



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

ORDER AND REASONS

Files No. PR-2013-005 and
PR-2013-008

Raymond Chabot Grant Thornton
Consulting Inc. and
PricewaterhouseCoopers LLP

v.

Department of Public Works and
Government Services

*Order and reasons issued
Thursday, September 5, 2013*

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IN THE MATTER OF a complaint filed by Raymond Chabot Grant Thornton Consulting Inc. and PricewaterhouseCoopers LLP 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 notice of motion filed by PricewaterhouseCoopers LLP on August 23, 2013, seeking an order directing the Department of Public Works and Government Services to produce certain documents.

BETWEEN

**RAYMOND CHABOT GRANT THORNTON CONSULTING INC.
AND PRICEWATERHOUSECOOPERS LLP**

Complainant

AND

**DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT
SERVICES**

**Government
Institution**

ORDER

Having considered the motion by PricewaterhouseCoopers LLP filed on August 23, 2013, the comments by the Department of Public Works and Government Services dated August 28, 2013, the submissions by the interveners Deloitte & Touche LLP, Ernst & Young LLP and KPMG LLP dated August 28, 2013, and the additional comments filed by PricewaterhouseCoopers LLP on August 30, 2013, the Canadian International Trade Tribunal hereby dismisses the motion filed by PricewaterhouseCoopers LLP.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Ann Penner
Ann Penner
Member

Dominique Laporte
Dominique Laporte
Secretary

STATEMENT OF REASONS

BACKGROUND

1. On July 5, 2013, PricewaterhouseCoopers LLP (PwC) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ alleging that the Department of Public Works and Government Services (PWGSC) unfairly evaluated PwC's bid in relation to a Request for Proposal, with Solicitation No. A0015-12-0040/A (the RFP). In particular, PwC argued that PWGSC improperly concluded that the sample forensic audit report provided by PwC (the report at issue), in purported compliance with Point-Rated Technical Criterion RT1, was not a forensic audit report.²
2. The Tribunal subsequently granted intervener status to Deloitte & Touche LLP, Ernst & Young LLP and KPMG LLP (together, the interveners).
3. On August 16, 2013, PWGSC filed the Government Institution Report.
4. On August 23, 2013, PwC filed a motion with the Tribunal, requesting an order pursuant to subsection 17(2) of the *CITT Act*, requiring PWGSC to provide PwC with further disclosure. Specifically, PwC sought production of:
 - the forensic audit reports provided by all bidders in response to Technical Criterion RT1, which were accepted as forensic audit reports; and
 - the evaluators' evaluation sheets, notes, memoranda and other documents relating to the technical evaluations of the forensic audit reports of all bidders.
5. On August 28, 2013, PWGSC, as well as the interveners, filed submissions in response to PwC's motion request.
6. PwC filed its reply to the submissions of PWGSC and the interveners on August 30, 2013.

POSITIONS OF THE PARTIES

PwC

7. PwC argued that further disclosure was warranted in order for the Tribunal to properly adjudicate PwC's complaint that PWGSC's evaluation team did not properly evaluate the report at issue. Specifically, PwC alleged that the requested documents should be disclosed so that they may be compared with the report at issue. Such a comparison, PwC contended, would allow the Tribunal to determine whether PWGSC's evaluation team acted unreasonably and unfairly when it concluded that the report at issue was not a forensic audit report.

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

2. As a result of a request by PwC, the Tribunal subsequently joined PwC's complaint with the complaint filed by Raymond Chabot Grant Thornton Consulting Inc. on July 26, 2013 (File No. PR-2013-005).

Opposing Parties

8. PWGSC and the interveners (the opposing parties) submitted that the documents requested by PwC were not relevant to the adjudication of the complaint and, therefore, should not be the subject of a disclosure order. The opposing parties maintained that, as PwC's bid was properly rated against the established evaluation criteria in the RFP and not against the proposals submitted by other bidders, a comparison between the report in issue and the requested documents would be both irrelevant and inappropriate.

9. In addition, the opposing parties argued that the requested documents would only be relevant if PwC had alleged a reasonable apprehension of bias in the manner in which PWGSC's evaluations were carried out. However, as PwC's complaint contained no such allegation, the opposing parties submitted that the requested documents were not relevant and, therefore, should not be produced.

ANALYSIS

10. Having considered the submissions of all parties, the Tribunal finds that the requested documents are not relevant to the adjudication of the present complaint. As noted by the opposing parties, the report at issue was rated against the established evaluation criteria in the RFP. In this regard, as the bids were to be evaluated against the evaluation criteria established in the solicitation itself and not against one another, in the absence of alleged bias, a comparison of submitted bids is neither relevant to nor necessary for the disposition of the complaint.³

11. Furthermore, while production of the proposals of the other bidders and related evaluation sheets might be helpful to the disposition of an allegation of bias, PwC has made no such allegation in its complaint. In this respect, section 30.14 of the *CITT Act* requires that, in conducting an inquiry, the Tribunal must limit its consideration to the subject matter of the complaint. PwC has not made any such allegation,⁴ and the Tribunal finds no basis to inquire into this ground.

12. Finally, in its motion request, PwC states that the requested documents should be disclosed, as "a significant portion of PwC's submissions will be based on this information."⁵ It is however well-established in jurisprudence that the purpose of the disclosure process is not to allow complainants to engage in evidentiary "fishing expeditions" for further possible grounds of complaint. As stated in *Enterasys Networks of Canada Ltd. v. Department of Public Works and Government Services*:

3. *Chamber of Shipping of British Columbia v. Department of Fisheries and Oceans* (24 March 2010), PR-2009-069 (CITT) [*Chamber of Shipping*] at para. 14.

4. By way of aside, the Tribunal notes that a bald assertion of actual or reasonably apprehended bias will not be sufficient to ensure disclosure. Rather, there must be a specific allegation of actual or reasonably apprehended bias, which is supported by information that was reasonably available to the complainant at the time the complaint was filed. As noted in *Chamber of Shipping* (at para. 15): "[T]here is an onus on a complainant to provide evidence of the basic facts underpinning an allegation. In the Tribunal's view, the inclusion of a general allegation in a complaint, which is not supported by information or evidence sufficient to give rise to a reasonable indication of its veracity, does not provide a basis for the complainant to access documents in the possession of the government institution in order to validate that unsubstantiated and speculative allegation."

5. PwC's letter of August 23, 2013, at para. 15.

[The Tribunal] will not allow complainants to have access to documents when the sole objective is to find evidence to use in a complaint. In the Tribunal's opinion, the mere inclusion of general allegations in a complaint does not entitle complainants to have an unlimited access to documents in the possession of government institutions. This would open the door to impermissible fishing expeditions into the records of government institutions.⁶

[Footnote omitted]

As PwC has failed to demonstrate that the requested documents are relevant to the present complaint, the Tribunal will not order that they be produced.

CONCLUSION

13. On the basis of the foregoing, the Tribunal hereby dismisses the motion.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Ann Penner
Ann Penner
Member

6. (10 September 2010), PR-2010-004 to PR-2010-006 (CITT) at para. 70. See *EDS Canada Ltd.* (30 July 2003), PR-2002-069 (CITT).