



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2009-129

CRG Consulting, ANJARO
International and Humber College

*Decision made
Tuesday, March 16, 2010*

*Decision and reasons issued
Wednesday, April 14, 2010*

IN THE MATTER OF a complaint filed pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47

BY

CRG CONSULTING, ANJARO INTERNATIONAL AND HUMBER COLLEGE

AGAINST

THE CANADIAN INTERNATIONAL DEVELOPMENT AGENCY

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.

Serge Fréchette
Serge Fréchette
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 relates to a procurement (Solicitation No. 2009-A-032561-1) by the Canadian International Development Agency (CIDA) for the initial training and professional development of the Haitian National Police officials.
3. CRG Consulting, ANJARO International and Humber College (collectively referred to as CRG) alleges that CIDA failed to comply with the evaluation methods and procedures prescribed in the solicitation documents when it mistakenly opened CRG's financial proposal before completing the evaluation of its technical proposal. CRG also disputes the points given for the technical component of its proposal.
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 conducted 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 Chapter Kbis of the *Canada-Chile Free Trade Agreement*⁶ or Chapter 14 of the *Canada-Peru Free Trade Agreement*⁷ applies. In this case, at a minimum, the *AIT* applies.⁸

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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) [*NAFTA*].
 4. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <http://www.ait-aci.ca/index_en/ait.htm> [*AIT*].
 5. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm> [*AGP*].
 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) [*CCFTA*]. Chapter Kbis, entitled "Government Procurement", came into effect on September 5, 2008.
 7. *Free Trade Agreement between Canada and the Republic of Peru*, online: Department of Foreign Affairs and International Trade <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/peru-perou/chapter-chapitre-14.aspx>> (entered into force 1 August 2009) [*CPFTA*].
 8. Depending on the precise nature of CIDA's role with regard to the invitation to tender, *NAFTA*, the *AGP* and the *CCFTA* may also apply (the *CPFTA* does not apply in this case because it came into force on August 1, 2009, and, therefore, after the procurement process was commenced). However, since the provisions of *NAFTA*, the *AGP* and the *CCFTA* that would apply in this case are similar in scope to those of the *AIT*, the Tribunal only took into account the latter agreement for purposes of making a determination pursuant to subsection 30.13(1) of the *CITT Act*. This should not, in any way, be interpreted to mean that the Tribunal has made a determination that the procured services are not covered by *NAFTA*, the *AGP* and the *CCFTA*.

5. On November 4, 2008, CIDA issued a Request for Proposal (RFP) for the provision of the said initial training and professional development services. The original bid closing date was December 19, 2008. However, following amendments to the RFP, that date was changed to January 12, 2009.

6. On January 12, 2009, CRG submitted a technical and financial proposal in response to the RFP. On three occasions, CIDA asked bidders to extend the period of validity of their proposals. In a letter dated February 24, 2010, CIDA notified CRG that another association had been selected for the execution of the project. In a letter dated February 26, 2010, CIDA again notified CRG that another association had been selected for the execution of the project. According to the complaint, CRG received these two letters on March 1, 2010. In another letter dated February 26, 2010, CIDA notified CRG that the bid receiving unit had mistakenly opened its financial proposal, but that “. . . the decision not to take into account its proposal for contract award purposes . . .” [translation] was not in any way attributable to this mistake. According to the complaint, CRG received that letter on March 3, 2010.

7. On March 5, 2010, CRG e-mailed CIDA to inform it that it was officially objecting to CIDA’s decision not to accept its proposal for this procurement. According to the complaint, a debriefing was held on March 8, 2010, at CIDA’s offices. During this debriefing, CIDA informed CRG of the score obtained and of the strengths and weaknesses of its proposal. On March 9, 2010, CRG e-mailed CIDA and asked for precise answers to some of the questions that had remained unanswered following the debriefing or for which CIDA had to research further. On March 10, 2010, CRG filed its complaint with the Tribunal.

8. CRG disputes the score given by CIDA for its technical proposal, which was lower than the passing score necessary to go on to the next step in the evaluation process. CRG disputed in particular the results for requirement nos. 2, 4, 7, 11, 13, 14, 17, 18, 19 and 20, set out in article 5.2 of the RFP. CRG questions the objectivity of that evaluation, particularly because its financial proposal was opened before completion of the evaluation of its technical proposal. According to CRG, that mistake alone raises a reasonable doubt with regard to the validity and credibility of the process.

9. Subsection 506(6) of the *AIT* reads 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.

10. Article 7.1 of the RFP, entitled « **Evaluation Procedures** » [translation], reads as follows:

The technical component of proposals will be opened and scored before any financial proposals are opened. . . .

A Consultant’s financial proposal is opened only if the technical component achieves a score equal to or in excess of the pass mark of 60%. All other financial proposals will be returned unopened once the final selection has been made.

11. The Tribunal is of the view that this evaluation method is intended to allow the evaluation of the technical components of proposals to proceed without being unduly influenced by the knowledge of relative prices. As indicated in *Telus Integrated Communications Inc.*,⁹ “. . . the knowledge of relative prices can and does, at times, compromise an evaluator’s ability to be objective.”

9. (10 November 2000), PR-2000-019 (CITT).

12. In this case, the Tribunal notes that CIDA clearly asserted the following in its letter dated February 26, 2010, to CRG: “. . . under no circumstances was the proposal evaluation team aware or informed of the contents of your financial proposal” [translation] and “. . . the decision not to take your proposal into account for contract award purposes is in no way due to the mistake made by the Bid Receiving Unit” [translation]. Other than the general allegations made by CRG, the Tribunal sees no evidence that the opening, by the bid receiving unit, of the envelope that contained the financial proposal could have influenced the decision with regard to the contract award. In fact, the Tribunal has no reason to doubt the assertion made in CIDA’s letter dated February 26, 2010. Under these circumstances, it seems that the object and the goal of the evaluation procedure set out in article 7.1 of the RFP were met. Opening CRG’s financial proposal by mistake cannot, in and of itself, justify questioning the validity and credibility of the procurement process.

13. As for CRG’s objection to the results obtained for certain technical requirements of the RFP, the Tribunal notes that CRG did not provide any evidence, other than the opening of its financial proposal, that would possibly indicate that CIDA did not correctly apply the evaluation criteria set out in the RFP or that it otherwise unreasonably evaluated its technical proposal.

14. Consequently, the Tribunal finds that the information at its disposal at this time does not disclose a reasonable indication that the procurement was not carried out in accordance with the applicable trade agreements, in particular the *AIT*.

15. On the basis of the foregoing, the Tribunal will not conduct an inquiry into the complaint and considers the matter closed.

DECISION

16. Pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal has decided not to conduct an inquiry into the complaint.

Serge Fréchette

Serge Fréchette
Presiding Member