



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File No. PR-2011-043

Excel Human Resources Inc.

v.

Department of the Environment

*Determination and reasons issued
Friday, March 2, 2012*

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IN THE MATTER OF a complaint filed by Excel Human Resources Inc. pursuant to 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 pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

BETWEEN

EXCEL HUMAN RESOURCES INC.

Complainant

AND

THE DEPARTMENT OF THE ENVIRONMENT

**Government
Institution**

DETERMINATION

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 the Environment its reasonable costs incurred in responding to the complaint, which costs are to be paid by Excel Human Resources Inc. 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 in article 4.2 of the *Guideline for Fixing Costs in Procurement Complaint Proceedings*. The Canadian International Trade Tribunal reserves jurisdiction to establish the final amount of the award.

Stephen A. Leach
Stephen A. Leach
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary

Tribunal Member: Stephen A. Leach, Presiding Member
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STATEMENT OF REASONS

1. On November 18, 2011, Excel Human Resources Inc. (Excel) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ concerning a procurement (Solicitation No. K7A31-11-0151) by the Department of the Environment (Environment Canada) for the provision of Information Management Architect services. According to the solicitation documents, the required services include the analysis and evaluation of various data models and project documentation, and the development of standards and policies relating to the management and governance of data and metadata.
2. Excel alleged that its proposal was improperly evaluated and declared non-compliant. Specifically, Excel claimed that, contrary to Environment Canada's evaluation, all of its proposed resources had the experience required in the mandatory criteria set out in the Request for Proposal (RFP). As a remedy, Excel requested to be compensated for the opportunity and profit that, in its view, it lost in not being awarded the contract. It also requested that it be compensated for the costs that it incurred in preparing its proposal and in bringing the complaint before the Tribunal.
3. On November 24, 2011, the Tribunal informed the parties that the complaint had been accepted for inquiry, as 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
4. On December 20, 2011, Environment Canada filed a Government Institution Report (GIR) with the Tribunal in accordance with rule 103 of the *Canadian International Trade Tribunal Rules*.³ On December 28, 2011, Excel requested an extension of time to file its comments on the GIR. On December 29, 2011, the Tribunal granted the extension. On January 11, 2012, Excel filed its comments on the GIR in accordance with rule 104.
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 August 25, 2011, Environment Canada issued the subject RFP to eight pre-qualified potential suppliers.⁴ During the solicitation process, Environment Canada responded to a number of questions from bidders. None of the questions or responses related to Excel's ground of complaint. The due date for the receipt of bids, originally set for September 15, 2011, was extended to September 23, 2011. According to Environment Canada, three suppliers submitted bids, including Excel.

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

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

3. S.O.R./91-499.

4. Participation in the procurement process was limited to suppliers that were pre-qualified to provide Task-Based Informatics Professional Services (TBIPS) to Environment Canada under a Supply Arrangement (SA) method of tender. As it is one of the eight TBIPS SA holders in the relevant service category, Excel was invited to submit a proposal in response to the solicitation at issue.

7. On November 3, 2011, Environment Canada informed Excel that it had failed to meet mandatory criterion M3 and, therefore, that its proposal was deemed non-compliant. In the same correspondence, Environment Canada indicated that a contract had been awarded to another bidder, Veritaaq Technology House Inc.

8. Mandatory criterion M3 provided as follows:

The bidder must demonstrate, that the three (3) proposed resources have each at least two (2) years of experience during the last ten (10) years in developing or supporting the development of standards or policy relating to the management and governance of data and metadata - based on internationally recognized standards and best practices (must specify specific standards/practices employed).

The project description must clearly explain each resource's specific role, the project scope and stakeholders and what was implemented

9. In response to an inquiry from Excel, on November 7, 2011, Environment Canada provided Excel with the following, more fulsome explanation of why its proposal was declared non-compliant:

[The proposed resource] from Excel ITR did not meet M3 Criteria which required the bidder to demonstrate that the proposed resource had at least 2 years experience during the last 10 years in developing or supporting the development of standards or policy relating to the management and governance of data and metadata based on internationally recognized standards and best practices. The resource was required to specify specific standards/practices employed.

[The proposed resource] cited DAMA DMBOK [*The DAMA⁵ Guide to the Data Management Body of Knowledge*] as reference to meet this criteria during Project 3 at [Company X] from 1997 – 2007. However, the first edition of DAMA DMBOK was released on April 5th 2009. Therefore it is not possible for [the proposed resource] to have utilized this during his work prior to 2007 at [Company X]. No other specific standards and practices were cited for this mandatory criterion.

It should be noted that [another of Excel's proposed resources] also cited DAMA DMBOK as reference to meet this criterion during Project 2 at [a government entity] from March 2005 to September 2010. This time was counted from April 2009 when the reference was released to September 2010 (19 months).⁶

For these reasons, the Excel ITR proposal did not meet M3 mandatory criterion.

10. On November 18, 2011, Excel filed its complaint with the Tribunal.

POSITIONS OF PARTIES

Excel

11. While acknowledging that the first edition of the publication entitled *The DAMA Guide to the Data Management Body of Knowledge* was released in April 2009, Excel submitted that the standards or practices set out in this guide, which was developed by DAMA, existed prior to 2009, albeit in another form. In this regard, Excel submitted that these practices were officially named "DMBOK" in 2004 and, prior to that, they were called "*Guidelines for Implementing Data Resource Management*".

5. The Data Management Association, a non-profit global association of technical and business professionals dedicated to advancing the practices of information and data management. See GIR at 3-4.

6. Therefore, Environment Canada determined that two of the three resources proposed by Excel did not comply with the experience requirement set out in mandatory criterion M3.

12. Excel submitted that the fact that these guidelines had been in place for many years prior to 2009 was borne out by the preface to *The DAMA Guide to the Data Management Body of Knowledge*, which states the following:

We at DAMA International have been working on a Data Management Body of Knowledge Guide (DAMA-DMBOK Guide) in various forms for many years in our *Guidelines for Implementing Data Resource Management* (Versions 1 through 4) and now in our more formalized structured Guide. . . .

The DAMA-DMBOK Guide in its form has been in development for over four years and is a complete overhaul of the earlier Guidelines mentioned above. . . . [I]n 2004, Deborah Henderson traveled to the Chicago DAMA Chapter meeting and presented the first structured framework for a ‘body of knowledge’ for data management.⁷

13. Excel’s complaint also included excerpts from a review of the fourth edition of the *Guidelines for Implementing Data Resource Management* which, Excel claimed, clearly stated that the fourth edition of those guidelines had been published in January 2002.⁸

14. Excel submitted that, in its bid, it used the phrase “DAMA/DMBOK International Standards” in order to include the DMBOK standards *and* the preceding standards that were known under a different name prior to April 2009. Accordingly, it argued that its proposal demonstrated that its resources had at least 2 years of experience during the last 10 years in developing or supporting the development of standards or policy relating to the management and governance of data and metadata based on internationally recognized standards and best practices and that, for this reason, it was unfairly deemed non-compliant.

15. In its comments on the GIR, Excel submitted that Environment Canada improperly excluded 73 months of eligible experience of one of its proposed resources since its proposal demonstrated that this experience was clearly acquired by the resource in question during the last 10 years in developing or supporting the development of standards or policy relating to the management and governance of data and metadata. Excel argued that Environment Canada’s decision in this regard was based on the improper introduction of an “ex post facto algorithm”⁹ to exclude years of experience that occurred before a published version of a particular cited standard. According to Excel, mandatory criterion M3 made no reference to any such date or time frame in relation to the reference to any standards. Since its proposed resource has much more than 2 years of experience in the relevant field during the last 10 years, Excel submitted that it was in fact compliant with the only time frame restriction on eligible experience imposed by mandatory criterion M3.

16. Excel further submitted that Environment Canada had the burden of confirming that Excel’s proposal met the conditions imposed by mandatory criterion M3, pertaining to experience “. . . based on internationally recognized standards and best practices . . .”, and failed to perform the required due diligence in this regard. In particular, it argued that it chose to use the terms “DAMA/DMBOK” as the two are intrinsically linked, the DMBOK being a creation of DAMA and a direct evolution of previous DAMA guidelines. Excel submitted that it was therefore incorrect for Environment Canada to consider that its proposal referred only to the DMBOK, as Excel had used the terms “DAMA/DMBOK” in its proposal. According to Excel, the use of a slash (/) instead of a hyphen indicated that Excel was in fact referring to any DAMA or DMBOK guidelines.

7. GIR, tab 22.

8. Complaint, Exhibit B.

9. Comments on the GIR at 5.

17. In response to Environment Canada's argument that it is not true that the DAMA-DMBOK standard existed in some other form before April 2009, Excel filed with the Tribunal an e-mail dated December 28, 2011, from the president of the DAMA Foundation, Ms. Deborah Henderson, which states the following:

We previously published (in 4 revisions) the Guidelines for Implementation of Data Resource Management these go back to 1988. In 2005 we started developing the 'next' version and completely changed it to its current form – a Guideline to the Data Management Body of Knowledge.

18. On that basis, Excel argued that Environment Canada's arguments on the time frame for the publication of the DAMA-DMBOK are null and void. Excel added that the e-mail from Ms. Henderson made it clear that the DAMA-DMBOK, as well as previous versions and incarnations of the DAMA guidelines, was in fact characterized by DAMA as best practices. Therefore, Excel submitted that its proposal was eliminated from consideration before it was fully evaluated.

19. Finally, Excel sought to amend its complaint to include an allegation that some unknown impropriety occurred during the evaluation of its proposal. Excel claimed that this unspecified impropriety stemmed, *inter alia*, from:

- Environment Canada not providing any evidence from the bid evaluation period, including any time-stamped documents;
- alleged inconsistencies in the evaluation, in particular, the fact that another proposed resource was found to have met mandatory criterion M3 when his experience was also based on the DAMA-DMBOK;
- the fact that Environment Canada's research into the DAMA-DMBOK appears to have taken place after the complaint was filed, not during bid evaluation; and
- the large number of wild accusations and simply false statements made by Environment Canada about DAMA that, Excel claimed, are a cause to believe that Environment Canada never researched the DAMA organization during the bidding process.

Environment Canada

20. Environment Canada submitted that Excel's proposal was properly assessed by a team of qualified experts that exercised sound, professional judgment. It also submitted that, as there are no allegations in the complaint regarding procedural unfairness in the evaluation of proposals, the only issue before the Tribunal is whether to interfere with the technical conclusion reached by the evaluation team. Environment Canada argued that the Tribunal must defer to the conclusions reached by Environment Canada and must not attempt to evaluate the sufficiency of the technical response provided by Excel in its proposal. It requested that the Tribunal dismiss the complaint and that it be awarded its costs.

21. Environment Canada submitted that the Tribunal has repeatedly held that there must be strict compliance with the mandatory criteria of an RFP; it also submitted that the inclusion of M3 as a mandatory criterion in this RFP had a direct impact on what was acceptable by way of a bidder's response, as well as what information had to be included in that response. It submitted that mandatory criterion M3 imposed a strict requirement on bidders to demonstrate in their proposals that their proposed resources had at least two years of experience during the last 10 years in developing or supporting the development of standards or policy related to the management and governance of data and metadata based on internationally recognized standards and best practices. Environment Canada submitted that Excel's proposal was properly evaluated against this criterion.

22. Environment Canada further submitted that the international best practices referenced by Excel in its proposal, namely, the DAMA/DMBOK, were not in existence until April 2009 and it was therefore impossible for the proposed resources to have acquired the requisite experience between October 1997 and 2007. It added that the suggestion by Excel that, while it referred to the DAMA/DMBOK in its proposal, it was in fact referring to some other preceding best practices was completely without merit. In this regard, Environment Canada noted that reading into the terms of Excel's proposal more than is stated would be tantamount to allowing impermissible bid repair and that, in any event, mandatory criterion M3 required bidders to identify the *specific* standards or practices employed, which Excel failed to do.

23. Environment Canada submitted that DAMA is not an authoritative standards body and that none of its publications have ever been approved as "standards" by any international standards body, such as the International Organization for Standardization or the Standards Council of Canada. It submitted that the DMBOK was accepted by the evaluation team as an internationally recognized best practice. Environment Canada submitted that the DAMA-DMBOK was only released as such in 2009 and that any publication that preceded it was not an internationally recognized best practice.

24. Environment Canada submitted that Excel's claim that the DAMA-DMBOK standard existed in some other format is patently false. Environment Canada's GIR included information that it obtained from Ms. Deborah Henderson, the current president of the DAMA Foundation, indicating that, as of October 2006, only three chapters of what would eventually become the DMBOK had been drafted—the Introduction; Data Management Overview, including the framework; and Data Stewardship and Governance — and that all were under review by the technical community at the time. Environment Canada submitted that, even if the proposed resource had had access to the prior version noted above, which Environment Canada denied, this was likely an *ex post facto* assertion from Excel and a fabrication taken directly from the Internet in order to remedy the defects in its proposal, since that version was only a draft structural framework for the body of knowledge (i.e. the DMBOK) without the content.

25. Environment Canada submitted that it did not give Excel credit for any time claimed regarding the *Guidelines for Implementing Data Resource Management*, as it was not the best practices referenced in the proposal nor was it the same resource/publication as the DAMA-DMBOK. Environment Canada submitted that if Excel had meant to reference best practices that preceded the DAMA-DMBOK, it had an obligation under the solicitation documents to identify those specific international standards or best practices in its proposal, which it failed to do. With regard to the suggestion that the evaluation team should have read into the words "DAMA/DMBOK" that they meant the *Guidelines for Implementing Data Resource Management*, Environment Canada submitted that such an action would have constituted a form of bid repair. Environment Canada argued that the procurement authority cannot read into the document more than is written and that Excel should have explicitly stated the title *Guidelines for Implementing Data Resource Management* as, at this stage, such a clarification would constitute a breach of its duty to reject non-compliant proposals.

TRIBUNAL'S ANALYSIS

26. 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 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. Section 11 of the *Regulations* provides that the Tribunal is required to determine whether the procurement was conducted in accordance with the

applicable trade agreements, which, in this instance, are the *North American Free Trade Agreement*,¹⁰ the *Agreement on Internal Trade*,¹¹ the *Agreement on Government Procurement*,¹² the *Canada-Chile Free Trade Agreement*,¹³ the *Canada-Peru Free Trade Agreement*¹⁴ and the *Canada-Colombia Free Trade Agreement*.¹⁵

27. Article 506(6) of the *AIT* requires that the tender documents 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.

28. Article 1013(1)(h) of *NAFTA* provides that the tender documentation shall include:
the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders . . .

29. Article 1015(4)(d) of *NAFTA* provides that the government shall award contracts as follows:
awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation;

30. The *AGP*, the *CCFTA*, the *CPFTA* and the *CCOFTA* contain provisions similar to those of *NAFTA*.

31. In the case at hand, the subject RFP provided that, in order to be awarded the contract, a bidder had to demonstrate compliance with a number of mandatory criteria, including the aforementioned mandatory criterion M3.

32. In essence, the issue before the Tribunal is whether Environment Canada failed to properly evaluate Excel's proposal by wrongly applying mandatory criterion M3 in assessing the experience of its proposed resources, as claimed by Excel. The debate is whether, in view of the information included in Excel's bid, the evaluators should have found that Excel demonstrated that its proposed resources had at least 2 years of experience during the last 10 years in developing or supporting the development of standards or policy relating to the management and governance of data and metadata based on internationally recognized standards or best practices. The Tribunal notes that mandatory criterion M3 expressly required bidders to identify the specific standards or best practices employed by its proposed resources.

10. *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*].

11. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <http://www.ait-aci.ca/index_en/ait.htm> [*AIT*].

12. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm> [*AGP*].

13. *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.

14. *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*].

15. *Free Trade Agreement between Canada and the Republic of Colombia*, online: Department of Foreign Affairs and International Trade <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/colombia-colombie/anc-colombia-toc-tdm-can-colombie.aspx>> (entered into force 15 August 2011) [*CCOFTA*].

33. Before turning to an examination of Excel's allegations, the Tribunal notes that it typically accords a large measure of deference to evaluators in their evaluation of proposals. In *Northern Lights Aerobic Team, Inc.*,¹⁶ the Tribunal indicated that it "... will interfere only with an evaluation that is *unreasonable*" and will substitute its judgment for that of the evaluators "... only when the evaluators have not applied themselves in evaluating a bidder's proposal, have ignored vital information provided in a bid, have wrongly interpreted the scope of a requirement, have based their evaluation on undisclosed criteria or have otherwise not conducted the evaluation in a procedurally fair way."

34. It is also well established that there is an onus on bidders to demonstrate compliance with mandatory criteria.¹⁷ The Tribunal has also stated that the responsibility for ensuring that a proposal is compliant with all essential elements of a solicitation ultimately resides with the bidder. Accordingly, it is incumbent upon the bidder to exercise due diligence in the preparation of its proposal to make sure that it is compliant in all essential respects.¹⁸

35. It is in light of these principles that the Tribunal will assess whether the evaluation of Excel's proposal complied with the requirements of the trade agreements.

36. With respect to mandatory criterion M3, Excel's bid stated the following regarding one of the proposed resources at issue:¹⁹

[The proposed resource] has over 6 years ... during the last 10 years, in developing or supporting the development of standards or policy relating to the management and governance of data and metadata - based on internationally recognized standards and best practices (must specify specific standards/practices employed).

Start Date / End Date	...	Work Summary	Resume Reference
October 1997 – October 2007	<p>Project Name: Enterprise Architecture Development</p> <p>Project Description: As a Information Management Architect, performed analysis, rendering, presentation and management of process, application, meta data and transactional object architectures. Stakeholders included third party developers and international [Company X] executives</p> <p>Project Scope: Initiation and development of an external product design and productivity benchmarking study with industry peers, presenting business case benchmarks for internal and external stakeholders</p>	Tab 1 Pages 27-31 Project #3

16. *Re Complaint Filed by Northern Lights Aerobic Team, Inc.* (7 September 2005), PR-2005-004 (CITT).

17. For example, *Re Complaint Filed by Info-Electronic H P Systems Inc.* (2 August 2006), PR-2006-012 (CITT).

18. *Re Complaint Filed by Integrated Procurement Technologies, Inc.* (14 April 2008), PR-2008-007 (CITT). In that case, the Tribunal also found that, while a procuring entity may in some circumstances seek clarification of a particular aspect of a proposal, it is not under any duty to do so.

19. Given that the RFP required bidders to demonstrate that each of its three proposed resources met mandatory criterion M3, a failure by Excel to demonstrate that only one of its proposed resources complied with this requirement was a sufficient basis for Environment Canada to declare its proposal non-compliant. Thus, to the extent that the Tribunal determines that Environment Canada did not breach the applicable trade agreements in finding that this first resource did not comply with the requirements of criterion M3, it would not be necessary to review Environment Canada's evaluation of the experience of the other two resources proposed by Excel in order to dispose of the complaint. In any event, the Tribunal notes that Excel's complaint focuses on the first resource discussed by Environment Canada in its November 7, 2011, correspondence and does not contain separate or distinct arguments pertaining to Environment Canada's evaluation of the experience of the second resource that was also deemed non-compliant with mandatory criterion M3.

	<p>Responsibilities:</p> <ul style="list-style-type: none"> • Developed and supported the development of standards and policy relating to the management and governance of data and metadata - based on internationally recognized standards and best practices at [Company X] • Utilized DAMA/DMBOK, an international data management standard, in the development of standards and policy relating to the management and governance of data and metadata • Used the DAMA/DMBOK standard for the governance of data and metadata as a guideline and reference document to develop customized data and Information management standards, policies and procedures • Using DAMA/DMBOK International standards, developed the following standards and policies and procedures for enterprise architecture development at [company X]: • Developed standard process for defining and documenting roles • Developed policy for the design and maintenance of data warehouses <ul style="list-style-type: none"> • Standards and Guidelines for the Data Quality and Data Archiving Strategy in the Master Data Store • Agency Data Warehouse and all Data marts • Involved in the design and development of many releases of [Company X]’s governance documents, such as the data architecture framework, data stewardship program, and enterprise data model using DAMA/DMBOK International standards <p>...</p>	
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37. The Tribunal notes that Excel’s proposal referred only to “DAMA/DMBOK”, which it characterized as either an “international data management standard” or as “[i]nternational standards”. It did not refer to other internationally recognized standards or best practices. The Tribunal further notes that the evidence indicates, and Excel does not dispute, that the DMBOK, that is, *The DAMA Guide to the Data Management Body of Knowledge*, was published in April 2009. In view of these facts, the Tribunal finds that it was reasonable for Environment Canada to conclude that the proposed resource could not have utilized the DMBOK as a basis for developing or supporting the development of standards or policy related to the management and governance of data and metadata between 1997 and 2007.

38. With respect to Excel’s argument that, by indicating “DAMA/DMBOK” in its proposal, it was referring not only to the DMBOK standards or best practices but also to some unspecified preceding standards or best practices emanating from the DAMA, the Tribunal notes that mandatory criterion M3 was clear: it required bidders to identify “*specific standards/practices employed*” [emphasis added]. The Tribunal finds that Excel could and should have included more information in its proposal for the evaluators to identify the specific standards or best practices to which it referred. In this regard, the Tribunal accepts Environment Canada’s argument that it would have been improper for the evaluators to read into Excel’s proposal a reference to other standards or best practices, such as the *Guidelines for Implementing Data Resource Management*.

39. As previously stated, the onus is on a bidder to demonstrate compliance with a mandatory criterion and, on the facts of this case, the Tribunal finds that it was reasonable for the evaluators to conclude that Excel's proposal did not include enough information to demonstrate compliance with mandatory criterion M3. Contrary to Excel's submissions, the trade agreements do not impose on a procuring entity an obligation to seek additional information from bidders or to otherwise perform research to find information that is not included in the proposal itself in order to clarify or confirm whether a proposal is compliant with the mandatory requirements of a solicitation. Thus, it was Excel's responsibility to specify exactly which internationally recognized standards or best practices that its proposed resource employed during the relevant period. The Tribunal finds that Environment Canada's conclusion that Excel failed to do so is supported by a tenable explanation and is, therefore, reasonable.

40. At any rate, even assuming that Excel meant to refer to any DAMA standards or guidelines in its proposal, which, the Tribunal finds, was not readily apparent on the face of its proposal, it would still have failed to identify the *specific* standards or best practices emanating from the DAMA employed by its proposed resource, as it was required to do. Accordingly, the Tribunal finds that it was reasonable for the evaluators to conclude that Excel's proposal did not comply with mandatory criterion M3.

41. In sum, after having carefully examined the evidence before it, the Tribunal sees no reason to interfere with the judgment of the evaluators. The Tribunal considers that they evaluated Excel's compliance with mandatory criterion M3 thoroughly and strictly in accordance with the terms of the RFP and the relevant provisions of the trade agreements.

42. Finally, with respect to Excel's allegation that some "... unknown impropriety occurred during this bid process ..." ²⁰ the Tribunal notes that this allegation was raised for the first time in Excel's comments on the GIR and was, therefore, not included in its original complaint to the Tribunal. The Tribunal considers this allegation and the arguments in support set out in Excel's comments on the GIR to be new grounds of complaint, which the Tribunal did not accept for inquiry. The Tribunal notes that the grounds of complaint that form the subject matter of a complaint and, thus, of the Tribunal's inquiry, cannot simply be changed, amended or supplemented after a complaint is accepted for inquiry. Indeed, the acceptance of new grounds of complaint would constitute a substantive amendment to the complaint in circumvention of section 7 of the *Regulations*, which directs the Tribunal to consider whether certain conditions are met before accepting to inquire into a particular ground of complaint. ²¹

43. For these reasons, the new grounds of complaint introduced by Excel in its comments on the GIR were not considered by the Tribunal.

44. On the basis of the foregoing, the Tribunal finds that the complaint is not valid.

Remedy and Costs

45. The Tribunal awards Environment Canada its reasonable costs incurred in responding to the complaint.

20. Comments on the GIR at 11.

21. *Re Complaints Filed by Enterasys Networks of Canada Ltd.* (10 September 2010), PR-2010-004 to PR-2010-006 (CITT).

46. In determining the amount of the cost award for this complaint case, the Tribunal considered its *Guideline for Fixing Costs in Procurement Complaint Proceedings* (the *Guideline*), which contemplates classification of the level of complexity of cases on the basis of three criteria: the complexity of the procurement, the complexity of the complaint and the complexity of the complaint proceedings.

47. The Tribunal's preliminary indication is that this complaint case has a complexity level corresponding to the lowest level of complexity referred to in Annex A of the *Guideline* (Level 1). The complexity of the procurement was low, as it involved the provision of one type of service and was conducted within the framework of a pre-existing supply arrangement. The Tribunal finds that the complexity of the complaint was low, as the issues were straightforward and dealt with whether Environment Canada properly evaluated Excel's proposal against one mandatory criterion. Finally, the complexity of the proceedings was low as the issues were resolved by the parties through documentary evidence and written representations, and a hearing was not necessary.

48. 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

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

50. Pursuant to section 30.16 of the *CITT Act*, the Tribunal awards Environment Canada its reasonable costs incurred in responding to the complaint, which costs are to be paid by Excel. 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 in article 4.2 of the *Guideline*. The Tribunal reserves jurisdiction to establish the final amount of the award.

Stephen A. Leach

Stephen A. Leach
Presiding Member