



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2012-018

Mediamix Interactive

*Decision made  
Thursday, October 4, 2012*

*Decision issued  
Friday, October 5, 2012*

*Reasons issued  
Thursday, October 18, 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**

**MEDIAMIX INTERACTIVE**

**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.

Serge Fréchette  
Serge Fréchette  
Presiding Member

Dominique Laporte  
Dominique Laporte  
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 by the Department of Public Works and Government Services (PWGSC) (Solicitation No. 5P004-100125/B) on behalf of the Parks Canada Agency (Parks Canada) for the provision of a reservation system. Mediamix Interactive (MMI) contests the evaluation of its bid.
3. 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, all six trade agreements apply.
4. Article 506(6) of the *AIT* provides that “[t]he 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.” The other trade agreements have a similar obligation.
5. The federal government has the right to define its procurement requirements to the extent that they meet its operational requirements.<sup>9</sup>

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

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

3. *North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2 (entered into force 1 January 1994).

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 Inforex Inc.* (24 May 2007), PR-2007-019 (CITT); *Re Complaint Filed by FLIR Systems Ltd.* (25 July 2002), PR-2001-077 (CITT); *Re Complaint Filed by Aviva Solutions Inc.* (29 April 2002), PR-2001-049 (CITT).

6. If a potential bidder believes that the evaluation criteria are flawed, it must make an objection to the government institution, or file a complaint with the Tribunal, within 10 working days.<sup>10</sup>

7. When responding to a solicitation, the onus is on the bidder to demonstrate that it meets all the mandatory requirements of the procurement.<sup>11</sup> Bidders must treat each solicitation independently and should be governed by the express terms set out for a particular solicitation.

8. When evaluating a bid, it is the duty of the government institution to ensure that the bid thoroughly and strictly complies with the mandatory requirements identified in the solicitation documents.<sup>12</sup> The Tribunal will not interfere with an evaluation unless it is unreasonable.<sup>13</sup>

9. The Request for Proposal contained the following terms:

**3.2 Section I: Technical Bid**

...

- (b) In their technical bid, bidders should demonstrate their understanding of the requirements contained in the bid solicitation and explain how they will meet these requirements. Bidders should demonstrate their capability and describe their approach in a thorough, concise and clear manner for carrying out the work.

...

**PART 4 – EVALUATION PROCEDURES AND BASIS OF SELECTION**

...

- (a) Bids will be assessed in accordance with the entire requirement of the bid solicitation including the technical and financial evaluation criteria. There are several steps in the evaluation process, which are described below. . . .

...

**4.2 Technical Evaluation**

...

- (b) Each bid will be reviewed against the requirements and evaluation criteria as described in Attachment 4.2 – Mandatory Requirements, Attachment 4.3 – Rated Requirements and Attachment 4.4 – Product Demonstration respectively.

...

**4.4 Basis of Selection – Highest Combined Rating of Technical Merit (70%) and Price (30%)**

- (a) To be declared responsive, a bid must:
- (i) Comply with all the requirements of the bid solicitation;

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10. Section 6 of the *Regulations* and *IBM Canada Ltd. v. Hewlett Packard (Canada) Ltd.*, 2002 FCA 284 (Can LII) at paras. 18-21.

11. *Re Complaint Filed by Thomson-CSF Systems Canada Inc.* (12 October 2000), PR-2000-010 (CITT); *Re Complaint Filed by Canadian Helicopters Limited* (19 February 2001), PR-2000-040 (CITT); *Re Complaint Filed by WorkLogic Corporation* (12 June 2003), PR-2002-057 (CITT).

12. *Re Complaint Filed by Integrated Procurement Technologies, Inc.* (14 April 2008), PR-2008-007 (CITT); *Re Complaint Filed by Bell Canada* (26 September 2011), PR-2011-031 (CITT).

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

- (ii) Meet all mandatory evaluation criteria;
  - (iii) Obtain the required minimum number of points for each section and subsection of point rated criteria with a pass mark; and
  - (v) Obtain the required minimum overall pass mark.
- (b) Bids not meeting (i), (ii) and (iii) and (iv) will be declared non responsive.

10. On September 19, 2012, PWGSC wrote to MMI advising that its bid did not obtain the required minimum number of points for each section and subsection of the point-rated criteria and did not obtain the required minimum overall pass mark of 70 percent. PWGSC's letter indicated that MMI passed only three requirements and failed nine, and that its overall mark was far less than 70 percent (and far less than the total score of the successful bidder).

11. MMI expressed the view that the evaluation was "not in any way congruent" to the reservation system that MMI had already built and was managing for Parks Canada. MMI identified specific concerns, including its failing score with regard to the experience of its proposed personnel, considering the proposed team includes the same persons who have been managing the existing system. In this respect, MMI further alleged that the evaluators disregarded MMI's current references. MMI also questioned the rating on functionality, arguing that its bid was based on the features of the existing system, an advantage that the successful bidder did not have.

12. Part of MMI's concerns may seem understandable. For example, it may seem puzzling that MMI's "Named Resources" were assessed a failing grade despite the proposed personnel having built and managed the current system. However, MMI has not addressed all the criteria that it did not meet. MMI's bid received a failing score for "Accounts, Account Profiles and Product Catalogue" and "Marketing and Mobile/Hand-held Device Requirements", among others. However, MMI has not provided any argument or evidence that the evaluation in respect of these particular criteria was unreasonable, was not carried out in accordance with Article 506(6) of the *AIT* and the similar provisions of the other trade agreements, or was otherwise contrary to the trade agreements. Furthermore, the Tribunal notes that the overall score was so far below the passing mark that, even if MMI had met the rated criteria for such items as "Named Resources" and "Project Understanding and Approach", its bid would still have failed.

## DECISION

13. In light of the foregoing, pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal has decided not to conduct an inquiry into the complaint.

Serge Fréchette  
Serge Fréchette  
Presiding Member