



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File No. PR-2020-069

Sourcetec Industries Inc.

v.

Department of Public Works and
Government Services

*Determination issued
Friday, April 30, 2021*

*Reasons issued
Friday, May 14, 2021*

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IN THE MATTER OF a complaint filed by Sourcing Industries 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

SOURCETEC INDUSTRIES 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 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 Sourcing Industries Inc. In accordance with the *Procurement Costs Guideline (Guideline)*, 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 \$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 *Guideline*. The Tribunal reserves jurisdiction to establish the final amount of the cost award.

Susan D. Beaubien
Susan D. Beaubien
Presiding Member

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

Tribunal Panel:	Susan D. Beaubien, Presiding Member
Support Staff:	Zackery Shaver, Counsel
Complainant:	Sourcetec Industries Inc.
Representative of the Complainant	Carrie Lennox
Government Institution:	Department of Public Works and Government Services
Counsel for the Government Institution:	Valérie Arseneault Sébastien Dubois

Please address all communications to:

The Deputy Registrar
Telephone: 613-993-3595
E-mail: citt-tcce@tribunal.gc.ca

STATEMENT OF REASONS

INTRODUCTION

[1] Sourcetec Industries, Inc. (Sourcetec) has filed a complaint with the Tribunal concerning a request for proposal (RFP) issued by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence (DND).¹ The tender process at issue arises from Solicitation No. W0107-21XC02/C, published on November 5, 2020, for the supply and delivery of temporary particle filters for vehicle exhaust (Particle Filters) required by Canadian Forces Base (CFB) Petawawa.²

[2] The Particle Filters operate to filter carcinogenic diesel particles emitted by vehicles as they are moved in and out of buildings, maintenance bays and workshops. As such, the Particle Filters serve to minimize occupational exposure to toxic diesel fumes of personnel working at CFB Petawawa.³ To achieve this objective, the RFP prescribed a list of mandatory technical requirements for the Particle Filters being procured, including (but not limited to) size, particle separation filtration, weight, (engine) revolutions per minute and filtration of oxides of nitrogen, hydrocarbons and carbon monoxide.⁴

[3] Sourcetec is a Canadian distributor of filtration products manufactured by EHC Technik AB (EHC), a Swedish company.⁵ Sourcetec is a supplier to the Canadian Forces and also supplies goods directly to CFB Petawawa.

[4] On July 17, 2019, CFB Petawawa sent an email to Sourcetec requesting a price quote for the supply of EHC Particle Filters (EHC Filters). From that correspondence, it appears that this product had been either supplied to CFB Petawawa by Sourcetec previously, or that previous price quotes had been obtained for it:

Hello, could we please have a fresh quote for the items listed in the attachment. We were unable to action the previous quote in time but still need the items.⁶

[5] Sourcetec supplied the price quote on the same day, indicating that it would maintain its previous pricing.⁷

[6] This became a pattern of correspondence which devolved over the course of the next year. During each of August, September, October of 2019 and February, March, May and July 2020, CFB Petawawa contacted Sourcetec seeking a “refreshed” or “updated” price quote for the EHC Filters. Sourcetec replied to these inquiries on the same or following day, maintaining its price through 2020, despite an intervening price increase from the manufacturer.⁸ This appeared to be a gesture of customer goodwill.

¹ Exhibit PR-2020-069-01.

² Exhibit PR-2020-069-05 at 47-69.

³ *Ibid.* at 61.

⁴ *Ibid.* at 62-63, 67-69.

⁵ Exhibit PR-2020-069-07.

⁶ Exhibit PR-2020-069-01 at 45-46.

⁷ *Ibid.* at 45.

⁸ *Ibid.* at 41-61.

[7] During this time, no fewer than seven different individuals at CFB Petawawa appeared to be successively involved with the file and corresponded with Sourcetec in relation to the seeking of price quotes for EHC Filters.⁹ Ostensibly, the procurement and acquisition of the EHC Filters could not be completed due to lack of funding or internal approval. Progress appeared to have been made by October 2019 when Sourcetec was informed as follows:

We got the go ahead to get the EHC. It has been a long battle to get the funding for the filters but our health and safety committee made it happen. The latest quote that was sent was in September and is now expired.

Could I have a new quote so we can get the purchase going.

Thank you so much.¹⁰

[8] Notwithstanding, the requisite approvals were not forthcoming and CFB Petawawa continued to request, and to receive, “refreshed” (but unchanged) price quotes from Sourcetec as late as July 29, 2020.¹¹

[9] During July 2020, DND submitted a requisition to PWGSC seeking to have the Particle Filters procured from Sourcetec as a sole-source contract.¹² An Advance Contract Award Notice (ACAN) was published on Buyandsell.gc.ca on August 27, 2020. The premise for the ACAN was that Sourcetec was “the only known authorized Canadian distributor for EHC Teknik and capable of providing the required product/equipment.”¹³

[10] The ACAN invited prospective suppliers to submit a statement of capabilities. PWGSC received replies to the ACAN from several suppliers. This apparently caused PWGSC to inform Sourcetec, on September 16, 2020, that the procurement would proceed as a competitive tender.¹⁴ A solicitation (W0107-21XC02/B) was published on September 22, 2020.¹⁵ No compliant bids were received. Sourcetec did not submit a bid.¹⁶

[11] PWGSC then issued a second solicitation, namely the RFP at issue in these proceedings. PWGSC asserts that the RFP was issued pursuant to the “limited tendering exception” in the Canadian Free Trade Agreement¹⁷ and sent to several interested suppliers, including Sourcetec.¹⁸

[12] The RFP had a closing date of November 17, 2020, which was later extended to November 20, 2020. Four amendments to the RFP were issued.¹⁹

⁹ *Ibid.*

¹⁰ *Ibid.* at 53.

¹¹ *Ibid.* at 41.

¹² Exhibit PR-2020-069-11 at 40-44; Exhibit PR-2020-069-07 at 2-5.

¹³ *Ibid.* at 5; see also at 22-27.

¹⁴ *Ibid.* at 46.

¹⁵ Exhibit PR-2020-069-05 at 70.

¹⁶ Exhibit PR-2020-069-11 at 6, 48-49.

¹⁷ Online: Internal Trade Secretariat <<https://www.cfta-alec.ca/wp-content/uploads/2017/06/CFTA-Consolidated-Text-Final-Print-Text-English.pdf>> (entered into force 1 July 2017) [CFTA].

¹⁸ *Ibid.*

[13] Sourcetek submitted a bid.²⁰ Upon evaluation of the bids, PWGSC found Sourcetek's bid to be non-compliant with certain mandatory technical criteria prescribed by the terms of the RFP. The contract was awarded to another bidder and Sourcetek was notified accordingly.²¹

[14] Sourcetek filed a complaint with the Tribunal on December 18, 2020, referencing the fact that CFB Petawawa had specifically sought EHC Filters and had been corresponding with Sourcetek for a year to further that procurement. As the solicitation was premised on EHC Filters, Sourcetek asserts that its bid should have been deemed compliant and should have won the contract as the lowest compliant bid.²²

[15] In its complaint, Sourcetek requested the remedies of termination of the awarded contract and the award of a new contract to Sourcetek.²³

[16] The Tribunal accepted Sourcetek's complaint for inquiry on December 22, 2020.²⁴

[17] PWGSC filed a Government Institution Report (GIR) on February 5, 2021.²⁵

[18] Although receiving notice from the Tribunal,²⁶ the successful bidder did not seek leave to intervene in the proceeding and did not participate.

POSITIONS OF THE PARTIES

Sourcetek

[19] Sourcetek states that it supplies equipment (including EHC Filters) to the Canadian Forces across Canada, and that it also provides custom-made equipment to Canada's military. It submits that the procurement at issue was focused on the specific acquisition of EHC Filters, a product which is exclusive to Sourcetek.

[20] In addition, Sourcetek, alleges that the particulars of the RFP were copied from Sourcetek's price quote supplied directly, as requested, to CFB Petawawa. Moreover, Sourcetek maintained that price for over a year, in response to repeated requests made by personnel at CFB Petawawa for updated and current pricing.

[21] Sourcetek contends that PWGSC wrongly found Sourcetek's bid to be non-compliant. Its bid included a product brochure to demonstrate the technical features of the equipment, as permitted by the terms of the RFP. Sourcetek also says that only technical information pertaining to the filters themselves is required.

¹⁹ Exhibit PR-2020-069-05 at 7-69 (RFP), 5-8 (Amendment 1), 9-12 (Amendment 2), 13-19 (Amendment 3) and 20-21 (Amendment 4).

²⁰ Exhibit PR-2020-069-01 at 14-40; Exhibit PR-2020-069-1B (protected); Exhibit PR-2020-069-1C.

²¹ Exhibit PR-2020-069-01 at 62-63.

²² *Ibid.* at 10.

²³ *Ibid.* at 7.

²⁴ Exhibit PR-2020-069-03.

²⁵ Exhibit PR-2020-069-11.

²⁶ Exhibit PR-2020-069-06.

[22] Finally, Sourcetec asserts that its bid had the lowest price and that PWGSC should have therefore awarded the contract to Sourcetec.

PWGSC

[23] PWGSC submits that it had a duty to evaluate Sourcetec's bid strictly in accordance with the mandatory requirements of the RFP. As Sourcetec's bid contained insufficient information to demonstrate compliance with all mandatory criteria of the RFP, it was properly deemed non-compliant.

[24] Once Sourcetec's bid was deemed non-compliant, PWGSC says that the bid was correctly rejected, without being subjected to a financial evaluation.

[25] PWGSC also asserts that competitive tenders are the presumptive norm and that it correctly proceeded with a competitive procurement process, despite having taken initial steps to acquire Particle Filters by way of a sole-source contract. It further states that Sourcetec was not entitled to receive a contract for the supply of the EHC Filters by reason of having previously supplied equipment to the Canadian Forces and/or price quotations to DND.

[26] Finally, PWGSC contends that Sourcetec's complaint concerning redundant technical specifications for filter casings is out of time and should have been made at the outset of the procurement process.

ANALYSIS

[27] There is no dispute that the RFP pertains to a "designated contract" within the meaning of section 30.1 of the *Canadian International Trade Tribunal Act*.²⁷

[28] Sourcetec's frustration and disappointment with the outcome of the procurement process is quite understandable. It had patiently answered supply inquiries from CFB Petawawa for over a year, keeping the price quote for the EHC Filters intact, while not passing along the effect of a price increase in the cost of the product. Unfortunately, these circumstances do not give rise to any remedy that the Tribunal can award.

[29] The evidence indicates that CFB Petawawa was interested in obtaining EHC Filters and that it recognized Sourcetec as an authorized distributor of those products. Indeed, this premise seems to have underpinned DND's initial efforts for approval to procure the EHC Filters using a sole-source contract.

[30] The trade agreements, including the CFTA, provide for sole sourcing or limited tendering in circumstances where the prospective sole-source supplier holds proprietary or intellectual property rights.²⁸

[31] At least from Sourcetec's perspective, its standing as a distributor for EHC gives rise to at least the implication that Sourcetec has exclusivity in Canada as a supplier of EHC Filters.²⁹ This viewpoint also appears to underpin Sourcetec's assertion that its bid was the lowest compliant bid. If

²⁷ R.S.C., 1985, c. 47 (4th Supp.) [*CITT Act*].

²⁸ For example, see Article 513 of the CFTA and *Papp Plastics & Distributing Ltd. v. Department of Public Works and Government Services* (18 July 2002), PR-2001-066 (CITT).

²⁹ For example, Sourcetec's complaint stresses CFB Petawawa's interest in obtaining "OUR EHC Equipment".

no other bidder can supply the product sought by CFB Petawawa, this leads, at first blush, to the apparent conclusion that Sourcetec is the only bidder able to supply EHC Filters and thus is the bidder with the lowest price for that specific equipment.

[32] However, the evidence falls short of establishing that Sourcetec holds proprietary rights that would preclude third-party supply of Particle Filters that are technically compliant with the provisions of the RFP.

[33] The evidence does not establish that EHC Filters are the only commercial product that can meet the mandatory technical requirements for the Particle Filters as defined by the RFP. The record does show that DND took steps to procure EHC Filters using a sole-source contract,³⁰ because “[n]o other supplier [besides Sourcetec/EHC] in North America or globally can supp[o]rt” and sell Particle Filters with the required size and specifications.³¹ However, DND and PWGSC then changed course as a result of the outcome of the ACAN process. Several possible rationales might explain this result.

[34] From the ACAN process, PWGSC may have learned that EHC has competitors who manufacture a proprietary product that is technically and operationally interchangeable with the EHC Filters. Alternatively, some prospective suppliers may have advised PWGSC that they are able to supply EHC Filters through an alternative distribution pathway. Although EHC confirmed in writing that Sourcetec is an authorized distributor in Canada, the letter did not explicitly state that Sourcetec is the *exclusive* or sole distributor in Canada.³² As such, it is possible that other bidders might be able to obtain EHC Filters from other sources, even if those filters are grey market goods, i.e. authentic products which are sold or traded outside channels of trade that are prescribed by the manufacturer.³³

[35] In the further alternative, other suppliers may have conveyed interest in copying or cloning the EHC Filters. Finally, PWGSC may have learned of alternate products which would be operationally serviceable, even if not identical to the EHC Filters.

[36] Accordingly, the exact reason for PWGSC’s decision to adopt a competitive, as opposed to sole-source, tender process remains unknown and speculative. However, the Tribunal identifies the possible reasons discussed above in order to explain why it cannot uphold the premise of the complaint that the contract was wrongly awarded based on the presumption advanced by Sourcetec, namely that its standing as an EHC distributor precludes any other bidder from being awarded a contract.

[37] To the extent that any of the above circumstances may give rise to any possible remedy, they fall outside the Tribunal’s jurisdiction. Should the Particle Filters supplied to PWGSC infringe any proprietary or intellectual property rights held by either Sourcetec or EHC, those rights may give rise to claims or enforcement action that may fall to be pursued in another venue.

[38] A procuring entity, such as PWGSC in this case, has the discretion to frame the terms of an RFP in order to meet legitimate operational requirements, so long as that discretion is reasonably

³⁰ At least initially, DND appeared to be satisfied that the EHC Filters from Sourcetec were the only suitable product for its operational needs. This was the rationale for seeking authorization to proceed by way of sole-source contract. See Exhibit PR-2020-069-11 at 40, 43-44.

³¹ Exhibit PR-2020-069-11 at 40, 43.

³² Exhibit PR-2020-069-11.

³³ See *Mars Canada Inc. v. Bemco Cash & Carry Inc.*, 2016 ONSC 7201 at para. 7.

exercised. This extends to the prescribing of mandatory technical requirements for the goods and services being procured.³⁴

[39] Accordingly, it was open to PWGSC to draft the RFP with technical specifications that are broad enough to encompass the EHC Filters as well as other products that DND may consider to be operationally equivalent or substitutable, if PWGSC indeed proceeded on this basis.

[40] Neither party submitted independent expert evidence to the Tribunal. Accordingly, there is no basis for the Tribunal to conclude, based on the record before it, that the tender specifications were unreasonably drafted.

[41] The Tribunal now turns to Sourcetec's argument that its bid was wrongly found to be non-compliant.

[42] Sourcetec notes that the RFP stated that bidders could submit brochures to demonstrate the technical attributes of the product to be supplied.³⁵

[43] However, a contextual reading of the RFP shows that bidders were expected to provide *all* of the prescribed technical information, with brochures being advanced as an example of a possible format by which that information could be supplied.³⁶

Any bid which fails to meet the following mandatory technical criteria will be deemed non-responsive and will receive no further consideration.

- (a) Bidders must provide brochures, specifications or a written explanation that demonstrates how the proposed equipment meets each of the following Mandatory Technical Criteria described in Annex "E" – Mandatory Technical Criteria Evaluation.
- (b) The 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, or stating complies is not sufficient.³⁷

[44] The Tribunal has previously held that the onus falls on bidders to demonstrate that their bid addresses and fulfills the mandatory requirements of an RFP.³⁸

[45] The bid document submitted by Sourcetec did include a product brochure for EHC Filters.³⁹ However, the content of that brochure did not provide all of the mandatory technical specifications

³⁴ *NISIT International Ltd. v. Department of Public Works and Government Services* (4 August 2020), PR-2019-067 (CITT) at para. 68 [*NISIT*]; *723186 Alberta Ltd. v. Public Health Agency of Canada* (12 September 2011), PR-2011-028 (CITT) at paras. 19-21; *Daigen Communications v. Canadian Food Inspection Agency* (23 August 2011), PR-2011-021 (CITT) at paras. 16-17; *Almon Equipment Limited v. Canada (Public Works and Government Services)* (3 January 2012), PR-2011-022 (CITT) at paras. 52-55.

³⁵ Exhibit PR-2020-069-01 at 10.

³⁶ Exhibit PR-2020-069-05 at 54, 97-99, 14, 17-19.

³⁷ *Ibid.* at 57.

³⁸ *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.

prescribed by the RFP. Providing a brochure, without more, will not suffice to fulfill the terms of the RFP if the brochure does not include all of the requisite information.

[46] In reviewing the evaluation of bids in a procurement, a reasonableness standard applies.⁴⁰ As noted by the Tribunal in *Samson & Associates*:

The Tribunal typically accords a large measure of deference to evaluators in their evaluation of proposals. Therefore, the Tribunal has repeatedly stated that it will interfere only with an evaluation that is *unreasonable* and will substitute its judgment for that of the evaluators only when the evaluators have not applied themselves in evaluating a bidder's proposal, have ignored vital information provided in a bid, have wrongly interpreted the scope of a requirement, have based their evaluation on undisclosed criteria or have otherwise not conducted the evaluation in a procedurally fair way. In addition, the Tribunal has previously indicated that a government entity's determination will be considered reasonable if it is supported by a tenable explanation, regardless of whether the Tribunal itself finds that explanation compelling.⁴¹

[Footnotes omitted]

[47] The Tribunal has reviewed the bid evaluation sheets that were generated during PWGSC's review of Sourcetek's bid, which was considered separately by three individuals who submitted their evaluations to DND and PWGSC in writing.⁴²

[48] During the evaluation of Sourcetek's bid, it appears that the evaluators attempted to map the technical content provided by Sourcetek's bid to the mandatory technical requirements, as presented within the RFP in the form of a grid.⁴³ Although the EHC brochure contained a significant amount of technical information, other items listed as mandatory technical requirements in the RFP were not addressed by the EHC brochure or elsewhere in the bid document. The presence of these gaps in technical information caused the evaluators to find that Sourcetek's bid was non-compliant.⁴⁴

[49] Quite possibly, Sourcetek was operating under the assumption that DND (and by extension, PWGSC) was already familiar with EHC Filters and that consequently, all of the technical features of the product did not need to be spelled out by Sourcetek in its bid such that the technical content of its bid could rest solely on the information contained in EHC's product brochure.

[50] The Tribunal will review complaints arising from a procurement process to ensure that the procurement, including the evaluation of received bids, is conducted fairly, openly and transparently, in accordance with the terms of the tender documents as provided to prospective bidders. However, in doing so, it cannot redraft the RFP requirements or the evaluation criteria.⁴⁵

³⁹ Exhibit PR-2020-069-01 at 37-40.

⁴⁰ *NISIT* at para. 75; *Samson & Associates v. Department of Public Works and Government Services* (13 April 2015), PR-2014-050 at para. 35 [*Samson & Associates*].

⁴¹ *Samson & Associates* at para. 35.

⁴² Exhibit PR-2020-069-11A at 87-104.

⁴³ Exhibit PR-2020-069-05 at 97-99.

⁴⁴ *Ibid.*

⁴⁵ *Valley Associates Global Security Corporation v. Department of Public Works and Government Services* (23 July 2020), PR-2019-060 (CITT) at paras. 75-77.

[51] The RFP was explicit in defining the technical content required for a compliant bid. It also clearly prescribed that a bid that did not fulfill these criteria would be rejected as non-compliant.

[52] A finding that the gaps in Sourcetek's bid should have been disregarded by PWGSC on the basis of presumed familiarity with the proposed product to be supplied would amount to granting one bidder a waiver from some of the RFP requirements. Moreover, such a waiver would arise retroactively, after the tender had concluded, and would thus be unfair to other bidders.

[53] The Tribunal finds that the PWGSC evaluators applied themselves in attempting to locate information within Sourcetek's bid that would address each of the RFP's mandatory technical requirements. Sourcetek's bid was deemed non-compliant because some of the requisite information was not present. By way of example, the evaluators found that the content of the second mandatory requirement (MTC-2) had not been addressed at all in Sourcetek's bid.

[54] A reasonable evaluation is one that is supported by a tenable explanation, even if that explanation is not one that the Tribunal finds compelling.⁴⁶

[55] In view of the foregoing, the Tribunal finds no basis to conclude that the bid evaluation was unfair or that the evaluators did not reasonably consider and apply the prescribed evaluation criteria in relation to Sourcetek's bid.

[56] In its complaint, Sourcetek also asserts that some of the mandatory technical requirements of the RFP pertained to surrounding equipment that house the Particle Filters or are used in conjunction with the filters are unnecessary.⁴⁷ The implication is that such technical requirements are extraneous or irrelevant to the filters and thus superfluous as a mandatory technical requirement of the RFP.

[57] The Tribunal disagrees with PWGSC that this aspect of Sourcetek's complaint is out of time. The evidence does not indicate that Sourcetek had any particular reservations about this requirement when it prepared its bid. Instead, it apparently proceeded on the assumption that the EHC product and brochure and DND's presumed familiarity with EHC Filters was sufficient to fully meet the RFP's requirements.

[58] As noted above, the procuring entity has the discretion to define the mandatory technical requirements of a tender document. The Tribunal will defer to the expertise and judgment of the procuring entity in defining both its operational requirements and the equipment needed to meet those requirements, for the purposes of procurement, unless the procuring entity has exercised its discretion unreasonably.

[59] Given that the purpose of the Particle Filters is to reduce occupational exposure to toxic substances generated by diesel engines, it is foreseeable that the filters may be required to complement or integrate with other equipment or may require accessories to facilitate their safe use and operation. Although there may be room for disagreement, the test is one of reasonableness. In such circumstances, there is no basis for the Tribunal to find that PWGSC acted unreasonably in defining the mandatory technical requirements.

⁴⁶ *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. See also *C3 Polymeric Limited v. National Gallery of Canada* (14 February 2013), PR-2012-020 (CITT) at para. 38.

⁴⁷ i.e. filter casings; see Exhibit PR-2020-069-01 at 10.

[60] For all of the above reasons, the complaint must be dismissed.

COSTS

[61] The Tribunal is conferred with a broad statutory discretion concerning the allocation of costs in a procurement dispute.⁴⁸

[62] As a general principle, costs usually follow the event.⁴⁹ As PWGSC has been successful, the Tribunal awards PWGSC its reasonable costs of the proceeding.

[63] This proceeding was not particularly complex. The issues were relatively straightforward and the materials submitted by the parties were not particularly voluminous. As such, the Tribunal's preliminary determination is that costs of this inquiry fall within Level 1 of the *Canadian International Trade Tribunal Procurement Costs Guideline*.

[64] The Tribunal encourages the parties to discuss and reach an agreement on the payment of costs, having regard to the content of these reasons.

[65] If no agreement can be reached, the parties may make submissions on costs within 15 days of the date of this Statement of Reasons.

Susan D. Beaubien

Susan D. Beaubien

Presiding Member

⁴⁸ Section 30.16, *CITT Act*; *Canada (Attorney General) v. Georgian College of Applied Arts and Technology*, 2003 FCA 199, [*Georgian College*] at para. 26.

⁴⁹ *Georgian College* at para. 28; *Canada (Attorney General) v. Educom TS Inc.*, 2004 FCA 130, at para. 11.