



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2020-082

Sigma Risk Management Inc.

*Decision made  
Thursday, February 4, 2021*

*Decision and reasons issued  
Friday, February 12, 2021*

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**

**SIGMA RISK MANAGEMENT INC.**

**AGAINST**

**THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT SERVICES**

**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.

Frédéric Seppey  
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Frédéric Seppey  
Presiding Member

## STATEMENT OF REASONS

[1] Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,<sup>2</sup> 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.

### OVERVIEW

[2] This complaint relates to a solicitation by the Department of Public Works and Government Services (PWGSC) for the provision of insurance services (Solicitation No. EN578-162394/C).

[3] Sigma Risk Management Inc. (Sigma) has challenged PWGSC's decision to disqualify its bid under one of the service streams in the solicitation on the basis that it did not comply with one of the mandatory criteria for that stream. Sigma argues that, contrary to the evaluators' conclusions, its bid met all the requirements of the mandatory criterion in question. Sigma requested that it be awarded the contract as well as compensation or, in the alternative, that the bids be re-evaluated or a new solicitation for the designated contract be issued.

### BACKGROUND

[4] PWGSC issued the solicitation in the form of a Request for Standing Offers (RFSO) on Buyandsell.gc.ca on October 8, 2020. The RFSO invited bidders to submit bids under the following three streams of insurance services:

- Stream 2 – Insurance Brokerage Services;
- Stream 3 – Insurance Claims Adjuster Services; and
- Stream 4 – Risk Management Process Services.<sup>3</sup>

[5] Sigma submitted bids under streams 3 and 4 on October 26, 2020.

[6] The RFSO closed on October 27, 2020.

[7] On December 2, 2020, PWGSC notified Sigma via email that its bid submitted under Stream 4 had been rejected due to non-compliance with the mandatory requirements. Information on Buyandsell.gc.ca indicates that Sigma was awarded a contract under Stream 3. Sigma's complaint, and this decision, pertain only to the evaluation and rejection of its bid submitted under Stream 4.

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

<sup>2</sup> SOR/93-602 [*Regulations*].

<sup>3</sup> The streams are so numbered because a previous procurement for insurance services (Solicitation No. EN578-162394/B) included the three streams listed above as well as "Stream 1 – Specialized Insurance Consulting Services." That procurement resulted in the award of a contract under Stream 1, with the remaining streams (i.e. streams 2, 3 and 4) being re-tendered under the present RFSO, which retained the previous numbering.

[8] On December 4, 2020, Sigma replied to PWGSC, objecting to its disqualification under Stream 4 and arguing that its bid was in fact compliant with all of the mandatory criteria for Stream 4 set out in the RFSO.

[9] On December 7, 2020, PWGSC replied to Sigma's objection, confirming its position that the bid did not comply with all of the mandatory criteria and was therefore disqualified.

[10] Sigma filed its initial complaint documents with the Tribunal on January 29, 2021; however, the complaint was deemed incomplete. The Tribunal requested additional information on February 1, 2021, which Sigma provided the following day. Sigma's complaint is therefore considered to have been filed on February 2, 2021.

## ANALYSIS

[11] 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 may conduct an inquiry into a complaint if all of the following conditions are met:

- 1) the complaint has been filed within the time limits prescribed by section 6;
- 2) the complainant is a potential supplier;
- 3) the complaint is in respect of a designated contract; and
- 4) the information provided discloses a reasonable indication that the government institution did not conduct the procurement in accordance with the applicable trade agreements.

[12] For the reasons set out below, the Tribunal finds that the complaint was not filed within the time limits prescribed by section 6 of the *Regulations*. The Tribunal also finds that the complaint does not disclose a reasonable indication of a breach of the applicable trade agreement, in this case, the Canadian Free Trade Agreement (CFTA).

### **The complaint is late**

[13] Pursuant to section 6 of the *Regulations*, a potential supplier must either raise an objection with the procuring government institution or file a complaint with the Tribunal no later than 10 working days after the day on which the basis of the complaint became known or reasonably should have become known to the supplier.<sup>4</sup>

[14] Sigma submitted a written objection to the disqualification of its bid on December 4, 2020, requesting that its bid be reviewed and found responsive. PWGSC replied to Sigma's objection on December 7, 2020, confirming its position that the bid did not comply with all of the mandatory criteria and was therefore disqualified. In the Tribunal's view, Sigma therefore became aware, on December 7, 2020, that PWGSC had denied its requested relief. The Tribunal received Sigma's complete complaint on February 2, 2021. The complaint is therefore late as it was not filed within 10 working days of Sigma becoming aware that PWGSC had denied it the relief it was seeking.

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<sup>4</sup> Subsections 6(1) and (2) of the *Regulations*.

**The complaint does not disclose a reasonable indication of a breach of the trade agreements**

[15] Pursuant to subsection 7(1) of the *Regulations*, the Tribunal must determine whether the information provided by the complainant, and any other information examined by the Tribunal, discloses a reasonable indication that the procurement was not conducted in accordance with any of the applicable trade agreements set out in that subsection, in this case, the CFTA.<sup>5</sup>

[16] While Sigma did not cite specific trade agreement provisions in its complaint, the most relevant provision of the CFTA would appear to be Article 507.3(b), which requires that a procuring entity “base its evaluation on the conditions that the procuring entity has specified in advance in its tender notices or tender documentation.”

[17] Sigma submits that its bid was inappropriately rejected because one of its proposed personnel resources was incorrectly determined to be non-compliant with all of the mandatory criteria required for that resource under the RFSO, specifically with Mandatory Criterion MT4.4, at Attachment 1 to Part 4 of the RFSO.

[18] Attachment 1 to Part 4, titled “Technical Evaluation”, sets out the requirements for technical proposals under the RFSO. Item 1.0 of Attachment 1 to Part 4 provides as follows:

**1.0 Mandatory Technical Criteria**

The technical offer must meet all mandatory technical criteria specified in the table below. The Offeror must provide the necessary documentation to demonstrate compliance.

Any Offer which fails to meet any of the mandatory technical criteria will be declared non-responsive. Each criterion should be addressed separately.

[19] Mandatory Criterion MT4.4 sets out mandatory requirements for the personnel resource proposed to provide Account Assistance/Business Analyst services under Stream 4. MT4.4 provides as follows:

MT4.4	<p>The resource proposed to provide Account Assistance/Business Analyst services must have acquired, over the last five years from the RFSO closing date, the required experience identified in article 5.4 of Annex A - Statement of Work.</p>	<p>The Offeror’s technical offer must demonstrate the experience of the resource proposed to provide risk management process services, describing the client(s) by industry type, the types of services performed and the duration involved.</p> <p>The Offeror’s technical offer must demonstrate (through submission of a copy of the related certificate(s)), that the resource proposed to provide consultant services has:</p> <ul style="list-style-type: none"> <li>i. Secondary diploma or General Education Development (GED) certificate;</li> </ul>
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<sup>5</sup> According to the RFSO, the CFTA applies to this procurement.

		and ii. 3 years of related work experience.
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[20] Article 5.4 of Annex A – Statement of Work provides as follows:

#### 5.4 Account Assistance / Business Analyst

Under the direction of the Consultant, as appropriate, the Account Assistant / Business Analyst is responsible for providing assistance, as required, to the Consultant. Tasks may include but are not limited to the following:

- a) Collecting and collating qualitative and quantitative data;
- b) Conducting research;
- c) Conducting preliminary analyses;
- d) Compiling background documentation; and
- e) Providing assistance with the development of briefing notes, presentations, papers and/or reports.

##### 5.4.1 Minimum Educational/Experience

At a minimum the Account Assistant must meet a) and b) below:

- a) A secondary school diploma or General Education Development (GED) certificate; and
- b) Have 3 years of related work experience.

[21] PWGSC rejected Sigma’s bid on the basis that it did not comply with the requirements set out in Mandatory Criteria MT4.4, specifically that the submission did not demonstrate the experience of the proposed resource to provide risk management process services, describing the client(s) by industry type, the types of services performed and the duration involved. PWGSC stated that “[t]he resume provided did not clearly demonstrate the resource experience, it only provided titles and the risk management experience was only one year.”<sup>6</sup>

[22] In both its objection to PWGSC and its complaint to the Tribunal, Sigma argued that its proposed resource under MT4.4 conformed to the requirements outlined in Article 5.4 of Annex A, which do not refer directly to three years of experience in risk management. In essence, Sigma’s argument is that three years of work experience related to risk management was an inappropriate requirement for judging compliance with MT4.4, because MT4.4 requires the resource to comply with the requirements outlined in Article 5.4 of Annex A, and because Article 5.4 of Annex A does not mention risk management experience.

<sup>6</sup> Exhibit PR-2020-082-01A at 83.

[23] This argument ignores the text of MT4.4 itself, which requires the offer to demonstrate “the experience of the resource proposed to provide risk management process services” as well as “3 years of related work experience”. In the Tribunal’s view, Article 5.4 of Annex A provides additional requirements to those listed in MT4.4, it does not displace them.

[24] In its complaint, Sigma appears to acknowledge that its bid did not conform to the requirement for three years of risk management experience set out in MT4.4, stating explicitly that “[h]ad Sigma Risk known that the Account Assistance / Business Analyst role required 3 years of *Risk Management* experience, another *qualified* candidate would have been put forward”<sup>7</sup> [italics in original].

[25] Given this tacit acknowledgment by Sigma that the resource it proposed did not have three years of risk management experience, combined with the plain language of MT4.4 setting out such experience as a mandatory technical criterion, and the stipulation at item 1.0 of Attachment 1 to Part 4 that offers failing to meet any of the mandatory technical criteria would be declared non-responsive, the Tribunal fails to see how rejecting Sigma’s bid based on a lack of such experience was in any way inconsistent with the terms of the RFSO.

[26] For these reasons, the Tribunal finds that the complaint does not disclose a reasonable indication that PWGSC failed to conduct the procurement in accordance with the RFSO or the CFTA.

**A reminder for federal institutions: the importance of providing recourse information to unsuccessful potential suppliers**

[27] The Tribunal remarks that, based on documents provided by Sigma, PWGSC does not seem to have immediately and voluntarily provided Sigma with information about recourse mechanisms when it communicated to Sigma, on December 2, 2020, that it was not the successful proponent. In addition, and again based on the documentation provided by Sigma as part of its complaint, it does not seem that PWGSC volunteered information about the Tribunal’s bid challenge authority when it denied Sigma the relief it had sought in its objection. Sigma seems to have been only advised of potential recourse to the Tribunal on January 25, 2021, by a representative of PWGSC’s Office of Small and Medium Enterprise – Western Region, with whom Sigma had been corresponding regarding other concerns it had with the procurement, which were separate from those identified in its complaint to the Tribunal. Because Sigma’s complaint does not explicitly refer to those concerns, the Tribunal does not consider that it has any basis to comment on them here; however, it notes that the concerns also appear to have been the subject of an objection by Sigma, relief for which was denied by PWGSC in late October 2020. The contracting authority does not appear to have mentioned the option of recourse to the Tribunal at any point.

[28] The manner in which PWGSC may have acted, or failed to act, in this case seems to indicate that PWGSC ignored the Tribunal’s repeated emphatic request to provide clear direction, the absence of which constitutes a serious impediment to access to justice by aggrieved suppliers.<sup>8</sup> The Tribunal

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<sup>7</sup> Exhibit PR-2020-082-01A at 2.

<sup>8</sup> *Expert Systèmes (148650 Canada Inc.)* (2 September 2020), PR-2020-027 (CITT) at paras. 20-24; *Seignior Chemical Products Limited, trading as SCP SCIENCE* (6 December 2019), PR-2019-048 (CITT) at para. 35; *Kaméléons & cie Solutions Design Inc.* (26 November 2019), PR-2019-047 (CITT) at para. 22; *R.H. MacFarlands (1996) Ltd.* (23 December 2013), PR-2013-029 (CITT) at paras. 30-31; *ADR Education* (16 July 2013), PR-2013-009 (CITT) at para. 34.

cannot but, again, emphatically request that government institutions systematically include the following paragraph in all communications of regret to potential suppliers:

As a general rule, a complaint regarding this procurement process must be filed with the Canadian International Trade Tribunal within 10 working days from the date on which a bidder becomes aware, or reasonably should have become aware, of a ground of complaint. Alternatively, within that time frame, a bidder may first choose to raise its ground of complaint by way of an objection to the government institution; if the government institution denies the relief being sought, a bidder may then file a complaint with the Tribunal within 10 working days of that denial. In certain exceptional circumstances, a 30-day time frame may be applicable for filing a complaint with the Tribunal. More information can be obtained on the Tribunal's website ([www.citt-tcce.gc.ca](http://www.citt-tcce.gc.ca)) or by contacting the Deputy Registrar of the Tribunal at 613-993-3595.<sup>9</sup>

[29] Notwithstanding the above criticism that PWGSC should have advised Sigma of its potential recourse to the Tribunal, section 6 of the *Regulations* leaves the Tribunal no discretion to consider such circumstances and extend the prescribed deadlines.<sup>10</sup>

## DECISION

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

Frédéric Seppey  
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Frédéric Seppey  
Presiding Member

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<sup>9</sup> Section 6 of the *Regulations*.

<sup>10</sup> *Aero Support Canada Inc.* (22 March 2016), PR-2015-065 (CITT) at para. 16; *The Typhon Group (Barrie) Limited* (28 March 2011), PR-2010-092 (CITT) at paras. 11-12.