



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2008-007

Integrated Procurement  
Technologies, Inc.

*Decision made  
Monday, April 14, 2008*

*Decision and reasons issued  
Tuesday, April 22, 2008*

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

**BY**

**INTEGRATED PROCUREMENT TECHNOLOGIES, INC.**

**AGAINST**

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

**DECISION**

Pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal has decided not to conduct an inquiry into the complaint.

Pasquale Michaele Saroli  
Pasquale Michaele Saroli  
Presiding Member

Hélène Nadeau  
Hélène Nadeau  
Secretary

## STATEMENT OF REASONS

1. Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,<sup>2</sup> a potential supplier may file a complaint with the Canadian International Trade Tribunal (the Tribunal) concerning any aspect of the procurement process that relates to a designated contract and request the Tribunal to conduct an inquiry into the complaint. Moreover, subsection 30.13(1) of the *CITT Act* provides that, subject to the *Regulations*, after the Tribunal determines that a complaint complies with subsection 30.11(2) of the *CITT Act*, it shall decide whether to conduct an inquiry into the complaint.

2. Integrated Procurement Technologies, Inc. (IPT) of Goleta, California, alleged that the Department of Public Works and Government Services (PWGSC) improperly deemed its proposal non-compliant on the basis that it submitted prices in U.S. dollars and not Canadian dollars, as was required in the solicitation document. The procurement was for the provision of various spare parts for wheeled light armoured vehicles on behalf of the Department of National Defence.

3. Paragraph 7(1)(c) of the *Regulations* requires that the Tribunal determine whether the information provided by the complainant discloses a reasonable indication that the procurement has not been carried out in accordance with whichever of Chapter Ten of the *North American Free Trade Agreement (NAFTA)*, Chapter Five of the *Agreement on Internal Trade (AIT)* or the *Agreement on Government Procurement (AGP)* applies. In this case, both *NAFTA* and the *AGP* apply.

4. On March 27, 2008, IPT submitted its proposal to PWGSC. On the cover page of IPT's proposal, it is stated as follows:

...

PLEASE DISREGARD OUR PRIOR QUOTATION AND SEE ENCLOSED THE UPDATED QUOTE FOR YOUR CONSIDERATION.

...

5. Prices in IPT's proposal are handwritten at each line item on page 2 of the Request for Proposal (RFP). There is no indication in the handwritten prices of the currency in which they are denominated. The front page of the RFP contains a standard clause indicating that the goods are offered in accordance with the terms and conditions of the RFP, and it is signed by a company representative. There is a separate quotation attached to the proposal that contains the identical dollar amounts as found on page 2 of the RFP. However, there is a note on the second page of this document that reads as follows: "... OUR QUOTATION IS IN US DOLLARS ...". Furthermore, the "Total" line at the bottom of the page indicates as follows: "Total: [USD] \$ ...".

6. On March 31, 2008, PWGSC advised IPT that its proposal had been deemed non-compliant, as its quotation had been expressed in U.S. dollars rather than in the required Canadian dollars. IPT responded to PWGSC and indicated that an error had been made and that its quote "should have said 'Canadian dollars'." It then asked PWGSC whether it would still be able to utilize its bid. On April 1, 2008, PWGSC advised that it could not accept the bid. On April 7, 2008, IPT filed its complaint with the Tribunal.

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

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

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

to be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and have been submitted by a supplier that complies with the conditions for participation.

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

To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be from a supplier which complies with the conditions for participation . . . .

9. As for the RFP itself, Clause 6 of Part 2, “BIDDER INSTRUCTIONS”, reads as follows:

**6. Basis of Payment**

All prices quoted are to be firm unit prices in Canadian funds . . . .

10. Clause 1 of Part 2, “BIDDER INSTRUCTIONS”, of the RFP provides as follows:

**1. Standard Instructions, Clauses and Conditions**

All instructions, clauses and conditions identified in the bid solicitation by number, date and title are set out in the Standard Acquisition Clauses and Conditions Manual issued by Public Works and Government Services Canada (PWGSC) . . . .

Bidders who submit a bid agree to be bound by the instructions, clauses and conditions of the bid solicitation and accept the clauses and conditions of the resulting contract.

**1.1** The 2003 (2007/11/30) Standard Instructions – Goods or Services – Competitive Requirements, are incorporated by reference into and form part of the bid solicitation.

. . .

11. In this regard, the 2003 (2007-11-30) Standard Instructions – Goods or Services – Competitive Requirements<sup>3</sup> provide as follows:

. . .

**04 Submission of Bids**

. . .

2. It is the Bidder’s responsibility to:

. . .

(b) prepare its bid in accordance with the instructions contained in the bid solicitation;

. . .

12. In its complaint to the Tribunal, IPT submitted that, while it is true that it attached a quotation for the requirement with the notation that it was in U.S. dollars, this was not its intention. IPT indicated that it meant to fully comply with the requirements and did so in the official written quotation (i.e. at page 2 of the RFP). IPT also submitted that, if there is a discrepancy between an official handwritten quotation and a reference document, this discrepancy should be clarified before rejecting a proposal.

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3. Online: Public Works and Government Services Canada <<http://sacc.tpsgc.gc.ca/sacc/query.do?lang=en&id=2003&date=current>>.

13. The Tribunal is of the view that the responsibility for ensuring that a proposal is compliant with all essential elements of a solicitation ultimately resides with the bidder. Accordingly, it is incumbent upon the bidder to exercise due diligence in the preparation of its proposal to make sure that it is compliant in all essential respects. The Tribunal is also of the view that, while a procuring entity may in some circumstances seek clarification of a particular aspect of a proposal, it is not under any duty to do so.<sup>4</sup> In this regard, it is important to distinguish between a “clarification”, on the one hand, and a substantive “revision” to a proposal, on the other.<sup>5</sup>

14. Given different currency values and exchange rate fluctuations, the currency in which a price quotation is denominated is not simply an issue of “form”, but rather one of “substance”, insofar as it bears directly upon the actual amount of the bid.

15. Paragraph (b) of Clause 2, “Note to Bidders”, of Part 2, “BIDDER INSTRUCTIONS”, of the RFP states as follows: “Changes to proposals will not be accepted after the solicitation closing date.” Therefore, PWGSC did not act inconsistently with the applicable trade agreements when it refused to accept IPT’s *ex post* substantive modification to its bid proposal.

16. In summary, the information submitted with the complaint does not indicate that PWGSC failed to follow the requirements stated in the RFP. Consequently, the Tribunal is of the view that there is no evidence that the evaluators did not properly apply themselves in evaluating IPT’s proposal. Therefore, the Tribunal finds that the complaint does not disclose a reasonable indication that the procurement has not been carried out in accordance with the applicable trade agreements.<sup>6</sup>

17. In light of the foregoing, the Tribunal will not conduct an inquiry into the complaint and considers the matter closed.

## DECISION

18. Pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal has decided not to conduct an inquiry into the complaint.

Pasquale Michaele Saroli  
Pasquale Michaele Saroli  
Presiding Member

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4. See *Re Complaint Filed by IBM Canada Limited, PricewaterhouseCoopersLLP and the Centre for Trade Policy and Law at Carleton University* (10 April 2003), PR-2002-040 (CITT) at 15.

5. See *Re Complaint Filed by Bell Mobility* (14 July 2004), PR-2004-004 (CITT) at 9.

6. The question as to whether a U.S.-based entity has standing to file a complaint under the *AIT* is currently before the Federal Court of Appeal (see *Attorney General of Canada v. Northrop Grumman Overseas Services Corporation*, File No. A—310—07). Without pre-judging the outcome of that judicial review, the Tribunal is of the view that, even if IPT had standing under the *AIT*, this would not have affected the ultimate disposition of this complaint, as the facts do not disclose a reasonable indication that the procurement has not been conducted in accordance with the *AIT*.