



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DETERMINATION AND REASONS

File No. PR-2021-016

1091847 Ontario Ltd.

v.

Shared Services Canada

*Determination and reasons issued  
Friday, October 22, 2021*

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IN THE MATTER OF a complaint filed by 1091847 Ontario Ltd. pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C., 1985, c. 47 (4th Supp.);

AND FURTHER TO a decision to conduct an inquiry into the complaint pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

**BETWEEN**

**1091847 ONTARIO LTD.**

**Complainant**

**AND**

**SHARED SERVICES CANADA**

**Government  
Institution**

**DETERMINATION**

Pursuant to subsection 30.14(2) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal determines that the complaint is not valid.

Pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal awards Shared Services Canada its reasonable costs incurred in responding to the complaint, which costs are to be paid by 1091847 Ontario Ltd. Pursuant to Article 4.1 and Appendix A to the *Guideline for Fixing Costs in Procurement Complaint Proceedings*, the Canadian International Trade Tribunal's preliminary indication of the level of complexity for this complaint is Level 1, and its preliminary indication of the amount of the cost award is \$1,150. If any party disagrees with the preliminary indication of the level of complexity or the preliminary 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 *Guideline for Fixing Costs in Procurement Complaint Proceedings*. The Canadian International Trade Tribunal retains jurisdiction to establish the final amount of the award.

Randolph W. Heggart

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Randolph W. Heggart

Presiding Member

Tribunal Panel:	Randolph W. Heggart, Presiding Member
Tribunal Staff:	Zackery Shaver, Counsel Lindsay Vincelli, Senior Registrar Officer
Complainant:	1091847 Ontario Ltd.
Counsel for the Complainant:	Phil Weedon
Government Institution:	Shared Services Canada
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## STATEMENT OF REASONS

### INTRODUCTION

[1] On June 7, 2021, 1091847 Ontario Ltd. (Aurora) submitted a complaint with respect to a Request for Proposal (Solicitation No. BPM011620) (RFP) issued by Shared Services Canada (SSC) on behalf of the Department of Foreign Affairs, Trade and Development (DFATD). The solicitation was for the provision of uninterruptable power supplies (UPS) and power distribution units (PDU) to be used in the Government of Canada's missions abroad.

[2] In its complaint, Aurora alleges that:

- (a) the proof of proposal (POP) testing was not completed in conformity with the procedures set out in the RFP;
- (b) SSC failed to provide adequate commentary and the results of the POP testing, even following repeated requests from Aurora; and
- (c) the COVID restrictions put in place by SSC and DFATD created unnecessary obstacles for Aurora's representative in adequately supervising and participating in the testing of its submission, which was damaged by DFATD staff.

[3] Aurora has requested that in the event that its complaint is valid, SSC cancel the current solicitation and issue a new solicitation for the requirement. In the alternative, Aurora has requested that it be compensated for its lost profits and for bringing its complaint. Aurora has also requested compensation for the damage to its equipment caused by SSC and DFATD during the POP testing.

### PROCEDURAL BACKGROUND

[4] Solicitation No. BPM011620 was published January 12, 2021, on buyandsell.gc.ca, with a bid closing date of February 5, 2021, at 3:00 p.m. EDT. The closing date was later extended to February 26, 2021, at 2:00 p.m. EST.

[5] The solicitation was the subject of 12 amendments, with several changes made to the bid submission process between January 12 and February 22, 2021.

[6] On or before the closing date, Aurora submitted a responsive bid in relation to the solicitation.

[7] On March 29, 2021, Aurora was advised that it was the highest-ranked bidder and that its proposed solution would proceed to POP testing. A kick-off meeting was scheduled for April 15, 2021.

[8] Following the kick-off meeting, several COVID restrictions were announced, including the partial closure of the Quebec-Ontario border.

[9] On April 19, 2021, Aurora's representative delivered the equipment to be tested to DFATD's test facility. The equipment was installed on April 21, 2021.

[10] The representative was present for the visual inspection of the equipment on April 21, 2021, and the first round of testing that was completed on April 22, 2021. Due to COVID restrictions put in place, he was not permitted to attend the software testing that took place on April 23 and 26, 2021.

[11] On April 27, 2021, SSC informed Aurora that its product had not met the requirements of POP test P.4 (which was the POP test for mandatory criterion M.15), namely that the network card provided in the power supply was not compatible with an ethernet port speed of 1 Gbps.<sup>1</sup>

[12] Aurora filed an objection with SSC regarding this determination on May 11, 2021.

[13] On May 21, 2021, SSC provided a written response to Aurora's concerns, indicating that SSC would be moving to test the product of the next supplier instead of retendering, as requested by Aurora, as the equipment was badly needed.

[14] On June 7, 2021, Aurora replied to SSC's written response, reiterating that SSC had erred in finding its product non-compliant with the required specifications.

[15] On June 8, 2021, Aurora filed its perfected complaint with the Tribunal.

[16] On June 15, 2021, the Tribunal accepted Aurora's complaint for inquiry.

[17] On June 16, 2021, the Tribunal issued a postponement of award of contract order. On June 24, 2021, with SSC having confirmed that the contract had been awarded to TeraMach Technologies Inc., the Tribunal issued a rescission of postponement of award of contract order.

[18] On July 13, 2021, the Tribunal received the Government Institution Report (GIR).

[19] On July 27, 2021, after granting Aurora an extension of time to file its comments, the Tribunal received Aurora's comments on the GIR.

[20] On September 3, 2021, the Tribunal made a request that the parties provide additional information related to the complaint. Aurora provided its response on September 10, 2021. SSC provided its response on September 9, 2021, and a reply to Aurora's response on September 13, 2021.

[21] On September 15, 2021, the Tribunal once again requested that Aurora provide additional information related to the complaint. Aurora furnished its response on September 17, 2021.

## **RELEVANT TRADE AGREEMENTS AND EXCERPTS FROM THE SOLICITATION DOCUMENTS**

[22] The solicitation documents and the tender notice published on Buyandsell.gc.ca do not cite any trade agreements applicable to the solicitation at issue. The stated contract award value is \$3,250,251.77. Canada's applicable trade agreements have thresholds ranging from \$26,400 to \$238,000 for goods.<sup>2</sup> As the complainant has based its argument on the Canadian Free Trade

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<sup>1</sup> Exhibit PR-2021-016-01 at 16.

<sup>2</sup> Public Works and Government Services Canada, Events Planning and Management (EN578-171582/D), Tender Notice, modified 30 July 2020.

Agreement (CFTA),<sup>3</sup> the respondent has not objected to the application of this agreement, and the goods at issue are being procured and delivered within Canada, the Tribunal sees no reason why the CFTA would not apply in the circumstances.

[23] Aurora argues that SSC breached Articles 503, 509 and 510 of the CFTA. Reviewing Aurora's arguments, however, its grounds of complaint focus primarily on the testing and evaluation of its proposed equipment (Article 515(4)), the unilateral changes to the testing process that were communicated following the close of bids (Article 510), and the incomplete reporting on the testing that was undertaken by SSC and DFATD (Article 516(1)). The relevant excerpts of the provisions are included below:

**Article 510: Modifications, Clarification, or New Information**

1. A procuring entity shall make available to all suppliers any new information or clarification of the original information set out in the tender documentation provided in response to questions from one or more suppliers, in an open, fair, and timely manner.
2. Prior to the final date for the submission of tenders, if a procuring entity modifies the evaluation criteria or the requirements set out in the tender documentation, or amends or reissues a tender notice or the tender documentation, the procuring entity shall:
  - (a) publish the modifications or amended or re-issued tender notice or tender documentation on the tendering website or system used by the procuring entity; and
  - (b) extend, if appropriate, the final date for the submission of tenders to allow adequate time for suppliers to modify and re-submit amended tenders.

**Article 515: Treatment of Tenders and Award of Contracts**

*Evaluation and Award of Contract*

4. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the tender notices and tender documentation and be from a supplier that satisfies the conditions for participation.

**Article 516: Transparency of Procurement Information**

*Information Provided to Suppliers*

1. A procuring entity shall promptly inform participating suppliers of its contract award decisions, and, on the request of a supplier, shall do so in writing. Subject to Article 517, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the procuring entity did not select its tender.

[24] Mandatory Criterion M.15 and POP Test Criterion P.4(a) in the RFP, with which Aurora was found to be non-compliant with, read as follows:

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<sup>3</sup> Canadian Free Trade Agreement, online: Internal Trade Secretariat <<https://www.cfta-alec.ca/wp-content/uploads/2021/09/CFTA-Consolidated-Version-September-24-2021.pdf>> (entered into force 1 July 2017).

**M.15.** The Bidder must demonstrate the following:

- a) The embedded network management interface has an Ethernet port (minimum 1 Gbps). No external network management device is acceptable.
- b) The network management supports Simple Network Management Protocol (SNMP).
- c) The solution allows configuration of a default gateway.
- d) The network management supports secure email alerts (SMTPS).<sup>4</sup>

**P.4.**<sup>5</sup>

ADDITIONAL MANDATORY TECHNICAL CRITERION	EVALUATION METHOD	EVALUATION CRITERIA	COMPLIANT (Y/N)
... a) The network management interface must have an Ethernet port that is 1 Gbps compatible ...	... a) Using a testing tool to verify the network management interface and verify the auto-negotiate speed is at 1 Gbps. ...	... <b>PASS:</b> a) The link speed is auto-negotiated at 1 Gbps. <b>FAIL:</b> if any of the above are not met. ...	

[25] Due to the length of the relevant section of the RFP concerning POP testing requirements, excerpts from this section have been included below at Appendix A.

## ANALYSIS

[26] Aurora maintains that its solution was compliant with all of the relevant requirements of the solicitation and that due to SSC's decision to not allow its representative to take part in testing, Aurora was unable to determine whether an error had taken place in the testing environment used by DFATD and SSC or with the equipment that had been supplied.<sup>6</sup> Aurora further submits that this was an impermissible deviation from the testing procedures contained in the solicitation documents.

[27] SSC submits that Aurora's solution did not meet the stated requirements of the solicitation and that its representative was present for the hardware testing that was completed, during which it was determined that Aurora's proposed network interface card (NIC) did not meet the minimum transfer speed of 1 Gbps.<sup>7</sup> Upon further review of the literature provided by Aurora, SSC further submitted that the product documentation included in Aurora's bid does not support Aurora's contention that the NIC had a 1Gbps transfer speed and that its bid should have been found non-compliant prior to POP testing.

<sup>4</sup> Exhibit PR-2021-016-11 at 76.

<sup>5</sup> *Ibid.* at 92.

<sup>6</sup> Exhibit PR-2021-016-01 at 10.

<sup>7</sup> Exhibit PR-2021-016-11 at 137–140.

**The POP testing was not completed in conformity with the procedures set out in the RFP**

[28] The complainant alleges that it should have been notified, in accordance with the POP testing process outlined in paragraphs 3.1 iv. b) and 3.1 iv. d) of the solicitation, in order to be able to fix its product submitted for testing once SSC found that the NIC provided by the complainant failed to meet the minimum transfer speed of 1 Gbps required by mandatory criteria M.15 and P.4 of the solicitation.

[29] This ground of complaint is not valid. The specific elements that the complainant alleges were not followed by SSC relate to “administrative faults,” which are not applicable in this case. The fault determined by SSC represented a non-compliance with a mandatory requirement of the RFP, which, according to the RFP, would result in immediate disqualification of the bid.<sup>8</sup>

[30] There appears to be a fundamental flaw in what Aurora believes to be its obligations and what it believes to be the obligations of the government. Aurora seems to be under the impression that the discrepancy found in the POP testing was one that should have been communicated to them during the testing phase and that they would be given an opportunity to correct this discrepancy. This is incorrect, both in terms of the discrepancy found and in terms of the requirements of the RFP. While there is a dispute as to when the pertinent test result was first communicated, it is definitive that the result was communicated in an email/letter dated April 27, 2021. The discrepancy was a failure of the provided UPS to meet a mandatory requirement of the POP test protocol and, consequently a mandatory requirement of the RFP (a minimum of 1 Gbps transfer speed), under P4 and M15, respectively. Any failure of this type rendered the bid non-compliant, with no opportunity for remediation.<sup>9</sup>

[31] The complainant mistakenly characterizes and/or understands this flaw to be either an “administrative fault” or a “technical fault”, which are both remedial faults, albeit in a limited fashion, according to the RFP.

[32] Administrative and technical faults are described paragraphs 3.1 iv. c) to e) and 3.1 vi. c) to e) of the RFP:

**3.1 Proof of Proposal Test for Top-Ranked Bid:****iv. Testing Procedures and Set-Up Instructions:**

- c) If the Product sample(s), or its replacement, exhibits another Administrative Fault, the Product will be eliminated from further consideration.
- d) In the event that the Product does not function in accordance with the Technical Requirements or fails to execute the testing completely and accurately, the Bidder will be required to repair the Product within 24 hours of notification by SSC unless another time period is agreed upon in writing by the Contracting Authority.

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<sup>8</sup> *Ibid.* at 44.

<sup>9</sup> Subsection 3.1(8) of the RFP; Exhibit PR-2021-016-11 at 44.

- 1.If the functionally issue is not rectified within the identified time period, the resulting fault may be deemed as a Technical Fault.
- 2.If the functionality issue is not rectified, the resulting fault will be deemed a Technical Fault.

**3.A maximum of two (2) Technical Faults will be allowed.**

- e) Failure by the Bidder to repair the Product will result in the Product being declared noncompliant. These Technical Faults apply to all parts of the testing.<sup>10</sup>

**vi. Applicable Definitions:**

- c) Administrative Fault: This occurs when the product is not supplied and configured as per the demonstration instruction letter. Administrative Faults are not used to bring a product from a non-compliant state to a compliant state.
- d) Technical Fault: This occurs when the product does not function in accordance with the technical requirement of the bid solicitation. Technical Faults cannot be used to bring a product from a noncompliant state to a compliant state.
- e) Non-Compliance: Any Product that fails to meet the bid solicitation technical requirements. Examples of non-compliance include; minimum number of hard drive bays, does not provide battery backup, hard drives do not meet minimum rpm, etc.

[33] The complainant emphasizes in its communications that its proposal included a 1 Gbps NIC. This is not in dispute. Indeed, that is precisely why the complainant's product was approved to move forward to the POP phase.

[34] What has been difficult to ascertain, however, is whether the correct NIC had been installed in the test unit presented under the POP testing phase of the solicitation and to what degree Aurora was aware that the NIC was non-compliant with the requirements of the RFP. In response to this issue, the Tribunal asked:

If this tool was accurate and the card installed had been a 100 Mbps card, how would have this been remedied in order for the test to be conducted with a pass result?<sup>11</sup>

[35] The complainant replied:

As mentioned previously, after notification by Makara Phan, the SSC Procurement Officer, 1091847 Ontario Ltd. would have remedied this issue by immediately placing a rush order for a replacement NIC card from CyberPower. 1091847 Ontario Ltd. would have then installed the replacement NIC and verified sufficient and correct cabling to the NIC, and

<sup>10</sup> Exhibit PR-2021-016-011 at 46.

<sup>11</sup> Exhibit PR-2021-016-18 at 2.

ensured a correctly set-up test bed and NIC set-up, so that the test could be conducted with a pass result.<sup>12</sup>

[36] All evidence seen by the Tribunal indicates that the testing of the UPS resulted in a failure of the NIC to demonstrate it was capable of a 1 Gbps transfer speed. Despite making two requests to the complainant, the Tribunal was unable to confirm the actual NIC supplied in the unit submitted for testing. In the last correspondence to the Tribunal on this subject the complainant stated:

. . . we did not take apart these *OL5KRTHD* UPS to verify what NIC cards were actually in these UPS, and they were returned.<sup>13</sup>

[37] What were the responsibilities of the bidder in this case? The bidder must provide a clear and unambiguous proposal and the bidder had to supply sample units for testing that would meet all of the mandatory requirements. Some latitude was allowed for configuration errors or damaged components; however, this did not permit the replacement of a component that failed a mandatory requirement with a different but compliant component. There seems to be some question as to which NIC was actually proposed and which NIC was actually installed in the units presented for testing. The RFP is clear that the NIC must have the capability of providing a 1 Gbps transfer speed at minimum. This is clear. However, it is not clear what card was actually installed in the units presented for testing.

[38] Indeed, indications are that the complainant itself was not absolutely sure which cards were installed in their test units. The onus was on the bidder to provide the “as proposed” product for testing. That product had to be capable of meeting all of the mandatory requirements. A component that did not meet the mandatory testing requirements would not be allowed to be replaced but would have resulted in a finding of non-compliance resulting in the proposal being rejected.<sup>14</sup>

[39] In the affidavit provided with the GIR, Mr. Arman Hossain states that a Fluke Networks NetTool series II was connected to the UPS NIC and got a reading of 100 Mbps.<sup>15</sup> Indeed he also states that the complainant’s representative took photos of the results on the tool for both the UPS and PDU tests (the UPS card read 100 Mbps and the PDU read 1 Gbps). When the Tribunal requested copies of these photos from the complainant, the event was not denied, however the photos were apparently no longer available due to the replacement of the phone that was used at the time.

[40] Additionally, it should also be noted that SSC did not compromise the POP testing procedure by restricting Aurora’s attendance during product testing. Paragraph 3.1 iii. d) of the RFP required that a representative of the bidder be available should an issue with testing arise.<sup>16</sup> Subsection 3.1 2. of the solicitation permitted up to two representatives of the bidder to be present during testing,<sup>17</sup> however this permission was subject to change following answers to questions in Amendment 12 to the RFP, it was warned that POP testing could be the subject of additional restrictions due to new security protocols put in place related to the COVID-19 pandemic:

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<sup>12</sup> Exhibit PR-2021-016-21 at 4.

<sup>13</sup> Exhibit PR-2021-016-24 at 2.

<sup>14</sup> Exhibit PR-2021-016-11 at 44.

<sup>15</sup> *Ibid.* at 139–140.

<sup>16</sup> *Ibid.* at 45.

<sup>17</sup> *Ibid.* at 44.

Canada takes the COVID-19 pandemic very seriously. At the time of the Proof of Proposal (POP) testing, Canada will provide detailed information about the COVID-19 security protocols related to equipment delivery and building access.<sup>18</sup>

**SSC failed to provide adequate commentary and the results of the POP testing, even following repeated requests from Aurora**

[41] This ground of complaint is not valid as the determinative result of the POP testing was provided to the complainant in the regret letter/email dated April 27, 2021. In the letter, the complainant was advised that the sample provided for testing did not meet POP test protocol item P4. The email reads, in part:

Proof of Proposal Test for Top-Ranked Bid: Item P.4;

a) The network management interface must have an Ethernet port that is 1 Gbps compatible

It has been deemed by SSC that the network card in the UPS solutions, RMCARD 205, does not provide sufficient evidence of the mandatory requirement of 1 Gbps compatible during the in the PoP testing and only supports up to 100 Mbps.

It is for this reasons that SSC has found Aurora's response to the RFP Solicitation No. BPM011620 for Global Affairs Canada - Uninterruptible Power Supply (UPS) and Power Distribution Unit (PDU) non-compliant. This letter will be considered the debrief for this requirement.<sup>19</sup>

[42] While the complete results of the POP testing were not provided to the complainant until the Tribunal request and subsequent response from SSC on September 9, 2021, the key element (i.e. the reason and test result relating to the rejection of the complainant's proposal) was provided on April 27, 2021. Since all of the other elements of the testing indicated a pass, it is not relevant that information on this testing was not provided to the complainant and the Tribunal concludes that the failure to provide complete testing notes and records does not amount to a violation of the procedures set out in the RFP and required by the trade agreements.<sup>20</sup>

[43] In *Royal Indevco Properties Inc.*, the Tribunal concluded that:

Article 516(1) of the CFTA and Article XVI(1) of the WTO-AGP require procuring entities to promptly inform participating suppliers of its contract award decisions, including an explanation of why the procuring entity did not select its tender.<sup>21</sup>

[44] This process can include verbal and written debriefings, the provision of contemporaneous documentary evidence, such as the consensus scoring, evaluator notes and instructions to evaluators.<sup>22</sup>

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<sup>18</sup> *Ibid.* at 123.

<sup>19</sup> Exhibit PR-2021-016-01 at 16.

<sup>20</sup> Exhibit PR-2021-016-11 at 33; Article 516(1) of the CFTA.

<sup>21</sup> *Royal Indevco Properties Inc. v. Department of Public Works and Government Services* (13 May 2021), PR-2021-008 [*Royal Indevco Properties Inc.*] at para. 63.

[45] As the Tribunal has stated previously, proactive disclosure of why a bidder's submission was unsuccessful allows bidders to determine their rights in view of the requirements set out in the trade agreements and should be favoured over disclosure following the complaint.<sup>23</sup> That said, disclosure obligations are typically met, as they were here, when a government institution shares results pertaining to the relevant portions of a supplier's bid where points were deducted or requirements were not met.

**The COVID restrictions put in place by SSC and DFATD created unnecessary obstacles for Aurora's representative in adequately supervising and participating in the testing of its submission, which was damaged by DFATD staff.**

[46] This ground of complaint was known or should have been known by Aurora on April 23, 2021, as outlined in the email from the contracting officer to Aurora's representative. Therefore, the Tribunal finds that an objection to the COVID restrictions and Aurora's limited presence during testing should have been made on or before May 7, 2021.

[47] Provisions of subsections 6(3) and 6(4) of *Canadian International Trade Tribunal Procurement Inquiry Regulations*<sup>24</sup> apply to the filing of complaints, rather than the making of objections, therefore even if subsections 6(3) and 6(4) applied, a complaint relating to this ground should have been filed on or before May 25, 2021 (the first business day after the expiry of the 30 day period stipulated in subsection 6(4)). Accordingly, the Tribunal finds that this ground of complaint is late.

**Aurora's allegations of a breach of articles 503 and 509 of the CFTA are not supported by Aurora's argument or documentary evidence.**

[48] The complainant's initial complaint document alleged the violation of Articles 503, 509, and 510 of the CFTA. Where the Tribunal concluded above that no violation of Article 510 of the CFTA took place, it warrants some explanation why the complainant's submissions did not support its allegation of a breach of Articles 503 and 509 of the CFTA.

[49] As stated in SSC's GIR, Article 503 of the CFTA establishes general rules for procurement to ensure an equal playing field among suppliers. Conversely, Article 509 of the CFTA bars unnecessary barriers to trade, including technical specifications and certifications that are not needed for procurements.<sup>25</sup> Insofar as Aurora did not make any specific arguments that would suggest a violation of either article, and as a complaint pertaining to the contents of the solicitation documents would be late under subsections 6(3) and 6(4) of the *Regulations*, the Tribunal finds these allegations to be without merit.

## **COSTS**

[50] Pursuant to section 30.16 of the *Canadian International Trade Tribunal Act* (CITT Act), the Tribunal awards SSC its reasonable costs incurred in responding to the complaint, to be paid by Aurora.

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<sup>22</sup> See *Nations Translation Group Inc. v. Department of Public Works and Government Services* (23 June 2020); PR-2019-071 at paras. 32–33.

<sup>23</sup> *Ibid.*

<sup>24</sup> SOR/93-602 [*Regulations*].

<sup>25</sup> Exhibit PR-2021-016-11 at paras. 36–38.

[51] In accordance with the *Procurement Costs Guideline (Guideline)*, the Tribunal's preliminary indication of the level of complexity for this complaint case is Level 1 (\$1,150). The procurement at issue in this complaint was not overly complex. The complaint was restricted to a single criterion and, although the record included a significant level of documentation, interventions were relatively circumscribed to this issue. While the inquiry was extended to 135 days, this was in part to allow the complainant additional time to file its reply.

## DETERMINATION

[52] Pursuant to subsection 30.14(2) of the *CITT Act*, the Tribunal determines that the complaint is not valid.

[53] Pursuant to section 30.16 of the *CITT Act*, the Tribunal awards SSC its reasonable costs incurred in responding to the complaint, which costs are to be paid by Aurora. Pursuant to Article 4.1 and Appendix A to the *Guideline*, the Tribunal's preliminary indication of the level of complexity for this complaint case is Level 1 and its preliminary indication of the amount of the cost award is \$1,150. If any party disagrees with the preliminary level of complexity or indication of the amount of the cost award, it may make submissions to the Tribunal, as contemplated in Article 4.2 of the *Guideline*. The Tribunal retains jurisdiction to establish the final amount of the cost award.

Randolph W. Heggart

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Randolph W. Heggart

Presiding Member

## APPENDIX A - PROOF OF PROPOSAL TESTING INSTRUCTIONS

### 3.1 Proof of Proposal Test for Top-Ranked Bid:

1. Canada reserves the right to invite the highest-ranked Bidder after Technical and Financial Evaluation (as detailed below) to a Proof of Product (PoP) test at GAC's location in the NCR. Through the PoP test, Canada will test the proposed Product to confirm that it will function as described in the bid. The vendor will be required to recreate the technical environment described in Proof of Test Criteria.
2. After being notified by Canada, Bidders will be given up to two (2) working days to start the installation of the proposed Product. The Product must be installed, functional, and fully charged within one (1) working day of the Bidder starting the installation. Canada will then conduct the PoP test. Up to two (2) representatives of the Bidder may be present during the test. The Bidder may also indicate in its bid the representatives available by telephone to provide technical support during the PoP. Canada will not delay the test if an individual is unavailable. Once started, the PoP test must be completed within two (2) working days (7.5 hours/day).
3. Canada will document the results of the PoP test. If Canada determines that the proposed Product does not meet any mandatory requirement of the bid solicitation, the bid will fail the PoP test. The bid will be disqualified and Canada will proceed with the next ranked responsive bid.
4. If, during the initial installation of the proposed Product for the PoP test, the Bidder discovers that there are missing or defective components identified in the technical bid, the Bidder must cease the installation process and inform the Second Administrative Authority. If Canada determines that the missing and/or defective items are components identified in the technical bid, Canada will permit the Bidder to submit the missing components and/or replacements for the defective components within one (1) working day of the issue being discovered.
5. If during the PoP test, Canada determines that the Bidder's offered devices do not meet a feature or function within the Proof of Test Criteria. The PoP test with the Bidder will end and no further consideration will be given to that Bidder. Canada will then start the PoP test with the next highest ranked Bidder (as determined in accordance with the combination of technical merit and pricing).
6. Canada will assume the responsibility for all cost related to Canada's resources/employees and Canada owned equipment and facilities; otherwise the testing will be conducted at no additional cost to Canada.
7. In connection with the PoP test, the Bidder grants to Canada permission to use the Bidder's offered devices for testing and evaluation purposes, as described herein. Should the PoP test complete successfully and the Bidder receives a Contract under this solicitation, Canada will include the tested devices in the initial order amount, otherwise the devices will be returned to the Bidder at the Bidder's cost.
8. The Bidder grants to Canada a limited license to use the Bidder's proposed Product for PoP testing and evaluation purposes.

**i. General**

- a. Canada requires the Bidder to have, as necessary, one (1) sample unit of Option 1 (UPS, 2 x PDUs, Batteries, Battery Cabinet, Environmental Monitor) and one (1) sample unit of Option 2 (UPS, Surge Suppression Device, Stepdown Transformer, Batteries, Battery Cabinet, Environmental Monitor), as illustrated in Appendix A to Annex A – UPS/PDU Options of the proposed Product, available within two (2) working days of receipt of a written request by Canada for test samples. The Product supplied for testing must be identical to those listed in the Bidder's bid response.
- b. Test samples will be assessed by SSC in order to demonstrate that the proposed Product meets the technical requirements stated in the Proof of Test criteria and that the proposed Product can operate within GAC's current IT infrastructure.
- c. Despite the written bid, if Canada determines as a result of examining the device test samples that the Bidder's proposed Product does not meet the mandatory requirements of this bid solicitation, the bid will be declared non-responsive and the Bidder's Proposal will be given no further consideration.

**ii. Canada's Responsibilities:**

- a) Notification to the Bidder of the requirement to submit testing samples including the due date for receipt of samples, the date of testing (for availability by the Bidder) and the location of delivery of the test samples. This will be the responsibility of the Contracting Authority.
- b) Verification of Product functionality and compatibility during the testing process with the assistance of the Bidder.
  1. Canada's testing evaluation team is composed of SSC representatives, who will be on-site to observe the testing.
- c) Canada will provide the following in order to facilitate testing:
  1. Technical support by means of an SSC technical infrastructure representative, an SSC functional analyst and an SSC technical representative.
- d) Notification to the Bidder of a Technical or Administrative Fault recorded during the testing evaluation. This will be the responsibility of the Contracting Authority.

**iii. The Bidder's Responsibilities:**

- a) The top-ranked Bidder (identified after the financial evaluation) must submit one (1) of each complete Product samples (as illustrated in Appendix A to Annex A – UPS/PDU Options for Option 1 and Option 2 for testing purposes.
- b) The Bidder must submit a list of all serial numbers and parts numbers for Product test samples of each option, including all associated peripherals, in advance of the delivery of the test samples, to meet GAC's security requirements.

- c) The Product test samples must be delivered, at no cost to Canada, to a location specified by Canada in the National Capital Region (NCR) within two (2) working days of the Contracting Authority's written request.
- d) The Bidder's representative must be available by telephone or e-mail during the testing period, and must be on-site within 24 hours of request by SSC personnel (if required).

**iv. Testing Procedures and Set-up Instructions**

- a) Testing hours:
  - 1. Specific hours for the conduct of the testing will be set out in the notification letter provided to the Bidder. It is anticipated that the hours for testing will be within SSC's core business hours, Monday to Friday local time, at the testing site, with the exception of any local Federal Government and Provincial Holidays.
  - 2. Specific timing for the delivery and initial set-up of the devices (by Canada) will be provided in the notification letter sent to the Bidder by Canada.
- b) Verification process
  - 1. Verification of the configuration will begin once SSC has finished installing the Products with the assistance of the Bidder.
  - 2. In the event that any Product(s) delivered to the testing site is not properly configured, the Bidder will be required to rectify the discrepancy within 24 hours of written notification unless another time period is agreed upon in writing by the Contracting Authority.
  - 3. If the configuration discrepancy is not rectified within the identified time period, the resulting fault may be deemed as an Administrative Fault.
  - 4. If the configuration discrepancy is not rectified at all, the resulting fault will be deemed as an Administrative Fault.
  - 5. **A maximum of one (1) Administrative Fault will be permitted.**
- c) If the Product sample(s), or its replacement, exhibits another Administrative Fault, the Product will be eliminated from further consideration.
- d) In the event that the Product does not function in accordance with the Technical Requirements or fails to execute the testing completely and accurately, the Bidder will be required to repair the Product within 24 hours of notification by SSC unless another time period is agreed upon in writing by the Contracting Authority.
  - 1. If the functionally issue is not rectified within the identified time period, the resulting fault may be deemed as a Technical Fault.
  - 2. If the functionality issue is not rectified, the resulting fault will be deemed a Technical Fault.

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3. **A maximum of two (2) Technical Faults will be allowed.**
- e) Failure by the Bidder to repair the Product will result in the Product being declared noncompliant. These Technical Faults apply to all parts of the testing.
  - f) If the Product, or its replacement, exhibits a third Technical Fault, the Product will be declared non-compliant.
  - g) Notification of Fault:
    - 1. Notification of a Technical Fault will be made to the Bidder's designated representative by the Contracting Authority and logged. The 24-hour clock will start after notification.
  - h) Component Replacement during Testing:
    - 1. Replacement of Product components (i.e. hard drive or peripherals) is allowed to facilitate a repair. These replaced components must be of the same manufacturer and model number as the component being proposed and being replaced.
    - 2. The Bidder is permitted to change a specific Product component once during testing. Additional changes of the specific component will result in the assessment of noncompliance of the Product.