



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2008-010

Trans-Sol Aviation Service Inc.

*Decision made  
Thursday, May 1, 2008*

*Decision and reasons issued  
Tuesday, May 13, 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**

**TRANS-SOL AVIATION SERVICE 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 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), it shall decide whether to conduct an inquiry into the complaint.

2. Trans-Sol Aviation Service Inc. (Trans-Sol) of Sainte-Foy, Quebec, alleged that the Department of Public Works and Government Services (PWGSC) improperly rejected its proposal on the basis that it entered the amounts for a given region at the wrong places on the form. The procurement was for the provision of aviation fuels on behalf of the Department of Transport, the Department of National Defence and the Royal Canadian Mounted Police.

3. The closing date of the request for proposal for Solicitation No. HL.E60HL-8-0050/00/A was April 7, 2008. On April 11, 2008, the PWGSC officer sent Trans-Sol an e-mail asking it to provide confirmation of the rates quoted for Chatham and Sept-Îles. Further to this e-mail, Trans-Sol contacted the PWGSC officer to ask him why he wanted such a confirmation since it had submitted rates for Québec and Sept-Îles. The officer then informed Trans-Sol that it had entered the amounts in the wrong places. Trans-Sol informed him that it had made an error and gave him its interpretation of the form. The PWGSC officer asked Trans-Sol to send him its explanations in writing to allow him to consider the issue. On the same day, Trans-Sol sent him the explanations by e-mail. On April 18, 2008, PWGSC informed Trans-Sol that, after consulting its team, it had come to the conclusion that Trans-Sol's request to evaluate its bid in respect of the rates quoted for Québec and Sept-Îles amounted to bid repair and that, therefore, its bid was inadmissible. On April 25, 2008, Trans-Sol filed its complaint with the Tribunal.

4. 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, *NAFTA*, the *AIT* and the *AGP* apply.

5. 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.

6. Paragraph 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.

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

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

7. Paragraph XIII(4)(a) of the *AGP* 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 be from a supplier which complies with the conditions for participation . . . .

8. With respect to the Request for a Standing Offer (RFSO), the requirements in Annex A are classified by product type having the same mode of delivery in the same zone (geographical region). If there are several different requirements for the same product type having the same mode of delivery in the same zone, the quantities associated with each requirement are grouped together and associated with a sole requirement. The offeror was required to propose a unit price for that requirement.

9. In its complaint, Trans-Sol claimed that it had misinterpreted the “Annex ‘A’” form of the RFSO and had inadvertently entered the amounts at the wrong places. Moreover, Trans-Sol submitted that the disposition of the fields on the form and the place indicated to enter the quoted rates for a given region was confusing.

10. In this respect, the Tribunal finds that the way in which Annex A of the RFSO was set out was reasonable and clear. In particular, the fact that each “Unit Price/Prix unitaire” refers to the requirements described directly above is obvious:

- (a) because the code specifying the “Zone” which is on the same line as the indicated price under the heading “Unit Price/Prix unitaire” corresponds to the code specifying the “Zone” which is at the top of the first column, above each requirement;
- (b) because the codes specifying the “Zone” indicate the relevant region, “NB” for “New Brunswick” and “PQ” for “Quebec”; and
- (c) because the amount under the heading “Total Quantity/Quantité totale” which appears in the field next to the heading “Unit Price/Prix unitaire” represents the total of the individual amounts listed immediately above that column.

11. The Tribunal is of the view that the responsibility for ensuring that a proposal is compliant with all essential elements of a solicitation and that it accurately reflects the bidder’s intention ultimately resides with the bidder. Accordingly, it is incumbent upon the bidder to exercise due diligence in the preparation of its proposal and to make sure that it is compliant with all essential elements. The present situation could have been avoided if Trans-Sol had exercised due diligence in the preparation of its proposal.

12. In this respect, it would be unreasonable to ask the contracting authority to confirm with a potential supplier that the quoted price accurately reflects its intention, especially if, as in this case, there was no obvious error in the RFSO itself. Therefore, the Tribunal finds that the complaint does not disclose a reasonable indication that the procurement was not carried out in accordance with the applicable trade agreements.

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

**DECISION**

14. 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