



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

---

## DETERMINATION AND REASONS

File Nos. PR-2020-009 and  
PR-2020-022

Falcon Environmental Inc.

v.

Department of Public Works and  
Government Services Canada

*Determination and reasons issued  
Thursday, October 22, 2020*

**TABLE OF CONTENTS**

DETERMINATION.....	1
STATEMENT OF REASONS .....	3
SUMMARY OF COMPLAINTS .....	3
PROCUREMENT PROCESS.....	4
COMPLAINT PROCEEDINGS.....	5
Falcon’s first complaint (File No. PR-2020-009).....	5
Falcon’s second complaint (File No. PR-2020-022).....	6
POSITIONS OF THE PARTIES .....	6
Falcon .....	6
PWGSC.....	7
PNWR .....	7
ANALYSIS.....	8
Falcon’s grounds of complaint .....	8
Relevant provisions of trade agreements and standard of review .....	10
Application to the evaluation of proposals in this case .....	11
REMEDY .....	16
COSTS.....	16
ANNEX 1 .....	18
ANNEX 2 .....	22

IN THE MATTER OF complaints filed by Falcon Environmental 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 complaints pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

**BETWEEN**

**FALCON ENVIRONMENTAL 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*, the Canadian International Trade Tribunal determines that the complaints are valid.

Pursuant to subsections 30.15(2) and (3) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal recommends that the Department of Public Works and Government Services terminate the current designated contract with Pacific Northwest Raptors Ltd. and award the contract to Falcon Environmental Inc. as the new highest-ranked responsive bidder in relation to Solicitation No. W0125-20WR08/A.

Pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal awards Falcon Environmental Inc. its reasonable costs incurred in preparing and proceeding with these complaints, which costs are to be paid by the Department of Public Works and Government Services. In accordance with the *Procurement Costs Guideline*, the Canadian International Trade Tribunal's preliminary indication of the level of complexity for these complaints is Level 2, and its preliminary indication of the amount of the cost award is \$3,500. 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 Canadian International Trade Tribunal, as contemplated in Article 4.2 of the *Procurement Costs Guideline*. The Canadian International Trade Tribunal reserves jurisdiction to establish the final amount of the cost award.

Georges Bujold

---

Georges Bujold

Presiding Member

---

Tribunal Panel:	Georges Bujold, Presiding Member
Support Staff:	Zackery Shaver, Counsel
Complainant:	Falcon Environmental Inc.
Counsel for the Complainant:	Gerry Stobo Marc McLaren-Caux Andrew Paterson
Government Institution:	The Department of Public Works and Government Services Canada
Counsel for the Government Institution:	Roy Chamoun Benjamin Hiemstra Peter Osborne Margaret Robbins
Intervener:	Pacific Northwest Raptors Ltd.
Representative for the Intervener:	Gillian Radcliffe

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](mailto:citt-tcce@tribunal.gc.ca)

## STATEMENT OF REASONS

### SUMMARY OF COMPLAINTS

[1] The reasons contained herein address two related inquiries into complaints filed by Falcon Environmental Inc. (Falcon) (File Nos. PR-2020-009 and PR-2020-022), in which it alleged that the Department of Public Works and Government Services (PWGSC), acting on behalf of the Department of National Defence (DND), had failed to evaluate the winning bid, tendered by Pacific Northwest Raptors Ltd. (PNWR), in conformance with Canada's trade agreements.

[2] The two complaints originate from the same procurement process (Solicitation No. W0125-20WR08/A), a Request for Proposals (RFP) for the provision of aerodrome wildlife control services at Canadian Forces Base (CFB) Trenton and Canadian Forces Detachment Mountain View.

[3] Falcon alleges that PWGSC did not evaluate the proposal of the winning bidder, PNWR, in accordance with the evaluation criteria set out in the RFP. In particular, Falcon claims that PNWR's bid should have been declared non-responsive and, even assuming that it met the stated mandatory criteria, should not have received full points for technical merit. The list of errors committed by the evaluators according to Falcon is as follows:

- (a) PNWR's bid could not have been compliant with mandatory criterion M2;
- (b) PNWR's bid should not have been awarded full points for rated criterion R1;
- (c) PNWR's bid was evaluated pursuant to undisclosed criteria;
- (d) PNWR's bid did not demonstrate that PNWR was able to perform the services required in the Statement of Work (Annex "A" of the RFP);
- (e) The information provided by PWGSC revealed that it applied the Compliance Assessment Report (CAR)<sup>1</sup> provisions of the RFP in a manner contrary to the obligations contained in the applicable trade agreements; and
- (f) PNWR's bid was improperly awarded points for rated criterion R1 on the basis of information provided in PNWR's CAR response, something that was expressly prohibited in the RFP; or alternatively, that the evaluators failed to apply themselves in their evaluation of rated criterion R1 on the basis of what was contained – or more accurately, not contained – in PNWR's original bid.<sup>2</sup>

[4] As a remedy, Falcon requested that the Tribunal recommend that the contract with PNWR be terminated and a new contract awarded to Falcon instead. Falcon submitted that this remedy is the most appropriate because once the errors in the evaluation of PNWR's bid are accounted for, Falcon's bid turns out to be the highest-rated responsive bid. In the alternative, Falcon requested that

---

<sup>1</sup> Upon completion of an assessment in Phases I or II of the evaluation process, the PWGSC procurement officer was to issue a CAR to bidders. This report informs them either that PWGSC is considering their bid as is or identifies any eligible mandatory requirement for which the bid does not as yet demonstrate compliance and for which the bidder will be entitled to provide a response.

<sup>2</sup> Allegations (a) to (d) were made in Falcon's initial complaint (File No. PR-2020-009). Allegations (e) and (f) were made in its second complaint (File No. PR-2020-022).

it be compensated for its lost profits or lost opportunity to profit. Falcon also requested as a further alternative that it be awarded its bid preparation costs. In any case, Falcon requested that it be awarded its complaint costs.

[5] On June 16, 2020 (File No. PR-2020-009), and August 6, 2020 (File No. PR-2020-022), having determined that the complaints met the conditions set out in subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,<sup>3</sup> the Tribunal decided, pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*,<sup>4</sup> to conduct an inquiry into the complaints.

[6] The Tribunal conducted an inquiry into the validity of the complaints as required by sections 30.14 and 30.15 of the *CITT Act*. In this regard, at the time of the filing of its second complaint concerning this procurement process, Falcon requested that the proceedings in both complaint files be combined into a single inquiry. On August 17, 2020, the Tribunal informed the parties that it had decided against formally joining the proceedings, due to its concern that combining the proceedings would not leave it with sufficient time to adequately examine the allegations and evidence filed in both complaints and to deliberate on all issues, after the date of the closing of the record.<sup>5</sup>

[7] However, the Tribunal indicated to the parties that it would endeavour to address the allegations in File No. PR-2020-022 as expeditiously as the circumstances and considerations of fairness would permit, while examining the allegations made in File No. PR-2020-009. The Tribunal also noted that it could decide to formally combine the inquiries at a later date, after its review of the evidence which, at the time, had yet to be filed in File No. PR-2020-022. Ultimately, the Tribunal decided, pursuant to rule 6.1 of the *Canadian International Trade Tribunal Rules*,<sup>6</sup> to combine the proceedings into a single inquiry.

[8] For the reasons provided below, the Tribunal finds that the complaints are valid.

## **PROCUREMENT PROCESS**

[9] On September 5, 2019, PWGSC issued a Request for Proposals (RFP) on Buyandsell.gc.ca. Amendment 01, containing the bid solicitation documents, was published on September 6, 2019.

[10] On November 13, 2019, at 2:00 p.m. Eastern Standard Time, the RFP closed.<sup>7</sup> Two bids were received; one bid from Falcon and another from PNWR.

[11] On November 28, 2019, PNWR received a CAR from PWGSC indicating that its bid did not comply with certain mandatory criteria.<sup>8</sup> In accordance with the evaluation procedures set out in the

---

<sup>3</sup> SOR/93-602 [*Regulations*].

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

<sup>5</sup> This concern stemmed from the fact that Falcon's second complaint was filed almost two months after the Tribunal's decision to conduct an inquiry into Falcon's first complaint, and that the Tribunal had no authority to extend the statutory deadline for the issuance of its determination in File No. PR-2020-009 beyond October 22, 2020.

<sup>6</sup> SOR/91-499.

<sup>7</sup> Exhibit No. PR-2020-009-16, Vol. 1 at 32.

<sup>8</sup> Exhibit No. PR-2020-009-16A (protected), Vol. 2 at 78.

RFP, PWGSC requested that PNWR respond to the CAR with additional or different information by December 5, 2019, in order to remedy its failure to meet the specified mandatory criteria.<sup>9</sup>

[12] On December 4, 2019, PNWR provided PWGSC with its reply to the CAR.<sup>10</sup>

[13] On February 18, 2020, Falcon was informed by email that it was not the successful bidder in the solicitation. The email stated that PNWR had tendered the winning bid and that the contract would start May 1, 2020. According to PWGSC, the date of the commencement of the performance of the contract was subsequently postponed until November 2020. The contract award value was \$312,900 for the first year of the contract, with four additional one-year options.

[14] Falcon filed objections to the award of the contract with PWGSC on March 2 and 3, 2020, and requested that PWGSC provide several documents related to the procurement.

[15] Following several delays related to office closures due to the COVID-19 pandemic, on May 26, 2020, PWGSC provided a reply to Falcon's objections and refused to disclose the documents requested.

## COMPLAINT PROCEEDINGS

### Falcon's first complaint (File No. PR-2020-009)

[16] On June 9, 2020, Falcon filed its first complaint with the Tribunal.

[17] On June 16, 2020, the Tribunal accepted the complaint for inquiry.

[18] On July 10, 2020, PNWR, the contract awardee, requested to participate in the inquiry as an intervener. Neither Falcon nor PWGSC opposed PNWR's request to intervene. The Tribunal accepted PNWR's request on July 20, 2020.

[19] On July 23, 2020, PWGSC filed its Government Institution Report (GIR).

[20] On July 27, 2020, Falcon filed a letter with the Tribunal requesting that it order the production of additional documents. On the same day, the Tribunal sent a letter to the parties requesting their comments on the request.

[21] Following the receipt of submissions by PWGSC on July 31, 2020, and by Falcon on August 5, 2020, on August 7, 2020, the Tribunal ordered that PWGSC produce a portion of the additional documents requested by Falcon. The documents ordered to be produced included PNWR's bid and all correspondence with respect to guidance on the evaluations of bids and to mandatory criterion M2 and point rated criterion R1, which, according to Falcon, are the requirements of the RFP that PWGSC failed to properly interpret and apply in the evaluation of PNWR's bid.<sup>11</sup>

[22] On August 14, 2020, PWGSC produced the requested documents.

---

<sup>9</sup> The relevant excerpts of the evaluation procedures prescribed by the RFP are reproduced in Annex 1 of these reasons.

<sup>10</sup> Exhibit No. PR-2020-009-16A (protected), Vol. 2 at 81.

<sup>11</sup> Mandatory Criterion M2 and Point Rated Technical Criterion R1 are reproduced in Annex 2 of these reasons.

[23] On August 20, 2020, PNWR filed its comments on the complaint and the GIR.

[24] Also on August 20, 2020, Falcon sent a letter to the Tribunal, stating its belief that PWGSC had not complied with the Tribunal's production order and requesting that PWGSC provide complete disclosure.

[25] On August 24, 2020, PWGSC objected to the request and noted that it did not have any other relevant documents in its possession to disclose.

[26] On August 27, 2020, the Tribunal denied Falcon's request for additional disclosure.

[27] On August 27, 2020, Falcon provided its reply to the GIR and to PNWR's comments.

### **Falcon's second complaint (File No. PR-2020-022)**

[28] On August 5, 2020, Falcon filed its second complaint with the Tribunal.

[29] On August 6, 2020, the Tribunal accepted Falcon's complaint for inquiry.

[30] On August 28, 2020, PWGSC filed its GIR.

[31] On September 2, 2020, PNWR requested to intervene. The Tribunal accepted PNWR's request on September 3, 2020.

[32] On September 8, 2020, PNWR filed its comments on the complaint and the GIR.

[33] On September 11, 2020, Falcon provided its reply to the GIR and to PNWR's comments.

## **POSITIONS OF THE PARTIES**

### **Falcon**

[34] Falcon submitted that mandatory criterion M2 and point-rated criterion R1 required that bidders demonstrate they had specific experience in providing services at military airfields and added that PNWR does not possess the necessary experience. In particular, it claimed that PNWR does not currently hold any wildlife management contracts at large military airfields (29,000 or more aircraft movements per year), nor does it hold a wildlife management contract at Vancouver International Airport and therefore does not have the requisite experience needed to meet mandatory criterion M2. Falcon further argued that none of the locations where PNWR currently runs wildlife management services would have the type of flight movements and requisite characteristics with respect to low-level flights using fast-moving aircraft of various kinds of the type encountered at CFB Trenton. Therefore, Falcon's primary position is that PNWR could not demonstrate that it possessed the experience required by mandatory criterion M2.

[35] Falcon added that PWGSC's decision to award the contract to PNWR despite its non-compliance with the terms of the RFP suggests that PWGSC misinterpreted the scope of the evaluation criteria or used undisclosed criteria in the evaluation of the proposals. With respect to the evaluation of PNWR's bid against point-rated criterion R1, Falcon submitted that PNWR should not have received any points. In this regard, Falcon contends that a bid that did not demonstrate



compliance with mandatory criterion M2 could not, by necessary implication, obtain points for rated criterion R1, in view of the structure of the RFP and the wording of these criteria.

[36] Falcon also submitted that, in any event, when evaluating PNWR's bid against rated criterion R1, the evaluators breached the terms of the RFP by considering information that was not included in PNWR's original bid, namely, that PNWR had experience providing wildlife control services at an airport with low-level flight movements involving aircraft with certain precisely defined characteristics. Falcon's argument is that because PNWR's additional information for demonstrating compliance with mandatory criterion M2 was provided through the CAR process, according to the evaluation procedures set out on in the RFP, the evaluators were not permitted to take into account any such additional information in the evaluation of bids and in determining their respective scores for point-rated requirements at Phase III of the evaluation process. Falcon argued that its complaints are valid on this basis alone.

### **PWGSC**

[37] In its GIRs, PWGSC submitted that it evaluated both Falcon and PNWR's bids fairly, transparently and consistently with the criteria set out in the RFP. Further, it outlined the steps that it took in investigating Falcon's objections to PNWR's contract award and the assertion that PNWR did not meet some of the mandatory and rated criteria.

[38] In response to Falcon's objection, PWGSC, in coordination with DND, verified the content of PNWR's bid with their client references and re-evaluated the bid to ensure there had been no errors. This included verifying the nature and type of work that PNWR had completed with the Vancouver Airport Authority. Notably, the airport authority confirmed that the airport had hosted a military aerobatics squadron and had seen monthly passes from military aircraft in order to properly calibrate the airport's RADAR systems.

[39] PWGSC also submitted that Falcon's interpretation of the mandatory requirement at issue is erroneous as criterion M2 contemplated that the relevant experience could be acquired at airfields other than military airfields. PWGSC added that Falcon does not properly read the wording of point-rated criterion R1, which awards points for experience over and above that required to meet mandatory criterion M2. PWGSC also suggested that Falcon's interpretation of the RFP's bid evaluation criteria would risk distorting the phased compliance evaluation process used by PWGSC and other government departments in technical or complex procurements to ensure that many potential suppliers are given a fair chance at submitting a compliant bid.

### **PNWR**

[40] In her comments, PNWR's principal, Gillian Radcliffe, noted that in her 35-year career in the business of falconry and wildlife control, she had never experienced a competitor that had sought to so aggressively undermine her business and her credibility as an operator. She found that Falcon had misrepresented the nature of the RFP to the Tribunal and had sought to bully its way into keeping the contract well past its expected end date.<sup>12</sup>

[41] PNWR also indicated that PWGSC has tendered the contract for wildlife control services twice in the last five years, with nearly identical mandatory criteria, and in both instances PNWR's

---

<sup>12</sup> Exhibit No. PR-2020-009-27, Vol. 1 at 3.

bid was found to be compliant. Given PNWR has had the benefit of an additional five years of experience, PNWR did not see how it could be less qualified now than it was five years ago to fulfill the requirements of the contract.<sup>13</sup>

## ANALYSIS

[42] Subsection 30.14(1) of the *CITT 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.

[43] 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. In the present case, the RFP states that the procurement is subject to *inter alia* the provisions of the *Canadian Free Trade Agreement*<sup>14</sup>, the *North American Free Trade Agreement*<sup>15</sup>, and the *WTO Agreement on Government Procurement*<sup>16, 17</sup>.

### Falcon's grounds of complaint

[44] In its initial complaint (File No. PR-2020-009), Falcon alleged that the winning bid of PNWR was incorrectly and, therefore, unreasonably evaluated by PWGSC. Specifically, Falcon made the following allegations:

- PNWR's bid could not have been compliant with mandatory criterion M2;
- PNWR's bid should not have been awarded full points for rated criterion R1;
- PNWR's bid was evaluated pursuant to undisclosed criteria; and
- PNWR's bid did not demonstrate that PNWR was able to perform the services required in the Statement of Work (Annex "A" of the RFP).<sup>18</sup>

---

<sup>13</sup> *Ibid.* at 5.

<sup>14</sup> Canadian Free Trade Agreement, online: Internal Trade Secretariat < <https://www.cfta-alec.ca/wp-content/uploads/2017/07/CFTA-Consolidated-Text-Final-Print-Text-English.pdf> > (coming into force July 1, 2017) [*CFTA*].

<sup>15</sup> North American Free Trade Agreement *between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2 (entered into force 1 January 1994) [*NAFTA*].

<sup>16</sup> *Revised Agreement on Government Procurement*, online: World Trade Organization < [http://www.wto.org/english/docs\\_e/legal\\_e/rev-gpr-94\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.htm) > (entered into force 6 April 2014) [*AGP*].

<sup>17</sup> The RFP and the Notice of Proposed Procurement published on Buyandsell.gc.ca list other applicable trade agreements. The Tribunal notes that the other applicable trade agreements have provisions that are similar to those of the *CFTA*, *NAFTA* and the *AGP*.

<sup>18</sup> Exhibit No. PR-2020-009-16, Vol. 1 at 55.

[45] Following receipt of the GIR and the documents filed by PWGSC in response to its first complaint, Falcon made the following additional allegations in its second complaint (File No. PR-2020-022):

- The information provided by PWGSC revealed that it applied the CAR provisions of the RFP in a manner contrary to the obligations contained in the applicable trade agreements; and
- PNWR's bid was improperly awarded points for rated criterion R1 on the basis of information provided in PNWR's CAR response, something that was expressly prohibited by the RFP; or, alternatively, that the evaluators failed to apply themselves in their evaluation of rated criterion R1 on the basis of what was contained – or more accurately, not contained – in PNWR's original bid.

[46] The Tribunal notes that both complaints dispute PWGSC's evaluation of PNWR's bid against rated criterion R1, albeit for different reasons. In File No. PR-2020-009, Falcon's claim in this regard is consequential to its first allegation, i.e. that PNWR's bid was not compliant with mandatory criterion M2.

[47] Falcon's argument stems from the fact that, under the evaluation methodology set out in the RFP, points for rated criterion R1 would only be awarded if a bidder could demonstrate that it exceeded the experience requirements of mandatory criterion M2. According to Falcon, given that the evaluation criteria were structured in such a way that a bidder could only receive points for rated criterion R1 in the event that it was found compliant with mandatory criterion M2, and where it could demonstrate experience over and above what mandatory criterion M2 required, if PNWR's bid did not demonstrate compliance with mandatory criterion M2 (which is Falcon's position), it follows that PNWR should not have received any points for rated criterion R1.

[48] In File No. PR-2020-022, Falcon's claim that PWGSC erred in its evaluation of PNWR's bid against point-rated criterion R1 is not dependent on finding, as a first step or precondition, that PNWR's bid was not responsive to the requirements of mandatory criterion M2. In fact, Falcon's ground of complaint with respect to rated criterion R1 in its second complaint presumes that the information provided by PNWR in response to the CAR was sufficient for PWGSC to declare its bid compliant with mandatory criterion M2.<sup>19</sup> Falcon's position is that, by virtue of the terms of the RFP, the evaluators were not permitted to take into account any new information submitted by a bidder through the CAR process when scoring rated criterion R1. According to Falcon, the evidentiary record demonstrates that the evaluators impermissibly relied on information provided by PNWR through the CAR process to unreasonably award points for rated criterion R1.<sup>20</sup>

---

<sup>19</sup> While Falcon argues that this information did not demonstrate compliance with M2, its allegation of improprieties in the evaluation of PNWR's bid against rated criterion R1, in File No. PR-2020-022, is made "[e]ven if the information provided by [PNWR] in response to the CAR was responsive to the requirements of M2 . . ." See Exhibit No. PR-2020-009-31, Vol. 1 at para. 37.

<sup>20</sup> The Tribunal notes that PWGSC argued, in File No. PR-2020-022, that this allegation was filed outside the time limits set out in section 6 of the *Regulations*. Contrary to PWGSC's claim, this ground of complaint was not filed late, as it is based on information that was not provided to Falcon until July 23, when it received the GIR in File No. PR-2020-009, and the second ground of complaint was filed within 10 working days after that date (on August 5, 2020).

[49] For the reasons provided below, the Tribunal finds that, due to an unredeemable error in the evaluation of PNWR's bid against point-rated criterion R1, the contract was improperly awarded to PNWR. On that basis alone, in view of the wording of the RFP, the Tribunal finds that PWGSC breached the applicable provisions of the relevant trade agreements in determining that PNWR's bid was the highest responsive bid. Had its bid been evaluated pursuant to the terms of the RFP, PNWR would not have been the highest-ranked bidder, that is, the bidder with the highest combined rating of technical merit and price.<sup>21</sup> As Falcon was the only other responsive bidder, it should have been awarded the contract and, therefore, the complaints are valid.

### Relevant provisions of trade agreements and standard of review

[50] The question before the Tribunal is whether the evaluation team erred in its evaluation of PNWR's proposal and, if so, if any such error is sufficient for the Tribunal to interfere with the evaluation and substitute its judgment for that of the evaluators. As shall be seen, in this case, the error made by the evaluators in determining that PNWR's bid contained sufficient information with regard to the experience required to achieve the maximum score of 30 points on rated criterion R1 warrants the Tribunal's intervention.

[51] In terms of a potential breach of the relevant trade agreements, the *CFTA* provides that a procuring entity shall "... base its evaluation on the conditions that the procuring entity has specified in advance in its tender notice or tender documentation"<sup>22</sup> and that, "[t]o be considered for an award, a tender shall ... at the time of opening, comply with the essential requirements set out in the tender notices and tender documentation ..."<sup>23</sup>

[52] Moreover, Article 515(5) of the *CFTA* provides the following:

Unless a procuring entity determines that it is not in the public interest to award a contract, the procuring entity shall award the contract to the supplier that the procuring entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the tender notices and tender documentation, has submitted:

- (a) the most advantageous tender; or
- (b) if price is the sole criterion, the lowest price.

[53] Articles 1015(4)(a), (c) and (d) of *NAFTA* and Articles VIII(3)(b) and XV(4) and (5) of the *AGP* contain similar provisions.

[54] The Tribunal typically accords a large measure of deference to evaluators in their evaluation of proposals.<sup>24</sup> The Tribunal has indicated as follows:

... 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

<sup>21</sup> Article 4.2.1 of the RFP (see Annex 1 of these reasons).

<sup>22</sup> Article 507(3)(b) of the *CFTA*.

<sup>23</sup> Article 515(4) of the *CFTA*.

<sup>24</sup> See, for example, *Saskatchewan Institute of Applied Science and Technology v. Department of Foreign Affairs, Trade and Development* (9 January 2014), PR-2013-013 (CITT) [*Saskatchewan Institute*] at para. 58.

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.<sup>25</sup>

[Footnotes omitted]

[55] The Tribunal has also held that the onus lies 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 is compliant with the requirements of the solicitation.<sup>26</sup>

[56] The circumstances under which the Tribunal will substitute its judgment for that of the evaluators, where they have wrongly interpreted and applied a requirement set out in the solicitation documents, applies to both mandatory and rated requirements. Evaluators must correctly interpret the scope and meaning of rated requirements and consider all elements of each rated criterion.<sup>27</sup> In the absence of evidence to the contrary, an error in the interpretation of a requirement will result in a scoring error.<sup>28</sup> Finally, the Tribunal has previously found that a failure on the part of the contracting authority to observe the evaluation methodology it had set out for itself in the solicitation documents will result in an inconsistency with the requirements of the trade agreements.<sup>29</sup> Indeed, this is tantamount to applying an undisclosed criterion in the evaluation of proposals.

#### **Application to the evaluation of proposals in this case**

[57] Applying the principles above to the facts before the Tribunal, it is clear that PWGSC failed to evaluate PNWR's bid against rated criterion R1 in accordance with the terms of the RFP. As discussed below, the RFP expressly prohibited evaluators from using the information filed by a bidder in response to a CAR to increase the points an original bid could have received for a rated requirement. As argued by Falcon, the evidence filed with the GIR in File No. PR-2020-009 demonstrates that the evaluators did just that and, by doing so, improperly determined that PNWR was the highest ranked bidder.

[58] Given the provisions in the trade agreements requiring contracting authorities to base their evaluation solely on the evaluation criteria in the solicitation documents, this error, in itself, is sufficient to conclude that the evaluation was unreasonable and justifies the Tribunal's intervention to substitute its judgment for that of the evaluators.

[59] The Tribunal's conclusion is supported by the following facts and evidence.

[60] In the case at hand, the evaluation procedures contained in Part 4 of the RFP set out a Phased Bid Compliance Process (PBCP). The three phases of the evaluation were as follows: Phase I –

---

<sup>25</sup> *Saskatchewan Institute* at para. 58.

<sup>26</sup> See, for example, *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).

<sup>27</sup> *Excel Human Resources Inc.* (25 August 2006), PR-2005-058 (CITT) at paras. 32-34; *Info-Electronics HP Systems Inc.* (2 August 2006), PR-2006-012 (CITT) at paras. 31, 32; *Viero Network Inc.* (23 April 2014), PR-2013-037 (CITT) at paras. 39, 48.

<sup>28</sup> *Saskatchewan Institute* at paras. 83-92.

<sup>29</sup> *TPG Technology Consulting Ltd.* (2 November 2007), PR-2007-025 (CITT) at paras. 31-35.

Financial Bid; Phase II – Technical Bid; and Phase III – Final Evaluation of the Bid. Phase I concerned the financial bid submitted and is not relevant in this matter. Phase II consisted of a review of the mandatory criteria to determine whether a bidder met those criteria and, if not, whether the CAR process would be used to allow a bidder to provide additional information to demonstrate compliance with any mandatory criterion. The evaluators determined that PNWR did not meet the criteria based on a review of the information included in its technical bid.

[61] Assuming that a bidder met all mandatory criteria (whether or not by way of the CAR process), the bidder's proposal would then move to Phase III at which point the final evaluation would take place, including the scoring of the rated requirements.<sup>30</sup>

[62] Crucially, the RFP made it clear that any information offered by a bidder in response to a CAR could not be used following the Phase II evaluation process, including using the additional information to increase a bidder's score in the evaluation of point-rated technical criteria at Phase III. Phase II was limited to a review of the bids to identify any instances where a bidder had failed to meet any mandatory criterion. It is only at Phase III of the evaluation process that the bids would be assessed in accordance with the entire requirement of the solicitation, including the technical and financial evaluation criteria.<sup>31</sup> In this respect, Article 4.1.1.3(g) of the RFP provides as follows:

*Additional or different information submitted during Phase II permitted by this section will be considered as included in the Bid, but will be considered by Canada in the evaluation of the Bid at Phase II only for the purpose of determining whether the Bid meets the Eligible Mandatory Criteria. It will not be used at any Phase of the evaluation to increase any score that the original Bid would achieve without the benefit of such additional or different information.* For instance, an Eligible Mandatory Criterion that requires a mandatory minimum number of points to achieve compliance will be assessed at Phase II to determine whether such mandatory minimum score would be achieved with such additional or different information submitted by the Bidder in response to the CAR. If so, the Bid will be considered responsive in respect of such Eligible Mandatory Criterion, and the additional or different information submitted by the Bidder shall bind the Bidder as part of its Bid, but the Bidder's original score, which was less than the mandatory minimum for such Eligible Mandatory Criterion, will not change, and it will be that original score that is used to calculate any score for the Bid

[Emphasis added]

[63] In other words, any additional information provided by a bidder was to be used solely for the purpose of determining whether a bid met the mandatory criteria, and was to be disregarded in Phase III, the stage at which point rated criteria were assessed. This meant that the evaluation of bids against rated criteria, including rated criterion R1, had to be based on the information found in a bidder's original proposal.

---

<sup>30</sup> Exhibit No. PR-2020-009-16, Vol. 1 at 40-45 and 163-169.

<sup>31</sup> Article 4.1.1.4 of the RFP (see Annex 1 of these reasons).

[64] Reading the terms of the RFP, mandatory criterion M2 and rated criterion R1 are virtually identical. The difference between the two is the minimum number of days of experience required to comply with mandatory criterion M2 and the additional number of days of experience necessary to receive points for rated criterion R1. The number of points that could potentially be awarded for rated criterion R1 varied depending by how many days a bidder exceeded the minimum level of experience set out in mandatory criterion M2.

[65] Specifically, mandatory criterion M2 set a floor in terms of the amount of experience (i.e. 750 days) that a bidder was required to demonstrate operating at airfields with the requisite characteristics (i.e. low-level flight movements totalling at least 29,000 movements per year, including a minimum of fast-moving jet propelled aircraft, helicopters and turbo propelled aircraft). Once a bidder satisfied the mandatory minimum criteria under mandatory criterion M2, it would then be eligible to be awarded points under rated criterion R1 on a sliding scale from 0 to 30 points based on any additional experience that the bidder possessed over and above the minimum of 750 days at airfields with the characteristics described in detail in both mandatory criterion M2 and rated criterion R1.

[66] The evidence on the record demonstrates that PNWR's original bid was non-compliant with mandatory criterion M2.<sup>32</sup> It is for this reason that PWGSC issued a CAR to PNWR, requesting information on its experience at an airfield with flight movements involving all types of aircraft specified in mandatory criterion M2. On the basis of the new information provided by PNWR in response to this notice,<sup>33</sup> the evaluators subsequently found PNWR's bid compliant with mandatory criterion M2.

[67] Given that PNWR's original bid was non-compliant because it failed to demonstrate that the company had 750 days of experience at airfields with the requisite characteristics (i.e. featuring low-level flight movements totalling at least 29,000 movements per year including a minimum of fast-moving jet-propelled, helicopters and turbo propelled aircraft), it follows that its original bid did not demonstrate that PNWR had the *higher* number of days of experience at airfields with these same characteristics, which was required for it to be awarded the maximum of 30 points for rated criterion R1.

[68] As such, the Tribunal accepts the following submissions made by Falcon in its response to the GIR:

It is only when PNWR submitted additional information in the CAR process showing that it "met" the requirements of M2 that it was, or could be, awarded any points for R1. However, as the RFP clearly pointed out (and this is not contested in the GIR), the CAR process could not lead to an increase in points for a rated requirement. And yet, this is precisely what happened here.<sup>34</sup>

---

<sup>32</sup> Exhibit No. PR-2020-009-16A (protected), Vol. 2 at 46.

<sup>33</sup> *Ibid.* at 81.

<sup>34</sup> Exhibit No. PR-2020-022-16, Vol. 1 at para. 8.

[69] Put another way, if PNWR's original bid was non-compliant with mandatory criterion M2, PNWR's original bid was entitled to no points for rated criterion R1. The fact that the evaluators ultimately awarded points to PNWR for rated criterion R1 necessarily means that they improperly relied on the information provided by PNWR in response to the CAR, that is, contrary to article 4.1.1.3(g) of the RFP.

[70] Accordingly, it appears that the evaluators did not apply themselves in the evaluation of PNWR's proposal and achieved a fundamentally inconsistent result in view of the evaluation procedures set out in the RFP. PNWR's original bid could not be at the same time non-compliant with mandatory criterion M2 and be entitled to full points for rated criterion R1.

[71] The Tribunal notes that PWGSC's submissions in its GIR do not squarely address this issue. PWGSC argued that PNWR's response to the CAR was only used to determine whether Falcon's bid was compliant with mandatory criterion M2. PWGSC added that, once that was determined, the information contained in PNWR's bid prior to the receipt of the CAR response was relied upon to determine how many points PNWR's would be awarded for rated criterion R1. This argument is not corroborated by the evidence on the evaluation of PNWR's bid and, in particular, the notes and dates on the evaluators' score sheets.<sup>35</sup> On these documents, points were seemingly awarded to PNWR by DND prior to it having received the CAR, solely on the basis of the number of days of experience stated in PNWR's original bid but, it would appear, conditional on the bid being later found compliant with mandatory criterion M2.

[72] However, the fact remains that, while PNWR's original bid stated a number of days of experience that exceeded 750 days,<sup>36</sup> the relevant experience had to be acquired at airfields with certain characteristics that were not demonstrated by the information contained in PNWR's bid, as determined by the evaluators in their Phase II evaluation. In other words, the evaluators contradicted themselves and did not consider all of the elements of rated criterion R1 in their Phase III evaluation. If the bid did not demonstrate a minimum of 750 days of experience at an airfield with the requisite characteristics to comply with mandatory criterion M2, it could not demonstrate that PNWR had up to or in excess of 1050 days of experience (which is significantly more than 750 days, which was necessary to obtain the maximum 30 points for rated criterion R1) at the same location.

[73] The Tribunal agrees with and accepts the following submission made by Falcon in response to PWGSC's arguments on this issue:

The fact is to obtain 30 points for rated criterion R1, PNWR's original bid was required to not only state the number of days (1,050), it was required to demonstrate that those days of experience were obtained on airfields with the characteristics required by M2/R1. Indeed, on [PWGSC's] logic, PNWR's bid was also compliant with M2 because it stated a number – 1,050 – that was more than 750. Clearly, stating the number of days was not enough to either be compliant with M2 or obtain points for rated criterion R1.<sup>37</sup>

---

<sup>35</sup> Exhibit No. PR-2020-009-16A, Vol. 2 at 120-134.

<sup>36</sup> Exhibit No. PR-2020-009-24 (protected), Vol. 2 at 39.

<sup>37</sup> Exhibit No. PR-2020-022-16, Vol. 1 at para. 44.



[74] Falcon took note in its reply to the GIR of this seemingly contradictory result. It stressed that Article 4.1.1.3(g) of the RFP prohibits points from being awarded in Phase III of the evaluation on the basis of information not contained in the original bid. Falcon also correctly noted that the evaluation guidelines given to the evaluators did not mention this provision and that it is not clear that the evaluators were made aware that such a restriction existed.

[75] The individual evaluation sheets of the evaluators also provide some evidence that the evaluation was not in fact conducted methodically in separate and successive phases as was contemplated by the RFP. Indeed, all of the individual evaluators did in fact fill out Phase III evaluation sheets for PNWR's bid on November 26, 2019, prior to the completion of Phase II, which required an assessment of the additional information provided by PNWR in response to the CAR on December 4, 2019. Also, some, but not all, score sheets suggest that a Phase III re-evaluation of PNWR's bid took place on December 9, 2019. This supports Falcon's position that the evaluators implicitly or explicitly relied on the information provided by PNWR in response to the CAR to award points for rated criterion R1. These discrepancies indicate that evaluation procedures set out in the RFP were not strictly adhered to and are illustrative of a failure, on the part of the evaluators, to consider all elements of rated criterion R1 and, more generally, of the terms of the RFP governing the evaluation process.

[76] In summary, the Tribunal finds that PWGSC's evaluation of PNWR's bid against rated criterion R1 was unreasonable. In view of the evidence before the Tribunal, PNWR's bid was not entitled to any points for rated criterion R1. Had PNWR not been awarded points for rated criterion R1, Falcon would have been the winning bidder.

[77] In order to reach this conclusion, the Tribunal considered the Evaluation Procedures contained in Part 4 of the RFP and the Point Rated Technical Criteria contained in Annex "C" of the RFP. The Point Rated Technical Criteria are to be rated out of a maximum possible score of 100, with a minimum score of 70, to move to the consideration of the financial score and generate a final combined rating.

[78] In the present circumstances, the Tribunal finds that PNWR's score on this criterion should have been 0 out of 30. As a result, contrary to the evaluators' conclusion, PNWR's final technical score should not have been a perfect score of 60 out of 60. Applying the formula set out at article 4.2.1 of the RFP,<sup>38</sup> its final technical score would be 70 out of 100, equating to a final technical merit score of 42 out of 60. Taking into account PNWR's financial score determined by the evaluators, and in respect of which there is no basis for the Tribunal to intervene, PNWR's combined rating should have been 82 out of 100, which is lower than Falcon's score.

[79] As Falcon's bid was considered responsive and was not the subject of a CAR, there would be no need in the circumstances to adjust Falcon's perfect technical score of 60 out of 60 for technical merit. Even if its financial bid was higher than PNWR's, with a combined rating of 96.3, Falcon's bid would have been the bidder with the highest responsive combined rating of technical merit and price. As such, it would have been the winning bidder but for the errors in the evaluation of PNWR's bid against rated requirement R1 discussed above.

---

<sup>38</sup> See Annex 1 of these reasons. Article 4.2.1 provided that the final evaluation of bids would be weighted so that the technical evaluation and the financial bid represented, respectively, 60 percent and 40 percent of the final score.

[80] Therefore, the Tribunal concludes that the complaints are valid on that basis alone. Given its conclusion regarding this ground of complaint, and for reasons of judicial economy, the Tribunal will not make findings with respect to the other issues raised by Falcon concerning whether PWGSC's evaluation of PNWR's bid was reasonable in the circumstances. The above conclusion, along with the remedy recommended further below, effectively render Falcon's other grounds of complaint moot.

## REMEDY

[81] The Tribunal notes that Falcon submitted that the most appropriate remedy would be a recommendation that it be awarded the contract. PWGSC agreed that in the event that the Tribunal found the complaints valid, the appropriate remedy would be to make a recommendation that the contract with PNWR be terminated and a new contract awarded to Falcon.

[82] In the circumstances, considering the parties' submissions, the fact that PNWR has not yet begun performance of the contract, with Falcon being the incumbent supplier continuing to provide the services until November 5, 2020, and having regard to the factors stipulated in subsection 30.15(3) of the *CITT Act*, the Tribunal recommends that the designated contract in issue, which was awarded to PNWR, be terminated and a new contract awarded to Falcon instead.

## COSTS

[83] Both parties have requested their costs, but neither has made submissions on the amount.

[84] The Tribunal has broad discretion to award costs under section 30.16 of the *CITT Act*. The Tribunal follows the judicial model under which, generally, the winning party is entitled to its costs.<sup>39</sup> As such, as the successful party in this inquiry, Falcon is entitled to its reasonable costs.

[85] An award of costs is not intended to be a source of profit for the successful party, nor is it imposed as punishment on the party who pays it.<sup>40</sup> Costs are generally determined in accordance with the Tribunal's *Procurement Costs Guideline*, which sets out a flat-rate system based on the level of complexity of the procurement, the complaint, and the complaint proceedings.

[86] Based on the factors listed in the *Guideline*, the Tribunal's preliminary assessment is that the level of complexity in this matter is Level 2, which has an associated all-inclusive flat rate of \$2,750. However, the Tribunal has discretion to increase this amount in certain circumstances, such as in the case at hand, in which multiple complaints were filed in respect of the same procurement process.

[87] The complexity of the procurement was at a medium level, as it involved the procurement of a defined service project, wildlife control services, i.e. the provision of a wide array of services on an as-required basis. The complaints were also of medium complexity, as the issue involved an analysis of mandatory and rated requirements, in conjunction with a larger analysis of the phased bid compliance process performed by DND and PWGSC. The proceedings were of higher than usual complexity, owing to the volume of requests and materials submitted, the use of affidavit evidence and the 135-day timeline.

---

<sup>39</sup> See *Canadian North v. Department of Indian Affairs and Northern Development* (15 May 2007), PR-2006-026R (CIIT) at para. 7; *Procurement Costs Guideline* at section 2.1.

<sup>40</sup> See *SoftSim Technologies Inc. v. National Research Council of Canada* (5 November 2018), PR-2018-015 (CIIT) at para. 6.

[88] All things considered, particularly in view of the fact that formal requests were necessary for Falcon to obtain full disclosure of the relevant documents, the Tribunal is of the view that it is necessary to adjust its preliminary indication of the cost award upwards. While the *Guideline* indicates that Level 2 complexity has an associated flat rate of \$2,750, the Tribunal deems it appropriate to add \$750 to this flat rate in the circumstances of these complaints. Accordingly, its preliminary indication of the amount of the cost award to Falcon is \$3,500.

Georges Bujold  

---

Georges Bujold  
Presiding Member

**ANNEX 1****EXCERPTS OF PART 4 OF THE RFP****PART 4 - EVALUATION PROCEDURES AND BASIS OF SELECTION****4.1 Evaluation Procedures**

- (a) Bids will be assessed in accordance with the entire requirement of the bid solicitation including the technical evaluation criteria.
- (b) An evaluation team composed of representatives of Canada will evaluate the bids.
- (c) Canada will use the Phased Bid Compliance Process described below.

**4.1.1 Phased Bid Compliance Process****4.1.1.1 General**

- (a) Canada is conducting the PBCP described below for this requirement.
- (b) Notwithstanding any review by Canada at Phase I or II of the PBCP, Bidders are and will remain solely responsible for the accuracy, consistency and completeness of their Bids and Canada does not undertake, by reason of this review, any obligations or responsibility for identifying any or all errors or omissions in Bids or in responses by a Bidder to any communication from Canada.

THE BIDDER ACKNOWLEDGES THAT THE REVIEWS IN PHASE I AND II OF THIS PBCP ARE PRELIMINARY AND DO NOT PRECLUDE A FINDING IN PHASE III THAT THE BID IS NON-RESPONSIVE, EVEN FOR MANDATORY

REQUIREMENTS WHICH WERE SUBJECT TO REVIEW IN PHASE I OR II AND NOTWITHSTANDING THAT THE BID HAD BEEN FOUND RESPONSIVE IN SUCH EARLIER PHASE. CANADA MAY DEEM A BID TO BE NON-RESPONSIVE TO A MANDATORY REQUIREMENT AT ANY PHASE.

THE BIDDER ALSO ACKNOWLEDGES THAT ITS RESPONSE TO A NOTICE OR A COMPLIANCE ASSESSMENT REPORT (CAR) (EACH DEFINED BELOW) IN PHASE I OR II MAY NOT BE SUCCESSFUL IN RENDERING ITS BID RESPONSIVE TO THE MANDATORY REQUIREMENTS THAT ARE THE SUBJECT OF THE NOTICE OR CAR, AND MAY RENDER ITS BID NON-RESPONSIVE TO OTHER MANDATORY REQUIREMENTS.

- (c) Canada may, in its discretion, request and accept at any time from a Bidder and consider as part of the Bid, any information to correct errors or deficiencies in the Bid that are clerical or administrative, such as, without limitation, failure to sign the Bid or any part or to checkmark a box in a form, or other failure of format or form or failure to acknowledge; failure to provide a procurement business number or contact information such as names, addresses and telephone numbers; inadvertent errors in numbers or calculations that do not change the amount the Bidder has specified as the price or of any component thereof that is subject to evaluation. This shall not limit Canada's right to request or accept any information after the bid solicitation closing in circumstances where the bid solicitation expressly provides for this right. The Bidder will have the time period specified in writing by Canada

to provide the necessary documentation. Failure to meet this deadline will result in the Bid being declared non-responsive.

- (d) The PBCP does not limit Canada's rights under Standard Acquisition Clauses and Conditions (SACC) 2003 (2019-03-04) Standard Instructions – Goods or Services – Competitive Requirements nor Canada's right to request or accept any information during the solicitation period or after bid solicitation closing in circumstances where the bid solicitation expressly provides for this right, or in the circumstances described in subsection (c).
- (e) Canada will send any Notice or CAR by any method Canada chooses, in its absolute discretion. The Bidder must submit its response by the method stipulated in the Notice or CAR. Responses are deemed to be received by Canada at the date and time they are delivered to Canada by the method and at the address specified in the Notice or CAR. An email response permitted by the Notice or CAR is deemed received by Canada on the date and time it is received in Canada's email inbox at Canada's email address specified in the Notice or CAR. A Notice or CAR sent by Canada to the Bidder at any address provided by the Bidder in or pursuant to the Bid is deemed received by the Bidder on the date it is sent by Canada. Canada is not responsible for late receipt by Canada of a response, however caused.

...

#### **4.1.1.3 Phase II: Technical Bid**

- (a) Canada's review at Phase II will be limited to a review of the Technical Bid to identify any instances where Bidder has failed to meet any Eligible Mandatory Criterion. This review will not assess whether the Technical Bid meets any standard or is responsive to all solicitation requirements. Eligible Mandatory Criteria are all mandatory technical criteria that are identified in this solicitation as being subject to the PBCP. Mandatory technical criteria that are not identified in the solicitation as being subject to the PBCP, will not be evaluated until Phase III.
- (b) Canada will send a written notice to the Bidder (Compliance Assessment Report or "CAR") identifying any Eligible Mandatory Criteria that the Bid has failed to meet. A Bidder whose Bid has been found responsive to the requirements that are reviewed at Phase II will receive a CAR that states that its Bid has been found responsive to the requirements reviewed at Phase II. Such Bidder shall not be entitled to submit any response to the CAR.
- (c) A Bidder shall have the period specified in the CAR (the "Remedy Period") to remedy the failure to meet any Eligible Mandatory Criterion identified in the CAR by providing to Canada in writing additional or different information or clarification in response to the CAR. Responses received after the end of the Remedy Period will not be considered by Canada, except in circumstances and on terms expressly provided for in the CAR.
- (d) The Bidder's response must address only the Eligible Mandatory Criteria listed in the CAR as not having been achieved, and must include only such information as is necessary to achieve such compliance. Any additional information provided by the Bidder which is not necessary to achieve such compliance will not be considered by Canada, except that, in those instances where such a response to the Eligible Mandatory Criteria specified in the CAR will necessarily result in a consequential change to other parts of the Bid, the Bidder shall identify such additional changes, provided that its response must not include any change to the Financial Bid.
- (e) The Bidder's response to the CAR should identify in each case the Eligible Mandatory Criterion in the CAR to which it is responding, including identifying in the corresponding section of the original Bid, the wording of the proposed change to that section, and the wording and location in the Bid of any other consequential changes that necessarily result from such change. In respect of any such consequential change, the Bidder must include a rationale explaining why such consequential

change is a necessary result of the change proposed to meet the Eligible Mandatory Criterion. It is not up to Canada to revise the Bidder's Bid, and failure of the Bidder to do so in accordance with this subparagraph is at the Bidder's own risk. All submitted information must comply with the requirements of this solicitation.

- (f) Any changes to the Bid submitted by the Bidder other than as permitted in this solicitation, will be considered to be new information and will be disregarded. Information submitted in accordance with the requirements of this solicitation in response to the CAR will replace, in full, only that part of the original Bid as is permitted in this Section.
- (g) Additional or different information submitted during Phase II permitted by this section will be considered as included in the Bid, but will be considered by Canada in the evaluation of the Bid at Phase II only for the purpose of determining whether the Bid meets the Eligible Mandatory Criteria. It will not be used at any Phase of the evaluation to increase any score that the original Bid would achieve without the benefit of such additional or different information. For instance, an Eligible Mandatory Criterion that requires a mandatory minimum number of points to achieve compliance will be assessed at Phase II to determine whether such mandatory minimum score would be achieved with such additional or different information submitted by the Bidder in response to the CAR. If so, the Bid will be considered responsive in respect of such Eligible Mandatory Criterion, and the additional or different information submitted by the Bidder shall bind the Bidder as part of its Bid, but the Bidder's original score, which was less than the mandatory minimum for such Eligible Mandatory Criterion, will not change, and it will be that original score that is used to calculate any score for the Bid
- (h) Canada will determine whether the Bid is responsive for the requirements reviewed at Phase II, considering such additional or different information or clarification as may have been provided by the Bidder in accordance with this Section. If the Bid is not found responsive for the requirements reviewed at Phase II to the satisfaction of Canada, then the Bid shall be considered non-responsive and will receive no further consideration.
- (i) Only Bids found responsive to the requirements reviewed in Phase II to the satisfaction of Canada, will receive a Phase III evaluation.

#### **4.1.1.4 Phase III: Final Evaluation of the Bid**

- (a) In Phase III, Canada will complete the evaluation of all Bids found responsive to the requirements reviewed at Phase II. Bids will be assessed in accordance with the entire requirement of the bid solicitation including the technical and financial evaluation criteria.
- (b) A Bid is non-responsive and will receive no further consideration if it does not meet all mandatory evaluation criteria of the solicitation.

...

## **4.2 Basis of Selection**

### **4.2.1 Basis of Selection – Highest Combined Rating of Technical Merit and Price**

- (1) To be declared responsive, a bid must:
  - (a) comply with all the requirements of the bid solicitation; and
  - (b) meet all mandatory criteria; and
  - (c) obtain the required minimum of 70 points overall for the technical evaluation criteria which are subject to point rating.

The rating is performed on a scale of 100 points.

- (2) Bids not meeting (a) or (b) or (c) will be declared non-responsive.
- (3) The selection will be based on the highest responsive combined rating of technical merit and price. The ratio will be 60 % for the technical merit and 40 % for the price.
- (4) To establish the technical merit score, the overall technical score for each responsive bid will be determined as follows: total number of points obtained / maximum number of points available multiplied by the ratio of 60 %.
- (5) To establish the pricing score, each responsive bid will be prorated against the lowest evaluated price and the ratio of 40 %.
- (6) For each responsive bid, the technical merit score and the pricing score will be added to determine its combined rating.
- (7) Neither the responsive bid obtaining the highest technical score nor the one with the lowest evaluated price will necessarily be accepted. The responsive bid with the highest combined rating of technical merit and price will be recommended for award of a contract.

The table below illustrates an example where all three bids are responsive and the selection of the contractor is determined by a 60/40 ratio of technical merit and price, respectively. The total available points equals 135 and the lowest evaluated price is \$45,000 (45).

**Basis of Selection - Highest Combined Rating Technical Merit (60%) and Price (40%)**

		<b>Bidder 1</b>	<b>Bidder 2</b>	<b>Bidder 3</b>
<b>Overall Technical Score</b>		115/135	89/135	92/135
<b>Bid Evaluated Price</b>		\$55,000.00	\$50,000.00	\$45,000.00
<b>Calculations</b>	<b>Technical Merit Score</b>	$115/135 \times 60 = 51.11$	$89/135 \times 60 = 39.56$	$92/135 \times 60 = 40.89$
	<b>Pricing Score</b>	$45/55 \times 40 = 32.73$	$45/50 \times 40 = 36.00$	$45/45 \times 40 = 40.00$
<b>Combined Rating</b>		83.84	75.56	80.89
<b>Overall Rating</b>		1st	3rd	2nd

**ANNEX 2**

**EXCERPTS OF ANNEX “C” OF THE RFP**

**ANNEX “C”**

**Mandatory and Point Rated Evaluation Criteria**

Proposals must comply with each and every mandatory requirement of this section. Failure to do so will render the proposal non-compliant. If a proposal is determined to be non-compliant, it will be given no further consideration. Deviations from, or issues concerning Mandatory Requirements are not to be raised in the Bidder's proposal as they will not be considered or accepted after the closing date and time of this RFP.

...

#	<u>Mandatory Technical Criteria</u>	Page Number(s) in Bid
M2	<p><b>The Bidder must demonstrate in their proposal that they have a minimum 750 days experience in the last five (5) years as a contractor for the provision of Wildlife Control services in accordance with the Canadian Aviation Regulations (CARS) Part 3 Airport Wildlife on an airfield with the following characteristics. The bidder will demonstrate this experience by providing references for contracts where they have accumulated these hours, that meet the following:</b></p> <p>(a) No smaller than CFB Trenton (CFB Trenton's size is 44,000 square meters fenced in area), and</p> <p>(b) With low level flight movements totaling at least 29,000 movements per year (including a minimum of: fast-moving jet propelled aircraft, helicopters and turbo propelled aircraft), <i>and</i></p> <p>(c) With a similar habitat (close to a large body of water that causes the flight paths of (c) birds to pass in and around the airport premises) as that of CFB Trenton, <i>and</i></p> <p>(d) Managing at least 2 full time employees who provided Wildlife Control Services. This includes all aspects of managing personnel, including, but not limited to the recruiting, employing and training.</p> <p>The Contract must have been performed by the Bidder itself (and does not include the experience of any proposed subcontractor or any affiliate of the Bidder).</p> <p>With a similar habitat (close to a large body of water that causes the flight paths of (c) birds to pass in and around the airport premises) as that of CFB Trenton, <i>and</i></p>	<p>(a) _____</p> <p>(b) _____</p> <p>(c) _____</p> <p>(d) _____</p>

...



#	<u>Point Rated Technical Criteria</u>	Page Number(s) in Bid
R1	<p><b>Points Will be awarded for experience over and above that required to meet M2 (750 days) as follows:</b></p> <p><b>M2</b>  <b>The Bidder must demonstrate in their proposal that they have a minimum of 750 days experience in the last five (5) years as a contractor for the provision of Wildlife Control services in accordance with the Canadian Aviation Regulations (CARS) Part 3 Airport Wildlife on an airfield with the following characteristics. The bidder will demonstrate this experience by providing references for contracts where they have accumulated these hours</b></p> <p>(a) No smaller than CFB Trenton (CFB Trenton's size is 44,000 square meters fenced in area), and</p> <p>(b) With low level flight movements totaling at least 29,000 movements (including a minimum of : fast-moving jet propelled aircraft, helicopters and turbo propelled aircraft), and</p> <p>(c) With a similar habitat (close to a large body of water that causes the flight paths of birds to pass in and around the airport premises) as that of CFB Trenton, and</p> <p>(d) Managing at least 2 full time employees who provided Wildlife Control Services. This includes all aspects of managing personnel, including, but not limited to the recruiting, employing and training".</p> <p>Bidders must include the contact names, phone numbers, start and end dates for each contract, the client company name and location at which the work was provided. Bidders should provide titles and email addresses for the contacts. Canada reserves the right to contact the names in order to verify the information provided.</p> <p>The Contract must have been performed by the Bidder itself (and does not include the experience of any proposed subcontractor or any affiliate of the Bidder). However, several entities may combine their experience by submitting a bid as a joint venture; in that case, the bid can describe the previous experience of one (1) or more joint venture members, to meet the experience requirement - that is, one similar Contract could be described for one joint venture member and another Contract could be described for another joint venture member. If two members of the joint venture worked on the same work site at the same time, it will only be counted as one (1) Contract.</p>	<p>(a) _____</p> <p>(b) _____</p> <p>(c) _____</p> <p>(d) _____</p> <p>Points will be awarded as follows:</p> <p><b>751 days to 900 days = 10 points</b></p> <p><b>901 days to 1050 days – 20 points</b></p> <p><b>1050+ days = 30 points</b></p>