



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2012-025

Central Automotive Inspections  
Records & Standards Services  
(CAIRSS) Corp.

*Decision made*  
*Wednesday, October 31, 2012*

*Decision issued*  
*Wednesday, October 31, 2012*

*Reasons issued*  
*Tuesday, November 6, 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**

**CENTRAL AUTOMOTIVE INSPECTIONS RECORDS & STANDARDS SERVICES  
(CAIRSS) CORP.**

**AGAINST**

**THE DEPARTMENT OF TRANSPORT**

**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

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 Transport (Transport Canada) (Solicitation No. T8080-110710) for the provision of services under an agreement to develop, manage and administer the Registrar of Imported Vehicles program. Under this agreement, the successful bidder would carry out all the tasks of the Registrar of Imported Vehicles, including developing and maintaining a registration, inspection and certification system to ensure that imported vehicles of certain prescribed classes comply or are modified to comply with applicable Canada Motor Vehicle Safety Standards.

3. Central Automotive Inspections Records & Standards Services (CAIRSS) Corp. alleged that Transport Canada awarded the contract to a company whose proposal did not meet a mandatory requirement of the procurement. Specifically, CAIRSS alleged that the successful bidder was in conflict of interest, contrary to the requirement regarding conflicts of interest set out in Appendix H of the solicitation documents. Appendix H stipulates the following: “The contractor declares that, directly or indirectly, as owner and/or shareholder . . . it is not engaged in the business of importing vehicles or equipment into Canada for the purpose of sale . . . .”

4. On July 25, 2012, Transport Canada issued a Request for Proposal (RFP) for the development, management and administration of the Registrar of Imported Vehicles program. The bid closing date was September 6, 2012. According to the complaint, on October 12, 2012, Transport Canada informed CAIRSS that it had accepted the bid of Adminserv Canada L.P. o/a Livingston Managed Services (Adminserv) to carry out the project. In the same letter, Transport Canada informed CAIRSS that its own proposal was not given further consideration because it had not met all the mandatory requirements.

5. On October 15, 2012, CAIRSS made an objection to Transport Canada. A debriefing session by teleconference was scheduled for October 16, 2012. In advance of the debriefing session, CAIRSS brought the question of Adminserv’s alleged conflict of interest to the attention of Transport Canada and sent Transport Canada e-mails with two press releases, which in CAIRSS’ opinion exemplified Adminserv’s conflict of interest.

6. The contents of the October 16, 2012, debriefing teleconference between the parties are unclear on the basis of the complaint, but a letter from CAIRSS indicates that Transport Canada offered to meet CAIRSS in a separate meeting to discuss its concerns regarding Adminserv’s conflict of interest. However, according to the complaint, this meeting never took place.

7. On October 24, 2012, CAIRSS filed a complaint with the Tribunal alleging that Transport Canada failed to disqualify Adminserv due to its alleged conflict of interest, contrary to Appendix H of the solicitation documents, which was a mandatory requirement of the procurement. CAIRSS received further

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

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

correspondence from Transport Canada, dated from October 26, 2012, which confirmed Transport Canada's view that the solicitation was conducted in compliance with the government's obligations and advised CAIRSS that it could contact the department for further discussions or file a formal complaint with the Tribunal.

8. The filing of this complaint was timely pursuant to subsections 6(1) and (2) of the *Regulations*.

## ANALYSIS

9. According to paragraph 7(1)(c) of the *Regulations*, to initiate an inquiry, the Tribunal must find that the complaint discloses a reasonable indication that the procurement has not been carried out 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 other words, the Tribunal must examine the complaint to determine if there is a reasonable indication that the procuring entity appears to have conducted the procurement in a manner that was in violation of one of the applicable trade agreements.

10. The procured services are covered under the *AIT*. Article 506(6) of the *AIT* provides as follows:

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. The evaluation method described in the solicitation documents provides in clause 1.3.1.2 of Appendix C that "[p]roposals must meet the mandatory evaluation criteria to be considered further." Therefore, failure to meet a requirement will only be fatal to a proposal if the requirement in question was a mandatory requirement.

12. The Tribunal notes that Appendix H stipulates the following: "The contractor declares that, directly or indirectly, as owner and/or shareholder . . . 3- it is not engaged in the business of importing vehicles or equipment into Canada for the purpose of sale; and 4- [d]uring the term of this agreement, it will not carry on any activity inconsistent with the performance of the terms of this contract."

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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).

13. The Tribunal also notes that the mandatory criteria for the evaluation of the proposals set out in detail in Appendix C of the solicitation documents make no direct or indirect reference to Appendix H or to conflicts of interest generally.

14. The only other part of the solicitation documents that squarely addresses conflicts of interest is clause 10 of Appendix D, entitled “General Conditions”.

15. Clause 10 reads as follows:

10. Conflict of Interest and Post-Employment Code

...

10.3 It is a term of this Agreement that any persons engaged in the course of this Agreement and subsequent to it shall conduct themselves in a manner such that there is not and will not be any conflict arising from competing or opposing interests of other clients of the Contractor. Should an interest be acquired during the life of the Agreement that would cause a conflict of interest, the Licensee shall declare it immediately to the Departmental Representative.

16. The Tribunal notes that the General Conditions are not part of the mandatory requirements set out in Appendix C; as specified on the Checklist of Documents at the beginning of the RFP documents, the General Conditions describe conditions of the resulting agreement that would be entered into with the successful bidder.

17. Looking at the plain meaning of the terms of Appendix H, which requires a “declaration” from the “contractor”; the mandatory criteria outlined in Appendix C, which do not mention Appendix H or conflicts of interest; as well as the entire context of the solicitation documents, the Tribunal is satisfied that Appendix H did not constitute a mandatory requirement that Transport Canada was required to take into account in the evaluation of the proposals in this solicitation process. As such, CAIRSS’ complaint does not raise a reasonable indication that Transport Canada breached Article 506(6) of the *AIT*.

18. Rather, the Tribunal is of the view that Appendix H relates to standards regarding conflicts of interest required from the eventual *contractor* for the *duration of the resulting agreement* with Transport Canada. Appendix H contemplates matters arising *after* the award of the contract and relevant to the performance of the contract, and not criteria for the selection of the successful bidder. As issues of contract performance or administration fall outside of the Tribunal’s jurisdiction under subsection 30.11(1) of the *Act* over issues relating to aspects of the procurement process, a complaint based on compliance with Appendix H is outside of the Tribunal’s jurisdiction.

19. The Tribunal further notes that even assuming that the declaration described in Appendix H was a mandatory requirement that Transport Canada had to take into account in evaluating the proposals, the Tribunal is not satisfied that CAIRSS’ complaint raises a reasonable indication that Transport Canada did not evaluate Adminserv’s bid in accordance with that mandatory requirement.

20. Indeed, CAIRSS did not allege that Adminserv failed to provide the declaration required by Appendix H. There is no reasonable indication that Transport Canada awarded the contract to a bidder whose proposal lacked a mandatory document. Instead, CAIRSS argued, after the bid evaluation, that Adminserv’s Appendix H declaration was in fact false and that Transport Canada contravened Article 506(6) of the *AIT* by failing to disqualify it on this basis.

21. In this respect, the Tribunal considers that, unless there is evidence indicating that the government knew or must have known at the time of the evaluation that a proposal did not in fact comply with a requirement, the government is entitled, at the time of evaluating the proposals and awarding the contract, to rely on the declaration provided by the bidders.

22. CAIRSS raised the following facts in support of its allegation: 1) that Livingston International, Adminserv's parent company, is engaged in the business of customs brokerage; 2) that the Toronto and Vancouver offices of Livingston International and the Registrar seem to be situated in the same buildings, giving rise to a concern about the demarcation between the two companies; and 3) that an Adminserv affiliate called Searail Cargo Surveys Inc. is in the vehicle transportation business. CAIRSS provided evidence in the nature of news releases purporting to show that Adminserv was at the date of those releases one of the lines of business of Livingston.<sup>9</sup>

23. The Tribunal is not convinced that CAIRSS' complaint discloses a reasonable indication that Transport Canada's reliance on Adminserv's Appendix H declaration was unreasonable at the time of the evaluation of the proposals. Therefore, there is no reasonable indication that Transport Canada's evaluation of Adminserv's proposal was in breach of Article 506(6) of the *AIT*.

24. This approach is consistent with past jurisprudence of the Tribunal. In *Sanofi Pasteur Limited*,<sup>10</sup> the bidders were required to include a statement acknowledging that the proposed products were latex-free. The complainant alleged, after the bid evaluation and contract award, that the successful bidder's products were not in fact latex-free. In deciding not to conduct an inquiry, the Tribunal considered the following:

22. . . . at the time of evaluating the proposals and awarding the contract, PWGSC was entitled to rely on Novartis' certification. The Tribunal finds that the complaint (i.e. that the "latex-free" requirement of the RFP was not satisfied at the time of the evaluation of proposals) does not present any evidence that PWGSC's conclusion was not reasonable or was inconsistent with the requirements in the RFP.

23. In fact, the evidence submitted with the complaint indicates that PWGSC was in possession of Novartis's certification at the time of bid evaluation. In fact, there is no indication that PWGSC had any reason to question Novartis' certification during the bid evaluation phase.

[Footnote omitted, emphasis added]

25. The Tribunal's reasoning was similar in *Airsolid Inc.*:<sup>11</sup>

11. At the time of evaluating the proposals and awarding the contract, PWGSC was entitled to rely on the document that was, in all likelihood, taken from Zodiac Marine's catalogue, and there was no evidence that would have made it question the information provided by the winning bidder concerning the dimensions of Zodiac Marine's SRMN 600 model. Furthermore, there was no evidence to indicate that PWGSC knew, prior to contract award, about the allegation that Zodiac Marine's SRMN 600 model could have been shorter than 6 metres, as alleged by Airsolid in its complaint.

26. Following this line of reasoning, in evaluating the proposals, Transport Canada was entitled to rely on Adminserv's declaration in Appendix H without contravening the provisions of the RFP documents or of

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9. See CAIRSS' documents, two letters to Transport Canada, dated October 15, 2012, citing examples of conflict of interest: a press release from September 1, 2005, and another from November 8, 2007.

10. (12 May 2011), PR-2011-006 (CITT).

11. (18 February 2010), PR-2009-089 (CITT). See also *3202488 Canada Inc. o/a Kinetic Solutions* (18 February 2011), PR-2010-089 (CITT).

Article 506(6) of the *AIT*. If it became known after the award of the contract that Adminserv did not in fact meet the mandatory requirement, this is an issue of contract administration falling outside of the Tribunal's jurisdiction.<sup>12</sup> In this respect, the Tribunal notes that complaints regarding contract administration are within the mandate of the Office of the Procurement Ombudsman.

## DECISION

27. 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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12. See also *Airsolid Inc.*, *supra* at para. 16.