



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File No. PR-2020-019

K'(Prime) Technologies Inc.

v.

Department of Public Works and
Government Services

*Determination issued
Monday, October 26, 2020*

*Reasons issued
Monday, November 9, 2020*

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IN THE MATTER OF a complaint filed by K'(Prime) Technologies Inc. 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

K'(PRIME) TECHNOLOGIES INC.

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 (CITT Act)*, the Canadian International Trade Tribunal determines that the complaint is valid in part.

Pursuant to section 30.16 of the *CITT Act*, the Tribunal awards the Department of Public Works and Government Services its reasonable costs incurred in responding to the complaint, which costs are to be paid by K'(Prime) Technologies Inc. In accordance with the *Procurement Costs Guideline*, the Tribunal's preliminary indication of the level of complexity for this complaint case is Level 1. The Tribunal's preliminary indication of the amount of the cost award is \$575. 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 *Procurement Costs Guideline*. The Tribunal reserves jurisdiction to establish the final amount of the cost award.

Randolph W. Heggart

Randolph W. Heggart
Presiding Member

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

Tribunal Panel:	Randolph W. Heggart, Presiding Member
Support Staff:	Heidi Lee, Counsel
Complainant:	K'(Prime) Technologies Inc.
Government Institution:	Department of Public Works and Government Services
Counsel for the Government Institution:	Roy Chamoun Benjamin Hiemstra Manou Ranaivoson
Intervener:	Nuctech Company Ltd.
Counsel for the Intervener:	Martha L. Harrison Oksana Migitko

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

SUMMARY OF COMPLAINT

[1] K'(Prime) Technologies Inc. (KPrime) filed the present complaint with the Canadian International Trade Tribunal, pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*,¹ concerning a Request for Standing Offer (solicitation No. E60PV-20WTMD/A) issued by the Department of Public Works and Government Services (PWGSC) for the provision of security screening equipment (the RFSO).

[2] The RFSO established two national master standing offers—Group 1 for conveyer-style x-ray machines and Group 2 for walk-through metal detectors. The standing offer was awarded to Nuctech Company Ltd. (Nuctech) for Group 1 and to Rapiscan Systems Inc. for Group 2.

[3] In this complaint, KPrime alleged that its bid was improperly found to be non-compliant and that Nuctech was not eligible to be awarded the contract.

[4] The Tribunal accepted the complaint for inquiry in accordance with subsection 30.13(1) of the *Act* and subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.²

[5] Following its inquiry into the complaint, the Tribunal finds that the complaint is valid in part.

PROCEDURAL BACKGROUND

[6] The RFSO was published on December 1, 2019, and after 14 amendments closed on April 3, 2020.³

[7] During its evaluation, PWGSC requested clarification from KPrime with respect to its responses to several mandatory criteria, including 3.8.1.3 and 3.8.1.4, which KPrime provided on May 13, 2020.⁴

[8] On July 15, 2020, PWGSC informed KPrime that its bid had been found to be non-compliant and awarded the standing offers to the winning bidders.

[9] On July 28, 2020, KPrime filed the present complaint, which was accepted for inquiry by the Tribunal on July 31, 2020.

[10] PWGSC filed the Government Institution Report (GIR) on September 4, 2020.

[11] The Tribunal granted intervenor status to Nuctech on September 11, 2020,⁵ and received comments from Nuctech on the complaint and the GIR on September 24, 2020.

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

² S.O.R./93-602 [*Regulations*].

³ The parties do not dispute that the amendments are not relevant to the issues raised by KPrime.

⁴ Exhibit PR-2020-019-01B at 2-6.

⁵ Nuctech submitted its request for intervenor status on September 3, 2020. Neither KPrime nor PWGSC objected to this request.

[12] KPrime submitted its comments on the GIR and Nuctech's submissions on October 5, 2020.

[13] As there was sufficient information on the record to determine the validity of the complaint, the Tribunal decided that an oral hearing was not required and disposed of the complaint based on the written record.

RELEVANT PROVISIONS OF THE RFSO

[14] The relevant provisions of the RFSO are as follows:

PART 4 – EVALUATION PROCEDURES AND BASIS OF SELECTION

4.1.1 Technical Evaluation

4.1.1.1 Mandatory Technical Criteria

An offer must comply with the requirements of the Request for Standing Offers and meet all mandatory technical criteria listed in Attachment 1 to Part 4 herein to be declared responsive. The responsive offer with the lowest evaluated price for each group in Groups 1 and 2 will be recommended for issuance of a standing offer.

ANNEX “A”

STATEMENT OF WORK

GROUP 1 – CONVEYOR STYLE X-RAY MACHINE⁶

3.0 X-RAY MACHINE REQUIREMENTS

3.8 Automatic Threat Detection

The x-ray machine must include the following automatic threat detection functionality:

3.8.1 The x-ray machine must automatically:

3.8.1.3 alert on any potential, typical weapon configuration (such as but not limited to guns and knives) using a box drawn around the suspicious area as a visual aid; and

3.8.1.4 alert on any potential liquids, gels and aerosols using a box drawn around the suspicious area as a visual aid.

ATTACHMENT 1 TO PART 4

TECHNICAL SUBMISSION DOCUMENT

Group 1

5.0 Tasks Performed By the Offeror

⁶ The original RFSO used the term “Conveyor Style Parcel X-Ray Machine”. “Parcel” was removed by Amendment 005 (see A50 and section B).

The offeror must provide:

1.1.1.3 a description of the process the offeror follows to ship spare parts globally.⁷

Group 2

2.0 Walk Through Metal Detector (WTMD) Requirements

2.4 The Walk Through Metal Detector must be provided with a power supply that accommodates both 110v and 220v applications or meet the following general power requirement:

2.4.3 transient, up to five times nominal voltages for up to 100ms durations.

ANALYSIS

[15] Subsection 30.14(1) of the *Act* requires that, in conducting an inquiry, the Tribunal limit its considerations to the subject matter of the complaint. At the conclusion of the inquiry, the Tribunal must determine whether the complaint is valid on the basis of whether the procedures and other requirements prescribed in respect of the designated contract have been observed.

[16] Section 11 of the *Regulations* specifies that the Tribunal must determine whether the procurement was conducted in accordance with the requirements set out in the applicable trade agreements, which in the present case include the *Canadian Free Trade Agreement*⁸ and the *North American Free Trade Agreement*.⁹

[17] KPrime's complaint contains two grounds. First, KPrime alleged that its bid should have been found to be compliant with several mandatory criteria. Second, it alleged that Nucotech was not eligible to be awarded a contract on the basis that Nucotech did not meet the relevant integrity provisions.

Ground 1: PWGSC's evaluation of KPrime's bid

Group 1 requirements for automatic threat detection

[18] With respect to the requirements relating to Group 1, PWGSC concluded that KPrime's bid failed to meet mandatory criteria 3.8.1.3 and 3.8.1.4, which relate to automatic threat detection functions. PWGSC determined that KPrime's bid contained insufficient information to demonstrate compliance with these criteria, which require the following:

3.8.1 The x-ray machine must automatically:

⁷ PWGSC's rejection email of July 15, 2020, refers to this requirement as "5.1.1.3". See Exhibit PR-2020-019-01 at 325-326.

⁸ Online: Internal Trade Secretariat <https://www.cfta-alec.ca/wp-content/uploads/2020/04/CFTA-Consolidated-Text-Final-English_April-24-2020.pdf> (entered into force 1 July 2017) [*CFTA*].

⁹ 17 December 1992, 1994 Can. T.S. No. 2, online: Global Affairs Canada <<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/fta-ale/index.aspx?lang=eng>> (entered into force 1 January 1994) [*NAFTA*].

3.8.1.3 alert on any potential, typical weapon configuration (such as but not limited to guns and knives) using a box drawn around the suspicious area as a visual aid; and

3.8.1.4 alert on any potential liquids, gels and aerosols using a box drawn around the suspicious area as a visual aid.

[19] KPrime argued that the information provided in its bid was sufficient to demonstrate compliance with the requirements.

[20] The trade agreements stipulate that, to be considered for contract award, a bid must conform to the essential requirements set out in the tender documentation and require that government institutions award contracts in accordance with the criteria and essential requirements specified in the tender documentation.¹⁰

[21] When considering whether bids are evaluated and contracts awarded in keeping with these provisions, the Tribunal applies the standard of reasonableness, typically according a great deal of deference to an evaluation panel with respect to its evaluation of proposals. The Tribunal does not, therefore, 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 based their information on undisclosed criteria or have otherwise not conducted the evaluation in a procedurally fair way. 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.¹¹

[22] Applying these principles to the facts at bar, the Tribunal must consider whether PWGSC was reasonable in determining that KPrime's bid failed to demonstrate compliance with mandatory criteria 3.8.1.3 and 3.8.1.4.

[23] The Tribunal has also consistently held that the onus is on the bidder to exercise due diligence in the preparation of its proposal to ensure that it is unambiguous and properly understood by PWGSC and that it is compliant with the requirements of the solicitation.¹² In the Tribunal's view, given the information provided in KPrime's bid, PWGSC's evaluation is supported by a tenable explanation.

¹⁰ See, for instance, Articles 1015(4)(a) and (d) of *NAFTA*, and Articles 515(4) and (5) of the *CFTA*.

¹¹ *Toromont Material Handling, a division of Toromont Industries Ltd.* (11 March 2020), PR-2019-063 (CITT) at para. 19; *Heiltsuk Horizon Maritime Services Ltd. and Horizon Maritime Services Ltd. v. Department of Public Works and Government Services* (18 October 2019), PR-2019-020 (CITT) at para. 47; *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; *Northern Lights Aerobatic Team, Inc. v. Department of Public Works and Government Services* (7 September 2005), PR-2005-004 (CITT) at para. 52, quoting *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247 at para. 55.

¹² *NORLEANS Technologies Inc. v. Department of Public Works and Government Services* (17 January 2020) PR-2019-031 (CITT) at para. 40, citing *Tri-Tech Forensics Inc.* (26 March 2018), PR-2017-064 (CITT) at para. 20; *Raymond Chabot Grant Thornton Consulting Inc. and PricewaterhouseCoopers LLP* (25 October 2013), PR-2013-005 and PR-2013-008 (CITT) at paras. 37, 38; *BRC Business Enterprises Ltd. v. Department of Public Works and Government Services* (27 September 2010), PR-2010-012 (CITT) at para. 51; *Integrated Procurement Technologies, Inc.* (14 April 2008), PR-2008-007 (CITT) at para. 13.

[24] In response to these criteria,¹³ KPrime's bid relied on product literature for its proposed x-ray machine, which provided in relevant part as follows:

Automatic detection: The AUTO key is used to enable or disable the Auto Detection of Drugs/Explosives or Insufficient Penetration alarm. It should be enabled in the system configuration. Press the AUTO button and the indicator light comes on when the automatic detection system starts. If a suspicious item is found, a frame blinks in different colors around the item to draw attention.¹⁴

Indication of prohibited material: When automatic detection is enabled, this icon indicates the presence of a prohibited material and draws a frame in red (explosives) or blue (high penetration) over the image.¹⁵

Indication of suspicious object: If the automatic detection function is enabled, the indicator turns red when a suspicious object is detected.¹⁶

[25] The product literature also included a brochure, which noted the following features of the proposed x-ray machine: "Drugs and explosives automatic detection and alarm" and "Automatic detection algorithm for drugs, explosives and high density materials".¹⁷

[26] In response to PWGSC's request for clarification, KPrime explained that its x-ray machine separates threats by atomic number:

Organic Material is below 10 and will be shown in shades of orange. Typical materials would include plastic, paper, water, wood, food, clothing and explosive. Mixed Material would be between 10 and 18 and will be shown in shades of green. Typical materials would include aluminum, sodium, chloride salt. Inorganic Mater [*sic*] would be higher than 18 and shown in shades of blue. Typical materials would include iron, nickel, copper and silver. Any material that have [*sic*] a low penetration region would be shown in black. . . . Using the automatic detection, if a suspicious item is found, a frame blinks in different colours around the item to draw attention, and would identify "suspicious" items for the operator by blinking a frame around that item in different colours.¹⁸

[27] PWGSC argued that without any other information in the bid, as clarified, regarding weapons or liquids, gels, or aerosols specifically, its evaluators reasonably concluded that the references in KPrime's bid to "suspicious items" or "prohibited material" were insufficient to demonstrate that KPrime's bid met the requirements of mandatory criteria 3.8.1.3 and 3.8.1.4.

[28] The Tribunal notes that KPrime argued that its bid included two videos demonstrating the automatic threat detection function using a gun and an aerosol as examples, but PWGSC submitted that it received no videos as part of KPrime's bid. The Tribunal is unable to rely on KPrime's claim in this regard as the record of this inquiry did not contain videos or references to any such videos.

¹³ Exhibit PR-2020-019-01 at 52.

¹⁴ Exhibit PR-2020-019-01 at 470.

¹⁵ Exhibit PR-2020-019-01 at 477.

¹⁶ Exhibit PR-2020-019-01 at 477.

¹⁷ Exhibit PR-2020-019-01 at 453.

¹⁸ Exhibit PR-2020-019-01B at 3-4

[29] Altogether, in the Tribunal's view, PWGSC has provided a tenable explanation of its evaluation. KPrime's bid stated that the automatic threat detection functions of the x-ray machine would identify "suspicious items" and "prohibited material", including explosives, by drawing a frame around the object. However, the bid does not include any information that would reasonably allow the evaluator to understand that weapons, liquids, gels and aerosols specifically are "suspicious items" or "prohibited materials" captured by this function, as required by the mandatory criteria 3.8.1.3 and 3.8.1.4. The Tribunal therefore finds that it was reasonable for PWGSC to conclude that KPrime's bid had not sufficiently demonstrated that its proposed x-ray machine met the requirements set out in mandatory criteria 3.8.1.3 and 3.8.1.4. In fact, a finding to the contrary would have introduced speculation into PWGSC's evaluation, which would have been inconsistent with PWGSC's trade agreement obligations.

[30] In its submissions to the Tribunal, KPrime explained that the analytical algorithm of the x-ray machine can be set to automatically identify specific objects, including firearms, knives, gels, aerosols and liquids, and provided images of x-rays identifying weapons. The Tribunal notes that this information was absent from KPrime's bid and cannot now be relied on to address gaps in information in its responses.¹⁹

[31] In its comments to the GIR, KPrime also argued that automatic detection is not effective in a single-view x-ray system, which is the type of system contemplated by the RFSO, and cannot replace a manual search by an operator. In the interest of completeness, the Tribunal notes that it is well established that a government institution is entitled to define its own procurement needs, provided it does so reasonably and in compliance with the applicable trade agreements.²⁰ In this case, there is no evidence, and KPrime does not argue, that the requirement for automatic threat detection is a breach of PWGSC's trade agreement obligations.

[32] For these reasons, the Tribunal finds that this ground of complaint is not valid.

Group 1 requirement for supply chain process

[33] PWGSC also found that KPrime's bid failed to meet mandatory criterion 5.0 – 1.1.1.3, which provides that bidders must provide "a description of the process the offeror follows to ship spare parts globally."

[34] KPrime's response to this requirement was set out in its cover letter.²¹ PWGSC concluded that KPrime's response mentioned services, support, technicians and distributors in various countries, but it did not include a description of KPrime's process to ship spare parts around the world.

¹⁹ See *SoftSim Technologies Inc. v. National Research Council Canada* (3 October 2018) PR-2018-015 (CITT) at para. 36, citing *Maxxam Analytics Inc. v. Department of Public Works and Government Services* (20 September 2007), PR-2007-017 (CITT) at para. 37; *NOTRA Environmental Services Inc.* (16 December 1997), PR-97-027 (CITT); *Bell Mobility v. Department of Public Works and Government Services* (14 July 2004), PR-2004-004 (CITT); *Francis H.V.A.C. Services Ltd. v. Canada (Public Works and Government Services)* 2017 FCA 165 (CanLII) at para. 22.

²⁰ *KUZMA Industrial Group v. Department of Public Works and Government Services* (4 October 2019) PR-2019-023 (CITT) at para. 33.

²¹ Exhibit PR-2020-019-01 at 102-103 and 309.

[35] KPrime argued that its response demonstrated its ability to provide fast response times for parts and to store parts locally across a number of international locations. KPrime also argued that it was not necessary to describe how and which couriers would be used to ship items.

[36] Based on KPrime's response, the Tribunal finds that PWGSC was reasonable in its evaluation. The information required by the mandatory criterion simply was not provided. The Tribunal also notes that despite KPrime's contention that the requirement was trivial, as noted above, bidders remain obligated to ensure their bids clearly and unambiguously demonstrate compliance with all mandatory criteria. The Tribunal therefore finds that this ground of complaint is not valid.

Group 2 requirement

[37] In addition to its proposal in response to Group 1, KPrime also proposed a walk-through metal detector in response to Group 2. PWGSC found that KPrime's bid failed to meet mandatory criterion 2.4.3.

[38] In the GIR, PWGSC conceded that, on review, KPrime's bid in fact met this requirement and its bid was therefore compliant with the terms of the solicitation with respect to Ground 2. However, PWGSC submitted that KPrime still would not have been awarded the contract as there were two lower-priced bidders. On this basis, PWGSC submitted that the contract awarded under Group 2 of the RFSO should not be disturbed. In its comments on the GIR, KPrime accepted this outcome.

[39] Based on the parties' submissions, the Tribunal finds that this ground of complaint is valid.

Ground 2: award of contract to Nuctech

[40] At the outset of the complaint, KPrime alleged that Nuctech was not eligible to be awarded a contract under the RFSO on the basis that Nuctech did not meet the relevant integrity provisions. In its comments to the GIR, KPrime clarified that it was not accusing Nuctech of wrongdoing, but that PWGSC is obligated to thoroughly review the companies involved in any tender.

[41] Both PWGSC and Nuctech submitted that there was no evidence to suggest that Nuctech did not meet the integrity requirements.

[42] The integrity provisions raised by this ground of complaint are captured in Clause 5.1.1 of the RFSO:

5.1.1 Integrity Provisions – Declaration of Convicted Offences

In accordance with the Integrity Provisions of the Standard Instructions, all offerors must provide with their offer, **if applicable**, the declaration form available on the Forms for the Integrity Regime website . . . to be given further consideration in the procurement process.

[43] The Standard Instructions, which are incorporated by reference into the RFSO, provide in relevant part as follows:

01 (2016-04-04) Integrity Provisions – offer

1. The *Ineligibility and Suspension Policy* (the "Policy") in effect on the date the Request for Standing Offer (RFSO) is issued, and all related Directives in effect on

that date, are incorporated by reference into, and form a binding part of the RFSO. The Offeror must comply with the Policy and Directives, which can be found at *Ineligibility and Suspension Policy*.

2. Under the Policy, charges and convictions of certain offences against a Supplier, its affiliates or first tier subcontractors, and other circumstances, will or may result in a determination by Public Works and Government Services Canada (PWGSC) that the Supplier is ineligible to be issued or is suspended from being issued a standing offer and to enter into a contract with Canada. The list of ineligible and suspended Suppliers is contained in PWGSC's Integrity Database.
4. Subject to subsection 5, by submitting an offer in response to this Request for Standing Offers, the Offeror certifies that:
 - e. none of the domestic criminal offences, and other circumstances, described in the Policy that will or may result in a determination of ineligibility or suspension, apply to it, its affiliates and its proposed first tier subcontractors.
5. Where an Offer is unable to provide any of the certifications required by subsection 4, it must submit a completed Integrity Declaration Form.

[44] The Policy sets out circumstances that automatically render or may render a supplier ineligible to be awarded federal contracts. Circumstances include charges²² or convictions against the supplier, or convictions against the supplier's affiliate, under sections 3 or 5 of the *Corruption of Foreign Public Officials Act* (bribery of foreign public officials)²³ and under sections 45, 46, 47, 49 and 52 of the *Competition Act* (arrangements between competitors, foreign directions, bid rigging, arrangements with federal institutions, false or misleading representation),²⁴ or of any similar offence outside Canada.²⁵ Suppliers also automatically become ineligible if they provide false or misleading certification to PWGSC in relation to the Policy.²⁶

[45] Nuctech submitted its bid and did not submit an Integrity Declaration Form. In accordance with the above provisions, by doing so Nuctech thereby certified to PWGSC that neither it nor its affiliates had been charged or convicted of any of the offences or other circumstances described in the Policy that would or may result in a determination of ineligibility or suspension of eligibility.

[46] Prior to awarding the contract, PWGSC also provided Nuctech's information, including its procurement business number and the names of its directors included in its bid, to PWGSC's internal Integrity Verification Services, which conducted a search that confirmed Nuctech was not listed as an ineligible or suspended supplier.

[47] Based on this, the Tribunal finds that PWGSC reasonably concluded at the time of its evaluation that Nuctech was eligible for contract award. In this regard, the Tribunal notes that a government institution is entitled to rely on assertions made by bidders, provided that the bid response meets the requirements of the solicitation.

²² Paragraph 7(d) of the Policy.

²³ Paragraph 6(b)(v) of the Policy.

²⁴ Paragraph 6(b)(ii) of the Policy.

²⁵ Paragraphs 7(a) and (b) of the Policy.

²⁶ Paragraph 6(e) of the Policy.

[48] The Tribunal now turns to the evidence submitted by KPrime in this inquiry. KPrime primarily relied on an article published in the *Taipei Times*, dated February 28, 2020, regarding the corruption conviction of a former public official in Taiwan. According to the article, a district court in Taiwan found that Nuctech paid the official NT\$3.06 million to approve a procurement for x-ray scanners worth approximately US\$2.31 million.²⁷

[49] First, the Tribunal notes that the news article did not report that Nuctech or an affiliate was charged or convicted of any of the relevant offences in the Policy. The substance of the article, though salacious in parts, therefore does not provide any indication that Nuctech would be ineligible for contract award in accordance with the relevant integrity provisions.²⁸

[50] Altogether, there is also no evidence before the Tribunal to establish that Nuctech did not or does not meet the requirements of the integrity provisions. Accordingly, there is no basis on which the Tribunal could make such a finding.

[51] The Tribunal therefore declines to disturb the standing offer awarded to Nuctech.

CONCLUSION

[52] For the foregoing reasons, the Tribunal concludes that the complaint is valid in part.

[53] Based on PWGSC's concession, the Tribunal finds that the ground of complaint regarding PWGSC's evaluation of KPrime's bid with respect to mandatory criterion 2.4.3 is valid. The Tribunal finds that the remaining grounds of complaint are not valid.

[54] Though KPrime's complaint is valid in part, the Tribunal finds that a remedy would not be appropriate on the facts. As discussed above, though KPrime's bid was in fact compliant with the mandatory criteria for Group 2, PWGSC submitted, and KPrime accepted, that KPrime would still not have been successful under this RFSO, as there were two compliant bidders with lower-priced offers. The Tribunal therefore declines to award a remedy in this matter.

COSTS

[55] Pursuant to section 30.16 of the *Act*, the Tribunal may award costs of, and incidental to, any procurement inquiry. On balance, the Tribunal finds that PWGSC is entitled to its reasonable costs.

[56] In determining the amount of cost award for this complaint, the Tribunal considered its *Procurement Costs Guideline* (the *Guideline*), which contemplates classification of the level of complexity of cases on the basis of three criteria: the complexity of the procurement, the complexity of the complaint and the complexity of the complaint proceedings.

[57] In this case, the solicitation was not particularly complex, the issues raised in the complaint were limited and straightforward, and the complaint proceedings were not overly complicated.

²⁷ KPrime also submitted additional articles that were not directly relevant to the issue at bar. They appeared to pertain to China's anti-dumping measures on x-ray scanners, with Nuctech as the domestic industry, and to Nuctech's links to the Chinese government. See Exhibit PR-2020-019-19 at 4.

²⁸ Nuctech submitted a witness statement of Mr. Wang Zheng (Ben), asserting that the Nuctech employee named in the article is not a Nuctech affiliate, as defined by the Policy (see Exhibit PR-2020-019-17 at 18). There is nothing on the record of this inquiry to contest this evidence.

Accordingly, the Tribunal's preliminary indication of the level of complexity for this complaint case is Level 1 (\$1,150). In light of the outcome, the Tribunal's preliminary indication of the amount of the cost award is half of this amount, i.e. \$575.

DECISION

[58] Pursuant to subsection 30.14(2) of the *Act*, the Tribunal determines that the complaint is valid in part.

[59] Pursuant to section 30.16 of the *Act*, the Tribunal awards PWGSC its reasonable costs incurred in preparing and proceeding with this complaint, which costs are to be paid by KPrime. 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 \$575. 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.

Randolph W. Heggart

Randolph W. Heggart

Presiding Member