



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File No. PR-2008-017

Bluedrop Performance
Learning Inc.

v.

Department of Public Works and
Government Services

*Determination and reasons issued
Thursday, September 25, 2008*

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IN THE MATTER OF a complaint filed by Bluedrop Performance Learning 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

BLUEDROP PERFORMANCE LEARNING 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 valid.

Pursuant to subsections 30.15(2) and (3) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal recommends that the Department of Public Works and Government Services terminate the contract awarded to 2054629 Ontario Inc. o/a Acron Capability Engineering Inc. and award it to Bluedrop Performance Learning Inc. The Canadian International Trade Tribunal also recommends that Bluedrop Performance Learning Inc. be compensated by an amount equal to the profit that it would have earned from the date of the contract award to 2054629 Ontario Inc. o/a Acron Capability Engineering Inc. to the date of the subsequent award to Bluedrop Performance Learning Inc.

If, for operational reasons, the Department of Public Works and Government Services considers that it is not feasible to terminate the contract already awarded, the Canadian International Trade Tribunal recommends that the Department of Public Works and Government Services compensate Bluedrop Performance Learning Inc. for the profit that it would have earned had it been awarded the contract. The basis for calculating the profit will be the price contained in the proposal submitted by Bluedrop Performance Learning Inc. In this circumstance, the Canadian International Trade Tribunal also recommends that the Department of Public Works and Government Services not exercise any option to extend the contract and allow it to expire on March 31, 2009.

If, upon the expiration of the contract, the Department of Public Works and Government Services determines that there is still a need for the services at issue that results in re-tendering the requirement, the Canadian International Trade Tribunal recommends that the Department of Public Works and Government Services also compensate Bluedrop Performance Learning Inc. for the loss of the experience that Bluedrop Performance Learning Inc. would have gained and the related efficiencies that it would have realized in the course of performing the contracted work by adding an amount of \$58,883.90 to the above recommendation.

The Canadian International Trade Tribunal recommends that Bluedrop Performance Learning Inc. and the Department of Public Works and Government Services negotiate the amount of compensation and, within 30 days of the date of this determination, report back to the Canadian International Trade Tribunal on the outcome.

Should the parties be unable to agree on the amount of compensation, Bluedrop Performance Learning Inc. shall file with the Canadian International Trade Tribunal, within 40 days of the date of this determination, a submission on the issue of compensation. The Department of Public Works and Government Services will then have 7 working days after the receipt of Bluedrop Performance Learning Inc.'s submission to file a response. Bluedrop Performance Learning Inc. will then have 5 working days after the receipt of the Department of Public Works and Government Services' reply submission to file any additional comments.

Pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal awards Bluedrop Performance Learning Inc. its reasonable costs for preparing and proceeding with the complaint, which costs are to be paid by the Department of Public Works and Government Services. 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 \$1,000. 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.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Hélène Nadeau
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STATEMENT OF REASONS

1. On June 3, 2008, Bluedrop Performance Learning Inc. (Bluedrop) 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 Solicitation No. W2037-080013/B, a procurement by the Department of Public Works and Government Services (PWGSC) for Learning Management System—School Administration Services on behalf of the Department of National Defence (DND).

2. Bluedrop alleges that PWGSC, contrary to the express terms of the Request for Proposal (RFP) at issue (Solicitation No. W2037-080013/B) (RFP-2) and the applicable trade agreements, failed to disqualify a bidder that was in a clear conflict of interest position. Specifically, Bluedrop alleges that the winning company, 2054629 Ontario Inc. o/a Acron Capability Engineering Inc. (Acron), employed the recently retired commanding officer of the G7 Branch of DND's Combat Training Centre (CTC) Headquarters (the former commanding officer), which was the group responsible for the preparation of Solicitation No. W2037-080013/A (RFP-1), a prior RFP, and for the technical evaluation of the bids received in response to RFP-1. Bluedrop further alleges that RFP-1 was allowed to expire without a time extension and without a contract having been awarded pursuant thereto, with its technical requirements being essentially carried over into RFP-2. Bluedrop therefore claims that the former commanding officer, by virtue of his involvement with RFP-1, was privy to inside information relating to the technical requirements of the RFP-2, as well as to the specifics of the bids submitted by potential suppliers (including Bluedrop) in response to RFP-1. As a result, it claims that Acron was in a conflict of interest position and enjoyed an unfair advantage in the RFP-2. In this regard, it requested, as a remedy, that the Tribunal recommend that the contract awarded to Acron be terminated and awarded, instead, to Bluedrop. In the alternative, Bluedrop requested that it be compensated by an amount equal to the profit that it would have earned had it been awarded the contract in the first instance. Bluedrop also requested that it be compensated by an amount that reflected the prejudice which it, and the competitive procurement system, suffered. It also requested its costs in preparing and proceeding with the complaint.

3. On June 9, 2008, the Tribunal informed the parties that the complaint had been accepted for inquiry, as it met the requirements of subsection 30.11(2) of the *CITT Act* and the conditions set out in subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.² On July 25, 2008, PWGSC submitted the Government Institution Report (GIR). On August 5, 2008, Bluedrop filed 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. RFP-1 was made available through MERX³ on August 24, 2007, with a due date for the receipt of bids of October 9, 2007. Three bidders, including Bluedrop and Acron, submitted proposals in response to RFP-1. PWGSC submitted that the "... proposals expired on December 10, 2007, before PWGSC could award a contract . . ."⁴ According to Bluedrop, "... PWGSC could have asked bidders to extend the period

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

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

3. Canada's electronic tendering service.

4. GIR at 2. The terms of RFP-1 required that bidders certify their prices for 60 days.

for which their bids were valid, rather than cancelling the RFP altogether – this was not done”⁵ On December 24, 2007, PWGSC advised bidders that RFP-1 was being cancelled, as the bid acceptance period had expired.

6. On January 31, 2008, RFP-2 was made available through MERX. The bidding period closed on February 25, 2008, with the same three bidders submitting proposals. RFP-2 allowed for the issuance of a one-year contract, with an option to extend it for two additional one-year periods.

7. Bluedrop alleged that, “. . . [a]part from the introduction of a Conflict of Interest – Unfair Advantage clause, the Statement of Work in W2037-080013/B was identical to that found in W2037-080013/A and the technical requirements were almost identical with only minor changes being made”⁶ PWGSC, for its part, acknowledged that “. . . RFP No. 2 . . . was a re-tendering of DND’s requirement from RFP No. 1”⁷

8. According to PWGSC, all bids submitted in response to RFP-2 were assessed as valid, and Acron was found to have submitted the lowest-priced proposal. On May 16, 2008, PWGSC awarded the contract to Acron. On May 22, 2008, PWGSC advised Bluedrop that it was not going to be awarded the contract.

TRIBUNAL’S ANALYSIS

9. 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*,⁸ the *North American Free Trade Agreement*⁹ and the *Agreement on Government Procurement*.¹⁰

10. The following facts are not in dispute:

- the former commanding officer was Commanding Officer of the G7 Branch of the CTC Headquarters during the drafting of RFP-1;
- the former commanding officer’s subordinates had a direct role in drafting RFP-1;
- the former commanding officer maintained an overview of the RFP-1 project and provided technical advice for the preparation of RFP-1, as required;
- all members of the RFP-1 technical evaluation team worked within the G7 Branch of the CTC Headquarters under the former commanding officer;

5. Complaint, para. 10.

6. Complaint, para. 14.

7. GIR at 2.

8. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <http://www.ait-aci.ca/index_en/ait.htm> [AIT].

9. *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].

10. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm> [AGP].

- the former commanding officer participated at a bidders' conference relating to RFP-1 (which was held to provide prospective bidders with information on the proposed procurement) as the DND technical authority and would have been the designated technical authority for any contract awarded pursuant to RFP-1;
- some time after bid proposals had been received in respect of RFP-1, the former commanding officer retired from the Canadian Forces and was hired by Acron to serve as its Vice-President, Strategic Initiatives;
- on December 10, 2007, shortly after the former commanding officer's departure from DND, RFP-1 was allowed to expire without a contract having been awarded pursuant thereto; and
- RFP-2, which was issued on January 31, 2008, was essentially a re-tendering of DND's RFP-1 requirement.

11. PWGSC acknowledged, in the GIR, that there was merit to Bluedrop's complaint that Acron should have been excluded from the procurement and stated the following: "... having regard to these particular facts and circumstances, Acron's bid should have been rejected once this information was confirmed. To this extent, PWGSC accepts that there is merit to Bluedrop's complaint"¹¹

12. PWGSC claims that "... [the former commanding officer] kept an arm's length from document preparation and was not involved in drafting the solicitation documents"¹² It further claims that "... PWGSC's written record reveals that [the former commanding officer] did not play an active role in Solicitation No. 1"¹³ Having regard to the uncontested facts in this case, the Tribunal finds these assertions unconvincing and further finds that the former commanding officer must be taken to have been privy to inside information that would have proven advantageous to a prospective bidder.

13. Regarding PWGSC's further assertion that "... PWGSC has been advised by Acron, and has no reason not to believe, that [the former commanding officer] had absolutely no involvement in the preparation of Acron's proposal . . . in the subsequent re-tender",¹⁴ the Tribunal finds that this self-serving assurance by Acron (which is not supported by any indication of specific steps taken by the firm to isolate this individual from its bid preparation) strains credulity, given the timing and circumstances of his appointment and the role that he was expected to play at Acron, as described in a related newspaper article at the time.¹⁵

11. GIR at 4.

12. GIR at 2.

13. *Ibid.*

14. *Ibid.*

15. At tab 4 of its complaint, Bluedrop included a copy of a January 7, 2008, article that appeared in the New Brunswick *Telegraph-Journal*, which stated the following with regard to the former commanding officer: "... His aim is to transform his experience leading the training technology's branch of the Army Individual Training Authority at CFB Gagetown into new opportunities for his new private-sector employer, Acron Capability Engineering" The article further stated that the former commanding officer, "... now the vice-president of strategic initiatives for Acron, is hoping to link the private company with the Army's research and development teams at CFB Gagetown"

14. The Tribunal notes that Annex D, “Conflict of Interest – Unfair Advantage”, to RFP-2 directs bidders to take particular notice of the following provisions:

...

1. In order to protect the integrity of the procurement process, bidders are advised that *Canada may reject a bid in the following circumstances:*
 - (a) if the Bidder, any of its subcontractors, any of their respective employees or former employees was involved in any manner in the preparation of the bid solicitation;
 - (b) if the Bidder, any of its subcontractors, any of their respective employees or former employees had access to information related to the bid solicitation that was not available to other bidders and that would, in Canada’s opinion, give the Bidder an unfair advantage.
2. The experience acquired by a bidder who is providing or has provided the goods and services described in the bid solicitation (or similar goods or services) will not, in itself, be considered by Canada as conferring an unfair advantage or creating a conflict of interest. This bidder remains however subject to the criteria established above.
3. Where Canada intends to reject a bid under this section, the Contracting Authority will inform the Bidder and provide the Bidder an opportunity to make representations before making a final decision. Bidders who are in doubt about a particular situation should contact the Contracting Authority before bid closing. *By submitting a bid, the Bidder represents that it does not consider itself to be in a conflict of interest nor to have an unfair advantage. The Bidder acknowledges that it is within Canada’s sole discretion to determine whether a conflict of interest or unfair advantage exists.*

...

[Emphasis added]

15. While the usage of the word “may” appears to confer a discretion upon PWGSC as to whether or not to reject bids in respect of which a conflict of interest or unfair advantage has been found to exist, the Tribunal notes the obligation at common law, on the part of a procuring entity, to consider whether such a conflict or unfair advantage exists and to act accordingly.¹⁶ In this regard, the Tribunal does not construe the word “may” in the present context of its usage to be conferring discretion on PWGSC regarding whether or not to reject a bid in the circumstances described in subparagraph 1(a) or (b) of Annex D to RFP-2. Rather, it is a reaffirmation of PWGSC’s right to respond to the requirements of fundamental fairness by rejecting a bid in such circumstances. Thus, in the first instance, while a bidder, by submitting its bid, subjectively represented itself as being free of conflict and unfair advantage, it remained incumbent upon PWGSC to protect the integrity of the procurement system by rejecting the bid of any bidder determined to be in a conflict of interest position or enjoying an unfair advantage.

16. In submitting its proposal in response to RFP-2, Acron represented itself as not being in a conflict of interest position or as not having an unfair advantage.¹⁷ However, having regard to the former commanding officer’s connection with RFP-1 to his employment with Acron shortly before the expiration of RFP-1 and to the fact that RFP-2 was essentially a re-tendering of the RFP-1 requirement, the Tribunal concludes that the circumstances surrounding Acron’s successful bid proposal did in fact give rise to a conflict of interest and a well-founded apprehension of unfair advantage. In failing to reject Acron’s bid proposal, PWGSC breached an express requirement of RFP-2 and, in the process, the applicable trade agreements.¹⁸

16. *Northeast Marine Services Ltd. v. Atlantic Pilotage Authority*, [1995] 2 F.C. 132.

17. The Tribunal did not receive any information from Acron, which was not a party to these proceedings.

18. Specifically, Article 506(6) of the *AIT*, Article 1015(4)(d) of *NAFTA* and Article XIII(4)(c) of the *AGP*.

17. Therefore, the Tribunal finds that the complaint is valid and that Bluedrop should have been awarded the contract in question.

Remedy

18. Having found the complaint to be valid, the Tribunal must now consider a suitable means of redressing the harm caused as a result of the deficiencies in the procurement process.

19. In this regard, subsection 30.15(3) of the *CITT Act* reads as follows:

(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.

20. Taking all relevant circumstances into account, the Tribunal is of the view that:

- the failure to apply the conflict of interest and/or unfair advantage provisions of Annex D to RFP-2 to disqualify Acron's bid proposal in the circumstances of this case constituted a violation of the terms of RFP-2, the common law requirements of fairness and the relevant trade agreements;
- PWGSC's failure to reject Acron's bid proposal resulted in Bluedrop being wrongfully deprived of a contract to which it was entitled;
- the temporal proximity of relevant events (including the closing date of RFP-1, the unconvincing explanation offered by PWGSC as to why RFP-1 was allowed to expire without the award of a contract pursuant thereto,¹⁹ the timing of the former commanding officer's retirement, the nature of his subsequent position at Acron and the RFP-2 re-tendering of the RFP-1 requirement shortly thereafter), while not a sufficient basis for a factual conclusion of the outright orchestration of a particular result, at a minimum created a well-founded apprehension that an unfair advantage had been conferred upon a particular bidder, which could only serve to compromise the integrity of the procurement system; and
- on the issue of the extent to which the contract has been performed, the contract inappropriately awarded to Acron (which was entered into on May 16, 2008, and is due to expire on March 31, 2009) would be about 45 percent completed at the release of the Tribunal's determination; however, if the contract had been properly awarded to Bluedrop, and if the option years are taken into account, the end date of the contract would be March 31, 2011, such that the contract would have been only about 15 percent completed at the time of the issuance of this determination.

19. PWGSC simply attributed the expiration to "... reasons that may be described as inadvertence" GIR at 2.

21. Both parties have made submissions regarding their respective preferred solutions, both of which differ from the Tribunal's initial solution. PWGSC has submitted that the appropriate remedy would be to allow the improperly awarded contract to continue until March 31, 2009, at which time any continuing requirement would be re-tendered. As compensation to Bluedrop, PWGSC submitted that an appropriate amount would be one that reflects Bluedrop's lost profit for the inappropriately awarded contract of 10 1/2 months. Bluedrop agreed with the suggestion, arguing that it made little sense to introduce a new service provider to complete the work for only a few months. Where Bluedrop differed from PWGSC, however, was that it felt that the Tribunal should also recommend the award of an amount for compensation that reflected the degree to which Bluedrop and the procurement process had suffered, as well as to offset the incumbency status and benefits enjoyed by Acron. Bluedrop argued that, by virtue of being the incumbent service provider, Acron gained a clear competitive advantage, which, in the circumstances of the present case, was an ill-gotten gain on the part of Acron, given the manner in which it was acquired.

22. The Tribunal is of the view that the best way to rectify the damage done to the procurement process would be to place all parties where they would have been had the error not occurred. Thus, the Tribunal is of the view that the most appropriate manner of rectifying the situation would be to cancel the improperly awarded contract and award it to the next highest placed finisher, i.e. Bluedrop. Therefore, the Tribunal recommends that, should PWGSC and DND, in evaluating the impact on service delivery, determine that a change in the identity of the service provider would not unduly harm DND's operations, the contract with Acron be terminated and Bluedrop be awarded the remainder of the contract. In addition to being awarded the contract, the Tribunal recommends that Bluedrop receive compensation for the profit that it would have earned from the contract award date (May 16, 2008) to the date on which the contract is properly placed with it. In this scenario, there shall be no compensation to Bluedrop for the loss of benefit relating to accrued experience.

23. On the other hand, having regard to PWGSC's claim that the services are "essential to DND", should PWGSC and DND be of the view that the essential nature of the services have become intricately linked with the provider of the services, such that a change in service provider would unduly harm DND's operations, the Tribunal recommends that the current contract be allowed to expire on March 31, 2009; that Bluedrop be compensated for the profit that it would have earned had it been awarded the contract for the entire period from May 16, 2008, to March 31, 2009; and that, if the requirement is re-tendered, Bluedrop be compensated by an amount that represents the loss of benefit relating to the accrued experience that it would have gained had it been awarded the contract.

24. In deriving an appropriate amount for the loss of benefit relating to accrued experience, the Tribunal has used figures submitted for the purposes of this complaint—specifically, the bid prices that PWGSC used in determining the contract award. Pursuant to the letter sent to Bluedrop by PWGSC on May 22, 2008, which informed Bluedrop that the contract was being awarded to Acron, the respective bid prices were \$1,611,958.30 for Acron and \$1,906,377.80 for Bluedrop, indicating a difference of \$294,419.50. The Tribunal has decided that a reasonable incumbency benefit factor, reflective of efficiencies that the incumbent could reasonably be expected to realize, which would render its bid more competitive in the circumstance of a subsequent tender, would equal 20 percent of that difference, or \$58,883.90. Therefore, if PWGSC and DND choose not to cancel the current Acron contract, and the requirement is re-tendered after the expiration of the contract, it is recommended that, further to compensating Bluedrop for its lost profit, PWGSC provide the additional amount of \$58,883.90 to Bluedrop in an effort to place it on an approximately equal footing with Acron in any future re-tendering of the requirement.

Costs

25. The Tribunal awards Bluedrop its reasonable costs incurred in preparing and proceeding with the complaint. The Tribunal has considered its *Guideline for Fixing Costs in Procurement Complaint Proceedings* (the *Guideline*) and is of the view that this complaint case has a complexity level corresponding to the lowest level of complexity referred to in Appendix A of the *Guideline* (Level 1). The *Guideline* contemplates classification of the level of complexity of complaint cases based on three criteria: the complexity of the procurement, the complexity of the complaint and the complexity of the complaint proceedings. The complexity of the procurement was medium, in that it was for a defined service project. The complexity of the complaint was low, in that the ground of complaint involved a single straightforward criterion. Finally, the complexity of the complaint proceedings was low, as PWGSC effectively acknowledged the validity of the complaint, there were no motions or interveners, and a public hearing was not required. And, while an extension of time was granted, which moved the process from the standard 90-day time frame to a 135-day time frame, the parties did not file information beyond the normal scope of proceedings. Accordingly, as contemplated by the *Guideline*, the Tribunal's preliminary indication of the amount of the cost award is \$1,000.

DETERMINATION OF THE TRIBUNAL

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

27. Pursuant to subsections 30.15(2) and (3) of the *CITT Act*, the Tribunal recommends that PWGSC terminate the contract awarded to Acron and award it to Bluedrop. The Tribunal also recommends that Bluedrop be compensated by an amount equal to the profit that it would have earned from the date of the contract award to Acron to the date of the subsequent award to Bluedrop.

28. If, for operational reasons, PSGSC considers that it is not feasible to terminate the contract already awarded, the Tribunal recommends that PWGSC compensate Bluedrop for the profit that it would have earned had it been awarded the contract. The basis for calculating the profit will be the price contained in the proposal submitted by Bluedrop. In this circumstance, the Tribunal also recommends that PWGSC not exercise any option to extend the contract and allow it to expire on March 31, 2009.

29. If, upon the expiration of the contract, PWGSC determines that there is still a need for the services at issue that results in re-tendering the requirement, the Tribunal recommends that PWGSC also compensate Bluedrop for the loss of the experience that Bluedrop would have gained and the related efficiencies that it would have realized in the course of performing the contracted work by adding an amount of \$58,883.90 to the above recommendation.

30. The Tribunal recommends that Bluedrop and PWGSC negotiate the amount of compensation and, within 30 days of the date of this determination, report back to the Tribunal on the outcome.

31. Should the parties be unable to agree on the amount of compensation, Bluedrop shall file with the Tribunal, within 40 days of the date of this determination, a submission on the issue of compensation. PWGSC will then have 7 working days after the receipt of Bluedrop's submission to file a response. Bluedrop will then have 5 working days after the receipt of PWGSC's reply submission to file any additional comments.

32. Pursuant to section 30.16 of the *CITT Act*, the Tribunal awards Bluedrop its reasonable costs for preparing and proceeding with the complaint, which costs are to be paid by PWGSC. 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 \$1,000. 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.

Pasquale Michaele Saroli

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Presiding Member