



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2012-029

Quality Control International in
Joint Venture with Service Star
Building Cleaning

*Decision made
Friday, November 30, 2012*

*Decision issued
Friday, November 30, 2012*

*Reasons issued
Thursday, December 13, 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

**QUALITY CONTROL INTERNATIONAL IN JOINT VENTURE WITH SERVICE
STAR BUILDING CLEANING**

AGAINST

THE DEPARTMENT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE

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*¹ provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,² 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 Foreign Affairs and International Trade (DFAIT) (Solicitation No. WSHDC Cleaning 2012-BH01) for the provision of cleaning and janitorial services at the Canadian Embassy in Washington, D.C., U.S.A. (the Embassy). Quality Control International in joint venture with Service Star Building Cleaning (QCI) alleged that DFAIT unfairly evaluated its proposal. In particular, it alleged that DFAIT failed to seek clarification regarding information included in its financial proposal.

3. On August 21, 2012, DFAIT issued a Request for Proposal (RFP) to select a supplier to enter into a contract with the Embassy to provide the required cleaning services. On August 27, 2012, Service Star Building Cleaning registered by e-mail to attend the mandatory site visit to be held on August 31, 2012. On September 13 and 25, 2012, DFAIT informed potential suppliers of the questions that had been received during the procurement process concerning the requirements of the RFP and of the answers that it provided.

4. On October 4, 2012, DFAIT sent an invitation to potential suppliers, including QCI, attaching the RFP for review and consideration. DFAIT also informed potential suppliers that the closing date for the receipt of bids had been extended to October 19, 2012. According to the complaint, the closing date of the solicitation was extended because DFAIT had not received compliant proposals by the initial closing date of October 1, 2012.

5. On October 19, 2012, QCI submitted a proposal in response to the solicitation. On October 25, 2012, DFAIT sent an e-mail to QCI requesting an explanation and more details with respect to an item of QCI's financial proposal. DFAIT's inquiry pertained to QCI's proposed charge regarding the labour burden to cover the office expenses to be incurred by the contractor for providing on-call cleaning services. On the same day, QCI responded that the percentage that it indicated to cover this so-called labour burden charge brought its hourly rate for on-call cleaning services to approximately one quarter (\$0.25) over and above the quoted regular daily routine rates.

6. On November 15, 2012, DFAIT informed QCI that it would not be awarded a contract as its proposal did not comply with all the mandatory requirements of the solicitation, in particular requirement "M6 Maximum Funding". In that same letter, DFAIT also informed QCI that no contract had been awarded as none of the proposals submitted were compliant with all the requirements of the RFP.

7. On November 26, 2012, QCI filed its complaint with the Tribunal. However, the complaint was deemed incomplete, since it did not comply with subsection 30.11(2) of the *CITT Act*. On November 27, 2012, the Tribunal wrote to QCI requesting additional information. On November 27 and 28, 2012, QCI provided the Tribunal with the requested additional information. In accordance with subrule 96(1) of the

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

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

Canadian International Trade Tribunal Rules,³ the complaint was therefore considered to have been filed on November 28, 2012.⁴

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 Chapter Ten of the *North American Free Trade Agreement*,⁵ Chapter Five of the *Agreement on Internal Trade*,⁶ the *Agreement on Government Procurement*,⁷ Chapter Kbis of the *Canada-Chile Free Trade Agreement*,⁸ Chapter Fourteen of the *Canada-Peru Free Trade Agreement*⁹ or Chapter Fourteen of the *Canada-Colombia Free Trade Agreement*¹⁰ applies. In this case, all trade agreements apply.¹¹

8. 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.”

9. Article 1013(1)(h) of *NAFTA* provides that, “[w]here an entity provides tender documentation to suppliers, the documentation shall contain . . . the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders”

10. Article 1015(4)(a) of *NAFTA* also provides that, “to be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation” In turn, Article 1015(4)(d) of *NAFTA* provides that the government shall award contracts “. . . in accordance with the criteria and essential requirements specified in the tender documentation.”

11. The *AGP*, the *CCFTA*, the *CPFTA* and the *CCOFTA* also contain provisions similar to those noted above.

3. S.O.R./91-499 [*Rules*].

4. Subrule 96(1) of the *Rules* reads as follows: “A complaint shall be considered to have been filed (a) on the day it was received by the Tribunal; or (b) in the case of a complaint that does not comply with subsection 30.11(2) of the Act, on the day that the Tribunal receives the information that corrects the deficiencies in order that the complaint comply with that subsection” [emphasis added].

5. *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*].

6. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <http://www.ait-aci.ca/index_en/ait.htm> [*AIT*].

7. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm> [*AGP*].

8. *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) [*CCFTA*]. Chapter Kbis, entitled “Government Procurement”, came into effect on September 5, 2008.

9. *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) [*CPFTA*].

10. *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) [*CCOFTA*].

11. The notice of proposed procurement posted on MERX (Canada’s electronic tendering service) states as much. Complaint, tab 2.

12. The federal government has the right to define its procurement requirements to the extent that they meet its operational requirements.¹²

13. When responding to a solicitation, the onus is on the bidder to demonstrate that it meets all the mandatory requirements of the procurement.¹³ Bidders must treat each solicitation independently and should be governed by the express terms set out for a particular solicitation.¹⁴

14. 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.¹⁵ Moreover, the Tribunal will not interfere with an evaluation unless it is unreasonable.¹⁶

15. It is also well established that a procuring entity will satisfy its obligations under Article 506(6) of the *AIT* and the similar provisions of the other trade agreements when it makes a reasonable evaluation, in good faith, of the competing bid documents. The Tribunal has also made it clear that the bidder bears the onus to seek clarification before submitting an offer. It has also stated that it 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.¹⁷

16. It is in light of these principles that the Tribunal will assess whether the information provided by the complainant discloses a reasonable indication that the procurement has not been conducted in accordance with the applicable trade agreements.

17. The relevant provisions of the RFP are as follows:

Appendix "B"

Evaluation Criteria

MANDATORY REQUIREMENTS

1. Mandatory Requirements – Bid Closing

1.1 Bidders must provide the necessary documentation to support compliance with the following Mandatory Requirements at bid closing time. Any offer which fails to meet the following mandatory requirements will be deemed non-compliant and will not be given further consideration. Bidders should address each criteria separately.

...

12. *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).

13. *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).

14. *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).

15. *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).

16. *Re Complaint Filed by Mediamix Interactive* (4 October 2012), PR-2012-018 (CITT).

17. *Re Complaint Filed by Ridgeline Mechanical Ltd.* (17 July 2012), PR-2012-009 (CITT); *Re Complaint Filed by Info-Electronics H P Systems Inc.* (2 August 2006), PR-2006-012 (CITT).

M6 Maximum Funding

The maximum funding available for the Contract, including all optional periods, resulting from the bid solicitation is \$1,200,000.00 USD (GST/HST or VAT extra, as appropriate). Bids valued in excess of this amount will be considered non-responsive. This disclosure does not commit Canada to pay the maximum funding available.

...

Appendix "D"

Financial Proposal

Amounts are to be quoted in USD.

NOTE: Estimated hours per year are strictly for evaluation purposes and are not a guarantee of hours under the Contract.

	Contract Term	Option Year 1	Option Year 2	Option Year 3
...				
On-call Cleaning Services				
Heavy-duty cleaner	\$ _____ Per Hour x 1,000 hours = \$ _____ (C1)	\$ _____ Hour x 1,000 hours = \$ _____ (C2)	\$ _____ Hour x 1,000 hours = \$ _____ (C3)	\$ _____ Hour x 1,000 hours = \$ _____ (C4)
Light-duty cleaner	\$ _____ Per Hour x 1,000 hours = \$ _____ (D1)	\$ _____ Hour x 1,000 hours = \$ _____ (D2)	\$ _____ Hour x 1,000 hours = \$ _____ (D3)	\$ _____ Hour x 1,000 hours = \$ _____ (D4)
Labour Burden: to cover the office expenses incurred by the Contractor for providing the On-call cleaning services	% _____ x C1 + D1 = \$ _____ (E1)	% _____ x C2 + D2 = \$ _____ (E2)	% _____ x C3 + D3 = \$ _____ (E3)	% _____ x C4 + D4 = \$ _____ (E4)
TOTAL PER YEAR (A+B+E) = F	\$ _____ (F1)	\$ _____ (F2)	\$ _____ (F3)	\$ _____ (F4)

Total (F1+F2+F3+F4) = \$ _____

NOTE: The Contractor may be responsible for supplying all sundries for the routine and scheduled cleaning services. If the Contractor is responsible, sundries used for On-call cleaning will be reimbursed, at cost, with no provision for mark-up or profit. The approximate cost of sundries for the routine and scheduled cleaning services (paper towel, roll towels, toilet [t]issue, and soap) for the year is \$10,961.62.

18. In its November 15, 2012, e-mail, DFAIT informed QCI that its financial proposal total quote (i.e. the total amount that QCI indicated on the last line of Appendix D to the RFP) did not include its

proposed prices for the “heavy-duty cleaner” and “light-duty cleaner” on-call cleaning services (i.e. items C and D of Appendix D to the RFP) over the course of the contract period. DFAIT also informed QCI that when the total amount quoted for these “heavy-duty cleaner” and “light-duty cleaner” on-call cleaning services are added to its total financial proposal, QCI’s financial proposal was over the maximum funding requirement and, as a result, was found to be non-responsive and disqualified.

19. In the Tribunal’s opinion, mandatory requirement M6 of Appendix B (Evaluation Criteria) to the RFP is clear. The maximum funding available for the contract, including all optional periods, resulting from the bid solicitation was \$1,200,000.00 USD and bids valued in excess of this amount were to be considered non-responsive. Therefore, it was incumbent upon bidders to ensure that their total financial proposal did not exceed this amount.

20. With respect to the on-call cleaning services in Appendix D (Financial Proposal) to the RFP, the Tribunal finds that DFAIT correctly determined that QCI was to add the total amount of the “heavy-duty cleaner” (item C) and the total amount of the “light-duty cleaner” (item D) to the percent labour burden amount (item E) for each year of the contract period to arrive at a total per-year amount (item F) and a total amount for the financial proposal.

21. Indeed, in responding to questions that arose during the procurement process, DFAIT clarified that item E of Appendix D not only included the “labour burden” amount “to cover the office expenses incurred by the Contractor for providing the On-call cleaning services”, but also incorporated the amounts quoted for the “heavy-duty cleaner” (item C) and the “light-duty cleaner” (item D). It stated the following in this regard:

Q6. Are we to include our supply costs in the labo[u]r burden?

A6. The labour burden is only to cover the office expenses incurred by the Contractor for providing the On-call cleaning services. How you incorporate the supply costs into your bid is up to you, but no new cells may be added to the chart.

Q7. Is there a reason that cells C and D are not calculated into the total per year in cell F?

A7. *Cells C and D are incorporated into cell E. Cell E is incorporated into cell F.*¹⁸

[Emphasis added]

22. Thus, it is clear that the total for items C and D of a bidder’s financial proposal had to be incorporated into the total amount quoted in item E for each year, which was itself to be included in the “total per year” (item F), to ultimately arrive at the total amount of the financial proposal (“F1+F2+F3+F4”) to be indicated on the bottom line of Appendix D to the RFP. The Tribunal considers that this is the only reasonable interpretation of the scope of this requirement. Otherwise, the total financial proposal would leave out the amounts quoted for the actual “on-call cleaning services”, which formed an integral part of the services required by the procurement.

23. Upon review of QCI’s financial proposal, the Tribunal agrees with DFAIT that QCI’s proposal did not include the requisite amounts for the “on-call cleaning services”. Rather, item E of its proposal only incorporated a quote for the “labour burden” component, which represented an amount that had to be added over and above the quoted amounts for the “heavy-duty cleaner” (item C) and the “light-duty cleaner” (item D). In this regard, the Tribunal notes that QCI’s response to DFAIT’s e-mail of October 25, 2012,

18. E-mail sent by Mr. Brent Hygaard of DFAIT on September 25, 2012. Complaint, tab 5.

indicates that QCI understood that the “labour burden” component actually increased the regular rates that it had quoted for the “on-call cleaning services”.

24. In short, the Tribunal finds that QCI’s financial proposal improperly only included the charge for the “labour burden” component of the “on-call cleaning services” under item E. By adding the amounts that QCI indicated under items C and D to item E, as was required, it is clear to the Tribunal that QCI’s financial proposal total amount, over the course of the contract period, was higher than the maximum funding requirement of the RFP.

25. Accordingly, the Tribunal finds that the complaint contains no evidence that the evaluators did not properly apply themselves in evaluating QCI’s proposal, ignored vital information provided in a bid or wrongly interpreted the scope of a requirement. In the Tribunal’s opinion, DFAIT’s determination that QCI’s bid did not meet all the mandatory requirements of the RFP was reasonable and, indeed, correct.

26. With respect to QCI’s assertion that DFAIT should have requested that it clarify its position with respect to items C and D of its financial proposal before disqualifying it, the Tribunal notes that, although a procuring entity can, in some circumstances, seek clarification on a particular aspect of a proposal, it is not under any duty to do so.¹⁹

27. Therefore, the Tribunal finds that the complaint does not disclose a reasonable indication that the procurement has not been conducted in accordance with the applicable trade agreements.

28. In light of the foregoing, the Tribunal will not conduct an inquiry into the complaint and considers the matter closed.

DECISION

29. 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

19. *Re Complaint Filed by IBM Canada Limited, PricewaterhouseCoopers LLP and the Centre for Trade Policy and Law at Carleton University* (10 April 2003), PR-2002-040 (CITT) at 15-16; *Re Complaint Filed by Integrated Procurement Technologies, Inc.* (14 April 2008), PR-2008-007 (CITT) at para. 13.