Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

**CANADIAN INTERNATIONAL TRADE TRIBUNAL**

# Procurement

## DECISION AND REASONS

File No. PR-2020-001

LDC Solutions Inc.

*Decision made*
*Tuesday, April 7, 2020*

*Decision issued*
*Wednesday, April 8, 2020*

*Reasons issued*
*Thursday, April 23, 2020*

Canada

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**

**LDC SOLUTIONS INC.**

**AGAINST**

**NATURAL RESOURCES 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.

Peter Burn

Peter Burn
Presiding Member

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 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 complaint relates to a request for proposal (RFP) (Solicitation No. NRCan-5000049827) issued by Natural Resources Canada (NRCan) for the provision of subject matter experts for the Indigenous Forestry Initiatives Expert Review Panel.

[3] The complainant, LDC Solutions Inc. (LDC), alleged that NRCan improperly failed to make the solicitation a mandatory Aboriginal set-aside in accordance with the *Procurement Strategy for Aboriginal Business* (PSAB). LDC also claimed that the terms of the RFP did not reflect an adequate sensitivity to Indigenous culture and Truth and Reconciliation efforts.

[4] In addition, LDC alleged that the winning bidder, Stratos in Joint Venture with First Peoples Group, should have been disqualified for misrepresenting itself as an Indigenous business. With respect to its own bid, LDC alleged that it was improperly found non-responsive to the mandatory criteria of the RFP when the bids were re-evaluated. LDC claimed that the financial evaluation tables and Statement of Work provided in the RFP were unclearly worded. Finally, LDC claimed that NRCan failed to provide it with requested debriefing meetings.

[5] As a remedy, LDC requested that the designated contract be terminated, that a new solicitation be issued for the requirement, and that the complainant be compensated by an amount specified by the Tribunal. LDC also requested that the Tribunal recommend that the new solicitation should be issued as a mandatory Aboriginal set-aside, that NRCan should undergo Indigenous Cultural Awareness training, and that the winning bidder should be barred from competing in the new solicitation process for misrepresenting its Indigenous status. LDC also requested reimbursement of its bid and complaint preparation costs.

## BACKGROUND

[6] The RFP was issued on December 17, 2019, with a bid closing deadline of January 27, 2020.[3]

[7] On December 21, 2019, LDC wrote to NRCan to inquire why the solicitation was not issued as an Aboriginal set-aside, and if NRCan would consider re-issuing the RFP as a mandatory Aboriginal set-aside.[4]

[8] On January 8, 2020, NRCan replied that a mandatory set-aside was considered but, in consultation with Public Services and Procurement Canada's Indigenous Involvement in

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1 R.S.C., 1985, c. 47 (4th Supp.) [*CITT Act*].
2 SOR/93-602 [*Regulations*].
3 Exhibit PR-2020-001-01 at 33, Vol. 1.
4 Exhibit PR-2020-001-01B at 41, Vol. 1.

Procurement Division, it had determined that this solicitation did not meet the criteria for a mandatory set-aside. It had also considered making the solicitation a voluntary set-aside but was concerned that it would not receive enough compliant bids if it did so. NRCan informed LDC that it still wished to ensure that Indigenous bidders were recognized and that, accordingly, it would add a criterion to the evaluation that would provide an extra 15 points to bidders registered with the Indigenous Business Directory. NRCan also indicated that it was exploring the possibility of making the solicitation a "conditional" set-aside.[5]

[9] On January 9, 2020, NRCan published Amendment 001 to the RFP. This amendment added item R7 to the rated criteria in the RFP and provided, as indicated by NRCan, that bidders that could demonstrate that they were registered with the Indigenous Business Directory maintained by Indigenous and Northern Affairs Canada (INAC), or another Canadian government Indigenous Business Directory, would receive an additional 15 points in their evaluation. Registration could be proved by submitting a screenshot of the listing or an email certification, which was subject to verification by NRCan.[6]

[10] On February 6, 2020, NRCan requested that LDC provide clarifications regarding its bid pricing. For Milestone 5 of the Financial Proposal Form, found at Appendix 2 to the RFP, LDC's bid provided that "travel costs will be additional and will be invoiced without markup." LDC also quoted a per-expert price for Milestone 5 and a per-application price for Milestones 3 and 6.[7]

[11] NRCan noted that, for Milestones 3 and 6, pricing was to be for up to 20 applications and up to four experts per application, therefore LDC would be considered to have bid the per-application price multiplied by the number of applications (20) and the number of experts (4). NRCan also stated that "there is no travel related to this contract, therefore [the bid price] will cover any travel and hospitality for the experts as well as the work to be completed. Or will the experts be taking care of their own incurred charges."[8]

[12] On February 7, 2020, LDC responded that travel costs were included in the price quoted for Milestone 5 and confirmed that the per-application prices quoted for Milestones 3 and 6 should be multiplied by the number of applications and the number of experts to calculate the total bid price. It also noted that the price quoted for Milestone 5 was a per-person rate and, since up to four experts would be required for each panel, the quoted price should be multiplied by four in order to calculate the correct total bid price.[9]

[13] On February 12, 2020, NRCan informed LDC that its bid had not been successful and that the contract had been awarded to Stratos Inc. NRCan stated that LDC's bid had met all mandatory criteria but did not achieve the highest score. The winning bidder's technical and financial scores were provided for comparison purposes.[10]

[14] On February 12, 2020, LDC contacted NRCan by telephone and email to inform it that LDC could not locate a listing for Stratos Inc. on the Indigenous Business Directory. LDC questioned how

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5 Exhibit PR-2020-001-01B at 43, Vol. 1.
6 Exhibit PR-2020-001-01 at 67, Vol. 1.
7 Exhibit PR-2020-001-01B at 45, Vol. 1; Exhibit PR-2020-001-01A (protected) at 5, Vol. 2.
8 Exhibit PR-2020-001-01B at 45, Vol. 1.
9 Exhibit PR-2020-001-01B at 46-47, Vol. 1.
10 Exhibit PR-2020-001-01B at 49, Vol. 1.

Stratos Inc. could have achieved the technical score stated in NRCan's regret letter without having been awarded the 15 points available under R7. LDC also requested a debriefing meeting.[11]

[15] On February 12, 2020, NRCan replied by email that Stratos Inc. was not awarded the 15 points for being registered on the Indigenous Business Directory. It also informed LDC that a debriefing meeting would be arranged.[12] LDC replied that, mathematically, Stratos Inc. could not have achieved its technical score if it had not been awarded 15 points under R7. NRCan then informed LDC that an internal investigation of its concerns would be conducted.[13]

[16] On February 13, 2020, NRCan informed all bidders that a re-evaluation of the bids would take place as a result of "concerns brought forward by industry".[14]

[17] On February 19, 2020, as part of the bid re-evaluation, NRCan requested that LDC again confirm that all the prices in its bid were firm, all-inclusive prices. In its request, NRCan cited to Appendix 2 to the RFP, the Financial Proposal Form, which provided explicitly that "any Travel and Living Expenses and other miscellaneous expenses must be included in the firm bid price."[15]

[18] On February 19, 2020, LDC confirmed the pricing it had provided in response to NRCan's first clarification request. LDC also raised issues with the structuring of the financial proposal – specifically, that the financial proposal did not account for the cost of providing an Honorarium for Elders who would perform ceremonies at the opening and closing of meetings – as well as the lack of clarity in the wording of the Financial Proposal Form and the Statement of Work.[16]

[19] On March 20, 2020, LDC was informed that its bid had been disqualified and that a contract had been awarded to Stratos in Joint Venture with First Peoples Group. NRCan stated that LDC's bid had been deemed non-responsive as it did not comply with the mandatory criteria of the RFP; specifically, LDC's bid explicitly stated that travel expenses were not included in the price for Milestone 5, but as noted above, prices were required to be all-inclusive. NRCan also explained that LDC had not provided a "firm, all-inclusive price" as it had provided prices for one application to be reviewed by one expert instead of the total pricing for up to four experts. NRCan also indicated that, in response to LDC's concerns, 15 points had been deducted from the bid submitted by Stratos in Joint Venture with First Peoples Group as it did not meet the requirements of R7.[17]

[20] On March 21, 2020, LDC requested a debriefing meeting.[18] On March 23, 2020, NRCan informed LDC that all debriefings were being conducted by email and requested that LDC submit questions in writing.[19]

[21] On March 31, 2020, LDC submitted two questions: (1) Why was the winning bidder named Stratos Inc. in the February 12 regret letter but Stratos in Joint Venture with First Peoples Group in the March 20 regret letter? and (2) Why did the winning bidder receive a lower score in the re-evaluation?[20]

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11 Exhibit PR-2020-001-01 at 16, Vol. 1; Exhibit PR-2020-001-01B at 51, Vol. 1.
12 Exhibit PR-2020-001-01B at 51, Vol. 1.
13 Exhibit PR-2020-001-01B at 58, Vol. 1.
14 Exhibit PR-2020-001-01B at 63, Vol. 1.
15 Exhibit PR-2020-001-01B at 64, Vol. 1.
16 Exhibit PR-2020-001-01 at 23, Vol. 1; Exhibit PR-2020-001-01B at 23, Vol. 1.
17 Exhibit PR-2020-001-01B at 108-109, Vol. 1.
18 Exhibit PR-2020-001-01B at 108, Vol. 1.
19 Exhibit PR-2020-001-01B at 112, Vol. 1.
20 Exhibit PR-2020-001-01B at 111, Vol. 1.

[22] On March 31, 2020, NRCan replied that the name of the bidder had always been Stratos in Joint Venture with First Peoples Group and that previous references to Stratos Inc. were an oversight. NRCan also confirmed that originally the winning bidder had received the 15 points because it was a joint venture with First Peoples Group, but that it had removed those 15 points from the winning bidder's re-evaluation as it was decided that this did not meet the requirements of R7.[21]

[23] On March 31, 2020, LDC replied that it would be submitting an access to information (ATIP) request to confirm that the winning bidder's name had always been Stratos in Joint Venture with First Peoples Group, and that it would be initiating a complaint with the Tribunal as it had concerns regarding the process and evaluations.[22]

[24] On April 1, 2020, LDC filed its complaint with the Tribunal.

## ANALYSIS

[25] Pursuant to sections 6 and 7 of the *Regulations*, after receiving a complaint that complies with subsection 30.11(2) of the *CITT Act*, the Tribunal must determine whether the following four conditions are met before it launches an inquiry:

i. the complaint has been filed within the time limits prescribed by section 6 of the *Regulations*;

ii. the complainant is a potential supplier;

iii. the complaint is in respect of a designated contract; and

iv. the information provided discloses a reasonable indication that the procurement has not been conducted in accordance with the relevant trade agreements.

[26] For the following reasons, the Tribunal has determined that these conditions are not met, and has decided not to inquire into this complaint.

### The procurement should have been an Aboriginal set-aside

[27] LDC submitted that, because this solicitation concerns control of Indigenous resources and Indigenous people are the end users, and the contract is valued at over $5000, the procurement should have been made a mandatory Aboriginal set-aside in accordance with the PSAB. LDC also submitted that the fact that the contract awardee is non-Indigenous does not respect Economic Reconciliation efforts.

[28] The Tribunal's jurisdiction extends only to alleged violations of the trade agreements. The decision on whether to make a procurement an Aboriginal set-aside is not tied to the provisions of the trade agreements and is instead based on government policy instruments, such as the PSAB. The Tribunal's mandate does not extend to the application or enforcement of these policies.[23]

[29] Accordingly, the Tribunal cannot inquire into whether NRCan's decision was consistent with the PSAB or with other government initiatives, such as Economic Reconciliation, nor can it order

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21 Exhibit PR-2020-001-01B at 115, Vol. 1.
22 Exhibit PR-2020-001-01B at 114, Vol. 1.
23 *Derouard Motor Products Ltd.* (24 July 2008), PR-2008-022 (CITT) at para. 5.

that the solicitation be cancelled and retendered as an Aboriginal set-aside. In any event, even if the Tribunal had jurisdiction over this ground of complaint, it was not raised in a timely manner.

[30] Subsections 6(1) and 6(2) of the *Regulations* require a complainant to make any objection to the relevant government institution or file a complaint with the Tribunal within 10 working days of the day on which the basis of a complaint became known (or reasonably should have become known). Subsection 6(2) of the *Regulations* provides that a potential supplier that has made an objection to the relevant government institution, and is denied relief by that government institution, may file a complaint with the Tribunal "within 10 working days after the day on which the potential supplier has actual or constructive knowledge of the denial of relief, if the objection was made within 10 working days after the day on which its basis became known or reasonably should have become known to the potential supplier."

[31] LDC objected to the fact that this procurement was not an Aboriginal set-aside to NRCan on December 21, 2019, and received a reply from NRCan on January 8, 2020, which, as noted above, stated that the procurement would not be made a mandatory set-aside but that rated criterion R7 would be added to the solicitation to provide recognition to Indigenous suppliers. For this ground of complaint to have been timely, LDC ought to have filed a complaint with the Tribunal within 10 days of the receipt of having received the denial of relief from NRCan on January 8, 2020.

**The financial evaluation tables and Statement of Work were unclearly worded and their terms do not reflect an adequate sensitivity to Indigenous culture**

[32] LDC submitted that there was no recognition of the unique requirements involved in dealing with Indigenous people in the RFP. Specifically, the requirements involved recruitment of Indigenous people, but there was no recognition of the particular aspects involved with the recruitment and retention of Indigenous people, which requires specialized training. In addition, the financial proposal did not allow bidders to account for the cost of providing the traditional Honorariums paid to Elders and Knowledge Keepers for performing the opening and closing ceremonies.

[33] LDC also submitted that the wording of the Financial Proposal Form found at Appendix 2 to the RFP, as well as the Statement of Work, was not clear and as a result it was difficult to determine how pricing should be presented.

[34] As noted above, subsections 6(1) and 6(2) of the *Regulations* provide that a complainant has 10 working days from the date on which it first became aware, or reasonably should have become aware, of its ground of complaint to either file a complaint with the Tribunal or object to the government institution.

[35] The Tribunal and the Federal Court of Appeal have consistently held that bidders are expected to keep a constant vigil and react as soon as they become aware, or reasonably should have become aware, of a flaw in the procurement process.[24] The procurement review process does not provide for grievances to be accumulated and then presented only when a proposal is rejected. In particular, complaints grounded on the interpretation of the terms of a solicitation should be made when the alleged problem with the term became or reasonably should have become apparent, which the Tribunal generally considers to be at the time when the bidder acquaints itself with the solicitation documents.[25]

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[24] *IBM Canada Ltd. v. Hewlett Packard (Canada) Ltd.*, 2002 FCA 284 (CanLII).

[25] *Davco Welding Ltd.* (29 June 2017), PR-2017-018 (CITT) at para. 24; *Joli Distribution F. Hendel Inc.* (18 April 2017), PR-2016-067 (CITT) at para. 12.

[36] According to the correspondence on file with the Tribunal, LDC never raised with NRCan its concerns regarding the failure of the RFP to account for specialized knowledge and training involved with the recruitment and retention of Indigenous people. Rather, this issue was first raised by LDC in its complaint to the Tribunal on April 1, 2020, which is more than 10 days after the complainant should have become aware of any problems with the terms of the solicitation documents.

[37] According to the complainant, the failure to provide for Honorariums, as well as the lack of clarity in the Financial Proposal Form and the Statement of Work, were raised with NRCan on February 19, 2020. This issue was also not raised with either the government institution or the Tribunal within 10 days of the date the complainant should have been aware of these alleged defects in the solicitation documents.

**The winning bidder should have been disqualified because it misrepresented itself as an Indigenous business**

[38] LDC submitted that the winning bidder, identified as Stratos Inc. in the regret letter of February 12, 2020, and Stratos in Joint Venture with First Peoples Group in the regret letter of March 21, 2020, should have been disqualified after the first evaluation. LDC claimed that the winning bidder misrepresented its status as a business registered on the Indigenous Business Directory in order to qualify for the additional 15 points available under rated criterion R7.

[39] There was apparently some confusion on NRCan's part regarding the name of the winning bidder and whether the winning bidder was or was not awarded the points under R7 in the first evaluation. However, the correspondence on file ultimately confirms that the winning bidder was awarded 15 points under R7 in the first evaluation but was found in the re-evaluation not to meet the requirements of that criterion (which was to provide proof or certification of registration on an Indigenous Business Directory maintained by INAC or another Canadian government department).

[40] LDC's complaint assumes that the winning bidder deliberately falsified the proof or certification of its registration on the Indigenous Business Directory. The Tribunal notes that, without access to the winning bid, it cannot confirm that this is so, or whether the award was due to a simple error on the part of either the bidder or of the evaluators. In any event, nothing in the RFP requires disqualification of a bidder for misrepresenting its status under R7. R7 is a rated, not a mandatory criterion, and so failure to meet its requirements would not result in the bid being deemed non-responsive and therefore disqualified. The Tribunal notes that the RFP does provide, at Part 5, that "Canada will declare a bid non-responsive, or will declare a contractor in default if any certification made by the Bidder is found to be untrue, whether made knowingly or unknowingly, during the bid evaluation period or during the contract period." However, this applies only to the certifications required *under Part 5*, and not to the certification of Indigenous status under rated criterion R7.[26]

[41] The Tribunal has previously found that, upon discovery of errors in the evaluation process, a contracting authority must take appropriate steps to correct such errors, in keeping with the terms of the solicitation and in a manner that preserves the integrity of the competitive procurement process.[27] Thus, where evaluators become aware of errors in their initial evaluation and take appropriate steps

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[26] Exhibit PR-2020-001-01 at 44, Vol. 1.

[27] *Madsen Power Systems Inc. v. Department of Public Works and Government Services* (29 April 2016), PR-2015-047 (CITT) at paras. 64-65; *Francis H.V.A.C. Services Ltd. v. Department of Public Works and Government Services* (2 September 2016), PR-2016-003 (CITT) at paras. 36, 40.

to correct them, they ensure that the procurement process is carried out in compliance with the trade agreements.[28] In this case, the Tribunal considers that NRCan took the appropriate steps once it had determined that the winning bidder did not meet the requirements of R7, which was to conduct a re-evaluation and deduct the 15 points awarded to the winning bidder under R7 from its score.

**LDC's bid was improperly disqualified as a result of the re-evaluation**

[42] LDC submitted that its bid should not have been disqualified as a result of the re-evaluation because NRCan had accepted its responses to the clarification questions and found its bid compliant with the mandatory criteria in the first evaluation.

[43] As noted above, LDC's bid stated, at Milestone 5 of the Financial Proposal Form, that travel costs would be invoiced separately from the quoted price, and provided pricing on a per-expert basis. LDC also provided pricing on a per-application basis for Milestones 3 and 6. However, in its response to NRCan's first clarification request, LDC stated that travel costs were included in the price, and also provided new prices for Milestones 5, 3 and 6.

[44] NRCan's second clarification request highlighted the fact that the instructions for the Financial Proposal Form provided that "[a]ny Travel and Living Expenses and other miscellaneous expenses must be included in the firm price" and that the price tendered must be an "all-inclusive firm price to perform the work".[29] Both clarification requests also included language that indicated that bidders would not be permitted to change or add to their responses through the responses to the clarification requests.[30]

[45] The regret letter of March 20, 2020, also pointed to the fact that the RFP required that bidders include all travel expenses in their quoted price and that quoted prices were required to be all-inclusive firm prices. Accordingly, LDC's bid was found non-responsive to the mandatory requirements of the RFP because travel expenses were not included in the bid price and the pricing was not presented as a firm, all-inclusive price but rather on a per-application or per-expert basis.

[46] 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.[31]

[47] 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

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28 *Valcom Consulting Group Inc. v. Department of National Defence* (14 June 2017), PR-2016-056 (CITT) at para. 52.

29 Exhibit PR-2020-001-01B at 64, Vol. 1.

30 Exhibit PR-2020-001-01B at 64, Vol. 1; Exhibit PR-2020-001-01B at 45, Vol. 1.

31 Article 509(7) of the *Canadian Free Trade Agreement* 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 the *North American Free Trade Agreement* 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."

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 unfair way.[32]

[48] 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.[33] 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 clearly demonstrates compliance.[34]

[49] As noted above, if evaluators find that they have committed an error in their evaluation, it is incumbent upon them to take steps to correct these errors in a manner that maintains the fairness of the procurement process, in accordance with the applicable trade agreements.

[50] In light of these principles, the Tribunal finds that it was reasonable, given the terms of the RFP, for NRCan to find LDC's bid non-responsive as a result of the re-evaluation. Section 4.1.2 of the RFP, titled Financial Evaluation, provides that "Mandatory financial evaluation criteria are included in Appendix '2'– Financial Proposal", and section 4.2 provides that bids not meeting all mandatory evaluation criteria will be declared non-responsive.[35] The instructions given in the Financial Proposal Form were accordingly properly considered mandatory criteria and the consequence for failing to abide by them was disqualification of LDC's bid.

[51] Unfortunately for LDC, the evaluators appear to have made an error by allowing it to amend its bid through the clarification process during the original evaluation, and to have corrected this error in the re-evaluation process. The evaluators were required to correct this error when it came to their attention. Fairness and proper evaluation being hallmarks of the competitive procurement system, the errors made when evaluating the proposals made by both the winning bidder, and LDC had to be corrected. LDC cannot successfully claim that it ought to be allowed the benefit of an error.

**LDC was not provided with debriefings it requested**

[52] Finally, LDC alleged that it had requested debriefing meetings on February 12 and March 21, 2020, but these requests had been refused.

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32 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.

33 *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.

34 *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.

35 Exhibit PR-2020-001-01 at 42, Vol. 1.

[53] LDC did request a debriefing meeting after receiving the first regret letter of February 12, 2020; however, the Tribunal finds that this request was rendered moot by NRCan's decision of February 13, 2020, to conduct a re-evaluation of the bids. Indeed, it would not have been appropriate for NRCan to engage in a discussion of the strengths and weaknesses of LDC's bid while the bids were being reconsidered.

[54] With respect to the second request for a debriefing on March 21, 2020, the Tribunal notes that NRCan informed LDC on March 23, 2020, that all debriefings were being conducted by email and invited LDC to submit questions. LDC submitted two questions on March 31, 2020, both of which related to the winning bidder's status as an Indigenous business. NRCan provided responses to those questions on March 31, 2020. On April 1, 2020, LDC responded that it would be initiating an ATIP request and filing a complaint with the Tribunal.

[55] The trade agreements require that government institutions disclose to unsuccessful suppliers that request it the reasons why their tenders were not selected, as well as information regarding the selected tender.[36] The Tribunal finds that NRCan did not breach these obligations.

[56] It is not clear why LDC considers that its request for a debriefing meeting was refused. While it is true there was no oral debriefing (in person or by telephone), the RFP provides, at section 1.4, that debriefings may be conducted in writing.[37] The debriefing also did not address any issues with LDC's bid, but was limited to responding to LDC's questions regarding the winning bidder. However, LDC could have posed additional questions by email to NRCan regarding its own bid, but according to the evidence on file, it did not do so. As a result, the Tribunal finds that NRCan provided all the information that was requested by LDC and did not breach the trade agreement requirements in regard to debriefings.

## DECISION

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

Peter Burn

Peter Burn
Presiding Member

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36 *CGI Information Systems and Management Consultants Inc. v. Canada Post Corporation and Innovapost Inc.* (27 August 2014), PR-2014-006 (CITT) at para. 43.

37 Exhibit PR-2020-001-01 at 37, Vol. 1.