



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File No. PR-2011-061

The Masha Krupp Translation
Group Limited

v.

Public Health Agency of Canada

*Determination and reasons issued
Monday, May 28, 2012*

TABLE OF CONTENTS

DETERMINATION..... i

STATEMENT OF REASONS 1

 BACKGROUND 1

 PROCUREMENT PROCESS..... 1

 PRELIMINARY MATTER—TIMELINESS OF COMPLAINT AND SCOPE OF INQUIRY 2

 TRIBUNAL’S ANALYSIS..... 4

 Adequate Experience Requirement 5

 Evaluation of MKTG’s Proposal..... 8

COSTS 9

DETERMINATION OF THE TRIBUNAL..... 9

IN THE MATTER OF a complaint filed by The Masha Krupp Translation Group Limited 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

THE MASHA KRUPP TRANSLATION GROUP LIMITED

Complainant

AND

THE PUBLIC HEALTH AGENCY OF CANADA

**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 Public Health Agency of Canada its reasonable costs incurred in responding to the complaint, which costs are to be paid by The Masha Krupp Translation Group Limited. Pursuant to article 4.1 and Appendix A to 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 retains jurisdiction to establish the final amount of the award.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Gillian Burnett
Gillian Burnett
Acting Secretary

Tribunal Member: Pasquale Michael Saroli, Presiding Member

Counsel for the Tribunal: Nick Covelli
Alexandra Pietrzak

Procurement Case Officer: Josée B. Leblanc

Complainant: The Masha Krupp Translation Group Limited

Counsel for the Complainant: Marc Sauvé
Alyssa Tomkins

Government Institution: Public Health Agency of Canada

Counsel for the Government Institution: Tatiana Sandler

Please address all communications to:

The Secretary
Canadian International Trade Tribunal
Standard Life Centre
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

STATEMENT OF REASONS

BACKGROUND

1. On March 27, 2012, The Masha Krupp Translation Group Limited (MKTG) 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
2. The complaint relates to a Request for Standing Offer (RFSO) for translation services (Solicitation No. 1000117933) by the Public Health Agency of Canada (PHAC). The PHAC declared MKTG's proposal non-responsive to the RFSO and awarded the contract to CLS Lexi-tech Ltd.
3. MKTG based its complaint on two broad sets of allegations, which centre on the second point-rated requirement (PR2) of the RFSO. The first was that the PHAC failed to clearly define its requirements and to clearly set out the evaluation criteria and their weighting. The second was that the PHAC based its evaluation of MKTG's proposal on undisclosed criteria, ignored vital information contained in the proposal and failed to provide MKTG with sufficient justification for the proposal's evaluation. By way of remedy, MKTG requested the postponement of the contract award, and either the reversal of the disqualification of its proposal and a direction to the PHAC to evaluate its proposal as compliant, or the issuance of a new tender, compensation for lost profits or proposal preparation costs, as well as its costs of bringing the complaint and such other relief that the Tribunal deems just.
4. On April 2, 2012, the Tribunal informed the parties that the complaint had been accepted for inquiry only in respect of the second set of allegations, which 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 The Tribunal did not issue a postponement of contract award order in accordance with subsection 30.13(3) of the *CITT Act*, since the evidence on file indicated that a contract had already been awarded. This was confirmed in an e-mail dated April 2, 2012, in which the PHAC informed the Tribunal that a contract had been awarded to CLS Lexi-tech Ltd.
5. On April 26, 2012, PHAC filed a Government Institution Report (GIR) with the Tribunal in accordance with rule 103 of the *Canadian International Trade Tribunal Rules*.³ On May 8, 2012, in accordance with rule 104, MKTG filed comments on the GIR.
6. 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.⁴

PROCUREMENT PROCESS

7. The relevant sequence of events is as follows:

August 22, 2011 The RFSO was posted on MERX.⁵

1. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].
2. S.O.R./93-602 [*Regulations*].
3. S.O.R./91-499 [*Rules*].
4. Rule 105 of the *Rules* permits the Tribunal to hold an oral hearing if needed to clarify material issues.

September 20, 2011	MKTG submitted its proposal.
February 08, 2012	The PHAC advised MKTG that its proposal had not been selected.
February 17, 2012	The PHAC held a debriefing with MKTG.
February 20, 2012	MKTG obtained the “Consensus Evaluation Report” of its proposal.
February 20, 2012	MKTG wrote to the PHAC to advise it of two possible errors made in the scoring of its proposal with respect to PR2.
February 22, 2012	MKTG inquired about the status of the matters that it had raised in its e-mail of February 20, 2012.
February 23, 2012	The PHAC responded that it was reviewing the information provided in MKTG’s e-mail dated February 20, 2012, and that it would communicate the results of the review once completed.
March 1, 2012	MKTG filed a complaint with the Tribunal.
March 2, 2012	The Tribunal, having noted that the documentation provided by MKTG as part of its complaint did not indicate that it had received the PHAC’s response to the objections that MKTG made in its e-mail of February 20, 2012, determined that the complaint was premature. The Tribunal indicated however that its decision did not preclude MKTG from filing a new complaint once the PHAC responded to its objection or failed to do so within a reasonable period of time. ⁶
March 19, 2012	MKTG received a letter from the PHAC dated March 15, 2012, which reaffirmed the determination that MKTG’s proposal was non-compliant due to its failure to meet the minimum requirements of PR2.
March 27, 2012	MKTG filed a new complaint with the Tribunal.

PRELIMINARY MATTER—TIMELINESS OF COMPLAINT AND SCOPE OF INQUIRY

8. Subsection 6(1) of the *Regulations* provides that a complaint shall be filed with the Tribunal “. . . not later than 10 working days after the day on which the basis of the complaint became known or reasonably should have become known to the potential supplier.” Subsection 6(2) provides that a potential supplier that has made an objection to the relevant government institution, and is denied relief by that government institution, may file a complaint with the Tribunal “. . . within 10 working days after the day on which the potential supplier has actual or constructive knowledge of the denial of relief, if the objection was made within 10 working days after the day on which its basis became known or reasonably should have become known to the potential supplier.”

9. In other words, a complainant has 10 working days from the day on which it first becomes aware, or reasonably should have become aware, of its ground of complaint to either object to the government institution or file a complaint with the Tribunal. If a complainant objects to the government institution within the designated time, the complainant will have 10 working days to file a complaint with the Tribunal after it has actual or constructive knowledge of the denial of relief by the government institution.

5. Canada’s electronic tendering system.

6. See *Re Complaint Filed by The Masha Krupp Translation Group Limited* (2 March 2012), PR-2011-055 (CITT).

10. Regarding the first set of allegations in respect of the solicitation itself and, in particular, MKTG's claims that the PHAC failed to clearly define its requirements and to clearly set out the evaluation criteria and their weighting, the Federal Court of Appeal stated as follows in *IBM Canada Ltd. v. Hewlett Packard Canada Ltd.*:⁷ "In procurement matters, time is of the essence. . . . Therefore, potential suppliers are required not to wait for the attribution of a contract before filing any complaint they might have with respect to the process. They are expected to keep a constant vigil and to react as soon as they become aware or reasonably should have become aware of a flaw in the process".

11. Citing the Federal Court of Appeal's admonition in *IBM*, the Tribunal stated as follows in File No. PR-2002-001:⁸ "When there is patent ambiguity . . . apparent on the face of the RFP article or amendment concerned . . . the potential supplier must seek clarification of what is being required or otherwise file an objection or a complaint in a timely manner."

12. In the same vein, the Tribunal stated as follows in File No. 2006-012:⁹ ". . . the bidder bears the onus to seek clarification before submitting an offer."

13. It is also noteworthy that the Federal Court of Appeal dismissed an application for judicial review of the Tribunal's decision in File No. PR-98-008,¹⁰ where the Tribunal, in not accepting the complaint for inquiry, stated as follows:

In reviewing the information provided, it is the Tribunal's view that the basis of the complaint was that the RFP failed to clearly identify the criteria that would be used in the evaluation of whether a proposed good fell within the description of item 2 of the RFP It is also the Tribunal's view that the basis for the complaint reasonably should have become known to Jastram on or about October 7, 1997, when it received the solicitation documentation. Therefore, any complaint to the Tribunal or objection to PWGSC should have been filed on or about 10 working days after October 7, 1997 Accordingly, the Tribunal cannot accept the complaint for inquiry and the matter is hereby concluded.

14. Given the patent nature of the alleged deficiencies with the solicitation in relation to PR2, evaluation criteria and weighting, MKTG must be taken to have known the basis of its complaint on August 22, 2011, when it received the solicitation documentation. Therefore, its complaint or objection should have been filed within 10 working days of that date, in accordance with section 6 of the *Regulations*. In view of MKTG's failure to adhere to the prescribed timelines, this aspect of its complaint was found to be time-barred by operation of law.

15. With regard to the second set of allegations, the March 15, 2012, letter from the PHAC denying MKTG relief in respect of the objections that it raised in its e-mail of February 20, 2012, on the scoring of its proposal indicated that MKTG's proposal failed to meet the minimum score of "adequate" for PR2 concerning the experience of proposed translation team members. In the Tribunal's view, this constituted a clear and unequivocal denial of relief within the meaning of that phrase in subsection 6(2) of the *Regulations*. In view of the fact that MKTG filed its complaint within 10 working days of having received notice of the PHAC's denial of relief, the new complaint was found to be timely under subsection 6(2) of the *Regulations* in respect of these allegations.

7. 2002 FCA 284 (CanLII) [*IBM*] at paras. 18, 20.

8. *Re Complaint Filed by Primex Project Management Ltd.* (22 August 2001) (CITT) at 10.

9. *Re Complaint Filed by Info-Electronics H P Systems Inc.* (2 August 2006) (CITT) [*Info-Electronics*] at para. 23.

10. *Re Complaint Filed by Jastram Technologies Inc.* (10 June 1998) (CITT) at 2.

16. By letter dated April 2, 2012, the parties were advised that MKTG's complaint had been accepted in part and that the Tribunal's inquiry would be limited to the evaluation of MKTG's proposal under PR2, as clarified through subsequent question and answer exchanges between the PHAC and potential bidders prior to bid closing.

TRIBUNAL'S ANALYSIS

17. 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, is the *Agreement on Internal Trade*.¹¹

18. The MERX notice indicates that the requirement falls under Category R109 "Translation and Interpreting Services". The services under Category R109 are excluded from *NAFTA* by virtue of Annex 1001.1b-2, from the *CCFTA* by virtue of Annex *Kbis*-01.1-4, from the *CPFTA* by virtue of Annex 1401.1-4 and from the *CCOFTA* by virtue of Annex 1401.1-4. Translation services are not covered under Appendix I, Annex 4 to the *AGP*. There is no such exclusion in the *AIT*. Further, the PHAC is one of the government institutions covered by the *AIT*, and the estimated value of the procurement is well in excess of the monetary thresholds under the *AIT*. The PHAC acknowledges that the *AIT* is applicable in this case.

19. Article 506(6) of the *AIT* provides as follows:

In 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.

20. In cases where the application of Article 506(6) of the *AIT* is at issue, the Tribunal does not generally substitute its judgments for that of the evaluators, unless the evaluators have not applied themselves in evaluating a bidder's proposal, have ignored vital information provided in a proposal, have wrongly interpreted the scope of a requirement, have based their information on undisclosed criteria or have otherwise not conducted the evaluation in a procedurally fair way.¹² In addition, the Tribunal is of the view that the responsibility for ensuring that a proposal is compliant with all essential criteria of a solicitation ultimately resides with the bidder.¹³

21. Submission requirement SR2 of the RFSO at issue expressly provides that bidders must meet the mandatory requirements set out in the RFSO:

SR2 Technical Proposal (50 POINTS)

This section outlines the information Proponents are required to submit. *To qualify, Proponents must meet the mandatory requirements set out in the RFSO. . . .*

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

12. *Re Complaint Filed by MTS Allstream Inc.* (3 February 2009), PR-2008-033 (CITT).

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

The evaluation will be based solely on the content of the responses and any correctly submitted amendments. No assumptions should be made that Her Majesty has any previous knowledge of the Proponents' qualifications other than that supplied pursuant to this RFSO.

[Emphasis added]

22. Mandatory requirement M2 (M2) of article 2.1, **Mandatory Requirements**, of Section "T", **Submission Requirements and Evaluations**, of the RFSO requires that a bidder propose a complement of at least five qualified translators:

M2 The offeror must provide evidence that they possess a qualified human resource complement capable of providing translation services, as indicated in this RFSO. To demonstrate compliance, offerors must include within their proposal a detailed Curriculum Vitae (CV) for the required number of named resources in each of the following resource categories:

- English to French Translator (minimum of three (3) resources required)
- French to English Translator (minimum of two (2) resources required)

**Named resources can only be proposed in one (1) resource category.*

[Underlining added for emphasis]

Adequate Experience Requirement

23. Article 2.2, **Point Rated Requirements**, of Section "T", **Submission Requirements and Evaluations**, of the RFSO indicates the following:

Offerors *must obtain*, at *minimum*, a rating of "*adequate*" on the criteria set out in PR1 and PR2. . . . Proposals not meeting this requirement will not be given any further consideration.

[Emphasis added]

24. In this regard, PR2 provides as follows:

PR2 Experience of Personnel (30 points)

Intent:

Evaluate the recent experience, of the proposed translators, on projects of similar size and scope. Adequate experience consists of five (5) years of recent professional experience in a similar role *and* the completion of three (3) recent science-based or health-based translation projects with a minimum of 5,000 words each.

Information to be submitted:

The response to be provided here can consist of existing material (resumes, brochures, corporate profiles, reference letters, etc.). To facilitate evaluation, information on the individual *must* include:

- area(s) of expertise of individuals being proposed (including project manager and site supervisor(s)) who would be involved with the project and the role for which they will be responsible;
- individuals' years of experience;
- responsibilities held, by the individuals being proposed, for projects they have completed; and
- certification and licensing of personnel, as appropriate.

Rating

Significantly exceeds the requirement 27-30	Exceeds the requirement 20-26	<i>Adequate</i> 15-19	Does not meet the requirement 0-14
--	----------------------------------	--------------------------	---------------------------------------

[Emphasis added]

25. PR2 must be read in light of the questions and answers issued by the PHAC during the bidding period, which bear upon its interpretation. Of particular relevance to this inquiry are “**Questions & Answers #1**” (of August 30, 2011) and “**Questions & Answers #3**” (of September 6, 2011), which respectively provide as follows:

Questions & Answers #1

August 30, 2011

...

Question 4

... In PR2, will an average score be calculated using the score obtained by each individual resource?

Answer 4

... The score attributed to PR2 will be obtained through the evaluation of the proposed resources as a whole.

...

Question 6

In regards to PR2:

- a. Adequate experience is described as five (5) years of professional experience and three (3) relevant projects. Could PHAC provide a description of what they would consider as “significantly exceeding the requirement” (how many years of experience and projects)?
- b. The requirement is for “recent” projects. How far back can we go?
- c. The requirement asks for projects with a minimum of 5,000 words. What is considered a project? Would it be a single translation of 5,000 words OR a client with whom the translator has an SOA and where several translations were done totaling at least 5,000 words?

Answer 6

- a) PHAC will consider “significantly exceeding the requirement” as being ten (10) or more projects.
- b) PHAC will consider “recent” as being within the last five (5) years.
- c) PHAC will consider a project to be a single translation of 5,000 words or more, or a subset of related translations (for the same intended purpose) totaling 5,000 words or more. The criterion does not require the translator to have an existing or previous SOA with another client.

...

Questions & Answers #3

September 6, 2011

...

Question 1

Further to the answers provided in Questions & Answers #1, I would like to clarify something with the following question:

In Answer 4, it states that the score for PR2 will be obtained through the evaluation of the proposed team as a whole. Can it then be assumed that Answer 6 also applies to the team as whole, meaning that the number of projects requested is for all team members combined and not for each resource?

Answer 1

No, each individual resource will be evaluated against the criteria described in PR2, in other words, the number of years of experience and number of projects are not cumulative for the entire team (i.e.: Five resources presented each with one year of experience would not be considered as five years of experience).

[Underlining added for emphasis]

26. By way of initial observation, the Tribunal finds that adequacy of experience under PR2 is indeed based on two separate criteria, as denoted by the use of the conjunctive “and”; the first being temporal (i.e. five years of recent professional experience in a similar role), and the second being substantive (i.e. the completion of three recent science-based or health-based translation projects with a minimum of 5,000 words each).¹⁴

27. Moreover, read in the light of the clarifications afforded by these questions and answers, the Tribunal finds that the evaluation of a proposal under PR2 necessarily entailed a two-step process.

28. As a first step, and consistent with Answer 1 of “**Questions & Answers #3**” and M2 which called for a qualified complement of at least five resources capable of providing translation services, each proposed resource had to be assessed for adequacy of experience against the two criteria set out in PR2. In other words, the proposal would have to show that each proposed translator had accumulated at least five years of recent experience in a similar role and completed at least three recent science-based or health-based translation projects of a minimum of 5,000 words each.

29. On the basis of the rating scale set out in the RFSO, every proposed translator who met the two adequate experience criteria in PR2 would have necessarily been assigned a score of at least 15 points (i.e. “Adequate”). That the rating scale also allowed for the assignment of up to 14 points to a proposed translator who fell short on either or both PR2 criteria indicates that the resource’s experience, albeit inadequate, was nonetheless to receive some recognition through the assignment of points commensurate with that individual’s level of relevant experience.

30. Once each proposed translator had been assessed for adequacy of experience against the two criteria set out in PR2, evaluators, as a second step, and in accordance with Answer 4 of “**Questions & Answers #1**”, would have had to determine an overall PR2 score based on the evaluation of the offeror’s proposed resources as a whole. Again, since the rating scale’s allowance of up to 14 points to a proposed resource who did not meet the adequate experience requirement was presumably not without purpose, it is the Tribunal’s view that the scores awarded to these individuals were also to be factored into the determination of an overall PR2 score for the proposed resources as a whole.

31. In addition to this two-step process for determining the point rating, the use, in PR2, of the word “must” in relation to the information to be submitted, indicates that disclosure of the responsibilities that each proposed translator held in his or her completed projects was also a mandatory requirement.

32. Thus, a proposal would fail if fewer than five proposed translators had at least three science-based or health-based projects or if the proposed translators’ responsibilities in those projects were not disclosed.

14. That PR2 included a substantive element in addition to the temporal one is not unusual, especially since professional fields such as the health sciences typically have their own lexica, with which translators would ideally be familiar in order to facilitate the performance and timely delivery of translation services.

Evaluation of MKTG's Proposal

33. MKTG's proposal was disqualified as a result of the PHAC's evaluation committee having given it a PR2 rating of less than "Adequate". The reasons cited by the evaluators for declaring MKTG's proposal non-compliant with PR2 included the fact that the table contained at pages 31 to 33 of its proposal failed to provide three recent science-based or health-based translation projects for each of the five proposed translators. In this regard, it was noted that, for each of the five proposed resources, only two science-based or health-based translation projects were identified, with the third, in each case, being economic or legal in nature.¹⁵

34. MKTG countered that the PHAC evaluation committee failed to properly consider the additional table included at pages 34 and 35 of its proposal, which listed additional projects in which three of its proposed translators had been involved.¹⁶ In this regard, it claimed that the PHAC's failure to seek clarification from MKTG on this point revealed the "... perfunctory and unreasonable nature ..." of its decision.¹⁷

35. The Tribunal is persuaded that this additional listing of projects constituted an integral part of MKTG's response to PR2 and, as such, ought to have been duly considered. That being said, this additional information would not have saved MKTG's proposal. Pursuant to M2, offerors must propose, as a minimum, a qualified complement of five resources: three English-to-French and two French-to-English translators. Of particular importance, in this regard, is the statement in M2 that each named resource could be proposed under only one category. MKTG acknowledges that two of its five proposed translators did not meet the PR2 science-based or health-based project requirement.¹⁸ It follows therefore that, with only three of MKTG's five proposed resources possibly having the requisite experience, MKTG was not in a position to satisfy M2. Clarification could not have altered this fact.¹⁹ In this respect, the Tribunal agrees with the PHAC's assertion that this fact alone was sufficient to disqualify MKTG's proposal without further consideration.²⁰

36. Finally, and on the basis of its own review of the listing of additional projects in MKTG's proposal, the Tribunal accepts the PHAC's claim that information required by PR2 on the responsibilities held by the individuals on the given projects was not included in MKTG's proposal. In this regard, while the Tribunal does not intend to delve into the matter at length, having already found MKTG's proposal non-responsive on other grounds, it notes that, apart from general statements about particular resources having been involved in a given project, there is no elaboration of specific responsibilities. Indeed, MKTG did not contest the PHAC's claim of its non-compliance with this mandatory requirement. Consequently, MKTG's proposal was non-responsive in this respect as well. For all the reasons above, the Tribunal concludes that the PHAC conducted the procurement in accordance with the *AIT*, including Article 506(6).

15. Tribunal Exhibit PR-2011-061-09 at para. 38.

16. MKTG's proposal at 34, 35.

17. Tribunal Exhibit PR-2011-061-01 at paras. 29, 48.

18. *Ibid.* at para. 39.

19. It is well established in jurisprudence that, while a procuring entity *may* seek clarification of a proposal in some instances, it does not have any duty to do so. Rather, 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. See *Integrated Procurement*. Likewise, the onus of ensuring that the information in a proposal is clear is on the bidder. See *Info-Electronics*. As such, there was no obligation on the PHAC to seek any such clarification.

20. Tribunal Exhibit PR-2011-061-09 at para. 46. With the point-rated requirements being clearly connected to the mandatory requirements of the RFSO, MKTG's overall PR2 score is not incompatible with the non-responsiveness of its proposal to M2.

COSTS

37. The Tribunal awards the PHAC its reasonable costs incurred in responding to the complaint.

38. 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.

39. 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 moderate, as it involved a moderately undefined project, such as the provision of as-and-when requested translation services. The Tribunal finds that the complexity of the complaint was moderate, as it dealt with an evaluation based on a combination of mandatory and rated requirements. Finally, the complexity of the proceedings was low, as there were no motions or interveners, and a public hearing was not required. 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

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

41. Pursuant to section 30.16 of the *CITT Act*, the Tribunal awards the PHAC its reasonable costs incurred in responding to the complaint, which costs are to be paid by MKTG. Pursuant to article 4.1 and Appendix A to the *Guideline*, 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 retains jurisdiction to establish the final amount of the award.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member