



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

---

## DECISION AND REASONS

File No. PR-2011-015

141895 Canada Inc.

*Decision made  
Wednesday, July 13, 2011*

*Decision and reasons issued  
Thursday, August 4, 2011*

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**

**141895 CANADA INC.**

**AGAINST**

**THE DEPARTMENT OF AGRICULTURE AND AGRI-FOOD**

**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*<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 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. 01B68-11-0503) by the Department of Agriculture and Agri-Food (AAFC) for the provision of specialized revision services.
3. 141895 Canada Inc. alleged that the mandatory and rated requirements of the Request for Proposal (RFP) are illogically restrictive and prevent competent people from bidding. 141895 Canada Inc. further alleged that the requirements act as a deceptive method for awarding a sole-source contract.
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*,<sup>3</sup> Chapter Five of the *Agreement on Internal Trade*,<sup>4</sup> the *Agreement on Government Procurement*,<sup>5</sup> Chapter Kbis of the *Canada-Chile Free Trade Agreement*<sup>6</sup> or Chapter Fourteen of the *Canada-Peru Free Trade Agreement*<sup>7</sup> applies.<sup>8</sup> In other words, the Tribunal must examine the complaint to determine if there is a reasonable indication that the procuring entity conducted the procurement in a manner that violated one of the applicable trade agreements.

---

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](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](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. Revision and translation services are covered by the *AIT*. Revision and translation services are not listed under Appendix I, Annex 4 of the *AGP*. These services appear to fall under both Category T “Communications, Photographic, Mapping, Printing and Publications Services” (editing and writing services) and Category R “Professional, Administrative and Management Support Services” (editing services). Editing and writing services under Category T are excluded from *NAFTA* per Annex 1001.1b-2, from the *CCFTA* per Annex Kbis-01.1-4 and from the *CPFTA* per Annex 1401.1-4. It is uncertain what proportion of the value of the procurement would be for the excluded services. As such, it is unclear whether *NAFTA*, the *CCFTA* or the *CPFTA* would apply. However, as the Tribunal is satisfied that this procurement is covered by the *AIT* and the Tribunal has decided to not conduct an inquiry into this complaint, it does not consider it necessary to determine whether *NAFTA*, the *CCFTA* and the *CPFTA* are applicable in this case.

5. On June 8, 2011, AAFC issued the RFP. The bid closing date was July 18, 2011.
6. Appendix D, "Evaluation Procedures and Criteria", of the RFP provides as follows:

2. **MANDATORY REQUIREMENTS**

Failure to comply with any of the mandatory requirements will render the Proposal non-compliant and the Proposal will receive no further consideration. The Proposer must include the necessary documentation to demonstrate this compliance.

...

Mandatory Requirement No.	Description	PAGE REFERENCE
...		
M3	<p>Proposers must demonstrate, in Appendix F and/or G, that the proposed employee/sub-contractor has a minimum of <b>fifteen (15) years</b> of translation/revision experience in the agricultural field.</p> <p><b><u>Work Stream #1</u></b></p> <p>Translation from English to French or revision of texts translated from English to French.</p> <p><b><u>Work Stream #2</u></b></p> <p>Translation from French to English or revision of texts translated from French to English.</p>	

3. **RATED REQUIREMENTS**

3.2 Rated Criteria

Rated Requirement No.	Description	Page Reference	Maximum Marks
...			
R5	<p>Using the Appendix F and/or G and a curriculum vitae, the proposed employee/sub-contractor will be evaluated against the following sub-criteria.</p> <p><i>If applying on both streams, each stream will be scored separately.</i></p>		
...			
B	<p>Total number of years of experience in translating or revising texts (in any subject area) from:</p> <p><b><u>Work Stream #1</u></b></p> <p>Translation from English to French or revision of texts translated from English to French.</p> <p><b><u>Work Stream #2</u></b></p> <p>Translation from French to English or revision of texts translated from French to English.</p>		

<b>C</b>	Cumulative years of translation/revision experience in at least 2 of the following subject areas: <ul style="list-style-type: none"> <li>• Agricultural policy;</li> <li>• Agricultural international markets;</li> <li>• Agricultural economics;</li> <li>• Agricultural research;</li> <li>• Agricultural programs.</li> </ul>		
<b>D</b>	Years of experience in translating / revising documents specifically related to AAFC's Growing Forward Framework.		
<b>R6</b>	Proposers must provide two (2) references for revision work related to agriculture done in the past five (5) years, carried out in an environment similar in size and scope to this RFP.		

7. On June 14, 2011, 141895 Canada Inc. sent two letters to AAFC concerning mandatory requirement M3 and rated requirements R5B, R5C, R5D and R6. With respect to mandatory requirement M3, 141895 Canada Inc. requested that the requirement for 15 years of translation/revision experience be decreased to 1 or 2 years of experience. With respect to R5B, 141895 Canada Inc. requested the removal of experience in revision from a text that has been translated from English to French or from French to English. With respect to R5C, it requested the removal of cumulative years from the requirement. With respect to R5D, 141895 Canada Inc. requested the removal of this requirement in its entirety. Finally, with respect to R6, 141895 Canada Inc. requested the removal of experience in an environment that is similar in size and scope.

8. On June 29, 2011, AAFC issued an amendment to the RFP in which it replied to bidders' questions. AAFC's response to 141895 Canada Inc.'s requests was that the requirements would not be changed.

9. On July 11, 2011, 141895 Canada Inc. filed its complaint with the Tribunal.

10. Article 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."

11. The Tribunal has stated in the past that, generally speaking, it is the prerogative of the procuring entity to define its own procurement needs.<sup>9</sup> However, the Tribunal has also indicated that, while a procuring entity has the right to establish the parameters of an RFP, it must do so reasonably. For example, procuring entities do not have a licence to establish conditions that are impossible to meet.<sup>10</sup>

9. See, for example, *Re Complaint Filed by FLIR Systems Ltd.* (25 July 2002), PR-2001-077 (CITT).

10. See, for example, *Re Complaint Filed by MTS Allstream Inc.* (5 August 2005), PR-2004-061 (CITT).

12. The Tribunal finds that the allegations made by 141895 Canada Inc. do not provide a reasonable indication that the procurement has not been conducted in accordance with the *AIT*. More specifically, the Tribunal finds that the mandatory requirements do not appear to be unreasonably restrictive; therefore, the Tribunal defers to the procuring entity in establishing the parameters of the subject RFP.

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