



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File No. PR-2009-040

Meta-Business Advantage Ltd.

v.

Canada Revenue Agency

*Determination and reasons issued
Tuesday, November 10, 2009*

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IN THE MATTER OF a complaint filed by Meta-Business Advantage Ltd. 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

META-BUSINESS ADVANTAGE LTD.

Complainant

AND

THE CANADA REVENUE AGENCY

**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, as a remedy, that the Canada Revenue Agency re-evaluate the proposal submitted by Meta-Business Advantage Ltd. in response to Solicitation No. 1000244131. The Canadian International Trade Tribunal directs the Canada Revenue Agency to consider each of the first three projects submitted by Meta-Business Advantage Ltd. in response to mandatory criterion M1 as a separate project. If, as a result of this re-evaluation, Meta-Business Advantage Ltd.'s proposal is one of the five highest-rated bids in accordance with the evaluation process provided in the solicitation, the Canadian International Trade Tribunal recommends that Meta-Business Advantage Ltd. either be issued a supply arrangement or, in the alternative, be compensated by an amount equal to the profit that it would reasonably have earned had it been awarded 20 percent of the work relating to Solicitation No. 1000244131. The Canadian International Trade Tribunal also recommends that the Canada Revenue Agency not exercise any option to extend the supply arrangements beyond the initial three-year period.

If the Canada Revenue Agency chooses to compensate Meta-Business Advantage Ltd. for its lost profit, the Canadian International Trade Tribunal recommends that Meta-Business Advantage Ltd. and the Canada Revenue Agency 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, Meta-Business Advantage Ltd. 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 Canada Revenue Agency will then have 7 working days after the receipt of Meta-Business Advantage Ltd.'s submission to file a response. Meta-Business Advantage Ltd. will then have 5 working days after the receipt of the Canada Revenue Agency's reply submission to file any additional comments. The Canadian International Trade Tribunal reserves jurisdiction to establish the final amount of compensation.

Pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal awards Meta-Business Advantage Ltd. its reasonable costs incurred in preparing and proceeding with the complaint, which costs are to be paid by the Canada Revenue Agency. 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 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.

Ellen Fry
Ellen Fry
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary

Tribunal Member:	Ellen Fry, Presiding Member
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STATEMENT OF REASONS

COMPLAINT

1. On August 20, 2009, Meta-Business Advantage Ltd. (Meta) 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. 1000244131 issued by the Canada Revenue Agency (CRA) for the establishment of up to five supply arrangements with process improvement service providers.

2. Meta submitted that the CRA did not evaluate its bid in accordance with the published evaluation plan and applied a definition of “project” that was not provided for in the subject Request for a Supply Arrangement (RFSA). As a remedy, Meta requested that its proposal be re-evaluated by an independent evaluation team using an ordinary definition of “project” and that the new evaluation team consider the projects that it submitted as separate projects and not as a single project, as was done by the original evaluation team. In the alternative, Meta requested that the CRA cancel the current solicitation and re-issue it. It also requested that it be compensated for the costs that it incurred in preparing its proposal and bringing the complaint before the Tribunal and that a postponement of award of contract order be issued until the Tribunal determines the validity of the complaint.

3. On August 26, 2009, the Tribunal informed the parties that the complaint had been accepted for inquiry, since 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 Also on August 26, 2009, pursuant to subsection 30.13(3) of the *CITT Act*, the Tribunal ordered the CRA to postpone the award of a contract until the Tribunal determined the validity of the complaint.³

4. On September 21, 2009, the CRA submitted the Government Institution Report (GIR). On October 1, 2009, Meta filed its comments on the GIR.

5. Given that there was sufficient information on the record to determine the validity of the complaint, the Tribunal decided that an oral hearing was not required and disposed of the complaint on the basis of the written information on the record.

PROCUREMENT PROCESS

6. On December 15, 2008, the CRA made available, through MERX,⁴ an RFSA to establish up to five supply arrangements with process improvement service providers to assist the CRA’s business lines, processes and operations on an “as, when and if requested” basis. The due date for the receipt of bids was February 19, 2009, and, according to the CRA, it received 22 offers. The RFSA specified that there would be four steps in the evaluation of the technical and financial proposals. During step 1, the proposals would be evaluated against mandatory criteria M1, M2 and M3. During step 2, those proposals that met the mandatory criteria would be evaluated against point-rated criteria. During step 3, those proposals awarded at least 70 percent for the rated criteria would have their financial proposals evaluated. During step 4, the

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

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

3. In cases where a supply arrangement has been issued, the Tribunal’s postponement of award of contract order postpones the awarding of any contract against that supply arrangement until the Tribunal determines the validity of the complaint.

4. Canada’s electronic tendering service.

proposals would be ranked based on a combination of the bidders' technical and financial evaluation scores. The RFSA provided that bidders that did not meet the mandatory criteria, i.e. those that failed step 1, would be deemed non-compliant and would not be considered further. According to the CRA, of the 22 offers that it received, 10 proposals passed through to step 4, resulting in the top five bidders being issued supply arrangements. Meta was evaluated as not having met mandatory criterion M1, and its proposal did not proceed to step 2. Mandatory criterion M1 read as follows:

M1	The Offeror must provide summaries of five (5) projects completed within ten (10) years from the date of offer submission in the areas of process improvement services, where the Offeror was the primary contractor responsible for the projects. . . .
----	--

7. According to the CRA, during the evaluation of Meta's proposal, the evaluators found that the first three projects (Projects 1, 2 and 3) that Meta had provided in response to mandatory criterion M1 had a common mandate, described identical project management methodology with none of the required descriptions of process improvements, were sequential and had the same reference contact. As a result, on May 4, 2009, the CRA contacted the reference that Meta had listed in its proposal (the same person was the reference for Projects 1, 2 and 3), who, the CRA submitted, indicated that Projects 1, 2 and 3 were subsets of a single project.

8. On or about July 9, 2009, the CRA advised Meta that its offer was non-compliant with mandatory criterion M1. On July 10, 2009, Meta requested a justification from the CRA as to why its proposal did not meet mandatory criterion M1. The same day, the CRA provided a more detailed explanation of its decision. Meta was not satisfied with the CRA's determination and informed the CRA accordingly later that day. On July 13, 2009, the CRA informed Meta that it could either request a formal debriefing with the CRA's Supply Arrangement Authority or file a complaint with the Tribunal. On July 21, 2009, Meta made an objection to the CRA and requested a formal debriefing, which took place on August 10, 2009. On August 10, 2009, Meta contacted its reference, who confirmed that he had spoken with the CRA evaluators during the evaluation period. On August 14, 2009, Meta's reference sent an e-mail to Meta stating as follows:⁵

I'm really sorry to hear that your submission hasn't been retained based on an apparent misunderstanding concerning the number of projects you worked on with CRA. As you know, having been with Standardized Accounting for 7 years I will often refer to the Standardized Accounting Initiative as one big project when in reality it is a huge initiative that includes several projects with their own timelines and project team.

As a matter of fact, Standardized Accounting started some 15 years ago, and has resulted in the implementation of 4 programs into the SA System under 4 separate projects, project teams and charters.

- 1.. Corporate Suspense 1998
- 2.. Corporate Income Tax[e]s] 1995 - 2000
- 3.. Excise taxes 2000 - 2003
- 4.. GST Redesign 2002 - 2007 (which was lead by me)

These were 4 different projects implemented into the Standardized Accounting System. If the vocabulary I used in my discussion with [the CRA evaluator] led him to conclude that these were only one project, I apologize as they really were separate projects.

...

Hope this will help

5. Complaint, tab 9.

9. On August 20, 2009, Meta filed its complaint with the Tribunal.

POSITION OF PARTIES

Meta

10. Meta submitted that the CRA applied an unreasonable definition of the word “project” to Projects 1, 2 and 3 that it submitted in response to mandatory criterion M1. Meta argued that, as a result, the CRA miscategorized Projects 1, 2 and 3 as being only parts of a single larger project, when, in fact, each was a separate project. It submitted that the CRA’s mischaracterization of its bid was not based on either the published evaluation plan or the information contained in its proposal.

11. Regarding the CRA’s argument that Projects 1, 2 and 3 were part of a larger initiative and that they shared identical descriptions, had the same mandate, were for the same organization and had the same project reference, Meta submitted that mandatory criterion M1 only asked bidders to provide five different projects. It submitted that the RFSA did not stipulate that the projects had to be completely dissimilar in their descriptions and could not relate to the same “initiative”, which, it noted, like the term “project” itself, was not defined in the RFSA. It argued that the similarities were not considerations that were identified in the evaluation plan of the RFSA and that it had no opportunity to address these considerations or put relevant information before the evaluators.

12. Meta submitted that its reference’s e-mail of August 14, 2009, clearly provided that Projects 1, 2 and 3 were separate and that there was some confusion regarding the definition of the term “project” in the reference’s conversation with the evaluator. Meta submitted that the evaluator misunderstood what its reference told him, as he had clearly said that there were three distinct projects: one relating to corporate income tax, one relating to excise tax and duty, and one relating to the goods and services tax.

13. Meta argued that it should be given the benefit of the doubt for any ambiguities in the RFSA, as bidders should not be penalized for a latent ambiguity in the solicitation documents.⁶ It also submitted that there had been no need for it to seek any clarifications prior to submitting its proposal, as it understood the word “project” in its ordinary grammatical sense as being “a specific plan or design” or “planned undertaking”.⁷

14. The CRA submitted that the Tribunal should not interfere with the evaluation team’s expertise in determining whether a proposal meets technical requirements. It submitted that the case law on this issue is clear, demonstrating that the Tribunal takes a deferential approach and does not substitute its judgement for that of government evaluators, except where evaluators fail to stay within the confines of the procurement process or make a decision that is unreasonable.⁸ It submitted that, in the current case, the CRA conducted the evaluation according to the evaluation plan and that, therefore, the Tribunal should not interfere with its decision.

6. *Re Complaint Filed by IBM Canada Ltd.* (24 April 1998), PR-97-033 (CITT); *Re Complaint Filed by Bell Canada* (13 July 1998), PR-97-054 (CITT); *Re Complaint Filed by Immeubles Yvan Dumais Inc.* (10 June 2008), PR-2007-079 (CITT); *Re Complaint Filed by MTS Allstream Inc.* (3 February 2009), PR-2008-033 (CITT).

7. Complaint, tab 10.

8. *Re Complaint Filed by AmeriData Canada Ltd.* (9 February 1996), PR-95-011 (CITT); *Re Complaint Filed by Crain-Drummond Inc.* (18 August 2000), PR-2000-009 (CITT); *Re Complaint Filed by Northern Lights Aerobatic Team, Inc.* (7 September 2005), PR-2005-058 (CITT); *Re Complaint Filed by Excel Human Resources Inc. (operating as excelITR)* (25 August 2006), PR-2005-058 (CITT).

15. The CRA submitted that, while reviewing Meta's proposal, and in accordance with the evaluation plan outlined in the RFSA, the evaluation team noted that Projects 1, 2 and 3 that Meta had submitted in response to mandatory criterion M1:

- shared a common mandate;
- had a description of a project management methodology that was identical, with no description of a methodology for process improvement as was required;
- had sequential dates; and
- had the same reference.

16. The CRA submitted that the lack of descriptions of process improvement methodologies placed Meta's bid at risk of being non-compliant and that, as a result, the evaluators had to look elsewhere in the proposal to find such descriptions. As a result of this search, it noted that the project descriptions were identical for Projects 1, 2 and 3.

17. The CRA submitted that the evaluators correctly relied on the reference's opinion during the evaluation of the offer and that, if the reference subsequently changed his opinion on the issue several months later, when the evaluation process was completed and the winning bids were announced, as evidenced by his e-mail of August 14, 2009, this is not a reason for the Tribunal to interfere. The evaluation team made its decision based on the information that Meta provided during the evaluation process.

18. The CRA submitted that, in its evaluation, it did not apply an unknown or hidden definition of "project" that was not in keeping with the ordinary grammatical use of the term. The "specific plan or design" as applied by the evaluation team was to integrate various tax programs into an overall accounting business suite. The goals and objects of Projects 1, 2 and 3 were identical and Projects 1, 2 and 3 were accomplished in a sequential time frame leading to the evaluators' conclusion that Projects 1, 2 and 3 had a common "specific plan or design" and could not be viewed in a reasonable manner as three separate projects. The CRA argued that Meta failed to provide descriptions that included details regarding the unique features of each project, instead providing descriptions of the apparently routine tasks performed in the course of the corporate accounting initiative. The CRA submitted that repeated completion of the same tasks three times in succession does not support Meta's contention that Projects 1, 2 and 3 were in fact three distinct projects. It submitted that Meta failed to include information in its offer that proved that Projects 1, 2 and 3 were distinct and that this deficiency was reinforced by Meta's reference.

19. The CRA submitted that it would have been a violation of the relevant trade agreements if Meta had been allowed to modify its offer after bid closing, i.e. as a result of the reference's change of opinion on Projects 1, 2 and 3. It submitted that a bid may only be clarified after bid closing in a case where a mistake was a mere minor aberration. The CRA argued that, in the present case, the issue of whether Projects 1, 2 and 3 were distinct is central to determining whether Meta's proposal met the basic requirements of mandatory criterion M1.

20. The CRA submitted that the evaluation was based on the information that was in its possession at the time of bid evaluation and that Meta, in its objection to the CRA and complaint to the Tribunal, has added information relating to how it met mandatory criterion M1 that was not included in its offer. As an example, the CRA noted that the descriptions of Projects 1, 2 and 3 were almost identical in the offer, but different in the complaint. The CRA submitted that it was open for the Tribunal to draw an adverse inference against Meta in light of the different descriptions that it advanced in its complaint. The CRA submitted that, if Projects 1, 2 and 3 had been truly separate, there would have been no need for Meta to change the descriptions in the complaint.

21. The CRA submitted that the decision that is subject to review in this proceeding against the standard of reasonableness is that of the evaluators, based on the content and wording of the offer submitted by Meta on or about February 19, 2009.

22. The CRA submitted that the complaint should be dismissed with costs. It also submitted that, if the Tribunal rules in favour of Meta, the Tribunal should order the CRA as follows:

- (1) To continue with the evaluation of Meta's proposal in accordance with the terms of the RFSA;
- (2) As a result of the evaluation and if Meta does qualify as one of the top five suppliers, to issue a supply arrangement to Meta; and/or
- (3) To pay for the cost of filing a complaint with the Tribunal in accordance with its *Guideline for Fixing Costs in Procurement Complaint Proceedings*.

TRIBUNAL'S ANALYSIS

23. 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. At the conclusion of the inquiry, the Tribunal must determine the validity of the complaint 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 *North American Free Trade Agreement*,⁹ the *Agreement on Internal Trade*,¹⁰ the *Agreement on Government Procurement*¹¹ and the *Canada-Chile Free Trade Agreement*.¹²

24. Article 506(6) of the *AIT* provides that "... [t]he 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."

25. Article 1015(4)(d) of NAFTA provides that "awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation."¹³

26. Meta alleged that the CRA evaluated mandatory criterion M1 incorrectly by considering that Projects 1, 2 and 3 submitted by Meta to meet this criterion constituted a single project.

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

11. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm> [*AGP*].

12. *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.

13. Similar provisions are found in Article XIII(4) of the *AGP* and Article Kbis-10 of the *CCFTA*.

27. Mandatory criterion M1 of the RFSA read as follows:

M1	<p>The Offeror must provide summaries of five (5) projects completed within ten (10) years from the date of offer submission in the areas of process improvement services, where the Offeror was the primary contractor responsible for the projects. Each project summary must include the following information, as a minimum:</p> <ul style="list-style-type: none"> • A description of the project and how the process improvement services were utilized; • A description of the process improvement methodology used; • Duration of the project (start and end dates). <p>Information provided in the project summaries will be subject to validation by members of the evaluation team and will be used further at 2.0 Point Rated Evaluation Criteria.</p> <p>In order to validate the information, each referenced project must contain the following information:</p> <ol style="list-style-type: none"> 1. Name of client organization. 2. Names, titles, telephone numbers, fax numbers and e-mail addresses of the primary and secondary client contacts. <p>...</p> <p>Should discrepancies exist between the information submitted by the Offeror and the information provided by the contract reference, the information provided by the project reference will take precedence.</p>
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28. In response to mandatory criterion M1, Meta's proposal provided the following general descriptions regarding the nature and duration of Projects 1, 2 and 3:

Project # 1 - Corporation Income Tax Program redesign and integration into the Standardized Accounting Business Suite

Description of the Project:^[14]

The project entailed the conversion of all outstanding Corporate Income Tax registrant account balances in the legacy corporate income tax processing system (Corpac) into the Standardized Accounting business suite. . . . [The description included the environment in which the work was conducted, as well as which systems were targeted by the project.]

The . . . project entailed the reengineering and migration of all client accounting and assessment processes and functions to the new business suite. All business processes surrounding the administration of the Corporate Income Tax revenue stream within the Canada Revenue Agency were reviewed and significant modifications to . . . procedures were introduced.

[The description also identified other applications that were impacted by the conversion.]

...

Duration of the project (start and end dates):

This project started in 1996 and was successfully delivered in October of 2000.

...

14. Information has been redacted for confidentiality reasons.

Project # 2 - Excise Tax and Duty Programs redesign and integration into the Standardized Accounting Business Suite**Description of the Project:**^[15]

The project entailed the conversion of all outstanding Excise Tax and Duty registrant account balances in the legacy Excise Tax and Duty processing system (Excise) into the Standardized Accounting business suite. . . . [The description included the environment in which the work was conducted, as well as which systems were targeted by the project.]

The . . . project entailed the reengineering and migration of all client accounting and assessment processes and functions to the new business suite. All business processes surrounding the administration of the Excise Tax and Duty revenue streams within the Canada Revenue Agency were reviewed and significant modifications to . . . procedures were introduced.

[The description also identified other applications that were impacted by the conversion.]

. . .

Duration of the project (start and end dates):

This project started August 2001 and was successfully delivered in October of 2003.

. . .

Project # 3 - Goods and Services Tax redesign and integration into the Standardized Accounting Business Suite**Description of the Project:**^[16]

The project entailed the conversion of all outstanding Goods and Services Tax (GST) registrant account balances in the legacy GST processing system (GST) into the Standardized Accounting business suite. . . . [The description included the environment in which the work was conducted, as well as which systems were targeted by the project.]

The . . . project entailed the reengineering and migration of all client accounting and assessment processes and functions to the new business suite. All business processes surrounding the administration of the . . . revenue streams within the Canada Revenue Agency were reviewed and significant modifications to . . . procedures were introduced.

[The description also identified other applications that were impacted by the conversion.]

. . .

Duration of the project (start and end dates):

This project started August 2003 and was successfully delivered in April of 2007.

29. The Tribunal notes that the project descriptions are the same for each project, except for the following:

- The system being converted into the Standardized Accounting business suite:
 - Project 1: corporate income tax processing system;
 - Project 2: excise tax and duty processing system; and
 - Project 3: goods and services tax processing system.

15. *Ibid.*

16. *Ibid.*

- The project time frames:
 - Project 1: 1996 to October 2000;
 - Project 2: August 2001 to October 2003; and
 - Project 3: August 2003 to April 2007.
- Project 1 had a different secondary client contact than did Projects 2 and 3.
- Projects 1, 2 and 3 were conducted under two different contracts and, according to Meta, under three separate statements of work.¹⁷

30. The CRA submitted that, given its concerns regarding the similarities between the descriptions of Projects 1, 2 and 3, the evaluators consulted the primary customer contact for Projects 1, 2 and 3 given by Meta. The notes taken during this consultation indicate that this contact said that “. . . the Standardized Accounting initiative was a corporate initiative affecting financial and system controls. . . . Projects 1 through 3 relate to this initiative, called SA-T2 (corporate income tax), SA-OL (excise tax and duty) and SA-GST (GST redesign).”¹⁸ The CRA submitted that, as a result of this consultation, the evaluation team concluded that Projects 1, 2 and 3 were not separate projects, but sub-projects belonging to a common larger project.

31. The Tribunal notes that the RFSa provides no guidance, in either official language version, in determining whether a given piece of work constitutes a separate “project”. In addition, the Tribunal found no prohibition in the RFSa against submitting projects with similar or identical work.

32. As indicated in previous determinations, the Tribunal will generally not substitute its judgment for that of the evaluators unless they have not applied themselves in evaluating a bidder’s proposal, ignored vital information provided in a bid, wrongly interpreted the scope of a requirement, based their evaluation on undisclosed criteria, or otherwise failed to conduct the evaluation in a procedurally fair manner.¹⁹

33. In this instance, however, the Tribunal considers that the evaluators have clearly been unreasonable in the manner in which they considered Projects 1, 2 and 3 in Meta’s proposal.

34. In normal usage, the word “project” is a very broad term. For example, the *Canadian Oxford Dictionary*²⁰ defines it as “**1** a plan; a scheme. **2** a an undertaking that is carefully planned and designed to achieve a particular aim. **b** any planned activity”

35. Based on the information found in Meta’s bid, Projects 1, 2 and 3 each consisted of different undertakings or activities, i.e. the conversion of three different tax systems, which took place during different time frames, i.e. 1996-2000, 2001-2003 and 2003-2007. While indicating that there was a three-month overlap between Projects 2 and 3, the evidence does not indicate that Project 3 was merely a continuation of Project 2. Based on the evidence, it appears to the Tribunal that Projects 1, 2 and 3 each had their own respective “particular aim[s]” as contemplated by the above definition.

17. Complaint, tab 1, para. 15(c).

18. GIR, confidential version, tab 2.

19. *Re Complaint Filed by Global Upholstery Co. Inc.* (6 July 2009), PR-2008-052 (CITT); *Re Complaint Filed by Excel Human Resources Inc. (operating as excelITR)* (25 August 2006), PR-2005-058 (CITT); *Re Complaint Filed by Vita-Tech Laboratories Ltd.* (18 January 2006), PR-2005-019 (CITT); *Re Complaint Filed by Polaris Inflatable Boats (Canada) Ltd.* (23 June 2003), PR-2002-060 (CITT).

20. Second ed., s.v. “project”.

36. Furthermore, in the Tribunal's view, the notes taken by the evaluator regarding the discussion with Meta's reference contact for Projects 1, 2 and 3 do not indicate that the contact necessarily considered them to be part of a single project. Rather, in the Tribunal's view, the notes appear to indicate simply that Projects 1, 2 and 3 were separate projects relating to the larger corporate Standard Accounting Initiative. Indeed, the notes confirm that Projects 1, 2 and 3 each related to specific, different work.

37. Accordingly, the Tribunal considers that the CRA was unreasonable in concluding that Projects 1, 2 and 3 were a single project.

38. In light of the foregoing, the Tribunal determines that Meta's complaint is valid.

Remedy

39. Having found the complaint to be valid, the Tribunal must now recommend the appropriate remedy.

40. In this regard, subsection 30.15(3) of the *CITT Act* provides 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.

41. The Tribunal considers that not evaluating a proposal in accordance with the criteria provided in the RFSA represents a serious deficiency in the procurement process. Bidders need to rely on the prescribed evaluation criteria to formulate their proposals. If they are not being informed of all the "rules of the game", bidders are unable to optimize their efforts to be the successful bidder. The Tribunal believes that such a serious deficiency in evaluation prejudices the integrity and efficiency of the competitive procurement system. The Tribunal notes that there was no evidence that the technical evaluators were not acting in good faith when they conducted their evaluations. In addition, the Tribunal notes that no work has been performed by any of the current holders of the five supply arrangements that were issued pursuant to Solicitation No. 1000244131.

42. The Tribunal recommends that Meta's proposal be re-evaluated in accordance with the evaluation provisions of Solicitation No. 1000244131, with the direction that the CRA evaluators consider Projects 1, 2 and 3, as found in Meta's proposal submitted to the CRA in response to Solicitation No. 1000244131, as separate projects.

Costs

43. The Tribunal awards Meta 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 services involving a moderately undefined project. The complexity of the complaint was low, in that the grounds of complaint involved a single criterion. Finally, the complexity of the complaint proceedings was low, as there were no motions or interveners, a public hearing was not required, and the 90-day time frame was respected. 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

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

45. Pursuant to subsections 30.15(2) and (3) of the *CITT Act*, the Tribunal recommends, as a remedy, that the CRA re-evaluate the proposal submitted by Meta in response to Solicitation No. 1000244131. The Tribunal directs the CRA to consider each of the first three projects submitted by Meta in response to mandatory criterion M1 as a separate project. If, as a result of this re-evaluation, Meta's proposal is one of the five highest-rated bids in accordance with the evaluation process provided in the solicitation, the Tribunal recommends that Meta either be issued a supply arrangement or, in the alternative, be compensated by an amount equal to the profit that it would reasonably have earned had it been awarded 20 percent of the work relating to Solicitation No. 1000244131. The Tribunal also recommends that the CRA not exercise any option to extend the supply arrangements beyond the initial three-year period.

46. If the CRA chooses to compensate Meta for its lost profit, the Tribunal recommends that Meta and the CRA negotiate the amount of compensation and, within 30 days of the date of this determination, report back to the Tribunal on the outcome.

47. Should the parties be unable to agree on the amount of compensation, Meta shall file with the Tribunal, within 40 days of the date of this determination, a submission on the issue of compensation. The CRA will then have 7 working days after the receipt of Meta's submission to file a response. Meta will then have 5 working days after the receipt of the CRA's reply submission to file any additional comments. The Tribunal reserves jurisdiction to establish the final amount of compensation.

48. Pursuant to section 30.16 of the *CITT Act*, the Tribunal awards Meta its reasonable costs incurred in preparing and proceeding with the complaint, which costs are to be paid by the CRA. In accordance with the *Guideline*, 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.

Ellen Fry
Ellen Fry
Presiding Member