



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File No. PR-2019-017

Pacific Northwest Raptors Ltd.

v.

Department of Public Works and
Government Services

*Determination issued
Wednesday, October 16, 2019*

*Reasons issued
Thursday, October 31, 2019*

TABLE OF CONTENTS

DETERMINATION..... i

STATEMENT OF REASONS 1

 SUMMARY OF THE COMPLAINT 1

 PROCEDURAL BACKGROUND 1

 TRIBUNAL’S ANALYSIS 2

 Point-rated criteria..... 3

 The undisclosed criteria..... 4

CONCLUSION 7

REMEDY 7

COSTS..... 8

DETERMINATION 8

IN THE MATTER OF a complaint filed by Pacific Northwest Raptors Ltd. pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C., 1985, c. 47 (4th Supp.);

AND FURTHER TO a decision to conduct an inquiry into the complaint pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

BETWEEN

PACIFIC NORTHWEST RAPTORS LTD.

Complainant

AND

THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT SERVICES

Government Institution

DETERMINATION

Pursuant to subsection 30.14(2) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal determines that this complaint is valid.

Pursuant to subsection 30.15(4) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal awards Pacific Northwest Raptors Ltd. its reasonable bid preparation costs, which costs are to be paid by the Department of Public Works and Government Services.

Should the parties be unable to agree on the amount of bid preparation costs, Pacific Northwest Raptors Ltd. shall file with the Canadian International Trade Tribunal, within 40 days of the date of this determination, a submission on the issue of costs. The Department of Public Works and Government Services will then have seven working days after receipt of Pacific Northwest Raptors Ltd.'s submissions to file a response. Pacific Northwest Raptors Ltd. will then have five working days after the receipt of the Department of Public Works and Government Services' reply submission to file any additional comments. The parties are required to serve each other and file with the Canadian International Trade Tribunal.

Pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal awards Pacific Northwest Raptors Ltd. its reasonable costs incurred in preparing and proceeding with this complaint, which costs are to be paid by the Department of Public Works and Government Services. In accordance with the *Procurement Costs Guideline*, the Canadian International Trade Tribunal's preliminary indication of the level of complexity for this complaint is Level 1, and its preliminary indication of the amount of the cost award is \$1,150. If any party disagrees with the preliminary level of complexity or indication of the amount of the cost award, it may make submissions to the Canadian International Trade Tribunal, as contemplated in Article 4.2 of the *Procurement Costs Guideline*. The Canadian International Trade Tribunal reserves jurisdiction to establish the final amount of the cost award.

Cheryl Beckett
Cheryl Beckett
Presiding Member

The statement of reasons will be issued at a later date.

Tribunal Panel: Cheryl Beckett, Presiding Member

Support Staff: Laura Colella, Counsel
Helen Byon, Counsel

Complainant: Pacific Northwest Raptors Ltd.

Government Institution: Department of Public Works and Government Services

Counsel for the Government Institution: Peter J. Osborne
Margaret Robbins
Susan Clarke
Roy Chamoun
Nick Howard
Benjamin Hiemstra

Please address all communications to:

The Registrar
Secretariat to the Canadian International Trade Tribunal
333 Laurier Avenue West
15th Floor
Ottawa, Ontario K1A 0G7
Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: citt-tcce@tribunal.gc.ca

STATEMENT OF REASONS

1. This inquiry concerns a complaint filed by Pacific Northwest Raptors Ltd. (PNWR) regarding a request for proposal (RFP) issued by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence (DND) for wildlife control services for the commercial airport and military aerodrome at 19 Wing Comox, in British Columbia.

2. The Tribunal accepted the complaint for inquiry pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*¹ and in accordance with the conditions set out in subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.²

3. The Tribunal conducted an inquiry into the validity of the complaint as required by sections 30.13 to 30.15 of the *CITT Act*. For the reasons that follow, the Tribunal finds that the complaint is valid.

SUMMARY OF THE COMPLAINT

4. PNWR claimed that its bid submitted in response to the RFP was unfairly evaluated due to the consideration of criteria which were not published in the RFP. PNWR also claimed that the undisclosed criteria provided the incumbent an unfair advantage in the procurement process.

5. As a remedy, PNWR requested that the bids be re-evaluated using only the criteria outlined in the RFP and that only evaluators with no prior experience working with the incumbent participate in the evaluation.

PROCEDURAL BACKGROUND

6. On January 22, 2019, PWGSC published the RFP for wildlife control services for a commercial airport and military aerodrome in British Columbia. The RFP was amended on February 2, 2019 and February 27, 2019.

7. PNWR submitted its bid to PWGSC in response to the RFP on the closing date of the RFP, March 4, 2019.

8. On March 21, 2019, PWGSC notified PNWR that the contract had been awarded to another bidder.³

9. On April 1, 2019, PNWR was advised that the contract was awarded to the incumbent, West Coast Wildlife Control Services Ltd.⁴ PNWR also received from PWGSC a more detailed “breakdown” of the technical points it was awarded.⁵ PNWR received its first debrief regarding its technical evaluation with PWGSC on April 18, 2019, by teleconference. Following this, PNWR requested a debrief with the evaluators, which took place on May 23, 2019.

10. On June 3, 2019, PNWR filed this complaint.

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

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

3. Exhibit PR-2019-017-01, Vol. 1 at 202.

4. Exhibit PR-2019-017-01, Vol. 1 at 205; Exhibit PR-2019-017-11, Vol. 1 at para. 18.

5. Exhibit PR-2019-017-01, Vol. 1 at 208-209; Exhibit PR-2019-017-01A, Vol. 2 (protected) at 88-91.

TRIBUNAL'S ANALYSIS

11. Subsection 30.14(1) of the *CITT Act* requires that, in conducting an inquiry, the Tribunal limit its considerations to the subject matter of a complaint. At the conclusion of the inquiry, the Tribunal must determine whether a complaint is valid on the basis of whether the procedures and other requirements prescribed in respect of the designated contract have been observed. Section 11 of the *Regulations* provides that the Tribunal is required to determine whether the procurement was conducted in accordance with the applicable trade agreements.

12. In its complaint, PNWR alleged that PWGSC breached certain provisions of the CFTA,⁶ including Articles 509(7)(a) and 515(5), which read as follows:

Article 509: Technical Specifications and Tender Documentation

...

7. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Tender documentation shall include all pertinent details concerning:

(a) the evaluation criteria that will be used in the evaluation of tenders, including the methods of weighting and evaluation, unless price is the sole criterion; ...

...

Article 515: Treatment of Tenders and Award of Contracts

...

5. Unless a procuring entity determines that it is not in the public interest to award a contract, the procuring entity shall award the contract to the supplier that the procuring entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the tender notices and tender documentation, has submitted:

(a) the most advantageous tender; ...

13. Using these provisions as the framework for its analysis, the Tribunal will determine the validity of the ground of complaint by considering whether PNWR's bid was evaluated using undisclosed criteria.

14. When considering the manner in which bids are evaluated, the Tribunal applies the standard of reasonableness.⁷ The Tribunal has previously indicated that a determination would be considered reasonable if it was supported by a tenable explanation, regardless of whether or not the Tribunal itself found that explanation compelling.⁸ As the Supreme Court of Canada underlined in a different context,

6. *Canadian Free Trade Agreement*, online: Internal Trade Secretariat <<https://www.cfta-alec.ca/wp-content/uploads/2017/06/CFTA-Consolidated-Text-Final-Print-Text-English.pdf>> (entered into force 1 July 2017) [CFTA]. Section 1.4 of the RFP lists other trade agreements that are applicable to this solicitation. The Tribunal refrains from listing them here for reasons of economy. See Exhibit PR-2019-017-06, Vol. 1 at 5. In this inquiry, the Tribunal will refer to the provisions of the CFTA given that PNWR only referred to this agreement in its complaint. The Tribunal notes that other applicable trade agreements have provisions that are similar in nature to those of the CFTA.

7. *Horizon Maritime Services Ltd./Heiltsuk Horizon Maritime Services Ltd. v. Department of Public Works and Government Services* (2 January 2019), PR-2018-023 (CITT) at para. 45.

8. *Samson & Associates v. Department of Public Works and Government Services* (13 April 2015), PR-2014-050 (CITT) at para. 35.

“reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process.”⁹ As a result, the Tribunal does not generally substitute its judgment for that of the evaluators, unless the evaluators have not applied themselves in evaluating a bidder’s proposal, have ignored vital information provided in a proposal, have wrongly interpreted the scope of the requirement, have based their information on undisclosed criteria or have otherwise not conducted the evaluation in a procedurally fair way.¹⁰

Point-rated criteria

15. PNWR alleged that undisclosed criteria were considered with respect to its responses to the point-rated technical criteria set out in section 4.1.1.2 of the RFP. The relevant criteria were worded as follows:¹¹

a) Approach and Performance: Max Pts 30

Provide an overview of the anticipated wildlife situation to include but may not be limited to birds at 19 Wing Comox, emphasizing:

Relevant knowledge in wildlife species (*sic*) indigenous to the West coast of Canada [10 Max Points]

Seasonal variations which can be anticipated [10 Max Points]

And peculiarities of the site’s geography which may have an influence [10 Max Points]

b) Methods and Risk Assessments: Max Pts 50

Provide an overview of your approach to meeting the requirements of Wildlife Control as outlined in the Statement of Requirement by providing methods, degree of anticipated success and any potential problems or anticipated difficulties.

Methods of control for anticipated species in various seasons [20 Max Points]

How seasonal variations will impact techniques and your ability to modify/adapt strategies based upon changing conditions [20 Max Points]

Degree of success anticipated success [5 Max Points]

Potential problems or anticipated difficulties [5 Max Points]

...

16. The RFP set out the percentage of points that would be awarded for each level of information and content. The relevant part of section 4.1.1.2 of the RFP stated the following:¹²

% of POINT-RATED CRITERIA	Information and content provided is . . .
---------------------------	--

9. *Newfoundland and Labrador Nurses’ Union v. Newfoundland and Labrador (Treasury Board)*, [2011] 3 SCR 708, 2011 SCC 62 (CanLII) at para. 11 (citing *Dunsmuir v. New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9 (CanLII)).

10. *Harris Corporation v. Department of Public Works and Government Services* (22 October 2018), PR-2018-016 (CITT) at para. 21; *MTS Allstream Inc. v. Department of Public Works and Government Services* (3 February 2009), PR-2008-033 (CITT) at para. 26.

11. Exhibit PR-2019-017-06, Vol. 1 at 11; Exhibit PR-2019-017-13, Vol. 1 at para. 12.

12. Exhibit PR-2019-017-06, Vol. 1 at 13.

Unsatisfactory 0-30%	Insufficient for any evaluation of the requirement.
Poor 31-59%	Insufficient for effective evaluation and considered not acceptable for meeting requirement.
Fair 60-69%	Minimal and is considered to be less than acceptable for meeting the requirement.
Good 70-79%	Sufficient for evaluation. Services offered are average and meet the requirement.
Very good 80-90%	More than sufficient for evaluation. Offer is above average and more than meets requirement.
Excellent 91-100%	Exceptional. Offer exceeds the requirement.

17. PNWR claimed that it had understood the point-rated system as meaning that in cases where a bid response fully met the RFP requirements, it would have received the higher score of “very good” or “excellent”. PNWR submitted that the evaluators used an approach that was not consistent with its understanding of how the evaluation would be conducted.

18. According to PNWR, it learned during its debrief with the evaluators on May 23, 2019, that a response that met the criteria would be rated as “good” or given 7 out of 10 points. To receive a higher rating of “very good” or “excellent”, the bid response had to go “above and beyond” the requirements set out in the RFP. After questioning the evaluators on how they determined what proposals exceeded the technical requirements, PNWR claimed that the evaluators responded by indicating that they had, before beginning the evaluation process, developed a set of criteria for what would be considered “good”, “very good”, “excellent”, etc.¹³ PNWR submitted that this implied the use of undisclosed criteria in the evaluation of bids and that the incumbent had an unfair advantage given its prior knowledge or access to information regarding the particular needs of the site. More specifically, PNWR alleged that bids were evaluated using undisclosed criteria including (1) the restriction on falconry¹⁴, and (2) the level of depth or detail that was required for responses to the technical criteria.

The undisclosed criteria

19. For the reasons below, the Tribunal finds that an undisclosed criterion was considered in the evaluation of PNWR’s bid.

Restriction on falconry

20. PNWR’s bid proposed, among other techniques, the use of birds of prey to control various species of wildlife. It is clear from the evaluation notes that the inclusion of falconry in PNWR’s bid response impacted its score on the technical criteria. Based on the evaluation notes, the Tribunal finds that PNWR’s

13. Exhibit PR-2019-017-01, Vol. 1 at 12.

14. PNWR describes applied falconry as “deterrence of problem species through training of birds of prey”. See Exhibit PR-2019-017-01, Vol. 1 at 10.

score was lower due to the prominence of falconry in its proposal.¹⁵ The fact that falconry negatively affected the evaluation of PNWR's bid was also confirmed in an email from PWGSC to DND sent on May 23, 2019, which described statements made by evaluators during a debrief.¹⁶

21. In the Tribunal's view, it was reasonable for bidders to expect that they would not be prejudiced by proposing falconry. The RFP provided no indication falconry was not a preferred option or that PWGSC would deduct points for bids that proposed this technique. On the contrary, the Statement of Work (SOW) included specific conditions that apply in cases where birds of prey are used in the control of wildlife. These were provided for in clause 24 of section 2 of the SOW.¹⁷ Absent language indicating otherwise in the RFP, it would be reasonable for bidders to expect that wildlife control methods that included birds of prey were acceptable, so long as the bidder could satisfy the conditions set out in the SOW. In these proceedings, PWGSC has provided no explanation with respect to the evaluators' consideration of falconry.

22. PWGSC submitted that PNWR had numerous opportunities to raise its concerns regarding the requirements of the solicitation. The Tribunal disagrees. PNWR could not have known that falconry would be a factor in how bids would be evaluated before submitting its bid.

23. Based on the evidence, the Tribunal finds that the methods for wildlife control that could be proposed in response to the RFP were restricted; full points were not accessible to bids that proposed falconry. This restriction amounted to an evaluation criterion that was not disclosed in the RFP as required under Article 509(7)(a) of the CFTA as noted above.

Detail of information

24. PNWR has indicated that the level of detail required for higher points was an undisclosed criterion and therefore, the evaluation of the point-rated technical criteria was unreasonable. PNWR noted this to be the case particularly where bidders had to provide an "overview" on a specific matter indicated in the criteria, such as the anticipated wildlife situation or its approach to meeting the requirements in the SOW. In this regard, for the reasons below, the Tribunal does not find that the evaluators assessed PNWR's bid unreasonably.

25. The consideration of criteria more specific than the ones published in the RFP was addressed previously by the Tribunal in *CGI*, wherein it stated:

[A] procuring entity will comply with its *NAFTA* obligations as long as it uses an evaluation approach that is logically consistent with, and could reasonably be anticipated or derived from, the methodology and criteria stated in the tender documents [I]f a procuring entity decides to use evaluation guides that rely on criteria more detailed than the ones published in the tender documents, the evaluation will remain reasonable if such detailed directions are consistent with, and could be anticipated or derived from, the published criteria.¹⁸

15. Exhibit PR -2019-017-11A, Vol. 2 (protected) at 26, 32, 54.

16. Exhibit PR-2017-017-11B, Vol. 2 (protected) at 58.

17. Exhibit PR-2019-017-06, Vol. 1 at 35.

18. *CGI Information Systems and Management Consultants Inc. v. Canada Post Corporation and Innovapost Inc.* (27 August 2014), PR-2014-006 (CIIT) at para. 77 [*CGI*]. See also *Siemens Westinghouse Inc. v. Canada (Minister of Public Works and Government Services)*, [2002] 1 F.C. 292 at paras. 41, 43, 45.

26. Although in this case no evaluation guide was provided to the Tribunal, it does not dispute PNWR's position that the level of detail provided in the response to the technical rated criteria was a subcriterion considered by the evaluators.

27. Section 4.1.1.2 of the RFP, noted above, expressly included a scoring system for awarding points for the technical rated criteria. The percentage of points would be awarded based on an assessment of the "information and content" of the bid response. There were essentially two components that would be evaluated for each rating, including (1) the sufficiency of the information for evaluation purposes, and (2) the degree to which the offer met the requirement. For example, the response would be rated as "good" if the information was "sufficient" for evaluation and the offer was "average" and met the requirements, "very good" if the information was "more than sufficient for evaluation" and the offer "more than meets" the requirement, and "excellent" if the information was "exceptional" and the offer "exceeds" the requirement.

28. The words used in the scoring system suggested that to achieve a higher rating, the bid response would be evaluated on some spectrum that considered the scope of the information included in the response as well as the degree to which the content met the requirement. In these circumstances, the evaluators are entitled to deference from the Tribunal and it was not unreasonable for evaluators to consider the level of detail of the information submitted in the bid. The degree of detail included in the response was a factor that could be reasonably anticipated from the language of section 4.1.1.2 of the RFP, which clearly indicated that the evaluation would be *rated*, implying an assessment based on the scope and content of the information contained in the bid. Contrary to PNWR's submissions, nothing in the RFP indicated that maximum or higher points would be awarded to a bid that *meets* the requirements.

29. The Tribunal notes, however, that the scarcity of published details in the RFP regarding how a bidder could respond to the technical criteria in a way that went beyond what was "sufficient" for evaluation or "more than meets" the requirements in order to access higher scores, gave the evaluators broad latitude to apply criteria it considered appropriate.¹⁹ To the extent that the RFP did not provide adequate details regarding the rules of this solicitation, in breach of the CFTA, this ground of complaint was not raised to the Tribunal within the time frame prescribed by the *Regulations* and is not within the scope of this inquiry. Moreover, the Tribunal notes that PNWR did not obtain clarification from PWGSC with respect to the scoring system for the technical criteria. The Tribunal has consistently held that bidders are responsible for ensuring that a proposal is compliant with all essential elements of a solicitation and solely responsible for obtaining clarification on any questions that arise before submitting an offer.²⁰ Bidders cannot adopt a "wait-and-see attitude" in procurement complaints in which time is of the essence and the procurement review process does not provide for grievances to be accumulated and then presented only when a proposal is rejected.²¹

Advantage to the incumbent

30. PNWR alleged that the undisclosed criteria gave the incumbent an unfair advantage. Initially, PNWR claimed that this advantage arose from the incumbent's knowledge of the site and its ability to

19. See *CGI* at paras. 86, 87.

20. *ADR Education v. Department of Public Works and Government Services* (18 October 2013), PR-2013-011 (CITT) at para. 59.

21. *Temprano and Young Architects Inc. v. National Capital Commission* (26 February 2019), PR-2018-036 (CITT) at paras. 21, 22.

provide details in regard to it.²² The Tribunal finds this allegation to be unfounded for two reasons. First, as discussed above, the Tribunal did not find that the necessary level of detail required for higher points was an undisclosed criterion. Accordingly, the fact that it was possible that the incumbent had previous knowledge of the site is moot. Secondly, as noted by PWGSC in its submissions, the Tribunal has recognized the commercial advantages of an incumbent in a competitive procurement process and found that this does not in and of itself amount to a discriminatory solicitation. In this regard, the Tribunal stated the following:

[W]hile certain bidders may have a competitive advantage regarding a particular procurement process, it does not necessarily follow that the solicitation is biased. Rather, such advantages may simply be “part of the ordinary ebb and flow of business”. The Tribunal noted that competitive advantages could arise from incumbency, but that, “in itself, [this] is normal and is not considered to be unfair.” In addition, the Tribunal noted that “there is no obligation to offset the effect of incumbency in the formulation of solicitations”²³ [footnotes omitted]

31. PNWR further alleged that the evaluators were influenced by the incumbent’s history with falconry, which resulted in point deductions for proposals that referenced this technique as a method of wildlife control.²⁴ The Tribunal finds that the evidence is deficient in showing that the evaluators’ consideration of falconry was in fact based on the incumbent’s previous experiences at the site or as a result of consultations with the incumbent. Further, while the evaluators considered an undisclosed criterion in evaluating PNWR’s bid, as discussed above, there is no evidence that they did so deliberately in favour of the incumbent to the exclusion of the other bidders.

CONCLUSION

32. On the basis of the above, the Tribunal finds that the PNWR’s bid was evaluated using an undisclosed criterion in contravention of Article 509(7)(a) of the CFTA.

REMEDY

33. Having found the complaint to be valid, the Tribunal must now address the issue of remedy. PNWR requested that the bids be re-evaluated in accordance with the RFP by a panel that has no experience working with the incumbent.²⁵ On the other hand, PWGSC submitted that if the Tribunal found the complaint to be valid and that a remedy is warranted, that lost opportunity to profit or bid preparation costs would be the appropriate remedy.²⁶

34. In determining the appropriate remedy, the Tribunal must consider all the circumstances relevant to the procurement, as set out in subsection 30.15(3) of the *CITT Act*. This includes taking into account the seriousness of any deficiency in the procurement process, the degree to which the complainant was prejudiced, the degree to which the integrity and efficiency of the competitive procurement system was prejudiced, and whether the parties acted in good faith.

35. The undisclosed criterion was a serious deficiency in the procurement process resulting in PNWR’s bid not being evaluated in accordance with the terms outlined in the RFP. Bearing in mind that the successful bidder needed to have the highest combined rating of technical merit and price with a much

22. Exhibit PR-2019-017-01, Vol. 1 at 12.

23. *Le Groupe Conseil Bronson Consulting Group v. Department of Public Works and Government Services*, (23 June 2017), PR-2016-058 (CITT) at paras. 34, 35.

24. Exhibit PR-2019-017-13, Vol. 1 at 7.

25. Exhibit PR-2019-017-01, Vol. 1 at 7.

26. Exhibit PR-2019-017-11, Vol. 1 at para. 42.

greater weight placed on technical scores, the seriousness of the deficiency was compounded.²⁷ Although the Tribunal has found no evidence that the evaluators were acting in bad faith, the use of undisclosed criteria in evaluating the bids nevertheless undermines the integrity and efficiency of the competitive procurement system. It denies bidders the opportunity to maximize their efforts in the bidding process.

36. That said, the Tribunal has considered the complainant's request for re-evaluation and has found that even if PNWR had received full points for its proposed methods for wildlife control, PNWR's overall score would remain insufficient to surpass the combined rating of the winning bid and the designated contract would still have been awarded to the incumbent. From this perspective, PNWR was not seriously prejudiced.

37. Considering the above, the Tribunal finds that there is no basis to recommend a remedy under subsection 30.15(2) of the *CITT Act*. However, in the circumstances, the Tribunal finds it appropriate to award PNWR its bid preparation costs pursuant to subsection 30.15(4) of the *CITT Act*.

38. It is clear that PNWR's proposal did not receive the evaluation that it would have expected from a reasonable interpretation of the RFP. Considering its background in applied falconry,²⁸ if PNWR had known about the restrictions regarding falconry as a proposed method for wildlife control, it presumably would have structured its bid differently or have chosen not to bid at all.

COSTS

39. The Tribunal also awards PNWR its reasonable costs incurred in preparing and proceeding with this complaint pursuant to section 30.16 of the *CITT Act*. In accordance with the *Procurement Costs Guideline* (the *Guideline*), the Tribunal's preliminary indication of the level of complexity in this case is Level 1. The procurement was for a single service, i.e. wildlife control services. The proceedings were extended to 135 days due to a request to extend the time for filing the GIR, but otherwise the proceedings were not overly complicated as there was no public hearing and no intervenors. The issues of this complaint were limited to undisclosed evaluation criteria. Accordingly, the Tribunal's preliminary indication of the amount of the cost award is \$1,150.

DETERMINATION

40. Pursuant to subsection 30.14(2) of the *CITT Act*, the Tribunal determines that this complaint is valid.

41. Pursuant to subsection 30.15(4) of the *CITT Act*, the Tribunal awards PNWR its reasonable bid preparation costs, which costs are to be paid by PWGSC.

42. Should the parties be unable to agree on the amount of bid preparation costs, PNWR shall file with the Tribunal, within 40 days of the date of this determination, a submission on the issue of costs. PWGSC will then have seven working days after receipt of PNWR's submissions to file a response. PNWR will then have five working days after the receipt of PWGSC's reply submission to file any additional comments. The parties are required to serve each other and file with the Tribunal.

27. The ratio was 70% for technical score and 30% for price. See paragraph 3 section 4.2 of the RFP, Exhibit PR-2019-017-06, Vol. 1 at 14.

28. Exhibit PR-2019-017-01, Vol. 1 at 10; Exhibit PR-2019-017-01A, Vol. 2 (protected) at 4.

43. Pursuant to section 30.16 of the *CITT Act*, the Tribunal awards PNWR its reasonable costs incurred in preparing and proceeding with this complaint, which costs are to be paid by PWGSC. In accordance with the *Guideline*, the Tribunal's preliminary indication of the level of complexity for this complaint is Level 1, and its preliminary indication of the amount of the cost award is \$1,150. If any party disagrees with the preliminary level of complexity or indication of the amount of the cost award, it may make submissions to the Tribunal, as contemplated in Article 4.2 of the *Guideline*. The Tribunal reserves jurisdiction to establish the final amount of the cost award.

Cheryl Beckett
Cheryl Beckett
Presiding Member