



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DETERMINATION AND REASONS

File No. PR-2012-016

Professional Computer  
Consultants Group

v.

Department of the Environment

*Determination issued  
Friday, November 30, 2012*

*Reasons issued  
Friday, December 7, 2012*

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IN THE MATTER OF a complaint filed by Professional Computer Consultants Group 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**

**PROFESSIONAL COMPUTER CONSULTANTS GROUP**

**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*, no award is made for costs.

Stephen A. Leach  
Stephen A. Leach  
Presiding Member

Dominique Laporte  
Dominique Laporte  
Secretary

The statement of reasons will be issued at a later date.

Tribunal Member: Stephen A. Leach, Presiding Member

Procurement Case Officer: Josée B. Leblanc

Counsel for the Tribunal: Reagan Walker

Complainant: Professional Computer Consultants Group

Counsel for the Complainant: Martin G. Masse  
Jonathan O'Hara

Government Institution: Department of the Environment

Counsel for the Government Institution: Alexander Gay

Please address all communications to:

The Secretary  
Canadian International Trade Tribunal  
333 Laurier Avenue West  
15th Floor  
Ottawa, Ontario  
K1A 0G7

Telephone: 613-993-3595  
Fax: 613-990-2439  
E-mail: [secretary@citt-tcce.gc.ca](mailto:secretary@citt-tcce.gc.ca)

## STATEMENT OF REASONS

1. On September 7, 2012, Professional Computer Consultants Group (Procom) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*.<sup>1</sup>
2. The complaint relates to a Request for Proposal (RFP) (Solicitation No. K7A31-12-0152) by the Department of the Environment (Environment Canada) for business analysts under a Task-based Informatics Professional Services (TBIPS) supply arrangement. Environment Canada declared Procom's proposal non-responsive for failing to meet the minimum score on the point-rated criteria requirement.
3. In its complaint, Procom submitted that its proposal was unfairly evaluated since Environment Canada gave no credit for the work experience of D. H., a level 3 business analyst, on Projects 7 and 8, allegedly contrary to the terms of the point-rated criteria in the RFP.
4. As a remedy, Procom requested a reversal of the disqualification of its proposal and a direction to Environment Canada to re-evaluate it; issuance of a new contract or compensation for lost profits, if Procom was found to be the winning bidder; and its costs.

## PROCEDURAL HISTORY

5. On September 17, 2012, 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*.<sup>2</sup>
6. On October 12, 2012, Environment Canada filed a government institution report (GIR) with the Tribunal, in accordance with rule 103 of the *Canadian International Trade Tribunal Rules*.<sup>3</sup>
7. On October 23, 2012, Procom filed comments on the GIR. On the same date, with leave of the Tribunal, the successful bidder, Solutions Moerae Inc. o/a MSi (MSi), filed comments on the GIR.
8. With leave of the Tribunal, Procom replied to MSi's submission on November 2, 2012, and Environment Canada filed its comments on Procom's reply on November 6, 2012.
9. In its comments on the GIR, Procom objected to paragraph 36 of the GIR in which Environment Canada draws attention to the fact that D. H.'s summary of experience failed to provide the corporate name and address of each client, as required by the RFP. Procom made a similar objection to MSi's submission on this point. Procom objected to these submissions on the basis that there is no evidence that the missing corporate information was a factor in evaluating its bid and it would be impermissible to bring it up now.
10. The Tribunal agrees with Procom on this issue. Under subsection 30.14(2) of the *CITT Act*, the Tribunal's mandate is to 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." Furthermore, the Tribunal's inquiry is limited to determining whether the prescribed procedures and requirements were observed *at the time the evaluation was made*. Therefore, the Tribunal

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1. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].
2. S.O.R./93-602 [*Regulations*].
3. S.O.R./91-499.

finds that it would be improper to inquire into any additional grounds, such as the missing corporate information, which were discovered subsequent to the evaluation.

11. 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

12. As mentioned, the RFP was issued under a TBIPS supply arrangement and called for the services of six business analysts, three at level 2 and another three at level 3. The RFP was made available through MERX<sup>4</sup> on May 2, 2012. The due date for submitting bids was May 31, 2012. Procom submitted its proposal on May 30, 2012. Its proposal contained details of the work experience and certifications of three level 2 business analysts and another three at level 3, including D. H.

13. Article 3.2 A of the RFP describes the level of detail that is required in the résumés of individual business analysts. It reads as follows: “. . . the résumé must not simply indicate the title of the individual’s position, but must demonstrate that the resource has the required work experience by explaining the responsibilities and work performed by the individual while in that position. The Bidder should provide complete details as to where, when, month and year, and how, through which activities/responsibilities, the stated qualifications/experience were obtained.”

14. Article 3.2 A of the RFP also states that, “[f]or any requirements that specify a particular time period (e.g., 2 years) of work experience, the Contract Authority will disregard any information about experience if the individual’s résumé does not include the relevant dates for the experience claimed (i.e., the start date and end date).”

15. Annex C of the RFP requires that the experience of the proposed business analyst “. . . be clearly identified by providing a description of the previous projects worked on, and indicating the following information directly in their proposals, **not** only linkages to the proposed resources curriculum vitae . . . : . . . Dates (mm-yy to mm-yy), duration of project, and **amount of time spent on specific tasks related to the point rated criteria in total months or year/months**; [and] Description of the work performed for the client and the responsibilities held by the bidder’s resources during the project; . . . [The e]xperience description must identify the amount of time that the proposed resource spent on these specific tasks within a given project experience.”

16. The purpose of the required information was to allow the evaluation team to score each proposed business analyst against a detailed evaluation grid contained in Annex C of the RFP.

17. Article 4.2(b), Point-Rated Technical Criteria, states that “[b]idders who fail to submit complete bids with all the information requested by this bid solicitation will be rated accordingly.” Article 4.2(e), Technically Responsive Proposal, reads as follows: “A technically responsive proposal is a proposal that . . . [m]eets the mandatory requirements and obtains the required minimum points specified in the bid solicitation for the criteria that are subject to point rating.”

18. Paragraph 1 of Annex C states that, “[t]o be declared responsive, a bid must . . . (d) obtain the required minimum of 70% overall points for the technical evaluation criteria which are subject to point

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4. Canada’s electronic tendering service.

rating.” Paragraph 2 states that “[b]ids not meeting . . . (d) will be declared non-responsive.” Later in Annex C, the following is stated: “Bidders failing to meet the minimum required score on the Point-Rated Criteria will be deemed non-compliant and given no further consideration.”

19. As can be seen from the foregoing, the RFP included a requirement that, for bidders to pass the technical evaluation phase, each of their six proposed business analysts must receive a minimum score of 70% on the point-rated evaluation criteria. If even one of them failed to meet this requirement, the proposal would be declared non-responsive and receive no further consideration.

20. In its bid, Procom presented D. H.’s experience and credentials first, and Environment Canada started with him for its evaluation. In the judgment of the evaluation team, D. H.’s résumé and summary experience table did not contain the level of detail required by the RFP. For example, according to the evaluators, it was impossible for them to tease individual projects out of the 108-month retainer that D. H. had claimed on Project 8. No start and stop dates were provided, neither was there a detailed breakdown of the individual tasks performed. Consequently, D. H. received a grade of 40.3%, well below the minimum 70%, and Procom’s proposal was declared non-responsive. All further evaluation ceased. Environment Canada advised Procom of this outcome on July 31, 2012.

21. On August 9, 2012, Procom objected to the rejection of its proposal and attempted to persuade Environment Canada to allow a common-sense approach, as it were, to prevail over the technical evaluation.

22. On August 23, 2012, Environment Canada dismissed the objection and explained in detail how Procom’s bid failed to meet the required technical criteria.

23. On September 7, 2012, as mentioned, Procom filed its complaint with the Tribunal.

## POSITIONS OF PARTIES

### Procom

24. Procom complains that it was improperly disqualified because Environment Canada applied an overly narrow interpretation of “project” not found in the RFP to D. H.’s résumé and summary table of experience. Environment Canada should have arguably followed the approach described by this Tribunal in *Meta-Business Advantage*<sup>5</sup> where it said: “In normal usage, the word ‘project’ is a very broad term. For example, the *Canadian Oxford Dictionary* 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 . . . .” Environment Canada’s narrow approach allegedly impacted the point-rated criteria such that Procom failed to receive the benefit of a full and proper evaluation. Having received less than the minimum pass mark, Procom’s remaining business analysts were not evaluated nor was its financial proposal assessed.

25. Procom chides Environment Canada for merely assuming that Projects 7 and 8 were an amalgam of various smaller projects and making no attempt to clarify that assumption by checking with it. To buttress its argument that Environment Canada’s evaluation was unreasonable, Procom made two ancillary points. First, that Environment Canada had previously accepted D. H.’s experience in Projects 7 and 8 in its prior contract with them. Second, Procom implied that the evaluation was biased, because a former employee that had joined

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5. *Meta-Business Advantage Ltd. v. Canada Revenue Agency* (10 November 2009), PR-2009-040 (CITT), para. 34.

MSi, Ms. M., had continued to work after the expiry of Procom's prior contract and was allegedly promised by Environment Canada that she would be paid once the new contract (with MSi) was in place.

### Environment Canada

26. In its GIR, Environment Canada responded that Procom's bid was determined to be non-responsive because it had failed to provide an adequate description of the projects worked on, their duration, the amount of time spent on specific tasks and the total months or years for each project involved in D. H.'s Projects 7 and 8, as required by the terms of the RFP. Even if the evaluators were to allow three months for Project 7 and two years for the Flight Data Acquisition and Analysis System project in Project 8, they would still fail to add up to the minimum three-year requirement. Therefore, the technical evaluation team had no choice but to award zero points to Projects 7 and 8, which is why Procom received less than the minimum pass mark for the point-rated portion of the bid.

27. Regarding the allegation that it owed a duty to request clarification on Procom's bid, Environment Canada responded that Article 4.1(c)(i) of the RFP was completely discretionary and had to be applied in a manner that would not result in bid repair. The Tribunal agrees with Environment Canada on this issue.<sup>6</sup>

28. Concerning Procom's "buttressing" arguments in paragraph 25 above, Environment Canada argued that the fact that D. H.'s experience was found to be compliant on the prior contract is irrelevant. The current bid must be responsive on its face. Similarly, Environment Canada confirms that the extended engagement of Ms. M. was an administrative error that was corrected as soon as it was drawn to their attention and is, as well, irrelevant. The Tribunal agrees with Environment Canada that these heads of argument are irrelevant because the bid must be responsive on its face.<sup>7</sup>

29. As for deeper policy issues, Environment Canada contends that the Tribunal should keep its hands off the evaluation process for a number of reasons: first, it is a technical process requiring curial deference; second, it is a somewhat subjective process that could lead to inconsistent results if a different board (i.e., the Tribunal) were involved; and third, the body of decided Tribunal cases has recognized that it would be inappropriate for the Tribunal to substitute its judgment for that of the evaluation team. In its comments on this part of the GIR, Procom tried to make a distinction between the above principle and applying a term (i.e., "project") in the evaluation criteria in such a way as to preclude any points from being awarded. The Tribunal addresses this matter in the Analysis portion below.

30. Environment Canada also implied that the Tribunal should adopt a tighter meaning of "project" than the one used in *Meta-Business Advantage*. Specifically, the Tribunal should embrace the project management definition, which is "a temporary endeavour undertaken to create a unique product, service or result",<sup>8</sup> alternatively denoted as "a unique, transient endeavour to achieve planned objectives".<sup>9</sup> Environment Canada stressed that this definition incorporates the notion that projects must be time-bound. This will also be addressed in the Analysis portion below.

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6. See 3056058 *Canada Inc. o/a CLA Personnel v. Department of Public Works and Government Services* (4 May 2011), PR-2010-088 (CITT).

7. *Ibid.*

8. Tribunal Exhibit PR-2012-016-11, para. 27.

9. *Ibid.*, para. 28.



**MSi**

31. MSi, the winning bidder, was allowed to intervene and made a number of comments on the complaint. The most relevant ones are summarized in the remainder of this paragraph. First, MSi contends that Procom should have asked for clarification of the term “project” if it were unclear as to its meaning. Second, MSi alleges that Procom failed to break down and describe each project and the relevant time that was allocated to it, where multiple projects were involved, such as in Projects 7 and 8, and it would have been impossible for the evaluators to make the breakdown for Procom. Third, Procom did not indicate the corporate name and address of the client on the summary table, thereby allegedly rendering its bid non-compliant. Fourth, MSi submits that Procom did not provide project descriptions *per se*; rather it merely referred to a variety of projects or repeated generic statements. The Tribunal finds that, to the extent these comments comprise after-the-fact justifications for declaring Procom’s bid non-responsive, they are irrelevant. To the extent they overlap with Environment Canada’s arguments, they are addressed below in the Analysis portion.

**TRIBUNAL’S ANALYSIS**

32. Subsection 30.14(1) of the *CITT Act* requires that, in conducting an inquiry, the Tribunal must limit its considerations to the subject matter of the complaint. Furthermore, 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* further provides that the Tribunal is required to determine whether the procurement was conducted in accordance with the applicable trade agreements.

33. There is no dispute as to the applicability of the trade agreements mentioned in section 11. The agreements that the parties have deemed to be relevant to the dispute are the *Agreement on Government Procurement*,<sup>10</sup> the *North American Free Trade Agreement*<sup>11</sup> and the *Agreement on Internal Trade*,<sup>12</sup> in particular the sections quoted below.

34. 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.”

35. Article 1015(4)(d) of *NAFTA* reads as follows: “[A]wards shall be made in accordance with the criteria and essential requirements specified in the tender documentation.”

36. Article XIII(4)(c) of the *AGP* stipulates that “[a]wards shall be made in accordance with the criteria and essential requirements specified in the tender documentation.”

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10. 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].

11. *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].

12. 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].

## Meaning of “Project”

37. The nub of the dispute is whether the ordinary meaning of “project” must prevail in the RFP, as Procom contends, or is it a term of art, as Environment Canada submits?

38. In the GIR, Environment Canada provided the following definition from *A Guide to the Project Management Body of Knowledge* and *A Guide to the Business Analysis Body of Knowledge*:<sup>13</sup> “A temporary endeavor undertaken to create a unique *product, service, or result*.” The authors of the above definition are the Project Management Institute (PMI) and the International Institute of Business Analysis (IIBA).<sup>14</sup> Environment Canada submitted that “PMI and IIBA are well recognized professional practices centres within the Business Analysis and Project Management industries . . . .”<sup>15</sup> It also provided the following definition from the Association for Project Management: “A unique, transient endeavour undertaken to achieve planned objectives.”

39. Procom observed that “. . . the GIR confirms that [Environment Canada] used a very narrow definition of the term [‘project’] that was not included in the RFP”<sup>16</sup> as a basis for defending its position. The Tribunal agrees. Moreover, the Tribunal finds that there is no evidence of a standard industry definition of the term as argued by Environment Canada. Therefore, if Environment Canada wanted a particular definition of the term for the purposes of the RFP, it should have included it in the RFP.

40. The RFP is a contract<sup>17</sup> and the interpretation of the RFP is largely governed by the law of contract. (Its application is, of course, mainly governed by statutory law, specifically, the *CITT Act* and related measures.) Under contract law, the written text of a contractual document “. . . is what permits the courts to have regard to the reasonable expectations created in one party by what the other did or said. From this point of view, the subjective intentions of one of the parties or . . . its idiosyncratic meanings of the words are irrelevant, except to the extent that the other either knew of that intention or meaning or perhaps reasonably should have known of it.”<sup>18</sup>

41. As mentioned, Environment Canada proffered no extrinsic evidence of its intention, at the time of issuing the RFP, to rely upon the PMI and IIBA definition of the term “project”. Neither is there any evidence that Procom reasonably should have known of such an intention. Therefore, the Tribunal finds that the PMI and IIBA definition is not relevant to the dispute.

42. Procom also alleges that, “[a]s the drafter of the RFP, it is incumbent on [Environment Canada] to provide a specific definition of the term [‘project’], to the exclusion of all others, particularly when it intends to rely on this specific definition to disqualify a particular bidder.”<sup>19</sup> The Tribunal does not agree. Environment Canada is not fettered to such a degree in its procurement activities. Environment Canada’s duties as a drafter are legislative in nature, as stipulated in the trade agreements and incorporated by reference under the *CITT Act* and the *Regulations*.

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13. Tribunal Exhibit PR-2012-016-11, Tabs 3, 4.

14. *Ibid.*, paras. 27, 28.

15. *Ibid.*, para. 27.

16. Tribunal Exhibit PR-2012-016-15, para. 2.

17. See *R. (Ont.) v. Ron Engineering*, [1981] 1 S.C.R. 111.

18. Angela Swan, *Canadian Contract Law*, 2d ed. (Markham: LexisNexis, 2009), para. 8.2 at 571.

19. Tribunal Exhibit PR-2012-016-15, para. 2.

43. Article 1013(1) of *NAFTA* requires a government institution's tender documentation to "... contain all information necessary to permit suppliers to submit responsive tenders ...", including "(h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders ..."

44. Article XII(2) of the *AGP* requires that "[t]ender documentation provided to suppliers [must] contain all information necessary to permit them to submit responsive tenders, including ... the following: ... (h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders ..."

45. 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."

46. In terms of drafting an RFP, how a government institution complies with the above provisions of the trade agreements is up to it, as there is no requirement that the obligations contained in the provisions be met in any particular way. In other words, in drafting the RFP, it was open to Environment Canada to rely upon the ordinary meaning of "project" or include a particular definition of the term. In this case, Environment Canada did not include a particular definition of the term in the RFP. Therefore, for the purpose of interpreting the RFP, the ordinary meaning of the term must be applied.

47. The ordinary meaning of "project", as defined by the *Canadian Oxford Dictionary*, is "**1** a plan; a scheme. **2 a** an undertaking that is *carefully planned* and designed to achieve a *particular* aim. **b** any planned activity ..." [emphasis added].<sup>20</sup>

48. The *Canadian Oxford Dictionary* defines "particular" as meaning "**1** relating to or considered as one thing or person as distinct from others; individual (*in this particular instance*). **2** more than is usual; special, noteworthy (*took particular trouble*). **3** scrupulously exact; fastidious. **4** detailed (*a full and particular account*). **5** *Logic* (of a proposition) in which something is asserted of some but not all of a class (*opp. UNIVERSAL adjective 2*)."<sup>21</sup>

49. The Tribunal finds that, based on the above definitions, even the ordinary meaning of "project" implies something that is somewhat limited and specific. Furthermore, the Tribunal does not agree with Procom's suggestion that, based on the *Meta-Business Advantage* case, the term is expansive and general.

50. The *Meta-Business Advantage* case concerned whether a number of projects should be considered as one big project or broken down into separate projects. In finding that the Canada Revenue Agency was unreasonable in concluding that Projects 1, 2 and 3 were a single project, the Tribunal found, in Meta's bid, evidence that Projects 1, 2 and 3 each consisted of different undertakings and activities, i.e., the conversion of three different tax systems (1996-2000, 2001-2003 and 2003-2007), each conversion having taken place during a separate time period. Based on the evidence, the Tribunal found that each undertaking had its own "particular aim" within the meaning of the *Canadian Oxford Dictionary* definition.

51. In the Tribunal's view, *Meta-Business Advantage* stands for the proposition that a bid must contain evidence of projects which are clearly described and distinguishable from the others.

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20. Second ed., s.v. "project".

21. *Ibid.*, s.v. "particular".

52. Thus, in this complaint, the Tribunal must determine if Environment Canada's evaluation team applied a definition of "project" that was narrower in scope than the ordinary meaning of the term, and then determine if Procom met the requirement in Article 3.2 A of the RFP to "... provide complete details as to where, when, month and year, and how, through which activities/responsibilities, the stated qualifications/experience were obtained" and the other requirements found in Article 4.2(b) and Annex C of the RFP, as quoted in paragraphs 14 and 15 above.

### Curial Deference to Technical Evaluations

53. Before turning to these lines inquiry, the Tribunal notes that it typically accords a broad measure of deference to evaluators in their evaluation of proposals. In File No. PR-2011-043,<sup>22</sup> the Tribunal confirmed 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.'"

54. In other words, if the Tribunal considers that the evaluators have applied themselves adequately to the task of evaluating the submission and applied the evaluation requirements as per the terms of the RFP, it will not substitute its opinion for that of the evaluators. It is also well established that there is an onus on bidders to demonstrate compliance with mandatory criteria.<sup>23</sup> The Tribunal has 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.<sup>24</sup>

### Was Project 8 a True "Project"?

55. In terms of the Tribunal's first line of inquiry, it would appear that some heads of experience in Project 8 may have been discrete projects, e.g. "Flight data, Airport information and Document Management",<sup>25</sup> whilst others may not have been, e.g. "Client's Business Process transformation initiatives".<sup>26</sup> The Tribunal also notes that the lead paragraph to Project 8 describes D. H.'s experience at NAV CANADA in terms of being a business analyst "on technology projects" in the plural. The Tribunal is unable to conclude that the evaluation team was unreasonable in finding that the overall scope of Project 8, "... the modernization of legacy applications and the development of new technology web/portal-based applications, in a large development area", was not sufficiently specific or limited to describe a "project" within the ordinary meaning of the term.

56. On the basis of this finding, the Tribunal can find no reason to disturb Environment Canada's conclusion that D. H.'s experience summary table was not broken down into discrete projects, as required by Article 3.2 A of the RFP. In other words, Procom has not established that Environment Canada evaluated its proposal on criteria other than those contained in the RFP, as alleged in its complaint.

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22. *Re Complaint Filed by Excel Human Resources Inc.* (2 March 2012), PR-2011-043 (CITT) [*Excel Human Resources*], para. 33.

23. For example, *Excel Human Resources; Re Complaint Filed by Info-Electronics H P Systems Inc.* (2 August 2006), PR-2006-012 (CITT).

24. *Re Complaint Filed by Integrated Procurement Technologies, Inc.* (14 April 2008), PR-2008-007 (CITT).

25. Tribunal Exhibit PR-2012-016-01, Tab 3, Point-rated Requirements, Item 8.4.

26. *Ibid.*, Item 8.14.

### Did Procom Provide the Required Details?

57. As stated above, the Tribunal's second line of inquiry was to determine whether Procom met the requirement in Article 3.2 A of the RFP to ". . . provide complete details as to where, when, month and year, and how, through which activities/responsibilities, the stated qualifications/experience were obtained" and similar requirements found in Article 4.2(b) and Annex C of the RFP, as quoted in paragraphs 14 and 15 above.

58. Even accepting, for the sake of argument, that, for example, the Flight Data, Airport Information and Document Management head of activity was a discrete project within the ordinary meaning of the term, there was no attempt on Procom's part to break out any details as to where, when, the month and year, how and through which activities and responsibilities the requisite experience was required. Yet all this detailed information was required by the RFP.

59. Annex C of the RFP contains the following statement under the heading for "Point Rated Evaluation Criteria – Business Services Class, Business Analyst Level 3": "Experience description must identify the amount of time that the proposed resource spent on these specific tasks within a given project experience." Article 4.2(a) of the RFP states that "[a]ll elements of the bid solicitation that are mandatory requirements are identified specifically with the words 'must' or 'mandatory'."

60. If Procom failed to comply with a mandatory requirement to present experiential information in a certain form and level of detail, it cannot complain that the experience was not counted for purposes of rating its business analyst and that it suffered the consequences stipulated in the RFP reproduced in paragraphs 17 and 18 above. In other words, the Tribunal has no basis to conclude that Environment Canada's evaluation of 40.3% for D. H. was unreasonable.

### CONCLUSION

61. In light of the foregoing, the Tribunal finds that there is no basis to interfere with Environment Canada's evaluation of Procom's proposal, since it was reasonable in the circumstances and did not contravene the relevant provisions of the *AIT*, *NAFTA* or the *AGP*. Therefore, the Tribunal concludes that the complaint is not valid.

### Costs

62. Since Environment Canada did not ask for costs, the Tribunal makes no award as to costs.

### DETERMINATION OF THE TRIBUNAL

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

64. No award is made for costs pursuant to section 30.16 of the *CITT Act*.

Stephen A. Leach  
Stephen A. Leach  
Presiding Member