



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2019-069

Piatt Training and Consulting Ltd.

*Decision made
Monday, March 23, 2020*

*Decision issued
Tuesday, March 24, 2020*

*Reasons issued
Monday, April 6, 2020*

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

BY

PIATT TRAINING AND CONSULTING LTD.

AGAINST

CORRECTIONAL SERVICE OF CANADA

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.

Georges Bujold

Georges Bujold
Presiding Member

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 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.

SUMMARY OF THE COMPLAINT

[2] The complainant, Piatt Training and Consulting Ltd. (Piatt), has disputed the evaluation of its bid to provide food premises sanitation inspection services to the Correctional Service of Canada (CSC) (Solicitation No. 50100-20-3259407).

[3] Piatt disputed the CSC's evaluation of a single mandatory criterion (M2), which required bidders to demonstrate that they had a minimum of three years' experience as a health inspector in a food processing plant or institutional/commercial food services facility.³ Piatt argued that its bid was compliant with M2 and that the Request for Proposals (RFP) required the CSC to request further information before finding a bidder to be non-compliant.

[4] On March 23, 2020, the Tribunal decided not to conduct an inquiry into Piatt's complaint. For the reasons below, the Tribunal finds the evaluators' conclusion reasonable in regard to Piatt's bid not demonstrating compliance with M2. The Tribunal similarly finds that, pursuant to the terms of the solicitation documents, the CSC had no obligation to seek out additional information in order to allow Piatt to substantiate its proposal. Consequently, the Tribunal finds that the complaint does not meet the requirement set out in paragraph 7(1)(c) of the *Regulations*: it fails to disclose a reasonable indication that the procurement has not been conducted in accordance with the applicable trade agreements.

BACKGROUND

[5] The solicitation was published on December 13, 2019. On December 27, 2019, Piatt submitted its bid by registered mail. Sometime between December 27, 2019, and January 3, 2020, Piatt confirmed by telephone that its bid had been received. Piatt stated that it does not know the exact date of this call. The solicitation closed on January 22, 2020.

[6] On March 3, 2020, the CSC notified Piatt that it was not the successful bidder because its proposal was non-compliant with M2. The same day, Piatt notified the CSC that it would like to dispute the evaluation.

[7] On March 5, 2020, the parties debriefed by telephone, and the CSC told Piatt that it would review the decision with a senior contracting officer at national headquarters.

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

² SOR/93-602 [*Regulations*].

³ Exhibit PR-2019-069-01, Vol. 1 at 53.

[8] On March 9, 2020, the CSC notified Piatt that a senior contracting officer had reviewed the bid and found it non-compliant with M2.

[9] On March 10, 2020, Piatt notified both the CSC and the Office of the Procurement Ombudsman (OPO) that it would like to challenge the evaluation. Piatt argued that it met the burden of proof to be considered compliant with M2, and that the RFP required the CSC to give bidders an opportunity to provide additional information before finding them non-compliant.

[10] On March 11, 2020, the OPO notified Piatt that the solicitation was outside of its jurisdiction and directed Piatt to the Tribunal.

[11] On March 11, 2020, Piatt filed its complaint with the Tribunal. However, the complaint did not include all relevant information and documents that were in the complainant's possession, as required by subsection 30.11(2) of the *CITT Act*. On March 13, 2020, the Tribunal informed Piatt that its complaint was deficient and requested that additional information be provided to correct the deficiencies.

[12] On March 15 and 18, 2020, Piatt provided the Tribunal with additional information that substantially addressed the deficiencies in the complaint. Accordingly, pursuant to paragraph 96(1)(b) of the *Canadian International Trade Tribunal Rules*, the complaint was considered to have been filed on March 18, 2020.

[13] On March 23, 2020, the Tribunal decided not to conduct an inquiry into the complaint.

ANALYSIS

[14] As a condition for the Tribunal to inquire into a complaint, paragraph 7(1)(c) of the *Regulations* requires that a complaint disclose a reasonable indication that the procurement was not conducted in accordance with the applicable trade agreements.⁴ Having reviewed the totality of the information provided by Piatt, the Tribunal finds that the complaint does not meet that condition. Specifically, the evaluation of M2 was reasonable, and the CSC had no obligation to request additional information.⁵

The evaluation of M2 was reasonable

[15] As noted above, M2 required bidders to demonstrate that they had a minimum of three years' experience as a health inspector in a food processing plant or institutional/commercial food services facility.⁶

⁴ The relevant trade agreement in this case is the *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*]. Other applicable trade agreements include: the World Trade Organization *Agreement on Government Procurement*, the *North American Free Trade Agreement* [*NAFTA*], the *Canada-Chile Free Trade Agreement*, the *Canada-Colombia Free Trade Agreement*, the *Canada-Honduras Free Trade Agreement*, the *Canada Korea Free Trade Agreement*, the *Canada-Panama Free Trade Agreement*, the *Canada-Peru Free Trade Agreement*, and the *Canada-Ukraine Free Trade Agreement*.

⁵ Accordingly, it is not necessary for the Tribunal to examine whether the other conditions for inquiry set out in the *Regulations* have been met.

⁶ Exhibit PR-2019-069-01, Vol. 1 at 53.

[16] Piatt argued that it fulfils this requirement because its owner and operator, Mr. Roger Piatt, has over 25 years of experience as a health inspector. The bid contained Mr. Piatt's résumé, which indicates that he has been employed with the Saskatchewan Health Authority as a public health inspector since 1994. It also indicates that he has been the owner and operator of Piatt Training and Consulting Ltd. since 1995.⁷

[17] The trade agreements require procuring entities to evaluate bids in accordance with the essential criteria specified in the tender documentation. The trade agreements also generally provide that, to be considered for contract award, a tender must conform to the essential requirements set out in the tender documentation, and that procuring entities must award contracts in accordance with the criteria and essential requirements specified in the tender documentation.⁸

[18] When assessing whether these procedures were followed, the Tribunal shows deference to evaluators and interferes only if an evaluation is unreasonable, e.g. if the evaluators have not applied themselves in evaluating a bidder's proposal, wrongly interpreted the scope of a requirement, ignored vital information provided in a bid, based their evaluation on undisclosed criteria, or otherwise failed to conduct the evaluation in a procedurally fair way.⁹

[19] Finally, it is well established that bidders bear the onus of demonstrating that their bids meet the mandatory criteria of a solicitation at the time of bid closing.¹⁰ The Tribunal has also made it clear that bidders bear the responsibility of preparing their bids diligently in accordance with the instructions in the solicitation, taking care to ensure that the information provided in their proposals clearly demonstrates compliance.¹¹

[20] The Tribunal notes that section 1.4 in Annex D of the RFP mandated bidders to demonstrate experience through a history of past projects either completed or ongoing, and section 1.6 of Annex D suggested a response format to clearly demonstrate compliance, including instructions to attach a

⁷ Exhibit PR-2019-069-01B, Vol. 1 at 8-10.

⁸ For example, Article 509(7) of the *CFTA* requires that a procuring entity provide suppliers all information necessary to permit them to submit responsive tenders, including the evaluation criteria, and Article 515(4) indicates that, to be considered for award, a tender must, at the time of opening, comply with the essential requirements set out in the tender documentation. Articles 1015(4)(a) and (d) of *NAFTA* provide as follows: "An entity shall award contracts in accordance with the following: (a) to be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation . . . (d) awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation." The other applicable trade agreements include similar requirements.

⁹ As stated by the Tribunal in *Joint Venture of BMT Fleet Technology Limited and NOTRA Inc. v. Department of Public Works and Government Services* (5 November 2008), PR-2008-023 (CITT) at para. 25, the government institution's "determination will be considered reasonable if it is supported by a tenable explanation, regardless of whether or not the Tribunal itself finds that explanation compelling." See also *Excel Human Resources Inc. v. Department of the Environment* (2 March 2012), PR-2011-043 (CITT) at para. 33; *Northern Lights Aerobatic Team, Inc. v. Department of Public Works and Government Services* (7 September 2005), PR-2005-004 (CITT) at para. 52.

¹⁰ *Accipiter Radar Technologies Inc. v. Department of Public Works and Government Services* (26 April 2019), PR-2018-049 (CITT) at para. 71; *Raymond Chabot Grant Thornton Consulting Inc. and PricewaterhouseCoopers LLP v. Department of Public Works and Government Services* (25 October 2013), PR-2013-005 and PR-2013-008 (CITT) at para. 37.

¹¹ *CGI Information Systems and Management Consultants Inc. v. Canada Post Corporation and Innovapost Inc.* (9 October 2014), PR-2014-015 and PR-2014-020 (CITT) at para. 150; *ADR Education v. Department of Public Works and Government Services* (18 October 2013), PR-2013-011 (CITT) at para. 59.

document with the relevant facility name, address, number of years, dates of each experience, a contact person, and an email address.¹² The complainant did not follow the instructions to attach such a document and chose to rely on information submitted in the résumé provided to fulfill the requirements of Part 5 of the RFP instead.

[21] The CSC concluded that Piatt did not comply with M2 because even though Piatt's bid indicated that the company provides training and consulting services, the bid did not indicate that the company provides inspection services.¹³ The Tribunal is of the view that this conclusion was reasonable, if not altogether accurate: the company's activities, as listed on Mr. Piatt's résumé, make no clear mention of providing food inspection services.

[22] As for the experience of Mr. Piatt himself, the Tribunal finds that the bid contained insufficient precise information about Mr. Piatt's experience in *food* inspection, as required by M2. Although Mr. Piatt's résumé gives certain details on his positions and the required contact information, it does not explain specifically how his experience relates to "food processing plants" or "food services facilities" as required by M2, nor does it refer to specific projects. While it mentions "restaurants" and "food service operations" as types of facilities, among others, that Mr. Piatt has inspected, there are no details on specific establishments. It also gives no indication of what proportion of Mr. Piatt's 25 years of experience was spent doing food-related inspections, meaning that the CSC could not determine, on the basis of the generic information provided, whether he had the requisite three years of food-related experience and, therefore, could not conclude that the bid met M2.

[23] As such, nothing indicates that, in this instance, the evaluation of Piatt's proposal was unreasonable according to the standard of review accepted in jurisprudence concerning similar matters. Nor is the evaluation unreasonable due to the fact that Piatt considers that the evaluators' conclusion does not faithfully reflect its real experience and the actual scope or quality of its services. The bidders must be evaluated only on the basis of their proposals. Again, the Tribunal's jurisprudence emphasizes that the bidders bear the burden of demonstrating how they meet the stated evaluation criteria *in their proposals*. Therefore, the Tribunal concludes that the CSC's evaluation was reasonable and finds no basis to interfere with the duly exercised professional judgment of the evaluators who declared Piatt's bid non-responsive on the basis of the information provided.

The CSC had no obligation to request additional information

[24] Piatt argued that section 5.1 of the RFP requires the CSC to contact bidders for additional information before finding them non-compliant. According to Piatt, had the CSC followed up with the references it provided, it would have been apparent that Piatt complied with M2.

[25] Section 5.1 of the RFP states:

The certifications and additional information listed below should be submitted with the bid, but may be submitted afterwards. If any of these required certifications or additional information is not completed and submitted as requested, the Contracting Authority will inform the Bidder of a time frame within which to provide the information.¹⁴

¹² Exhibit PR-2019-069-01, Vol. 1 at 52-53.

¹³ Exhibit PR-2019-069-01, Vol. 1 at 10-11.

¹⁴ Exhibit PR-2019-069-01, Vol. 1 at 24.

[26] The Tribunal is of the view that section 5.1 must be interpreted in light of the RFP as a whole. In this regard, it warrants noting that section 5.1 is found in Part 5 of the RFP entitled “Certifications and Additional Information”. In this part of the RFP, bidders are informed that they are to provide certain required certifications in order to be awarded a contract and that the contracting authority will have the right to ask for additional information to verify a bidder’s certifications. As discussed below, the provisions of the RFP concerning bidders’ certifications and their verification are to be contrasted with those governing the evaluation of proposals and the selection of the winning bidder.

[27] The provisions of Part 5 of the RFP, including section 5.1, which is invoked by Piatt, are not included in Part 4 of the RFP entitled “Evaluation Procedures and Basis of Selection.” It is the provisions of Part 4 that governed the evaluation of proposals and that were to be followed by the CSC in order to select the winning bidder. A review of these provisions makes it clear that the CSC was under no obligation to request additional information from bidders to allow them to clarify the contents of bids, let alone to substantiate their proposals, after the submission of their bid, in order to demonstrate compliance with the mandatory technical criteria.

[28] Indeed, Annex D of the RFP, which is referred to in section 1.1 of Part 4 as outlining the RFP’s mandatory technical criteria, unequivocally states at that the proposal must address each of the mandatory criteria and must provide substantiation:

1.2 LISTING EXPERIENCE WITHOUT PROVIDING ANY SUBSTANTIATING DATA TO SUPPORT WHERE, WHEN AND HOW SUCH EXPERIENCE WAS OBTAINED WILL RESULT IN THE STATED EXPERIENCE NOT BEING CONSIDERED FOR EVALUATION PURPOSES.¹⁵

[29] In addition, section 1.1.1 of Part 4 of the RFP clearly states that proposals not meeting all mandatory criteria will be declared non-responsive.¹⁶

[30] These clauses and the previously mentioned sections 1.4 and 1.6 of Annex D, when read together, are clear that bidders had to provide—at the time of bidding, and within their bids—sufficient information demonstrating their experience, with the requisite substantiating data on when and how such experience was obtained and that failure to do so would result in the disqualification of their proposal.

[31] In other words, in view of the structure of the RFP, the requirement to provide the requested certifications and the CSC’s obligation to verify such certifications only became applicable to the extent that evaluators, as a first step, determined that a proposal met all mandatory criteria.¹⁷ Once the evaluators determined that it did not, through the application of the provisions of Part 4 of the RFP, there was no need to apply the provisions of Part 5 governing the provision and verification of certifications given that, in that event, the proposal was no longer to be considered in the evaluation process. For this reason, section 5.1 cannot be relied upon by Piatt to claim that the CSC was required to contact it and ask for additional information *before* rendering its decision on the non-compliance of its bid with M2.

¹⁵ Exhibit PR-2019-069-01, Vol. 1 at 52.

¹⁶ Exhibit PR-2019-069-01, Vol. 1 at 23.

¹⁷ Subsequently, per the terms of Part 5 of the RFP, even if a proposal was initially deemed compliant with the mandatory criteria and recommended for contract award, it could still be declared non-responsive at a later date should the bidder fail to comply with the provisions of the RFP governing certifications.

[32] Additionally, while section 5.1.6 of the RFP, concerning “Education and Experience”, refers to a standard clause stipulating that bidders certify the accuracy of information in “résumés and supporting material”, this clause cannot be reasonably interpreted to require the CSC to request additional information from bidders on their education credentials and experience to supplement their proposals.¹⁸ At the most, this would mean that bidders were not required to certify, in their bids, the accuracy of the substantive information provided in résumés and supporting material attached to a proposal. Accordingly, section 5.1 of the RFP would merely allow the CSC to seek out such a certification at a later date and indicate a time frame for its provision by the bidder. This section can therefore not be interpreted to mean that the CSC was under any obligation to request bidders to provide additional information on their experience in order to demonstrate compliance with M2.

[33] In summary, section 5.1 did not create an obligation to request supplementary information from bidders when the evaluators considered that the information provided in the technical bid was insufficient to meet a mandatory criterion. In that event, the terms of the RFP required that the bid be declared non-responsive. Requesting additional information about the certifications in a bid that has already been found to be compliant with mandatory criteria is distinct from requesting clarifications or substantiating information of the technical bid to determine if it is compliant. The Tribunal interprets section 5.1 of the RFP as allowing the CSC to do only the former. Logically, in order to request that bidders provide any missing certifications or additional information per section 5.1, the CSC had to first conclude that compliance with the mandatory criteria was clearly demonstrated by the information provided with the bid. If a proposal is declared non-responsive through the application of the provisions of the RFP governing evaluation procedures and basis of selection, as is the case here, the provision of certifications and additional information by bidders, as required by section 5.1, becomes irrelevant.

[34] To the extent that any ambiguity remains, the Tribunal is of the view that a standard clause incorporated by reference into the RFP removes any doubt about the meaning of section 5.1 of the RFP. Clause 16 of the *Standard Instructions – Goods and Services – Competitive Requirements* is clear that the government has no obligation to seek clarifications or verify information.¹⁹ This clause

¹⁸ “The Bidder certifies that all the information provided in the résumés and supporting material submitted with its bid, particularly the information pertaining to education, achievements, experience and work history, has been verified by the Bidder to be true and accurate. Furthermore, the Bidder warrants that every individual proposed by the Bidder for the requirement is capable of performing the Work described in the resulting contract” (Standard Acquisition Clauses and Conditions Manual clause A3010T 2010-08-16 Education and Experience).

¹⁹ *Standard Instructions – Goods and Services – Competitive Requirements* (2008-05-12), 16 Conduct of Evaluation: “1. In conducting its evaluation of the bids, Canada may, but will have no obligation to, do the following:

- a. seek clarification or verification from bidders regarding any or all information provided by them with respect to the bid solicitation;
- b. contact any or all references supplied by bidders to verify and validate any information submitted by them;
- c. request, before award of any contract, specific information with respect to bidders' legal status;
- d. conduct a survey of bidders' facilities and/or examine their technical, managerial, and financial capabilities to determine if they are adequate to meet the requirements of the bid solicitation;
- e. correct any error in the extended pricing of bids by using unit pricing and any error in quantities in bids to reflect the quantities stated in the bid solicitation; in the case of error in the extension of prices, the unit price will govern.
- f. verify any information provided by bidders through independent research, use of any government resources or by contacting third parties;
- g. interview, at the sole costs of bidders, any bidder and/or any or all of the resources proposed by bidders to fulfill the requirement of the bid solicitation.”

makes it clear that that the use of “will” in the context of section 5.1 of the RFP only applies to the obligation to provide a deadline should the procuring entity choose to request the certifications or to request that bidders provide any additional information that was not provided with an already-compliant bid in accordance with section 5.1.

[35] In light of the above, the Tribunal finds that section 5.1 of the RFP does not require the CSC to request that Piatt supplement the information in its bid before finding it non-compliant.

[36] Therefore, neither of Piatt’s allegations discloses any indication that the CSC failed to conduct the procurement in accordance with the trade agreements.

DECISION

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

Georges Bujold

Georges Bujold
Presiding Member