



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File No. PR-2020-024

Lions Gate Risk Management
Group

v.

Department of Public Works and
Government Services

*Determination issued
Friday, December 18, 2020*

*Reasons issued
Tuesday, January 5, 2020*

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IN THE MATTER OF a complaint filed by Lions Gate Risk Management Group 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

LIONS GATE RISK MANAGEMENT GROUP

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 not valid.

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 Lions Gate Risk Management Group. 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 \$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 *Procurement Costs Guideline*. The 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.

*The name of the government institution in the style of cause was corrected on February 9, 2021.

Tribunal Panel:	Cheryl Beckett, Presiding Member
Support Staff:	Heidi Lee, Counsel
Complainant:	Lions Gate Risk Management Group
Counsel for the Complainant:	Tom Beasley
Government Institution:	Department of Public Works and Government Services
Counsel for the Government Institution:	Roy Chamoun Benjamin Hiemstra Manou Ranaivoson Peter Osborne Margaret Robbins
Intervener:	The British Columbia Corps of Commissionaires (dba Commissionaires BC)
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STATEMENT OF REASONS

SUMMARY OF COMPLAINT

[1] Lions Gate Risk Management Group (Lions Gate) 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 Proposal (Solicitation No. M2989-202968/A) (RFP) issued by the Department of Public Works and Government Services (PWGSC) on behalf of the Royal Canadian Mounted Police (RCMP) for the provision of crime scene security and emergent scene security.

[2] Lions Gate, which was the incumbent service provider, submitted a bid in response to the RFP but was unsuccessful. The successful bidder was The British Columbia Corps of Commissionaires (dba Commissionaires BC) (“C-BC”), which was awarded a contract valued at \$3,047,619.05.

[3] Lions Gate alleged that C-BC was not compliant with the terms of the solicitation, relied on false or misleading information, and would be unable to provide the services procured. Lions Gate claimed that PWGSC evaluated C-BC’s bid by applying undisclosed criteria. Lions Gate also claimed that PWGSC was biased in favour of the winning bidder and that the fairness monitor failed to perform its duty.

[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, and for the reasons that follow, the Tribunal finds that the complaint is not valid.

PROCEDURAL HISTORY

[6] The RFP was published on May 20, 2020, and closed on June 11, 2020.

[7] On July 24, 2020, PWGSC advised Lions Gate that its bid had been unsuccessful and that a contract would be awarded to C-BC.

[8] On July 28, 2020, Lions Gate informed PWGSC that it intended to appeal the award, as Lions Gate believed that the winning bidder would not be able to meet the performance criteria.³

[9] On August 6, 2020, Lions Gate submitted the present complaint to the Tribunal, which was considered filed on August 7, 2020, after Lions Gate filed additional information. The Tribunal accepted the complaint for inquiry on August 12, 2020.

[10] On September 10, 2020, the Tribunal granted PWGSC’s request for an extension to file its Government Institution Report (GIR), and on September 15, 2020, the Tribunal granted C-BC leave to intervene in these proceedings. As a result of these procedures, the Tribunal extended the deadline

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

² S.O.R./93-602 [*Regulations*].

³ Lions Gate re-iterated its intention to file a complaint to the Tribunal in emails dated July 30, 2020.

for the issuance of the Tribunal's determination to 135 days after the filing of the complaint, pursuant to paragraph 12(c) of the *Regulations*.⁴

[11] PWGSC filed its GIR on September 25, 2020. C-BC filed comments to the GIR and the complaint on October 6, 2020. Lions Gate then submitted comments in reply to the GIR and C-BC's comments on October 15, 2020.

[12] Further to Lions Gate's reply comments, C-BC filed further written submissions to clarify its initial submission. The Tribunal accepted this additional filing onto the record and permitted both Lions Gate and PWGSC to reply.⁵ Lions Gate submitted comments in reply. PWGSC declined to comment on C-BC's clarification, but argued that Lions Gate had raised new allegations in its comments to the GIR, which in PWGSC's view were out of time.

PRELIMINARY ISSUE: NEW ALLEGATIONS BY LIONS GATE

[13] In its comments to the GIR, Lions Gate claimed that PWGSC did not award the correct number of points for its response to requirements B2 and B4, based on the written debrief it received from PWGSC. Requirement B2 sought information on the individual service providers, and requirement B4 concerned the bidder's knowledge of various command systems.

[14] In response, PWGSC submitted that Lions Gate's allegations were out of time. PWGSC argued that Lions Gate received the written debrief on August 13, 2020, and only raised its allegations in its comments to the GIR, which were filed with the Tribunal on October 15, 2020.

[15] The Tribunal finds that Lions Gate's arguments regarding PWGSC's evaluation of its bid were raised for the first time in its comments to the GIR. It is well established that complainants may not raise new grounds of complaint during the inquiry.⁶ In accordance with subsection 30.14(1) of the *Act*, in conducting an inquiry, the Tribunal must limit its considerations to the subject matter of the complaint. The Tribunal cannot consider new grounds of complaint raised in the comments to the GIR during its inquiry.

[16] The Tribunal finds that Lions Gate's arguments regarding PWGSC's evaluation of its bid were raised for the first time in its comments to the GIR. Accordingly, to the extent that Lions Gate's submission raised a new ground of complaint relating to PWGSC's evaluation of its bid, they have not been considered.

RELEVANT PROVISIONS OF THE RFP

[17] The relevant provisions of the RFP provide as follows:

PART 1 – GENERAL INFORMATION

1.1 Introduction

⁴ Exhibit PR-2020-024-15.

⁵ Exhibit PR-2020-024-22.

⁶ *Méridien Maritime Réparation v. Department of Public Works and Government Services* (23 November 2015), PR-2015-021 (CITT) at para. 59; *Storeimage v. Canadian Museum of Nature* (18 January 2013), PR-2012-015 (CITT) at paras. 41-46; *Griffin Engineered Systems v. Department of Public Works and Government Services* (26 June 2020), PR-2019-061 (CITT) at para. 37.

The bid solicitation is divided into seven parts plus attachments and annexes, as follows:

...

Part 4 Evaluation Procedures and Basis of Selection: indicates how the evaluation will be conducted, the evaluation criteria that must be addressed in the bid, and the basis of selection;

...

Part 7 Resulting Contract Clauses: includes the clauses and conditions that will apply to any resulting contract.

...

1.2 Summary

The Royal Canadian Mounted Police (RCMP), as the need arises, has a requirement for the provision of scene security at potential crime scenes and emergent events such as natural disasters including but not limited to wildfires, floods, landslides and asset security for large scale police operations at various locations in the Vancouver Island District, North District, Southeast District, and Lower Mainland.

...

A Fairness Monitor (FM) has been engaged to provide independent assurance that this procurement is conducted in a fair, open and transparent manner.

PART 4 – EVALUATION PROCEDURES AND BASIS OF SELECTION

...

4.1.2 Technical Evaluation

4.1.2.1 (2017-07-31) Mandatory Technical Criteria

Mandatory and point rated technical evaluation criteria are included in Annex “J”.

The Phased Bid Compliance Process will apply to all mandatory technical criteria.

4.1.2.2 Point Rated Technical Criteria

Mandatory and point rated technical evaluation criteria are included in Annex “J”.

PART 7 – RESULTING CONTRACT CLAUSES

The following clauses and conditions apply to and form part of any contract resulting from the bid solicitation.

7.1 Statement of Work

Statement of Work – Contract

The Contractor must perform the Work in accordance with the Statement of Work at Annex “A”.

[18] The relevant annexes of the RFP are set out in Appendix A of these reasons.

ANALYSIS

[19] 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.

[20] 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 is the Canadian Free Trade Agreement.⁷

[21] In the Tribunal’s view, the present complaint includes three separate grounds of complaint: 1) allegations regarding C-BC’s bid, including PWGSC’s evaluation of the bid; 2) allegations that PWGSC was biased in favour of C-BC; and 3) the allegation regarding the fairness monitor.

[22] The Tribunal will consider each in turn.

Ground 1: Allegations regarding C-BC’s bid

Positions of the parties

[23] Lions Gate alleged that C-BC’s bid was not compliant with the terms of the solicitation. Lions Gate argued that C-BC did not have the capacity to provide the services being procured and therefore must have submitted false or misleading information in its bid. Specifically, Lions Gate claimed that C-BC could not have reasonably met the criteria set out in sections 5.0 and 6.0 of Annex A of the RFP, as well as those set out in Annex G. Alternatively, Lions Gate claimed that PWGSC improperly evaluated C-BC’s bid by applying undisclosed criteria in order to be able to conclude that it was compliant with the terms of the solicitation.

[24] To support its claims, Lions Gate relied on witness statements of four individuals employed by both C-BC and Lions Gate.⁸ Altogether, these statements asserted that C-BC did not have enough qualified personnel to provide the services procured;⁹ was already short-staffed;¹⁰ and offered lower wages than Lions Gate.¹¹ Lions Gate also relied on job advertisements by C-BC from September 2020 for “scene security guards” as evidence that C-BC did not have the capacity to provide the procured services.

⁷ 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].

⁸ Exhibit PR-2020-024-01A (protected) at 64-69.

⁹ Exhibit PR-2020-024-01A (protected) at 64, 65 and 68.

¹⁰ Exhibit PR-2020-024-01A (protected) at 67-68.

¹¹ Exhibit PR-2020-024-01A (protected) at 64.

[25] In response, PWGSC submitted that Lions Gate did not identify any evaluation criteria that C-BC is alleged to have failed to meet. PWGSC submitted that Lions Gate's allegations only refer to the requirements set out in the Statement of Work in Annex A, which forms part of the resulting contract clauses and does not contain any bid evaluation requirements. PWGSC argued that these requirements are not relevant to bid evaluation, except to the extent that they are explicitly referred to by any mandatory or point-rated criteria. PWGSC argued that C-BC's ability to meet the requirements of Annex A is therefore a matter of contract administration, which is outside of the Tribunal's jurisdiction.

[26] PWGSC also argued that minimal weight should be accorded to the four witness statements. PWGSC submitted that they were unsworn statements made by individuals that, as employees of Lions Gate, have a personal interest in the outcome of the complaint. PWGSC also noted that none of the individuals were proposed as resources in C-BC's bid.

[27] For its part, C-BC submitted that the four individuals were not involved in C-BC's bid in any way and have no knowledge of C-BC's recruitment or retention of its human resources. Overall, C-BC argued that Lions Gate's allegations were not supported by any evidence.

Analysis

[28] As noted above, in making its allegations, Lions Gate claimed that C-BC could not meet the requirements set out in the Statement of Work at Annex A. PWGSC argued that Annex A was not relevant to bid evaluation.

[29] Having reviewed the terms of the RFP, the Tribunal finds Annex A forms part of the resulting contracting clauses.¹² Annex A is referenced in Part 7 of the RFP, titled "Resulting Contract Clauses", which sets out the "clauses and conditions [that] apply to and form part of any contract resulting from the bid solicitation", as follows:

7.1 Statement of Work

Statement of Work – Contract

The Contractor must perform the Work in accordance with the Statement of Work at Annex "A".

[30] This is supported by the wording of both Part 7 and Annex A, which refer only to the "Contractor", rather than the "Bidder". In contrast, the terms of the RFP clearly provide that the evaluation criteria are set out in Annex J; clauses 4.1.2.1 and 4.1.2.2 state that the "mandatory and point rated technical evaluation criteria are included in Annex 'J'". Annex J also refers exclusively to the "Bidder". In the Tribunal's view, this finding is also supported by the written debrief received by

¹² Lions Gate also disputed C-BC's compliance with Annex G, which required bidders to have a minimum of 21 resources per district at the time of bid submission. For the same reasons as Annex A, namely, that Annex G is referenced only in Part 7 of the RFP (at clause 7.11, Priority of Documents) and not by Annex J, the Tribunal also finds that Annex G forms part of the resulting contract clauses and does not contain any bid evaluation requirements. However, the Tribunal notes that the requirement is also found in point-rated criterion B2 of Annex J, which awarded points based on the number of proposed resources. In order to meet this requirement, bidders were required to achieve a minimum of 6 points, which corresponded to 21-30 proposed resources.

Lions Gate.¹³ The debrief noted that the technical evaluation criteria are included in Annex J, and addressed only the requirements set out in Annex J.

[31] The Tribunal has consistently held that the resulting contract clauses set out in solicitation documents do not apply to the evaluation process and relate rather to contractual terms that will prevail once the resulting contract is issued.¹⁴ As resulting contract clauses impose obligations on the “Contractor”, compliance with such clauses relates to contract administration, which is beyond the Tribunal’s jurisdiction.¹⁵

[32] Having found that Annex A forms part of the resulting contract clauses, the Tribunal also concludes based on the foregoing that Annex A does not contain any bid evaluation requirements, and as such bidders were not required to comply with the requirements of Annex A during the procurement process, except as expressly referred to by the terms of Annex J.¹⁶

[33] Accordingly, to the extent that Lions Gate challenged C-BC’s ability to meet terms set out in the Statement of Work in Annex A, the Tribunal finds that Lions Gate raised matters relating to contract administration, which are outside the Tribunal’s jurisdiction.

[34] In the context of this ground of complaint, the Tribunal’s inquiry is limited to a review of PWGSC’s evaluation of C-BC’s bid.

[35] Articles 515(4) and (5) of the CFTA provide that, to be considered for contract award, a bid must conform to the essential requirements set out in the tender documentation, and that government institutions must award contracts in accordance with the criteria and essential requirements specified in the tender documentation.

[36] 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.¹⁷

¹³ Exhibit PR-2020-024-16A (protected) at 91.

¹⁴ *Sepha Catering Ltd.* (13 November 2014), PR-2014-038 (CITT) [*Sepha*] at para. 25.

¹⁵ *Sepha* at para. 26; *WW-ISS Solutions Canada* (16 December 2019), PR-2019-050 (CITT) at para. 15; *Vidéotron Ltée v. Shared Services Canada* (5 October 2018), PR-2018-006 (CITT) at para. 16.

¹⁶ The Tribunal notes that criteria A3, A4 and A5 in Annex J refer expressly to paragraphs 5.3 and 5.4 of the Statement of Work.

¹⁷ *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) [*Horizon*] 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.

[37] The Tribunal also previously held that, in the absence of any indication to the contrary, a government institution is entitled to rely on information provided by the bidder.¹⁸

[38] Lions Gate did not submit any evidence with respect to C-BC's bid. While the four witness statements asserted that C-BC was unable to provide the services being procured, they were silent on the contents of C-BC's bid. C-BC also submitted that none of these individuals were knowledgeable about its bid, which was not disputed by Lions Gate. The Tribunal notes that, of the four witness statements provided, the only individual in a managerial position stated that they were not informed about or consulted on C-BC's bid.¹⁹ Altogether, the Tribunal finds that the evidence in this complaint does not establish that PWGSC's evaluation of C-BC's bid was unreasonable. Moreover, the Tribunal notes that even if Lions Gate's allegations were true and C-BC was not capable of providing the procured services, these would relate to matters of contract administration.

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

Ground 2: Allegations of bias

Positions of the parties

[40] Lions Gate alleged that PWGSC was biased in favour of C-BC, as evidenced by the circumstances surrounding PWGSC's inclusion of the term "commissionaire" in the list of relevant prior experience for proposed resources, as well as the effect of the inclusion itself.

[41] PWGSC argued that Lions Gate was out of time to challenge the inclusion of "commissionaire" in the terms of the solicitation. PWGSC also argued that by submitting its bid without objecting to the term, Lions Gate accepted the terms of the solicitation. More broadly, PWGSC also submitted that there is no reasonable basis to find actual bias or reasonable apprehension of bias in the procurement process.

[42] The Tribunal is not persuaded by PWGSC's argument on timeliness. While Lions Gate would have been late to challenge the inclusion of "commissionaire" as a violation in and of itself of the applicable trade agreement, in the Tribunal's view Lions Gate raised this term as evidence of bias on the part of PWGSC. Though a ground of complaint may be late, it may still be timely as a discrete element of a complainant's allegations of bias.²⁰ Allegations of bias must themselves be raised at the earliest practicable opportunity. If not done so in a timely fashion, the objection will be regarded as waived, and it cannot be used after the procurement process to impugn the validity of the outcome.²¹ In the present case, the Tribunal is satisfied that Lions Gate raised the allegation of bias in a timely manner.

[43] The Tribunal therefore finds that Lions Gate's arguments regarding the term "commissionaire" is properly before the Tribunal and may be considered in assessing the allegations of bias.

¹⁸ *J.A. Larue inc. v. Department of Public Works and Government Services* (7 August 2020), PR-2020-004 (CITT) at para. 46; *KUZMA Industrial Group v. Department of Public Works and Government Services* (4 October 2019), PR-2019-023 (CITT) at para. 33; *MasterBedroom Inc.* (26 August 2015), PR-2015-024 (CITT) at para. 23.

¹⁹ Exhibit PR-2020-024-01A at 64.

²⁰ *Computer Talk Technology, Inc.* (26 February 2001), PR-2000-037 (CITT) at 10.

²¹ *Cougar Aviation Ltd. v. Canada (Minister of Public Works and Government Services)*, 2000 CanLII 16572 (FCA) at para. 40.

Analysis

[44] It is well established that the federal government's procurement evaluation process is subject to a duty of fairness and impartiality. As a result, evaluators must avoid both actual bias in favour of one bidder, as well as conduct that can give rise to a reasonable apprehension of such bias.²²

[45] Actual bias is more difficult to establish than a reasonable apprehension of bias, as the relative burden of proof is higher.²³ In the Tribunal's view, Lions Gate's evidence does not approach the standard needed to establish actual bias, and therefore its allegations are best dealt with under the test for a reasonable apprehension of bias.

[46] The Tribunal applies the following test to determine if the circumstances of a case give rise to a reasonable apprehension of bias:

[W]hat would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the person], whether consciously or unconsciously, would not decide fairly.²⁴

[47] The Tribunal's jurisprudence is clear that the complainant bears the burden of supporting its claim. When a complainant alleges even a reasonable apprehension of bias, "it is not sufficient to simply state that there is a belief that there is bias—[the complainant] must offer sufficient evidence in that regard."²⁵ Moreover, the Tribunal generally "presumes the good faith and honesty both of the bidders and of the public servants mandated to evaluate their bid", meaning that the complainant must provide sufficient evidence to overcome this presumption.²⁶

[48] Lions Gate relied on an internal analysis conducted by PWGSC prior to the issuance of the RFP. PWGSC concluded that the work could not be directly awarded to the Corps of Commissionaires (the Corps) as the scope of services would fall outside the Right of First Refusal held by the Corps under an existing standing offer for security guard services.²⁷

²² *SoftSim Technologies Inc. v. Department of Foreign Affairs, Trade and Development* (11 June 2020), PR-2019-053 (CITT) [*SoftSim*] at para. 71.

²³ *SoftSim* at para. 75, relying on *Wewaykum Indian Band v. Canada*, 2003 SCC 45 at para. 64. When alleging that a solicitation was structured to favour a particular bidder, the Tribunal has stated that "a complainant bears the onus to present positive evidence that the government institution structured the terms of the RFP, such as technical requirements or specifications, with the purpose or effect of favouring (or excluding) a particular supplier". See *SoftSim* at para. 74.

²⁴ *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25 at paras. 20-21, citing *Committee for Justice and Liberty v. National Energy Board*, 1976 CanLII 2 (SCC), [1978] 1 S.C.R. 369, at 394, per de Grandpré J. (dissenting). See also *Horizon* at para. 73 and *SoftSim* at para. 76.

²⁵ *SoftSim* at para. 77; *Sunny Jaura d.b.a. Jaura Enterprises v. Department of Foreign Affairs, Trade and Development* (30 January 2019), PR-2018-058 (CITT) at paras. 13, 15. See also *Renaissance Aeronautics Associates Inc. (D.B.A. Advanced Composites Training) v. Department of Public Works and Government Services* (28 May 2017), PR-2017-063 (CITT) at para. 38; *Tyr Tactical Canada, ULC v. Royal Canadian Mounted Police* (16 May 2016), PR-2016-006 (CITT) at para. 26.

²⁶ *SoftSim* at para. 77; *MasterBedroom Inc. v. Department of Public Works and Government Services* (28 June 2017), PR-2017-017 (CITT) at para. 12; *GESFORM International* (26 May 2014), PR-2014-012 (CITT) at para. 16.

²⁷ Confidential analysis, Exhibit PR-020-024-16A (protected) at 26-28.

[49] Based on this internal analysis, Lions Gate argued that PWGSC itself determined that Corps Commissionaires do not have the required skillset to perform the work, but PWGSC nevertheless included “commissionaire” on the list of acceptable relevant experiences.²⁸ In Lions Gate’s view, the inclusion of “commissionaire” cannot be considered to be in view of PWGSC’s operational requirements, and therefore indicates bias in favour of C-BC.

[50] The Tribunal is not persuaded by this argument. The Tribunal notes that the analysis was conducted for the purpose of assessing whether the work fell under the contractual terms of the Corps’ existing Right of First Refusal. In concluding the analysis, PWGSC noted in a paragraph that while the Corps was well suited for departmental security work, the work under the RFP would require skills in addition to being security minded. In the Tribunal’s view, this does not reasonably amount to a conclusion by PWGSC that Corp Commissionaires are not qualified to provide the procured services. Accordingly, the internal analysis does not support a finding that the inclusion of the term “commissionaire” is contrary to PWGSC’s legitimate operational requirements, as argued by Lions Gate. As a result, the Tribunal finds that the inclusion of the term “commissionaire” in light of PWGSC’s own internal analysis does not give rise to a reasonable apprehension of bias.

[51] Lions Gate also argued that PWGSC, in its internal analysis, identified other required skillsets beyond those exercised by Corp Commissionaires, but they were not included in the evaluation criteria, meaning C-BC was not disadvantaged.

[52] More broadly, Lions Gate claimed that the inclusion of “commissionaire” was transformative to C-BC’s ability to submit a successful proposal. Lions Gate argued that the inclusion also gave C-BC a financial advantage by “downgrading” the skill requirements, which allowed C-BC to make a financial bid based on the lower wages payable to commissionaires, as compared to peace officers.²⁹

[53] In addition to arguments related to the inclusion of the term “commissionaire”, Lions Gate also argued that mandatory requirement A9 of Annex J, which required three years of experience of on-site securities duties within the past 10 years, facilitated an outcome in favour of C-BC.

[54] In the Tribunal’s view, the fact that C-BC was better able to meet certain terms of the solicitation does not in and of itself give rise to a reasonable apprehension of bias. In this regard, the Tribunal notes that a government institution may structure an RFP to meet its legitimate operational needs, and the fact that one bidder is better able than another to meet the specifications of an RFP does not in itself mean that the requirements of the RFP are biased in favour of that bidder.³⁰ Moreover, the trade agreements do not guard against greater or excessive competition.³¹ Accordingly, the Tribunal also finds that expanding the conditions of participation by including the term “commissionaire” does not, in and of itself, give rise to a reasonable apprehension of bias.

²⁸ See criterion B1 of Annex J of the RFP.

²⁹ At the outset of the complaint, Lions Gate alleged as a separate ground of complaint that C-BC submitted a non-compliant financial proposal as it was implausible (i.e. too low). In its comments to the GIR, Lions Gate clarified that this argument should be considered within the context of its allegation of bias. See Exhibit PR-2020-024-20 at para. 24.

³⁰ *Almon Equipment Ltd. v. Canada (Attorney General)*, 2012 FCA 318 at para. 11.

³¹ *Western Star Trucks Inc.* (11 September 2000), PR-2000-011 (CITT); *6979611 Canada Inc. v. Department of Public Works and Government Services* (18 August 2009), PR-2009-039 (CITT) at paras. 20-21.

[55] Lions Gate also alleged that, according to an unnamed individual with direct knowledge of PWGSC's work on the solicitation, PWGSC gave C-BC advance knowledge of the procurement. C-BC denied this allegation. Without any evidence to substantiate this claim, the Tribunal finds that this allegation cannot give rise to an apprehension of bias.

[56] Lions Gate also emphasized requirement B1 of Annex J, which mandated the education, training and experience of proposed resources. The terms of B1 referred specifically to "Corps Commissionaires experience", rather than the more general term "commissionaire". While this may appear peculiar, in the Tribunal's view the terms of B1 alone cannot give rise to a reasonable apprehension of bias.

[57] Altogether, the Tribunal finds that Lions Gate has not provided sufficient evidence to support a finding of bias or the reasonable apprehension thereof. The totality of Lions Gate's evidence did not convince the Tribunal that "an informed person, viewing the matter realistically and practically—and having thought the matter through" would conclude that PWGSC failed to treat Lions Gate fairly. As such, the Tribunal finds that this ground is also not valid.

Ground 3: Allegation regarding the fairness monitor

[58] Lions Gate also submitted that the fairness monitor did not discharge its duty.

[59] In response, PWGSC argued that the trade agreements do not require a fairness monitor to be involved in a procurement process, nor are the findings of a fairness monitor relevant to the Tribunal's determination of whether the procurement was conducted in accordance with the trade agreements.

[60] Fairness monitors are third parties appointed to review the procurement process, and are intended to be at arm's length from the government institution. Lions Gate's arguments regarding the fairness monitor did not allege any wrongdoing on PWGSC's part. Lions Gate also did not provide any evidence in support of this ground of complaint. The Tribunal therefore concludes that this ground of complaint is not valid.

Conclusion

[61] For the foregoing reasons, the Tribunal finds that the complaint is not valid.

COSTS

[62] The Tribunal has broad discretion to award costs under section 30.16 of the *Act*. The Tribunal follows the "judicial model" under which, generally, the winning party is entitled to its costs. As such, the Tribunal will award costs to PWGSC.

[63] 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.

[64] 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. Accordingly, the Tribunal's preliminary indication of the level of complexity for this complaint case is Level 1, which has an associated flat-rate amount of \$1,150.

[65] C-BC also requested its costs at Level 1.

[66] As a general rule, intervenors are not awarded their costs. The Tribunal has consistently decided against awarding costs to interveners.³² In the present circumstances, the Tribunal finds no reason to deviate from this rule as C-BC chose to intervene and brought no new significant substantive issues to the proceedings. The Tribunal therefore declines to award costs to C-BC.

DECISION

[67] Pursuant to subsection 30.14(2) of the *Act*, the Tribunal determines that the complaint is not valid.

[68] Pursuant to section 30.16 of the *Act*, the Tribunal awards PWGSC its costs in the amount of \$1,150 for responding to the complaint, which costs are to be paid by Lions Gate. The Tribunal directs Lions Gate to take appropriate action to ensure prompt payment.

Cheryl Beckett

Cheryl Beckett

Presiding Member

³² *Saskatchewan Institute of Applied Science and Technology v. Department of Foreign Affairs, Trade and Development* (9 January 2014), PR-2013-013 (CITT) at para. 119; *TPG Technology Consulting Limited v. Department of Public Works and Government Services* (20 December 2007), PR-2007-060 (CITT) at 38; *Canadian North Inc. v. Department of Indian Affairs and Northern Development* (5 April 2007), PR-2006-026R (CITT) at paras. 16-28; *Bosik Vehicle Barriers Ltd. v. Department of Public Works and Government Services* (6 May 2004), PR-2003-082 (CITT) at paras. 37-39; *Bell Mobility v. Department of Public Works and Government Services* (14 July 2004), PR-2004-004 (CITT) at paras. 46-47; *Northern Lights Aerobatic Team, Inc. v. Department of Public Works and Government Services* (7 September 2005), PR-2005-004 (CITT) at paras. 96-99.

APPENDIX A

The relevant provisions of Annex A of the RFP provide as follows:

ANNEX “A”

STATEMENT OF WORK

...

5.0 Required on-site resources

The onsite resources delivering the services must meet the following criteria:

1. Have strong communication skills, both verbal and written with proficiency in English
2. Obtain and maintain a RCMP security clearance at the appropriate level prior to contract award
3. Possess applicable licenses to perform security service work in the Province of British Columbia as per the *Security Services Act* and the *Security Services Regulation of British Columbia*;
4. Must respond to a scene from their deployment origin, within the Google Maps estimated drive time to the scene plus 2 hours.
5. Operating knowledge of Major Case Management principles as it relates to the preservation and continuity of crime scenes and evidence is an asset;
6. Recent experience as a private security officer, commissionaire, Peace Officer, either as Police Officer, Correctional Officer, Sheriff, Fishery Officer, Conservation Officer, Canadian Border Service Agency Officer and Officer and non-commissioned members of the Canadian Force, who were appointed as members of the military police. (Recent defined as within the past five years);
7. Experience or exposure to providing court room testimony is an asset

6.0 Requirement for the Company

1. Have on-site resources available on call for twenty-four hours a day, seven days a week during the Task Authorization requirement.
2. Have access to and be able to provide up to 25 onsite resources for the North District and 30 onsite resources for all other districts within 14 days of contract award date.
3. Operating knowledge of the Incident Command System (ICS) and the Gold-Silver-Bronze (GSB) command and control system is an asset.

...

The relevant provisions of Annex G of the RFP provide as follows:

ANNEX “G”

QUALIFIED ONSITE RESOURCE PERSONNEL PER DISTRICT

...

*Minimum number of resources required at bid submission is indicated in the table below. If there are more resources to list in the table above, please use another table.

Onsite resources required at the time of bid submission and within 14 days of contract award date:

Location:	Number of resources required at time of bid submission	Number of resources required within 14 days of contract award date
Vancouver Island District	21	30
North District	21	25
Southeast District	21	30
Lower Mainland District	21	30

The relevant provisions of Annex J of the RFP provide as follows:

ANNEX “J”

EVALUATION CRITERIA

Section A: Mandatory Technical Criteria

The technical bid should address clearly and in sufficient depth the points that are subject to the evaluation criteria against which the bid will be evaluated. Simply repeating the statement contained in the bid solicitation is not sufficient. In order to facilitate the evaluation of the bid, Canada requests that bidders address and present topics in the order of the evaluation criteria under the same headings. To avoid duplication, bidders may refer to different sections of their bids by identifying the specific paragraph and page number where the subject topic has already been addressed.

MANDATORY Criteria

...

RESOURCE REQUIREMENT

...

A9 Bidder must demonstrate that onsite resources have minimum 3 years experience of on-site security duties. The experience must be current, within the past 10 years.

...

Section B: Point Rated Technical Criteria

	Point Rated Technical Criteria (RT) and Scores	Required Minimum Number of Points	Maximum Number of Points
B1.	<p>Combined education/ training and experience of resources including prior security officer, military, Corps Commissionaires and/or Peace Officer service (Peace Officer defined as per Section 2 of the <i>Criminal Code of Canada</i>)</p> <p>Bidder should provide a detailed listing of all company personnel and how they meet the education/training and experience. An average score will be assigned to each company based on the total of individual scores.</p> <p>Total of individual scores / Number of proposed personnel</p> <p>Each proposed personnel is evaluated based on the following rating:</p> <p>“0” for no information provided “2” for do not possess significant education/training, experience, accreditation(s) and training “4” for lacks of some education, experience, accreditation(s) and training “6” for acceptable level of combined education, experience, accreditation(s) and training (ie security officer experience) “8” for satisfactory level of education, experience, accreditation(s) and training (ie military or Corp Commissionaires experience) “10” for excellent level of highly educated, experienced, and trained (ie peace officer experience)</p> <p>** Please use table provided in RFP</p>	6	10
B2.	<p>Number of resources available: Including both Security Officer and Supervisor Each District is evaluated based on the following rating. Average score will be assigned using the following formula: Total points of four Districts / 4 Example: (6+8+8+10) / 4 = 8</p> <p>“0” for no resources proposed per district “2” for up to and including 10 resources “4” for 11 to 20 resources</p>	6	10

	“6” for 21-30 resources “8” for 31-40 resources “10” for more than 40 resources		
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