



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2009-050

INTERLOC Solutions (Canada)
ULC

*Decision made
Tuesday, October 6, 2009*

*Decision and reasons issued
Tuesday, October 20, 2009*

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

INTERLOC SOLUTIONS (CANADA) ULC

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.

Stephen A. Leach
Stephen A. Leach
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary

STATEMENT OF REASONS

1. Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,² 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. 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. The complaint in issue relates to a Request for Proposal (RFP) issued by the Department of Public Works and Government Services (PWGSC) on behalf of the Parks Canada Agency for licensed software for a real property management system.

3. INTERLOC Solutions (Canada) ULC (INTERLOC) alleges that PWGSC either ignored the evaluation criteria set out in the RFP or introduced undisclosed criteria in improperly declaring its proposal non-responsive.

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*,³ Chapter Five of the *Agreement on Internal Trade*,⁴ the *Agreement on Government Procurement*⁵ or Chapter *Kbis* of the *Canada-Chile Free Trade Agreement*⁶ applies. In this case, all four agreements apply.

5. According to INTERLOC, on September 8, 2009, it was informed by PWGSC that its proposal was deemed non-responsive because it did not comply with article 3.3(b) of Part 3 of the RFP, which required that its proposal have a single price for all time periods listed in Table B and a single price for all time periods listed in Table D. INTERLOC submitted that, on September 14, 2009, PWGSC provided it with a debriefing through a teleconference, during the course of which PWGSC confirmed that Table B of INTERLOC's proposal was, in fact, compliant with the requirements of the RFP. INTERLOC submitted that PWGSC, however, maintained that Table D of its financial proposal was non-compliant.

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

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

3. *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).

4. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <http://www.ait-aci.ca/index_en/ait.htm>.

5. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm>.

6. *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). Chapter *Kbis*, entitled "Government Procurement", came into effect on September 5, 2008.

6. The Tribunal notes the following instructions to bidders:⁷

PART 3 - BID PREPARATION INSTRUCTIONS

...

3.3 Section II: Financial Bid

...

- (b) [Bidders] must bid a single price for all time periods in Table B and a single price for all time periods in Table D or the bid will be considered non-responsive and will not be considered further.

7. The Tribunal notes that the amended Table D⁸ appeared as follows:

Table D Maintenance and Support on Optional additional Users

...

Item No.	Item Description	Unit of Issue	Period of Annual Service	Annual Firm Price per additional User
01	For the provision of Software Maintenance and Support Services for the Licensed Software on additional Users from 301 up to nine (900) hundred.	Annual per User	Year 1: April 1, 2009 to March 31, 2010. Year 2: April 1, 2010 to March 31, 2011. Year 3: April 1, 2011 to March 31, 2012. Option Year 1: April 1, 2012 to March 31, 2013. Option Year 2: April 1, 2013 to March 31, 2014.	\$_____

8. INTERLOC submitted that the purpose of Tables C and D was to provide PWGSC with the necessary information for it to quantify the cost consequences of adding additional users. It argued that Table D required it to provide an “[a]nnual [f]irm [p]rice per additional [u]ser” for maintenance and support services on the optional additional users, as set out in Table C of its proposal. INTERLOC submitted that PWGSC determined that the manner in which INTERLOC completed Table C was compliant with the requirements of the RFP. INTERLOC argued that, as it had provided PWGSC with eight potential categories of users in Table C, Table D of its proposal provided the required “single price for all time periods” for each of the eight potential categories.

9. In the Tribunal’s view, article 3.3(b) of Part 3 of the RFP clearly required that bidders provide PWGSC with a *single* price for all time periods in Table D. The Tribunal also notes that article 3.3(b) advised bidders of the consequences of not providing a single price for all time periods in Table D, i.e. that the bid would be considered non-responsive and would not be considered further. In light of the consequences, before a potential supplier changes the format of a mandatory table in the tender documents, in the Tribunal’s view, it would be prudent for that supplier to submit a question of clarification in that regard to the procuring entity. The Tribunal can find no evidence in the complaint that such a question was asked.

7. RFP at 10.

8. Table D was amended on April 22, 2009, with amendment No. 005 to the RFP.

10. The Tribunal also notes that question 046 found in amendment No. 003 read as follows: “Would the Crown consider a vendor proposing a Registered and/or Secondary User Model in response to this RFP requirement?” The answer provided was “No”. Question 085 found in amendment No. 007 asked the following:

In the spirit of delivering the most cost effective solution to the Crown, would the Crown please provide a breakdown of the number of administrators (within the initial population of 300, and the following 600 people) used to configure the software and those who would be considered users of the software?

Answer 085 read as follows:

Canada understands that some Bidders prefer to price their software using a variety of other methods. Canada specifies the User license so that all bids can be evaluated on an equal basis based upon the same kind of license, without limits that vary from Bidder to Bidder. . . .

11. With respect to INTERLOC’s submission that PWGSC determined that Table C was compliant with the requirements, the Tribunal could not find evidence in the complaint that such a determination had been made. The Tribunal finds that, regardless of the construct of Table C in INTERLOC’s proposal, providing a separate price in each of eight different categories of additional users in a bidder-modified Table D amounted to providing eight prices for all time periods.

12. As INTERLOC’s proposal contained eight prices for all time periods in Table D, the Tribunal finds that PWGSC’s decision to declare INTERLOC’s proposal non-responsive because it did not contain the required single price for Table D was in accordance with the provisions of the RFP. As such, the Tribunal finds that the complaint discloses no 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.

Stephen A. Leach
Stephen A. Leach
Presiding Member