



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DETERMINATION AND REASONS

File No. PR-2009-037

Giamac Inc. dba AutoRail  
Forwarders

v.

Department of Public Works and  
Government Services

*Determination and reasons issued  
Wednesday, November 25, 2009*

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IN THE MATTER OF a complaint filed by Giamac Inc. dba AutoRail Forwarders 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**

**GIAMAC INC. DBA AUTORAIL FORWARDERS**

**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 Giamac Inc. dba AutoRail Forwarders. In accordance with the *Guideline for Fixing Costs in Procurement Complaint Proceedings*, the Canadian International Trade Tribunal's preliminary indication of the level of complexity for this complaint case is Level 3, and its preliminary indication of the amount of the cost award is \$4,100. 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.

Ellen Fry  
Ellen Fry  
Presiding Member

Dominique Laporte  
Dominique Laporte  
Secretary

Place of Hearing: Ottawa, Ontario  
Date of Hearing: October 5, 2009

Tribunal Member: Ellen Fry, Presiding Member

Director: Randolph W. Heggart

Investigation Manager: Michael W. Morden

Investigator: Josée B. Leblanc

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Nick Covelli

Complainant: Giamac Inc. dba AutoRail Forwarders

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Tanya L. Butler

Intervener: SIRVA Canada LP

Counsel for the Intervener: Phuong T. V. Ngo  
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Government Institution: Department of Public Works and Government Services

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## STATEMENT OF REASONS

### COMPLAINT

1. On August 4, 2009, Giamac Inc. dba AutoRail Forwarders (Giamac) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*.<sup>1</sup> The complaint concerned procurements (Solicitation Nos. W0153-09HLO1/A and W0153-09HLO1/B) by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence (DND) for services in support of the movement of personal motor vehicles.

2. Giamac submitted that, regarding Solicitation No. W0153-09HLO1/A, PWGSC denied it the opportunity to correct a clerical error in its bid and refused to provide it with a timely debriefing. Regarding Solicitation No. W0153-09HLO1/B, which superseded Solicitation No. W0153-09HLO1/A for the same services and for which Giamac claimed to have submitted a superior bid, Giamac claimed that, as it received a significantly lower score, the procurement process was not fair or transparent and did not provide an equal opportunity to all suppliers. As a remedy, Giamac requested the following: (1) that PWGSC terminate the contract awarded to the winning bidder, SIRVA Canada LP (SIRVA), pursuant to Solicitation No. W0153-09HLO1/B and award it to Giamac or, in the alternative, (2) that Giamac be compensated for the profit that it could reasonably have expected to have made or, in the further alternative, (3) that Giamac be compensated for the lost opportunity to be awarded and perform the contract. Giamac also requested that it be compensated for the costs that it incurred in bringing its complaint before the Tribunal, including the cost of retaining legal counsel.

3. On August 17, 2009, the Tribunal informed the parties that the complaint had been accepted for inquiry, in part, as one ground of complaint 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*.<sup>2</sup> Parties were advised that the Tribunal would limit its inquiry to the allegations concerning Solicitation No. W0153-09HLO1/B.

4. On August 31, 2009, the Tribunal granted SIRVA intervener status. On September 11, 2009, PWGSC submitted a Government Institution Report (GIR). On September 23, 2009, SIRVA filed its comments on the GIR. On September 28, 2009, Giamac filed its comments on the GIR. On October 5, 2009, the Tribunal held a hearing in Ottawa, Ontario.

### PROCUREMENT PROCESS

5. On May 14, 2009, PWGSC made Solicitation No. W0153-09HLO1/A available to bidders through MERX.<sup>3</sup> The due date for the receipt of bids was June 15, 2009, and Giamac's bid was the only one submitted. According to Giamac, PWGSC informed it on June 16, 2009, that page 2 of all five copies of its bid was missing. According to PWGSC, on June 17, 2009, Giamac's technical bid was declared non-compliant.

6. On June 18, 2009, PWGSC informed Giamac that its bid had received a 74 percent score for the point-rated criteria, which was 6 percent less than the 80 percent threshold, specified in the Request for

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

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

3. Canada's electronic tendering service.

Proposal (RFP), that bidders were required to achieve in order to be considered for contract award. As no other bid had been submitted, PWGSC initiated a second procurement process, that is, Solicitation No. W0153-09HLO1/B.

7. On June 25, 2009, PWGSC made Solicitation No. W0153-09HLO1/B available through MERX. The due date for the receipt of bids was July 7, 2009. According to PWGSC, two bids were received—one each from Giamac and SIRVA—and both were evaluated on July 8, 2009. On July 9, 2009, PWGSC requested Giamac’s financial statements, which Giamac submitted on July 15, 2009. Meanwhile, on July 10, 2009, DND evaluators provided their technical evaluation results to PWGSC. Giamac’s bid received 808 points (out of 1,000) and SIRVA’s bid received 994 points.<sup>4</sup>

8. According to PWGSC, between July 10 and 13, 2009, it reviewed the technical evaluation results and found that “. . . the points accorded [to both Giamac and SIRVA] did not match the comments on the evaluation report . . . .”<sup>5</sup> As a result, PWGSC requested that DND re-evaluate both bids. The re-evaluation took place on July 14, 2009, and, after a review of the results of this second evaluation by a DND procurement officer not previously involved in the procurement, DND provided the results to PWGSC on July 16, 2009. This second evaluation resulted in Giamac’s bid being awarded 575 points and SIRVA’s bid receiving 908 points.<sup>6</sup>

9. As a result of the re-evaluation, Giamac’s bid no longer had a score that allowed Giamac to be considered for contract award.

10. On July 17, 2009, PWGSC informed Giamac of its score and told Giamac that the contract had been awarded to SIRVA. Giamac requested a debriefing, which PWGSC provided on July 20, 2009, by way of supplying Giamac with copies of the evaluation sheets from the second evaluation of the bids submitted in response to Solicitation No. W0153-09HLO1/B.

11. Giamac made an objection to PWGSC on July 21, 2009.

12. On August 4, 2009, Giamac filed its complaint with the Tribunal.

### TRIBUNAL’S JURISDICTION

13. Subsection 30.14(2) of the *CITT Act* requires the Tribunal to 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.

14. Section 30.1 of the *CITT Act* defines a “designated contract” as “. . . a contract for the supply of goods or services that has been or is proposed to be awarded by a government institution and that is designated or of a class of contracts designated by the regulations . . . .”

15. Section 3 of the *Regulations* establishes the designation as follows:

. . . any contract or class of contract concerning a procurement of goods or services or any combination of goods or services, as described in Article 1001 of [the *North American Free Trade*

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4. GIR, para. 5.

5. *Transcript of Public Hearing*, 5 October 2009, at 52.

6. GIR, para. 5.

*Agreement*],<sup>[7]</sup> in Article 502 of the Agreement on Internal Trade,<sup>[8]</sup> in Article I of the Agreement on Government Procurement<sup>[9]</sup> or in Article *Kbis*-01 of Chapter *Kbis* of the [*Canada-Chile Free Trade Agreement*],<sup>[10]</sup> by a government institution, is a designated contract.

16. Section 11 of the *Regulations* provides as follows:

When the Tribunal conducts an inquiry into a complaint, it shall determine whether the procurement was conducted in accordance with the requirements set out in whichever of NAFTA, the Agreement on Internal Trade, the Agreement on Government Procurement or the CCFTA applies.

17. The *AIT* is the only trade agreement that applies to this procurement.<sup>11</sup> The Tribunal must therefore determine whether Giamac's complaint is valid on the basis of the procedures and other requirements set out in the *AIT*. To the extent that Giamac's complaint relates to allegations of violations of the general obligations of contract law or procedural fairness, rather than the requirements of the *AIT*, it is outside the Tribunal's jurisdiction.

18. In this inquiry, the relevant provision of the *AIT* is Article 506(6), which provides that 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."

19. Thus, the issue before the Tribunal is whether the procurement was conducted in accordance with the evaluation criteria set out in Solicitation No. W0153-09HLO1/B.

#### **GROUND OF COMPLAINT NOT ACCEPTED FOR INQUIRY**

20. In its complaint, Giamac identified a total of three grounds of complaint relating to the two solicitations. Regarding Solicitation No. W0153-09HLO1/A, Giamac alleged that (1) it had been denied the opportunity to supply the missing page from its bid and (2) it had been refused a timely debriefing. As indicated above, neither of these two grounds of complaint was accepted for inquiry. The third ground of complaint, relating to Solicitation No. W0153-09HLO1/B, was accepted for inquiry and will be addressed below.

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

9. 15 April 1994, online: World Trade Organization <[http://www.wto.org/english/docs\\_e/legal\\_e/final\\_e.htm](http://www.wto.org/english/docs_e/legal_e/final_e.htm)> [*AGP*].

10. *Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile*, 1997 Can. T.S. No. 50 (entered into force 5 July 1997) [*CCFTA*]. Chapter *Kbis*, entitled "Government Procurement", came into effect on September 5, 2008.

11. According to the RFP, the procured services are classified under Federal Supply Classification code V502A—Relocation Services. In accordance with Section B of Annex 1001.1b-2 of *NAFTA* and Part 1 of Section B of Annex *Kbis*-01.1-4 of Chapter *Kbis* of the *CCFTA*, relocations services are excluded from coverage. Annex 4 to Canada's Appendix 1 of the *AGP* provides a list of the services that are offered for coverage by Canada; relocation services are not included. Therefore, the procurement is not covered by the *AGP*.

**Ground 1—Giamac was denied the opportunity to supply the missing page from its bid**

21. Giamac claimed that the missing page was in its own copy of the bid and that PWGSC acted improperly in not permitting it to correct this clerical error in the PWGSC copies by submitting the missing page.<sup>12</sup>

22. It is clear from the RFP that it was the bidder's responsibility to provide a complete bid.

23. Solicitation No. W0153-09HLO1/A incorporated, by reference, PWGSC's "2003 Standard Instructions - Goods or Services - Competitive Requirements (2008-12-12)",<sup>13</sup> which state as follows:

**04 Submission of Bids**

...

2. It is the Bidder's responsibility to:

...

(c) submit by closing date and time a complete bid;

...

24. In addition, the main text of the RFP contained the following clause:

**ATTACHMENT 1 TO PART 4  
EVALUATION PROCEDURES**

...

**1.1 Point Rated Technical Criteria**

...

... Proposals will be evaluated solely on the content and information provided as part of the Bidder's proposal. It is the Bidder's responsibility to ensure that sufficient information is provided to properly evaluate these criteria.

25. The Tribunal could find no reasonable indication that the missing page was removed from Giamac's bid after it was received by PWGSC.

26. The Tribunal therefore found no reasonable indication that the procurement was not carried out in accordance with Article 506(6) of the *AIT*, and this ground of complaint was not accepted for inquiry.

**Ground 2—PWGSC refused to provide a timely debriefing**

27. Giamac submitted that it repeatedly requested a debriefing from PWGSC regarding Solicitation No. W0153-09HLO1/A but that PWGSC refused, claiming that the procurement process was incomplete.

28. Neither the *AIT* nor the RFP requires the procuring entity to debrief an unsuccessful bidder.

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12. In section 5(F) of its complaint, Giamac states that PWGSC informed it that, in accordance with "... s. 4 of the 2003 Standard Instructions - Goods or services - Competitive Requirements, ... the bidder must submit a complete bid by the closing date ..."

13. <<http://sacc.pwgsc.gc.ca/sacc/query.do?lang=en&id=2003&date=2008/12/12&eid=1>>.



29. Accordingly, the Tribunal could find no reasonable indication that the procurement was not carried out in accordance with the terms of the *AIT*, and this ground of complaint was not accepted for inquiry.

### **GROUND OF COMPLAINT ACCEPTED FOR INQUIRY**

#### **Ground 3—The procurement process was not fair, transparent or competitive and did not provide an equal opportunity to all suppliers**

30. As indicated above, Article 506(6) of the *AIT* requires tender documents to “. . . 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.” Therefore, if the Tribunal concludes that the evaluation did not comply with the tender documents, either because it did not follow the specified evaluation requirements or because there was bias, there has been a violation of Article 506(6).

31. In this connection, Giamac argued that Article 506(6) of the *AIT* was breached in respect of Solicitation No. W0153-09HLO1/B because:

- (a) there was an “. . . inexplicable drop in scores for what was an improved bid to essentially the same solicitation . . .”;<sup>14</sup>
- (b) the decision to re-evaluate was procedurally unfair; and
- (c) the re-evaluation itself was conducted in a procedurally unfair manner.

32. It is uncontested that PWGSC, within a very short time frame, conducted two separate but similar solicitations, which only differed in relatively minor respects.<sup>15</sup> The due dates for the submission of bids were June 15 and July 7, 2009, only 22 days apart.

33. Giamac was awarded far fewer points for the rated criteria on its second bid (575) than on its first bid (740). This significant decrease resulted in the contract being awarded to SIRVA. Giamac’s second bid received lower scores for 7 of the 9 rated criteria for which its first bid had received points.<sup>16</sup>

34. The scoring for 8 of the 11 rated criteria was based on the following scale, which was included in both RFPs:<sup>17</sup>

<b>Percentage of Available Points</b>	<b>Basis for Percentage Distribution</b>
0%	Not appropriate - No information provided or is considered to be ineffective to meet the requirement
40%	Poor - Is considered to have limited effectiveness to meet the requirement
60%	Average - Is considered to be sufficiently effective to meet the requirement.
80%	Good - Is considered to be very effective to meet the requirement
100%	Very Good - Is considered to be highly effective to meet or exceed the requirement.

14. Complaint, section 5(F), Detailed Statement of Facts and Arguments.

15. The second solicitation increased the term of the contract from one year to two and added four paragraphs to the Statement of Work relating to the contractor’s attendance at Progress Review Meetings (PRM), the preparation of PRM agendas, the taking of minutes at PRMs and the preparation of an Action Item Log.

16. Because of the missing page, Giamac’s first bid did not receive any points for 2 of the 11 rated criteria.

17. Solicitation No. W0153-09HLO1/A at 18; Solicitation No. W0153-09HLO1/B at 17.

35. For those eight criteria, Giamac's score was decreased by two levels (i.e. from "very good" to "average") three times and by one level three times. The other two times, it stayed at the same level. For the three criteria to which the above table did not apply, the scoring guides were also provided in the RFPs.<sup>18</sup> Giamac's score decreased by 50 percent for the one criterion of the three for which its first bid was awarded points.

36. Giamac asserted that, notwithstanding the lower score, its second bid was superior to its first bid as it included not only the page missing from its first bid but also more detailed information. According to Giamac, no information from the first bid was removed, and the second bid was better organized and more detailed than the first. A comparison of the two bids confirms that Giamac's second bid does appear to contain more information.

37. As indicated above, the technical components of the bids submitted in response to Solicitation No. W0153-09HLO1/B were re-evaluated prior to the contract being awarded to SIRVA. Giamac's second bid initially received scores that were similar to those that its first bid had received. In fact, Giamac's score initially increased from 740 points to 808 points. Given that it had the lowest bid, this score would have been enough to result in the award of the contract to Giamac. However, the re-evaluation of the bids resulted in Giamac's score falling to 575 points and the contract being awarded to SIRVA.

38. The Tribunal heard testimony from PWGSC's contracting authority who was responsible for both solicitations and from the three DND evaluators who evaluated Giamac's and SIRVA's bids in response to the second solicitation. Two of the DND evaluators were also involved in the evaluation of Giamac's first bid.

39. Based on his testimony at the hearing, PWGSC's contracting authority testified that he took the unusual step of evaluating the financial aspects of the bids before the technical evaluation had been completed. He testified that it was not normal practice to do the financial evaluation until after the technical evaluation had been completed, but that he was trying to do things as quickly as possible because the procurement was urgent.<sup>19</sup>

40. As things stood at the time that the initial technical evaluation and the financial evaluation were completed, Giamac's bid was ahead of SIRVA's bid. While PWGSC's contracting authority knew this, his supervisor did not.<sup>20</sup>

41. The PWGSC contracting authority testified that he and his supervisor reviewed DND's evaluations and were both concerned that the points awarded to Giamac were not consistent with the DND evaluators' comments.<sup>21</sup> He therefore was concerned about ensuring that awarding the contract to Giamac would withstand any challenge to the technical evaluation.<sup>22</sup> He and his supervisor took the joint decision of requesting the re-evaluation.<sup>23</sup>

42. When asked why PWGSC had not sought a re-evaluation of Giamac's bid submitted for the first solicitation, given that the approach to evaluation for that solicitation seemed to be similar to the approach to the initial evaluation for the second solicitation, the PWGSC contracting authority testified that a

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18. Solicitation No. W0153-09HLO1/A at 19-21; Solicitation No. W0153-09HLO1/B at 18-20.

19. *Transcript of Public Hearing*, 5 October 2009, at 79.

20. *Ibid.* at 52.

21. *Ibid.* at 94.

22. *Ibid.* at 82-83.

23. *Ibid.* at 52.

re-evaluation of Giamac's first bid would not have changed anything. Given the absence of page 2 of its first bid, Giamac could not have achieved the minimum number of points necessary to be considered for contract award under the first procurement process. The witness also testified that, in view of the urgency of the procurement, PWGSC took the view that the best approach was to move forward with a second solicitation.<sup>24</sup>

43. The Tribunal notes that PWGSC also asked for a re-evaluation of SIRVA's bid to ensure consistency, although it did not perceive the same kind of problem with the evaluation of SIRVA's bid as it did with Giamac's bid.<sup>25</sup> As a result of the re-evaluation, the number of points awarded for SIRVA's bid decreased from 994 to 908, leaving SIRVA's bid as the only one to be considered for contract award in accordance with the terms of the RFP.

44. The DND evaluators all testified at the hearing that they now agreed that the initial evaluation of the bids submitted in response to Solicitation Nos. W0153-09HLO1/B and the evaluation of the bids submitted in response to RFP W0153-09HLO1/A had been done incorrectly.<sup>26</sup> The evaluators testified that they either had given Giamac the benefit of the doubt or had read between the lines of Giamac's bid in their initial scoring. They testified that they had given Giamac credit for substantiating statements in its bid based on their personal knowledge of Giamac's performance or the expectation of Giamac's performance, even though that substantiation had not been present in Giamac's bids.<sup>27</sup>

45. The Tribunal has reviewed the evaluators' consensus comments for the points awarded in the initial evaluation of the second bids and finds that PWGSC's contracting authority's impression that the points were inconsistent with the comments in some instances was not unreasonable.

46. The Tribunal considers that the testimony of the witnesses for PWGSC and DND concerning the reason for the change in points from the evaluation in respect of Solicitation No. W0153-09HLO1/A to the second evaluation in respect of Solicitation No. W0153-09HLO1/B was credible and does not consider that the evidence indicated bias on the part of either PWGSC or the DND technical evaluation team.<sup>28</sup> The evidence indicates that neither PWGSC's contracting authority nor his supervisor counselled the DND evaluators on whether it was their points or comments that were problematic.<sup>29</sup>

47. Furthermore, the results of the financial evaluation could not have affected the points awarded on the re-evaluation of the technical criteria, since the technical evaluators were unaware of the results of the financial evaluation at the time they did the technical re-evaluation.<sup>30</sup>

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24. *Ibid.* at 54.

25. *Ibid.* at 97, 99.

26. *Ibid.* at 103, 130, 143, 152.

27. *Ibid.* at 103, 131, 152.

28. The Tribunal notes that, although one of the witnesses for Giamac testified that, in administering Giamac's contracts with DND, she had had disagreements with one of the DND evaluators that might have led to bias on his part, she was unaware of any bias in dealing with her on the current contracts. *Transcript of Public Hearing*, 5 October 2009, at 38. At the hearing, Giamac stated that it was not alleging that any bias by that particular evaluator coloured the evaluation in respect of the second solicitation. *Transcript of Public Hearing*, 5 October 2009, at 202.

29. *Transcript of Public Hearing*, 5 October 2009, at 58, 104.

30. *Ibid.*

48. Accordingly, the Tribunal does not consider that the significant decrease in scores from the evaluation in respect of Solicitation No. W0153-09HLO1/A to the second evaluation in respect of Solicitation No. W0153-09HLO1/B indicates a violation of the *AIT*.

49. The Tribunal will now consider Giamac's allegation that the decision to re-evaluate W0153-09HLO1/B was procedurally unfair because it was made after the results of the financial evaluation were known.

50. With regard to this allegation, Giamac argued that PWGSC's evaluation guidelines<sup>31</sup> required the technical evaluation to be completed first and that procedural fairness requires the Government to follow its own internal processes as set out in those guidelines. Specifically, Giamac argued that:

... once an administrative body sets its own rules and procedures, then it's compelled to follow them.

And if it doesn't follow them... once they've violated their own procedures, they've then breached the legitimate expectation of the supplier who has an understanding of how the process is going to take place and when that process doesn't take place in accordance with their own guidelines, then it creates an unfairness on their part. So, there is a legitimate expectation on the part of the supplier that the authority will follow their own guidelines.<sup>32</sup>

51. The Tribunal does not agree. The Tribunal's jurisdiction, as outlined above, is to determine if there was a violation of a trade agreement, in this case the *AIT*. If the evaluation process was unfair, in that it was biased, or a particular procedure in the tender documents was not observed, there would be a violation of Article 506(6) of the *AIT*. However, the Tribunal's jurisdiction does not extend to inquiring into whether the government institution behaved in a procedurally fair way in the abstract, i.e. independent of the relevant provisions of the trade agreement.

52. As indicated above, PWGSC testified that it was not normal practice to do the financial evaluation until after the technical evaluation was completed. However, the tender documents do not contain any clauses that would limit the Government's ability to conduct a re-evaluation or set any process requirements for doing so. The tender documents require the technical and financial evaluations to be done based on the relevant criteria for each, i.e. technical criteria are to be evaluated using the requirements for those criteria, which do not include a consideration of the results of the financial evaluation. However, the tender documents do not require the technical evaluation to be completed prior to the financial evaluation.

53. PWGSC's evaluation guidelines referred to above were not given to bidders and hence cannot be considered to be part of the tender documents. Therefore, any violation of PWGSC's guidelines would not amount to a violation of the *AIT*.<sup>33</sup> The Tribunal also notes that it does not consider that the language from the evaluation guidelines requires the technical evaluation to be completed first.

54. Accordingly, the Tribunal does not consider that the decision to re-evaluate was a violation of the *AIT*.

55. The Tribunal will now consider Giamac's allegation that the re-evaluation of the W0153-09HLO1/B bids was considered in a procedurally unfair manner.

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31. Affidavit of Jeffrey Campbell, attachment 2, section 5.0.

32. *Transcript of Public Hearing*, 5 October 2009, at 205.

33. A violation of the guidelines might be evidence of bias, but, in this instance, as discussed above, the Tribunal does not consider that the evidence indicates that there was bias on the part of PWGSC or DND.

56. As discussed above, the Tribunal only has the jurisdiction to consider alleged procedural unfairness insofar as it is an alleged violation of the provisions of the trade agreements.

57. The evidence did not establish that any particular acts during the course of the re-evaluation, on the part of either PWGSC or DND, constituted unfairness in violation of the requirements of the *AIT*.

### Costs

58. The Tribunal awards PWGSC its reasonable costs incurred in responding to 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 highest level of complexity referred to in Appendix A of the *Guideline* (Level 3). 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 services relating to a defined project on an as-required basis. The complexity of the complaint was medium, as the matter involved the interpretation of evaluation criteria. The complexity of the complaint proceedings was high, as there was an oral hearing, the parties were required to submit information beyond the normal scope of proceedings, and the 135-day inquiry time frame was required. Accordingly, as contemplated by the *Guideline*, the Tribunal's preliminary indication of the amount of the cost award is \$4,100.

59. The Tribunal does not award any costs to SIRVA.

60. The Tribunal does not accept Giamac's argument that it should be awarded costs regardless of the outcome because a proper debriefing by PWGSC would have obviated the need for the proceedings. The Tribunal notes that, if that were the case, the Tribunal would have reasonably expected Giamac to discontinue the proceedings after it received the explanation contained in the GIR.

### DETERMINATION OF THE TRIBUNAL

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

62. 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 Giamac. In accordance with the *Guideline*, the Tribunal's preliminary indication of the level of complexity for this complaint case is Level 3, and its preliminary indication of the amount of the cost award is \$4,100. 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.

Ellen Fry  
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Presiding Member