



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

---

## DECISION AND REASONS

File No. PR-2012-019

P.J.W. van Zyl and Sons Ltd.

*Decision made  
Friday, October 5, 2012*

*Decision issued  
Tuesday, October 9, 2012*

*Reasons issued  
Monday, October 22, 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**

**P.J.W. VAN ZYL AND SONS 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.

Jason W. Downey  
Jason W. Downey  
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. P.J.W van Zyl and Sons Ltd. filed a complaint with the Tribunal on October 4, 2012, in relation to a procurement (Solicitation No. EJ196-121147/B) by the Department of Public Works and Government Services for airport grounds maintenance. The complainant alleged that the contract was unjustifiably awarded to a higher-priced bidder.
3. In order for the Tribunal to have jurisdiction to inquire into a complaint, the information provided by the complainant must disclose a reasonable indication that the procurement was not carried out in accordance with whichever trade agreement applies.<sup>3</sup>
4. In respect of the present complaint, the Tribunal finds that the information does not disclose such a reasonable indication.
5. Article 506(6) of the *Agreement on Internal Trade*<sup>4</sup> requires that solicitation 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.” The other trade agreements have a similar obligations.
6. The federal government has the right to define its procurement requirements to the extent that they meet its operational requirements.<sup>5</sup>
7. If a potential bidder believes that the evaluation criteria are flawed, it must object to the government institution, or complain to the Tribunal, within 10 working days.<sup>6</sup>
8. When responding to a solicitation, the onus is on the bidder to demonstrate that it meets all the mandatory requirements of the procurement.<sup>7</sup> Bidders must treat each solicitation independently and should be governed by the express terms set out for a particular solicitation.<sup>8</sup>

---

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

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

3. Paragraph 7(1)(c) of the *Regulations*.

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

7. *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).

9. 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>9</sup>

10. Part 3 of the solicitation document at issue states in relevant part as follows:

**2. Submission of Evidence**

Submission of Evidence as described in 2.1 and 4. below **MUST** be included with the bidder's proposal at time of bid closing. Failure by the bidder to provide the required evidence will result in the bidder being disqualified and no further consideration will be given to the bidder and the proposal will be deemed non responsive.

...

**2.1 (MANDATORY) Full Time Supervisor's Qualifications**

1. The bidder **MUST** have one full time supervisor available May 1 to October 31 and who has one of the following:

i) a College diploma in Horticulture from a recognized college; **OR**

ii) a degree in Horticulture from a recognized university;

Proof of this training as described in the above documents **MUST** be included with the bidder's proposal at time of bid closing.

...

**4. (MANDATORY) Contractor's Experience and Past Performance**

**1. Experience of the bidder**

1.1 The bidder must provide evidence of its experience and past performance as a contractor by providing references from **three (3) contractors for Landscape maintenance and three (3) Contracts for snow removal services each for a duration of three (3) consecutive years satisfactorily rendered within the last five (5) years.** . . .

11. In a letter dated September 18, 2012, PWGSC informed the complainant that its bid did not comply with two of the mandatory requirements of the solicitation: (1) the mandatory full-time supervisor's qualifications; and (2) the mandatory contractor's experience and past performance.

12. With regard to the first criterion, PWGSC's letter states that no diploma or degree was provided. With regard to the second criterion, the letter states that the third landscape reference and the second snow removal reference were for less than three years.

13. In a letter dated September 30, 2012, Mr. Peter J.W. van Zyl admits that the bid did not satisfy these mandatory requirements. The letter states that, "[h]aving held (and presently holding) this particular contract [the complainant was an incumbent supplier], we assumed that our current diploma would be on file. In hind sight we could have included additional copies . . ." The letter also states that, "[a]lthough the contracts listed in the RFP did not meet the required 3 years they were of similar scope and size which was a requirement of the RFP process."

---

8. *Re Complaint Filed by the Spallumcheen Band* (26 April 2001), PR-2000-042 (CITT); *Re Complaint Filed by APM Diesel 1992 Inc.* (15 February 2012), PR-2011-052 (CITT).

9. *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).

14. Accordingly, the Tribunal finds no reasonable indication that PWGSC breached Article 506(6) of the *AIT* or otherwise failed to carry out the procurement in a manner that was consistent with the applicable trade agreements.

#### **DECISION**

15. Pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal has decided not to conduct an inquiry into the complaint.

Jason W. Downey

Jason W. Downey  
Presiding Member