



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File Nos. PR-2021-020,  
PR-2021-021 and PR-2021-022

Dynamic Facility Services Ltd.

*Decision made  
Tuesday, June 29, 2021*

*Decision issued  
Wednesday, June 30, 2021*

*Reasons issued  
Friday, July 23, 2021*

IN THE MATTER OF a complaint filed pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C., 1985, c. 47 (4th Supp.).

**BY**

**DYNAMIC FACILITY SERVICES LTD.**

**AGAINST**

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

**DECISION**

Pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal has decided not to conduct an inquiry into the complaint.

Peter Burn

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Peter Burn

Presiding Member

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

## STATEMENT OF REASONS

[1] Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,<sup>2</sup> a potential supplier may file a complaint with the Canadian International Trade Tribunal concerning any aspect of the procurement process that relates to a designated contract and request the Tribunal to conduct an inquiry into the complaint. Subsection 30.13(1) of the *CITT Act* provides that, subject to the *Regulations*, after the Tribunal determines that a complaint complies with subsection 30.11(2) of the *CITT Act*, it shall decide whether to conduct an inquiry into the complaint.

[2] Pursuant to rule 6.1 of the *Canadian International Trade Tribunal Rules*<sup>3</sup> and in recognition of the common grounds of complaint in Dynamic Facility Services Ltd. (Dynamic)'s three complaints, the Tribunal will consider the complaints together.

## SUMMARY OF THE COMPLAINT

[3] The Tribunal received three complaints from Dynamic relating to three notices of proposed procurement (Solicitation Nos. W684Q-200129/B, W684Q-200133/A and W684Q-200136/A) relating to the provision of janitorial services for different portions of Canadian Forces Base Esquimalt, in British Columbia. The procurement was managed by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence.

[4] The three complaints concern the same issue with Dynamic alleging that PWGSC improperly deducted points in the evaluation of its bids.

[5] For the reasons that follow, the Tribunal finds that the complaints do not raise a reasonable indication of a breach of the applicable trade agreements. As such, the Tribunal has decided not to conduct an inquiry into the complaints at this time.

## BACKGROUND

[6] Solicitation Nos. W684Q-200129/B, W684Q-200133/A and W684Q-200136/A were all published on December 24, 2020, with each having a closing date of February 25, 2021, at 2 p.m. PST. The solicitations were all subject to four amendments, two of which extended the bid closing date.

[7] On or before the bid closing date, Dynamic submitted bids in each of the solicitations.

[8] On May 13, 2021, PWGSC informed Dynamic that it was not the winning bidder in each of the solicitations and that the three contracts had been awarded to 3388646 Canada Inc. The technical scores in each of the solicitations were identical, with varying final scores based upon Dynamic and 3388646 Canada Inc.'s financial scores.

[9] On May 26, 2021, PWGSC provided a debriefing to Dynamic.

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

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

<sup>3</sup> SOR/91-499.

[10] On May 27, 2021, Dynamic wrote a letter to PWGSC providing its objections to the evaluation of its bids and the selection of 3388646 Canada Inc. Dynamic requested that PWGSC investigate its concerns and “delay in the award of the contract until the review/audit is completed.”<sup>4</sup>

[11] On May 27 and June 1, 2021, Dynamic filed its complaint with the Tribunal. The Tribunal acknowledged receipt of Dynamic’s complaints as filed on June 1, 2021.

[12] Dynamic’s complaint was decided to be premature on June 2, 2021, with the reasons issued June 17, 2021.

[13] Dynamic filed a new complaint with the Tribunal on June 23, 2021. Included in its complaint was a letter dated June 9, 2021, from PWGSC denying Dynamic its requested relief. Receipt of the complaint was acknowledged on June 25, 2021.

[14] On June 29, 2021, the Tribunal decided not to conduct an inquiry into the complaint.

## ANALYSIS

[15] Pursuant to sections 6 and 7 of the *Regulations*, the Tribunal may conduct an inquiry into a complaint if all of the following conditions are met:

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

[16] As set out by Dynamic, four out of twenty points were deducted under point rated criterion 1.2.2(c). All three bids were close.

### Relevant excerpts from the notices of proposed procurement

[17] The point rated criteria are described as follows in the notices of proposed procurement:

#### 1.2 POINT RATED CRITERIA

Bidders must demonstrate their capability in a thorough, concise and clear manner for carrying out the Work in compliance with the specific point rated criteria listed below.

Where the information submitted is not sufficiently precise, Canada may request that the Bidder direct Canada to the appropriate location in the documentation. As noted in article 05 of the Standard Instructions, Canada will evaluate only the documentation provided with a bidder’s bid. Canada will not evaluate information such as references to Web site addresses where additional information can be found.

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<sup>4</sup> Exhibit PR-2021-020-01 at 64.

**1.2.2 Company Work Plan** (maximum 80 points)

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**c) Security** (maximum 20 points):

The Bidder should demonstrate how security requirements will be met, including a timeline for the CISC security clearance and RVF processes. The Bidder should demonstrate knowledge of PSPC and DND security processes by providing a detailed step-by-step process on its security clearance application procedures. Bidders should also outline how they will maintain a sufficient number of secret-level cleared staff on an on-going basis to meet the requirement.

[18] The evaluation of this point rated criterion, is described under section 2.2.2, under the Technical Evaluation heading, as follows:

**2.2.2.3 Security** (maximum 20 points):

- Unsatisfactory/no details provided = 0
- Incomplete and/or limited summary explaining staffing sufficiency, and problem mitigation. Several major deficiencies exist = 4
- Complete, but poor summary explaining staffing sufficiency, and problem mitigation. A few major deficiencies exist = 8
- Acceptable and/or adequate summary explaining staffing sufficiency, and problem mitigation. Several minor deficiencies exist = 12
- Good explanation summary explaining staffing sufficiency, and problem mitigation. A few minor deficiencies exist = 16
- Excellent, in-depth and specific summary explaining staffing sufficiency, and problem mitigation. No deficiencies exist = 20

**No reasonable indication of a breach**

[19] As outlined in the discussion between Dynamic and PWGSC, Dynamic is of the view that the timelines it provided for security clearances were accurate and reflected its current practices. Dynamic also argues that it confirmed the timelines it submitted with PWGSC security staff directly, rather than relying on what it viewed as unrealistic benchmark timelines published on the PWGSC website. Accordingly, Dynamic suggests that the deduction of points, for such a metric that is not easily verifiable and so minor, is unreasonable.

[20] In denying Dynamic's objection, PWGSC suggests that Dynamic's explanation on this criterion was lacking and did not explain how it would treat "complex" applications to obtain a security clearance. PWGSC concluded that it could not award Dynamic full marks in light of what it viewed as an imperfect response.<sup>5</sup> PWGSC, in its letter providing denial of relief, stated that there were two deficiencies in Dynamic's bid, as Dynamic had not addressed "complex" clearance times for both reliability and secret security clearances.<sup>6</sup>

[21] Pursuant to subsection 7(1) of the *Regulations*, the Tribunal must determine whether the information provided by the complainant, and any other information examined by the Tribunal, discloses a reasonable indication that the procurement was not conducted in accordance with any of the applicable trade agreements set out in that subsection. The Tribunal has previously described the "reasonable indication" threshold as follows:

In procurement complaints, the party alleging that a procurement has not been conducted in accordance with the applicable trade agreements must provide some proof to support that claim. This is not to say that the complainant in a procurement dispute under one of the agreements has the burden of proving all necessary facts as a plaintiff generally does in a civil case. . . . However, the complainant must provide sufficient facts or arguments to demonstrate a reasonable indication that a breach of one of the trade agreements has taken place.<sup>7</sup>

[22] The main criticism made by Dynamic in its complaint is that it did not receive full points with respect to point rated criterion 1.2.2(c) concerning security requirements and the processing of security clearance applications.<sup>8</sup>

[23] The Tribunal affords the evaluators in a solicitation a large degree of deference and will generally only interfere with an evaluation if it can be demonstrated that an error was made during the evaluation process or that the evaluators failed to evaluate a bid in conformity with the solicitation documents and the applicable trade agreements. The Tribunal stated the following in *Heiltsuk Horizon* at paragraph 47:

It is well established that the Tribunal will review a procurement process on a reasonableness standard, showing deference to the evaluators' expertise and making recommendations only when a decision is unreasonable. As the Tribunal has repeatedly stated, a procurement evaluation "is unreasonable where 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 failed to conduct the evaluation in a procedurally fair manner".<sup>9</sup>

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<sup>5</sup> Exhibit PR-2021-020-01 at 66-67.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Paul Pollack Personnel Ltd. o/a The Pollack Group Canada* (24 September 2013), PR-2013-016 (CITT) at para. 27, citing *K-Lor Contractors Services Ltd.* (23 November 2000), PR-2000-023 (CITT) at 6.

<sup>8</sup> Exhibit PR-2021-020-01 at 64-65.

<sup>9</sup> *Heiltsuk Horizon Maritime Services Ltd. and Horizon Maritime Services v. Department of Public Works and Government Services* (1 November 2019), PR-2019-020 (CITT) [*Heiltsuk Horizon*] at para. 47.

[24] As discussed above, PWGSC provided a detailed explanation as to why it awarded Dynamic less than full marks with respect to its security submission. While Dynamic may disagree with the decision made, this reasoning does not demonstrate that PWGSC or the evaluation team had failed to evaluate Dynamic's bid in conformity with the trade agreements.<sup>10</sup>

## DECISION

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

Peter Burn  
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Peter Burn  
Presiding Member

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<sup>10</sup> Under Article 515(1) of the Canadian Free Trade Agreement: "A procuring entity shall receive, open, and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders."