



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2012-009

Ridgeline Mechanical Ltd.

*Decision made  
Tuesday, July 17, 2012*

*Decision issued  
Thursday, July 19, 2012*

*Reasons issued  
Wednesday, August 1, 2012*

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**

**RIDGELINE MECHANICAL LTD.**

**AGAINST**

**THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT SERVICES**

**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

Gillian Burnett  
Gillian Burnett  
Acting Secretary

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

## 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. F1700-120203/A) by the Department of Public Works and Government and Services (PWGSC) on behalf of the Department of Fisheries and Oceans for the provision of construction services.
3. Ridgeline Mechanical Ltd. (Ridgeline) alleged that PWGSC improperly evaluated its proposal. Specifically, it alleged that its bid revision had been improperly applied. As a remedy, Ridgeline requested that its proposal be re-evaluated and that it be awarded the contract. In the event that its tender amount was not corrected, Ridgeline requested its complaint costs and lost profits.
4. The Invitation to Tender (ITT) for the provision of construction services was issued by PWGSC on June 7, 2012. The deadline for the receipt of bids was originally June 29, 2012, at 2:00 p.m., but the bid closing date was changed to July 6, 2012, through amendments to the solicitation.
5. Ridgeline submitted a bid in response to the solicitation. According to the complaint, Ridgeline also submitted a bid revision by fax on July 6, 2012, at 1:05 p.m., which stated the following:

### TENDER PRICE REVISION

Please **CREDIT** the following amount from ou[r] price for the Quinsam Hatchery Section Intake Screen Modifications:

**Total Additional: \$20,464.00** of tender price excluding HST.

6. Shortly after bid closing, Ridgeline called the bid hotline and learned that its tender total was not the price that Ridgeline had intended to bid. Ridgeline alleges that its intended bid price was the initial bid price minus \$20,464.00, but that PWGSC added \$20,464.00 to its initial bid price instead. According to the complaint, Ridgeline immediately called the contract authority at PWGSC and left a message asking that its tender be reviewed, as the price listed was incorrect.
7. On July 9, 2012, the contract authority responded by e-mail to Ridgeline stating that its objection was being considered. Later that day, the contract authority confirmed the results of her evaluation and explained that she understood Ridgeline's bid revision to be a request to add the amount of \$20,464.00 to its total bid. On July 9, 2012, Ridgeline also spoke with the contract authority's supervisor, who confirmed the results of the contract authority's evaluation.
8. Ridgeline filed its complaint with the Tribunal on July 13, 2012.

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

9. 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 the *North American Free Trade Agreement*,<sup>3</sup> the *Agreement on Internal Trade*,<sup>4</sup> the *Agreement on Government Procurement*,<sup>5</sup> the *Canada-Chile Free Trade Agreement*,<sup>6</sup> the *Canada-Peru Free Trade Agreement*<sup>7</sup> or the *Canada-Colombia Free Trade Agreement*<sup>8</sup> applies. In this case, the *AIT* applies.

10. Article 506(6) of the *AIT* provides that, “[i]n evaluating tenders, a Party may take into account not only the submitted price but also quality, quantity, transition costs, delivery, servicing, the capacity of the supplier to meet the requirements of the procurement and any other criteria directly related to the procurement that are consistent with Article 504. 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. A procuring entity will satisfy its obligations under Article 506(6) of the *AIT* when it makes a reasonable evaluation, in good faith, of the competing bid documents.<sup>9</sup> The Tribunal will not substitute its judgment for that of evaluators unless 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.<sup>10</sup>

12. Clause 1(c) of Part 2 of the General Instructions to Bidders R2710T (2011-05-16), incorporated by reference into the ITT, provides as follows:

1. The bid shall be:
  - ...
  - c. correctly completed in all respects;
  - ...

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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).

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)>.

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). 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).

8. *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).

9. *Re Complaint Filed by Northern Lights Aerobatic Team, Inc.* (7 September 2005), PR-2005-004 (CITT) at para. 51.

10. See, for example, *Re Complaint Filed by MTS Allstream Inc.* (3 February 2009), PR-2008-033 (CITT) at para. 26.

13. The Tribunal sees no reasonable indication that Ridgeline's proposal was not evaluated in accordance with the criteria and methodology set out in the solicitation documents. There is nothing in the solicitation documents that requires PWGSC to re-evaluate bids after bid closing or to seek clarification from a party that has submitted a bid or a bid revision.

14. The Tribunal also finds that PWGSC did not act unreasonably when it concluded that the \$20,464.00 in Ridgeline's bid revision was to be added to, rather than subtracted from, Ridgeline's total bid price. The bid revision used the term "CREDIT", which could reasonably be interpreted in isolation to mean that the bid price was to be reduced by \$20,464.00. However, the bid revision also included the phrase "Total Additional: \$20,464.00 of tender price excluding HST" [emphasis added]. As such, it was reasonable for the evaluators to conclude that this amount was to be added to the original bid price.

15. The onus is on the bidder to ensure that the information submitted as part of its bid is clear.<sup>11</sup> If there is ambiguity in a bid, the procuring entity is under no obligation to seek clarification.<sup>12</sup>

16. Consequently, the Tribunal concludes that the information on the record does not disclose a reasonable indication that the procurement has not been conducted in accordance with the *AIT*. In light of the foregoing, the Tribunal will not conduct an inquiry into the complaint and considers the matter closed.

## DECISION

17. 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

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11. *Re Complaint Filed by Info-Electronics H P Systems Inc.* (2 August 2006), PR-2006-012 (CITT).

12. *See Re Complaint Filed by IBM Canada Limited, PricewaterhouseCoopersLLP and the Centre for Trade Policy and Law at Carleton University* (10 April 2003), PR-2002-040 (CITT) at 15.