exhibit site management services similar to the work described in Annex “A” Requirement.

The above represents a minimum requirement. Proposed personnel will be rated on their depth and breadth of experience in excess to that indicated as well as other related education and training.

Note: GCEP also reserves the right to conduct an interview with the proposed Exhibit Site Managers to confirm their verbal communication skills in both English and French.

This information must be submitted in a maximum of one (1) page per project. (10 point Arial)

11. R.S.C. 1985, (4th Supp.) c. 31.

12. *Re Complaint Filed by Noël Import/Export* (6 February 2003), PR-2002-036 (CITT).

22. According to Antian, it was informed during its debriefing that PWGSC had deducted points from its score because the experience claimed for the site managers did not indicate “report writing”.

23. Antian referenced section 3.1.7 of Annex A to the RFSO, which stated the following:

3.1.7 Reporting

The Offeror may be required to prepare and submit reports following the specifications and formats provided by the GCEP, in accordance with the specifications herein:

The following reports are those that will be required as needed, however this list is not an exhaustive one.

- Event Wrap-up Report that includes visitor counts and other pertinent information according to format provided by the GCEP; to be provided within five (5) working days after the event.
- Promotional Activities report, includes ads on paper, CD or DVD, according to the GCEP instructions; to be provided within days (10) working days after the event.
- Media Relations report, including media plan and results, coverage obtained, press clippings, interviews on CD or DVD, pictures and recommendations, according to the format provided by the GCEP; to be provided within ten (10) working days after the event.
- Daily bulletin for exhibitors at Canada Pavilion events, according to the specifications under 3.2.1.
- Daily feedback for GCEP at Canada Pavilion events, according to the specifications under 3.2.1.

24. Antian submitted that the applicable pages of its proposal clearly indicate that, depending on the resource, weekly and final reports were compiled and submitted to the clients with recommendations, statistics, etc. It noted that samples of reports had been attached to the proposal. Antian also submitted that the second project referenced by two of its proposed site managers included references to the specific reports on which they had worked as part of that project, which included the following: a final report, a promotional activities report, a media relations report and an event log to record any significant occurrences.

25. Antian responded to PWGSC’s arguments about the use of the term “reporting” to state that PWGSC’s arguments regarding the lack of reporting back to the client department appeared to be in reference to another section of the RFSO¹³ relating to the roles and responsibilities of on-site staff, which, it noted, it also addressed in its proposal. This section read as follows:

A1.1 Site Managers

The following is a description of the Site Manager roles and responsibilities generally performed at Canada Pavilion events:

Approvals and Updates

- obtain approval from the GCEP Project Manager in all situations requiring an additional expense or amendment to what was prescribed (i.e. all expenses above what was previously approved in the cost proposal, all amendments to staff work schedules, etc.). The On-site Order Form must be completed for every expense following written approval for such.

26. Antian submitted that PWGSC’s arguments about the lack of information about reporting, as opposed to report writing, is inconsistent with PWGSC’s comments made during the debriefing. It also submitted that, when comparing the contents of its proposal and PWGSC’s new arguments regarding those contents, information was ignored and that its proposal was improperly evaluated and unjustly penalized based on misinterpretations of what was stated in the RFSO.

13. RFSO, Annex A, Appendix a.

27. PWGSC submitted that Antian's proposal included two reference projects for each proposed site manager in order to demonstrate their experience. PWGSC submitted that Antian included the same project for two of the three proposed site managers and that the event required little management expertise, was much narrower in scope and involved less complex work than the work described in the RFSO. PWGSC submitted that the evaluators indicated that there was "no reporting", which, it claimed, reflected the fact that there was no reporting back to that project's client department to obtain any necessary approvals or to keep the department informed of any issues or situations. PWGSC submitted that Antian's score for rated criterion R4 properly reflected the evaluators' review of the entire portion of Antian's proposal relating to rated criterion R4.

28. Regarding rated criterion R5, the RFSO contained the following:

R5 Work plan (Value 60 points, minimum score 42)

The following project example must be used to develop a detailed work plan:

Event: Manitoba Home Show

Date of event: August 2 to 8

Business hours: from 9 am to 9 pm

Number of exhibitors: 7 government departments in the Canada Pavilion

PWGSC personnel on site for setup and opening day.

Supplier staff on site from the day before opening (August 1) to participate in the greeting of departments and briefing session, to the last event day (August 8).

Exhibit Management Services:

- Provide Media Relations to promote the Canada Pavilion at the Manitoba Home Show (as per 3.1.2).
- Provide Event Wrap-up report, Media Relations report, daily bulletins and daily feedback. (as per 3.1.7)

Exhibit Personnel Services:

- Site Manager: 1
- Information officers: 2
- Greeters: 2

The Offeror should note that he will be asked to provide the same services for another Canada Pavilion occurring at the same time as the Manitoba Home Show, and must include the steps to achieve this in his work plan.

The other event is the Montreal Garden Show.

Same dates and hours, and all same specifications and requirements as for the Manitoba Home Show.

The Offeror must submit a work plan by listing all tasks in a detailed manner, to deliver the Exhibit Management Services and the Exhibit Personnel Services for the two events mentioned above. The Work plan must specify the category of personnel and level of effort required to be used for each task.

29. According to Antian, it was informed during its debriefing that PWGSC had found its work plan difficult to understand, but that it considered that Antian had submitted a work plan for a single event and not for two simultaneous events, as required by the RFSO. Antian also submitted that one of the evaluation committee members informed it that it had failed to demonstrate budget approvals and that it had not shown a travel authority document. It also claimed to have been informed by one of the evaluation committee members that the committee had only evaluated from page 70 to 81 of its proposal regarding rated criterion R5. It noted that confidential exhibit 7 of the GIR, which contained the evaluators' notes regarding Antian's proposal, confirmed this fact, by stating that "... pages 71-81 [were] used for rating ..."

30. Antian submitted that pages 65 to 89 of its proposal related to rated criterion R5 and that paragraphs 1 and 2 on page 65 were quite clear that the work plan was for both shows. Antian claimed that the budget approvals and travel documents were clearly found on pages 71, 73, 77 and 89 of its proposal. Antian claimed that the evaluation committee neither read nor evaluated the entire portion of its proposal relating to rated criterion R5 and, therefore, could not have evaluated this section properly.

31. PWGSC stated that rated criterion R5 is clear that the bidder's work plan for the two concurrent events was to be evaluated. It submitted that, while Antian met the basic requirement of providing a work plan, it did not fully meet the requirement of rated criterion R5 because it had advised that its work plan was specific to only one event and that the work plan for conducting two concurrent exhibitions was to be achieved by merely reproducing the single-event work plan. PWGSC submitted that reproducing the work plan for a single exhibition ignores the unique challenges of covering concurrent events. With respect to the fact that the evaluators' notes contained a reference to specific pages of Antian's proposal, PWGSC submitted that this does not imply that the evaluators failed to read, ignored or, otherwise, had no regard for the balance of Antian's proposal in response to rated criterion R5. PWGSC also submitted that the evaluators took into account the sections of Antian's proposal relating to budgeting and travel arrangements, but had concerns with the process and timing listed in the proposal. PWGSC again submitted that the fact that Antian was not awarded full marks does not mean that the evaluators ignored or overlooked relevant information.

32. 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.¹⁴

33. The Tribunal does not find that any of these circumstances exist in this case.

34. The Tribunal finds that PWGSC's explanations in the GIR regarding the number of points awarded to Antian for rated criteria R1, R4 and R5 were reasonable and consistent with the provisions of the RFSO.

35. Regarding rated criterion R1, the Tribunal finds that Antian was incorrect in deciding that its response was limited to three pages. The Tribunal notes that Antian argued that PWGSC, in other parts of the RFSO, clearly provided limits to the amount of space that certain answers were allowed to take, even going so far as to specify minimum font size requirements. The Tribunal notes that this rigidity was not present in PWGSC's answer in amendment No. 001 ("We have not specified a number of pages. It has been left up to the offeror. We suggest, however, 1-3 pages") and, thus, cannot determine that PWGSC's response could be considered anything other than a suggestion.

36. Consistent with a previous determination,¹⁵ the Tribunal is of the opinion that a bidder needs to do more than list an ability in order to demonstrate that it actually possesses that ability. The Tribunal finds that the wording of rated criterion R1 was clear, in that it required bidders to "... *demonstrate an understanding* and the implications ..." [emphasis added] of the noted policies. The Tribunal sees no error in the way in which the evaluators assessed that Antian only addressed this element to a level that was not deserving of full marks. As such, the Tribunal finds no reason to disturb this result.

14. *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).

15. *Re Complaint Filed by Noël Import/Export* (6 February 2003), PR-2002-036 (CITT).

37. Regarding rated criterion R4, the Tribunal finds that PWGSC's explanation of the marks that Antian was awarded was reasonable and consistent with the evaluation scheme described in the RFSO. It is clear to the Tribunal that "reporting", i.e. as defined by both Antian and PWGSC, was required and that the evaluators considered that Antian did not deserve full marks for how it had responded to rated criterion R4 in its proposal.

38. Regarding rated criterion R5, the Tribunal considers that the criterion was clear that bidders had to specifically address the extra challenges associated with running two concurrent events. Rated criterion R5 was precise in requiring the following:

The Offeror should note that he will be asked to provide the same services for another Canada Pavilion occurring at the same time as the Manitoba Home Show, and *must include the steps to achieve this in his work plan.*

[Emphasis added]

39. The Tribunal can therefore understand why the evaluators would have expected bidders to address this specific requirement in their proposals and that marks would be assigned based on the degree to which the bidder succeeded in doing so. The Tribunal accepts PWGSC's argument that Antian's proposal did not adequately address the unique challenges of conducting two concurrent events. As noted above, the Tribunal is not of the opinion that the circumstances in which it might substitute its judgment for that of the evaluators exist in this particular instance.

40. Accordingly, the Tribunal finds that PWGSC's evaluation of Antian's proposal was reasonable, consistent with the RFSO and, therefore, in conformity with the requirements of the *AIT*.

Costs

41. 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.

42. In determining the level of costs to be awarded, the Tribunal considers that it must take into account the conduct of PWGSC and the quality of information provided to Antian during the debriefing. Based on the evidence in the file, it is clear to the Tribunal that the debriefing and the GIR imparted different and incomplete information to Antian about the manner in which its proposal had been evaluated. The Tribunal considers it reasonable to assume that, had the information contained in the GIR been provided to Antian during the debriefing, the complaint may not have been filed.

43. 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 low, in that it involved routine services. The complexity of the complaint was medium, in that it dealt with multiple grounds and involved an evaluation of rated requirements. Finally, the complexity of the complaint proceedings was low, as there was a single intervener, there was no need for a public hearing, and the minimum legislated time frame for the complaint proceedings could be respected. Accordingly, the Tribunal is of the preliminary view that this complaint case has an overall complexity level corresponding to the lowest level of complexity referred to in Appendix A of the *Guideline* (Level 1). As noted above, given that the Tribunal considers that PWGSC's actions are in part responsible for the complaint being filed, it will reduce the amount to be awarded to \$500. The Tribunal reserves jurisdiction to establish the final amount of the award.

DETERMINATION OF THE TRIBUNAL

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

45. 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 Antian. The Tribunal's preliminary indication of the level of complexity for this complaint case is Level 1, and its preliminary indication of the amount of the cost award is \$500. 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.

André F. Scott

André F. Scott
Presiding Member