



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2021-036

Amerigo Tours and Travel Inc.

*Decision made
Thursday, August 19, 2021*

*Decision and reasons issued
Friday, August 27, 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

AMERIGO TOURS AND TRAVEL INC.

AGAINST

THE CORRECTIONAL SERVICE OF CANADA

DECISION

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

Frédéric Seppey

Frédéric Seppey
Presiding Member

STATEMENT OF REASONS

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

SUMMARY OF THE COMPLAINT

[2] The complaint concerns a procurement (Solicitation No. 50200-21-3787836A) by the Correctional Service of Canada (CSC). The Request for Proposal (RFP) is for accommodations and meal service in Saskatoon, Saskatchewan.

[3] The complainant, Amerigo Tours and Travel Inc. (Amerigo), submitted two proposals, one with the Sandman Hotel Saskatoon (Sandman) and another with the Hampton Inn & Suites by Hilton Saskatoon (Hampton).

[4] In its complaint, Amerigo alleged that CSC incorrectly disqualified its two bids by determining that they did not comply with the mandatory requirements of the RFP. Specifically, Amerigo argued that mandatory requirements M1 and M2 were lacking sufficient details.

[5] For the reasons set out below, the Tribunal has decided not to conduct an inquiry into the complaint.

BACKGROUND

[6] On July 2, 2021, CSC published the RFP (Solicitation No. 50200-21-3787836A) on Buyandsell.gc.ca for accommodations and meal service for participants in four sessions of a correctional training program to be held in Saskatoon in fiscal year 2021–2022.³

[7] On July 19, 2021, Amerigo submitted a first bid for Sandman.⁴

[8] On July 20, 2021, it submitted a second bid for Hampton.⁵ The solicitation closed the same day.

[9] On August 3, 2021, CSC advised Amerigo that its two bids were disqualified as they did not provide a temporary reservation confirmation as required by mandatory requirement M1. Amerigo was also advised that the winning bidder was the Ramada Hotel.⁶

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

² SOR/93-602 [*Regulations*].

³ Online: <<https://buyandsell.gc.ca/procurement-data/award-notice/PW-21-00961706-001>>.

⁴ Exhibit PR-2021-036-01 at 37-51.

⁵ *Ibid.* at 52-66.

⁶ *Ibid.* at 77-81.

[10] On the same day, Amerigo sought clarification from CSC as to why its bid for Sandman was rejected given that “rooms were temporarily reserved at Sandman Hotel.” On August 4, 2021, CSC replied that it requested a confirmation, such as a reservation code, that the rooms were held.⁷

[11] On August 4, 2021, Amerigo requested CSC to reconsider its proposal, arguing that the RFP did not specify that a reservation confirmation code had to be provided. Amerigo also stated that it should have been provided an opportunity to provide a confirmation number.⁸ The same day, CSC informed Amerigo that its bid was being reviewed, and requested a brochure from the Sandman self-serve laundry facilities on-site, as prescribed in mandatory requirement M2.⁹ Later that day, Amerigo submitted confirmation numbers for the rooms at Sandman, as well as a letter from the Sandman Hotel Group, dated August 4, 2021, committing to “install a Laundry Facility in our Sandman Hotel Saskatoon as soon as your company (Amerigo) obtains the contract or winning bid for the Correctional Canada.”¹⁰

[12] On August 5, 2021, CSC informed Amerigo that mandatory requirement M2 regarding the on-site laundry facility was not met as “the technical criteria is [*sic*] reviewed with what is currently on site at time of bid.”¹¹

[13] On August 12, 2021, Amerigo filed a complaint with the Tribunal.¹²

[14] On August 13, 2021, the Tribunal requested additional information pursuant to subsection 30.12(2) of the *CITT Act*.¹³

[15] On August 17, 2021, Amerigo filed the requested document, and the complaint was considered completed and in compliance with subsection 30.11(2) of the *CITT Act*.¹⁴

ANALYSIS

[16] Pursuant to sections 6 and 7 of the *Regulations*, after receiving a complaint that complies with subsection 30.11(2) of the *CITT Act*, the Tribunal must determine that the following four conditions are met before it can conduct an inquiry:

- (i) the complaint has been filed within the time limits prescribed by section 6 of the *Regulations*;
- (ii) the complainant is a potential supplier;
- (iii) the complaint is in respect of a designated contract; and
- (iv) the information provided discloses a reasonable indication that the procurement has not been conducted in accordance with the relevant trade agreements.

⁷ Exhibit PR-2021-036-01 at 82-83.

⁸ *Ibid.* at 84.

⁹ *Ibid.* at 85.

¹⁰ *Ibid.* at 86-87.

¹¹ *Ibid.* at 88.

¹² *Ibid.*

¹³ Exhibit PR-2021-036-02.

¹⁴ Exhibit PR-2021-036-01A; Exhibit PR-2021-036-03.

[17] For the following reasons, the Tribunal finds that the complaint discloses no reasonable indication that CSC breached its obligations under the applicable trade agreements.

No reasonable indication of a breach

[18] According to paragraph 7(1)(c) of the *Regulations*, the Tribunal must determine whether the information provided by the complainant, and any other information examined by the Tribunal in respect of the complaint, discloses a reasonable indication that the procurement was not conducted in accordance with the applicable trade agreements. 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.¹⁵

[19] Amerigo alleges that the CSC incorrectly disqualified its proposals, as mandatory requirements M1 and M2 of the RFP, invoked by CSC, lacked sufficient detail.

[20] The relevant provisions of the RFP are the following:¹⁶

PART 4 - EVALUATION PROCEDURES AND BASIS OF SELECTION

1. Evaluation Procedures

...

1.1 Technical Evaluation

1.1.1 Mandatory Technical Criteria

Proposals will be evaluated to determine if they meet all mandatory requirements outlined in **Annex D – Evaluation Criteria**. Proposals not meeting all mandatory criteria will be declared non-responsive and will be given no further consideration.

...

2. Basis of Selection

A bid must comply with the requirements of the bid solicitation and meet all mandatory technical evaluation criteria to be declared responsive. The responsive bid with the lowest evaluated price will be recommended for award of a contract.

¹⁵ *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.

¹⁶ Exhibit PR-2021-036-01 at 17 and 34–36.

...

Annex D Evaluation Criteria

...

#	Mandatory Technical Criteria
M1	<p>Provide up to a maximum of 40 guest rooms in two different blocks;</p> <ul style="list-style-type: none"> • Up to 16 recruits during the period of August 9, 2021, to November 10, 2021; • Up to 16 recruits during the period of September 12, 2021, to December 17, 2021; • Up to 20 recruits during the period of January 10, 2022, to April 7, 2022; and • Up to 20 recruits during the period of January 25, 2022, to April 21, 2022; <p>In order to meet this requirement, the bidder must provide temporary reservation confirmation</p>
M2	<p>Self Serve laundry on site.</p> <p>In order to meet this requirement, the Bidder must provide a brochure or detailed description.</p>

[21] The Canadian Free Trade Agreement,¹⁷ which applies here, requires that the tender documentation include all pertinent details concerning the evaluation criteria that will be used in the evaluation of tenders, as well as the requirements to be fulfilled by the supplier, and the terms or conditions applicable to the tender, including, if applicable, requirements related to the submission of the tender.¹⁸ It also requires the procuring entity to award contracts in accordance with, and solely based upon, the criteria and essential requirements specified in the tender documentation.¹⁹

[22] The Tribunal will determine whether there is a reasonable indication that CSC failed to comply with these obligations in disqualifying Amerigo's bids.

Bid 1: Sandman

[23] In the regret letter to Amerigo (Sandman), CSC stated the following:

As indicated in the solicitation, *a bid was required to meet each and every mandatory requirement*. Unfortunately, the evaluating team determined that your bid did not comply with all the mandatory requirements of the solicitation, *including the following*:

- Provide up to a maximum of 40 guest rooms in two different blocks;
- Up to 16 recruits during the period of August 9, 2021, to November 10, 2021;
- Up to 16 recruits during the period of September 12, 2021, to December 17, 2021;
- Up to 20 recruits during the period of January 10, 2022, to April 7, 2022; and
- Up to 20 recruits during the period of January 25, 2022, to April 21, 2022;

¹⁷ Canadian Free Trade Agreement, online: Internal Trade Secretariat <https://www.cfta-alec.ca/wp-content/uploads/2020/09/CFTA-Consolidated-Text-Final-English_September-24-2020.pdf> (entered into force 1 July 2017) [CFTA].

¹⁸ Paragraphs 509(7)(a) and (b) of the CFTA.

¹⁹ Article 515 of the CFTA.

In order to meet this requirement, the *bidder must provide temporary reservation confirmation*

As a result of finding your bid to be non-responsive, your bid was disqualified.²⁰

[Emphasis added]

[24] Upon review of Amerigo's bid submission for Sandman, the Tribunal finds no reasonable indication that CSC's evaluation of the bid was not conducted in accordance with Article 509 of the CFTA. The description of mandatory technical requirement M1 in the RFP clearly stated that "in order to meet this requirement, the bidder must provide temporary reservation confirmation."²¹ It is common practice for hotels to provide a confirmation number when making a reservation. In this regard, the Tribunal finds that M1 did not lack detail, as alleged by Amerigo. Amerigo's bid simply stated that "all rooms have been temporarily reserved." In the Tribunal's view, such an assertion does not constitute a "temporary reservation confirmation". In absence of such confirmation, the Tribunal does not find it unreasonable that CSC declared the bid non-responsive.

[25] Amerigo did provide CSC with temporary confirmation numbers for the rooms booked at Sandman, but only after bid closure.²² Had CSC allowed the introduction of such information, which was not included in Amerigo's bid, it would have been allowing bid repair, which is not permissible.²³

[26] As noted above, the regret letter from CSC noted that Amerigo's bid did not meet all mandatory requirements, including M1, implying that the bid may also not have complied with other mandatory requirements. Upon review by the Tribunal, it appears that the bid for Sandman did not comply with mandatory technical criterion M2 (self-serve laundry on site). As part of its bid, Amerigo did not provide a brochure or a detailed description of the self-serve laundry on site, contrary to the express requirement stated in M2.²⁴ While this absence of details would have constituted a sufficient ground for finding the bid non-responsive, subsequent information provided by Amerigo after bid closing revealed that Sandman did not, in fact, feature a self-serve laundry facility.²⁵

[27] The Tribunal concludes that there is no reasonable indication that CSC's evaluation of Amerigo's bid with respect to Sandman was not conducted in accordance with the provisions of the CFTA. The onus was on Amerigo to ensure that it met all the mandatory criteria. The Tribunal has repeatedly held that the bidder bears the onus of clearly demonstrating that its bid meets the criteria set out in the solicitation documents.²⁶ As Amerigo did not do so, pursuant to Part 4 of the RFP,

²⁰ Exhibit PR-2021-036-01 at 79.

²¹ *Ibid.* at 35. The quoted text was highlighted in the RFP.

²² Exhibit PR-2021-036-01 at 86.

²³ See *Sunny Jaura d.b.a. Jaura Enterprises v. Department of Public Works and Government Services* (9 June 2016), PR-2015-058 (CITT) [*Sunny Jaura*] at para. 37.

²⁴ Exhibit PR-2021-036-01 at 35 and 40.

²⁵ *Ibid.* at 87.

²⁶ *Sunny Jaura* at para. 34; *Samson & Associates v. Department of Public Works and Government Services* (13 April 2015), PR-2014-050 (CITT) at para. 36; *The Masha Krupp Translation Group Limited* (25 August 2011), PR-2011-024 (CITT) at para. 16; *Info-Electronics H P Systems Inc. v. Department of Public Works and Government Services* (2 August 2006), PR-2006-012 (CITT).

which clearly indicates that “proposal[s] not meeting all mandatory criteria will be declared non-responsive”²⁷, CSC properly declared Amerigo’s bid non-responsive.

Bid 2: Hampton

[28] The second bid (Hampton) was also found non-compliant with mandatory technical criteria, including M1. The complaint does not indicate that Amerigo made an objection with respect to this bid nor that it had requested a debrief from CSC.

[29] That being said, and upon careful review of Amerigo’s bid with respect to Hampton, the Tribunal finds no reasonable indication that the CSC’s evaluation of that second bid was not conducted in accordance with the provisions of the CFTA.

[30] For the foregoing reasons, the Tribunal finds that the complaint does not disclose a reasonable indication of a breach of the relevant trade agreements. Therefore, the Tribunal will not conduct an inquiry into this complaint.

DECISION

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

Frédéric Seppey

Frédéric Seppey
Presiding Member

²⁷ Exhibit PR-2021-036-01 at 17.