



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File No. PR-2021-032

Anritsu Electronics Ltd.

v.

Department of Public Works and
Government Services

*Determination and reasons issued
Wednesday, December 1, 2021*

TABLE OF CONTENTS

DETERMINATION.....	i
STATEMENT OF REASONS	1
SUMMARY OF THE COMPLAINT	1
PROCUREMENT PROCESS.....	1
PROCEDURAL HISTORY	2
ANALYSIS	3
Specific grounds of complaint	4
Did PWGSC err by not deeming Keysight’s bid non-responsive on the basis that its product was not released by the solicitation closing date?.....	5
Did PWGSC err by not deeming Keysight’s bid non-responsive on the basis that its product did not meet the MTC in items 001, 006, 015, 020 and 025?	6
Item 001 (environmental).....	7
Item 006 (AC power).....	7
Item 015 (real-time spectrum analysis).....	8
Item 020 (displayed average noise level)	8
Item 025 (third order intercept).....	8
COSTS.....	9
DETERMINATION	9

IN THE MATTER OF a complaint filed by Anritsu Electronics 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

ANRITSU ELECTRONICS LTD.

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 complaint is not valid.

Pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*, the Tribunal awards the Department of Public Works and Government Services its reasonable costs incurred in responding to the complaint, which costs are to be paid by Anritsu Electronics Ltd. In accordance with the *Procurement Costs Guideline*, the Tribunal's preliminary indication of the level of complexity for this complaint is Level 1, and its preliminary indication of the amount of the cost award is \$1,150. If any party disagrees with the preliminary level of complexity or indication of the amount of the cost award, it may make submissions to the Tribunal, as contemplated in article 4.2 of the *Procurement Costs Guideline*. The Tribunal reserves jurisdiction to establish the final amount of the cost award.

The intervener, Keysight Technologies Canada Inc., shall bear its own costs.

Frédéric Seppey
Frédéric Seppey
Presiding Member

Tribunal Panel:	Frédéric Seppey, Presiding Member
Tribunal Counsel:	Kirsten Goodwin, Counsel
Complainant:	Anritsu Electronics Ltd.
Government Institution:	Department of Public Works and Government Services
Counsel for the Government Institution:	Brendan Morrison Peter J. Osborne Jennifer Power
Intervener:	Keysight Technologies Canada Inc.
Counsel for the Intervener:	Jesse Goldman Matthew Kronby Erica Lindberg Danny Yeo

Please address all communications to:

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

STATEMENT OF REASONS

SUMMARY OF THE COMPLAINT

[1] The complaint concerns a procurement (Solicitation No. UT255-219841/A) made by the Department of Public Works and Government Services (PWGSC) on behalf of Innovation, Science and Economic Development Canada. The solicitation was for the provision of handheld spectrum analyzers.

[2] The complainant is Anritsu Electronics Ltd. (Anritsu). The successful bidder is Keysight Technologies Canada Inc. (Keysight). Anritsu claims that PWGSC breached trade agreements because it did not evaluate the winning bid in accordance with certain requirements set out in the tender documentation.

[3] More specifically, Anritsu alleges that the model presented in Keysight's bid was not released by the solicitation closing date, contrary to the solicitation stipulation that all mandatory features had to be available on that date. Anritsu also alleges that the model did not meet all the mandatory technical criteria (MTC) specified in the solicitation, and therefore Keysight's bid should have been deemed non-compliant.

[4] As a remedy, Anritsu asks the Tribunal to reject Keysight's bid as non-compliant and award the contract to Anritsu.

PROCUREMENT PROCESS

[5] PWGSC issued the solicitation Request for Proposal (RFP) on January 14, 2021, with a closing date of February 18, 2021.¹ The RFP states that bids "will be evaluated on a simple, stringent pass/fail basis. Proposals not meeting each mandatory requirement will be considered non-responsive (non-compliant) and given no further consideration."²

[6] Between January 19, 2021, and February 12, 2021, PWGSC made four solicitation amendments, including amendment 003, which clarifies that mandatory features had to be available at the solicitation closing.³

[7] Anritsu submitted its bid on February 17, 2021,⁴ and the solicitation closed on February 18, 2021.

[8] On June 15, 2021, PWGSC informed Anritsu that Keysight was the winning bidder.⁵ On the same day, Anritsu raised its first objection with PWGSC.⁶ In its communication, Anritsu claimed that Keysight's product range (FieldFox B series) could not have met all the MTC stipulated in the RFP as of the bid closing date as a model covering the main requirements of 9 kHz to 40 GHz and real-time spectrum analysis (RTSA) bandwidth was only released on March 15, 2021, several weeks after bid closing date. In addition, Anritsu noted that the FieldFox B model released on

¹ Exhibit PR-2021-032-01 at 20.

² *Ibid.* at 27.

³ *Ibid.* at 53.

⁴ *Ibid.* at 738.

⁵ *Ibid.* at 365.

⁶ *Ibid.* at 4, 366.

March 15, 2021, was still failing to meet some of the MTC, as evidenced by a publicly available data sheet. On June 17, 2021, Anritsu requested a debriefing from PWGSC on the results of the solicitation and sought information on potential challenge mechanisms.⁷

[9] On June 18, 2021, PWGSC advised Anritsu that it was investigating the matter.⁸ On June 24, 2021, PWGSC advised Anritsu that the former had confirmed that Keysight's model was released prior to the solicitation closing and complied with the solicitation requirements.⁹ On June 25, 2021, Anritsu raised a second set of objections regarding the compliance of Keysight's model with the terms of the RFP, alleging inconsistencies between the specifications listed on a publicly available data sheet for Keysight's FieldFox B series and various MTC. Anritsu also provided additional information regarding the March 15, 2021, release of the FieldFox B series capable of meeting several of the MTC.¹⁰

[10] On June 28, 2021, PWGSC requested an extension of the bid validity period.¹¹ The bidders agreed to extend the validity period of their bids until July 30, 2021.¹² On July 12, 2021, Anritsu provided further information to support its claim that Keysight's product was not released at the time of bid closure.¹³ On July 14, 2021, PWGSC acknowledged receipt of further objections from Anritsu,¹⁴ and on July 21, 2021, reconfirmed that Keysight's bid was compliant and offered to provide a technical bid debrief.¹⁵

[11] PWGSC awarded the contract to Keysight on July 21, 2021.¹⁶ On the same day, Anritsu reiterated its objections.¹⁷ On July 26, 2021, PWGSC acknowledged receipt of these further objections from Anritsu, confirmed the contract award to Keysight, offered specific dates for a debrief, and provided guidance on how to contest the procurement process and contract award.¹⁸

PROCEDURAL HISTORY

[12] Anritsu filed its complaint with the Tribunal on August 3, 2021.¹⁹ Anritsu's complaint includes a request for the Tribunal to order PWGSC, pursuant to subsection 30.13(3) of the *Canadian International Trade Tribunal Act*,²⁰ to postpone awarding the contract. The Tribunal accepted the complaint for inquiry on August 6, 2021, but did not make a postponement order because the contract had already been awarded.

[13] On September 1, 2021, PWGSC asked the Tribunal to extend the deadline for filing the Government Institution Report (GIR), citing an upcoming statutory holiday and an anticipated

⁷ *Ibid.* at 472.

⁸ *Ibid.* at 477.

⁹ *Ibid.* at 490.

¹⁰ *Ibid.* at 611.

¹¹ *Ibid.*

¹² Exhibit PR-2021-032-14A at 9.

¹³ Exhibit PR-2021-032-01 at 660.

¹⁴ *Ibid.* at 660.

¹⁵ *Ibid.* at 676.

¹⁶ *Ibid.* at 734.

¹⁷ *Ibid.* at 679.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ R.S.C., 1985, c. 47 (4th Supp.) [CITT Act].

intervener request. On September 2, 2021, the Tribunal gave Anritsu an opportunity to comment on PWGSC's extension request. On September 3, 2021, given PWGSC's concerns, and in the absence of any comments from Anritsu, the Tribunal extended the deadline for filing the GIR to September 21, 2021.

[14] On September 8, 2021, the Tribunal granted Keysight, the successful bidder and therefore an interested party, leave to intervene. On the same date, the Tribunal extended the deadline for Anritsu to file its comments on the GIR to October 5, 2021.

[15] PWGSC filed the GIR on September 21, 2021.²¹ Keysight filed its intervener submissions on September 28, 2021.²² Anritsu filed its comments on the GIR on October 5, 2021.²³

[16] On October 7, 2021, the Tribunal asked PWGSC and Keysight for additional information, and allowed all parties to provide their views on the questions.²⁴ PWGSC and Keysight replied to the Tribunal's request on October 13, 2021, and October 15, 2021, respectively.²⁵ On October 19, 2021, the Tribunal invited Anritsu to file any comments it had on the additional information.²⁶ Anritsu did not submit comments.

[17] Given the deadline extensions, the time frame for the Tribunal to issue its findings and recommendations increased to 135 days, pursuant to paragraph 12(c) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.²⁷

ANALYSIS

[18] To determine whether Anritsu's complaint is valid, the Tribunal is required by subsection 30.14(2) of the CITT Act to decide whether PWGSC acted in accordance with the prescribed procedures and other requirements found in the RFP. The Tribunal must also determine, pursuant to section 11 of the Regulations, whether the procurement was conducted in accordance with the requirements of an applicable trade agreement.²⁸ Relevant trade agreements generally require procuring entities to evaluate bids in accordance with the essential criteria prescribed in tender notices and documentation.²⁹

²¹ Exhibit PR-2021-032-14A.

²² Exhibit PR-2021-032-15.

²³ Exhibit PR-2021-032-16.

²⁴ Exhibit PR-2021-032-17.

²⁵ Exhibit PR-2021-032-18; Exhibit PR-2021-032-19.

²⁶ Exhibit PR-2021-032-20.

²⁷ SOR/93-602 [Regulations].

²⁸ The RFP identifies the following applicable trade agreements: the World Trade Organization Agreement on Government Procurement; the Canadian Free Trade Agreement; the Canada-European Union Comprehensive Economic and Trade Agreement; and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. Exhibit PR-2021-032-01 at 731.

²⁹ For example, as the Tribunal stated in *AJL Consulting v. Department of Agriculture and Agri-food* (12 February 2020), PR-2019-045 (CITT) [*AJL Consulting*] at para. 7, the Canadian Free Trade Agreement requires procuring entities to evaluate bids in accordance with essential criteria set out in the tender documentation.

[19] In assessing a procuring entity's evaluation of bids, the Tribunal shows deference to evaluators' expertise.³⁰ This means the Tribunal interferes only when an evaluation or award is unreasonable.³¹ The Tribunal has previously found that a procuring entity's "determination will be considered reasonable if it is supported by a tenable explanation, regardless of whether or not the Tribunal itself finds that explanation compelling."³² The Tribunal has also previously found that an evaluation or award is unreasonable where evaluators have not applied themselves in evaluating a bid, interpreted the scope of a solicitation requirement incorrectly, ignored vital information provided in a bid, based their evaluation on undisclosed criteria, or otherwise not conducted the evaluation in a procedurally fair way.³³

[20] Therefore, at issue here is whether PWGSC evaluated bids in accordance with the MTC specified in the tender documentation, as required by the applicable trade agreements.

Specific grounds of complaint

[21] Anritsu's specific grounds of complaint are as follows:

- (i) contrary to solicitation amendment 003, which required mandatory features to be available at the solicitation closing on February 18, 2021, Keysight's Fieldfox B series covering the main requirements of 9 kHz to 40 GHz and RTSA bandwidth analysis of 100 MHz was allegedly only released on March 15, 2021;³⁴ and
- (ii) Keysight's bid did not meet other MTC in the RFP,³⁵ namely:
 - (a) Item 001: mandatory operating temperature range of -10 °C to 55 °C;³⁶
 - (b) Item 006: mandatory operating alternating current (AC) power specification of -10 °C to 55 °C;³⁷
 - (c) Item 015: mandatory requirement for the spectrum analyzer to perform RTSA;³⁸
 - (d) Item 020: mandatory requirement for displayed average noise level (DANL), normalized to a 1 Hz resolution bandwidth at frequencies up to 2 GHz, to be less than or equal to -137 dBm/Hz;³⁹ and

³⁰ *AJL Consulting* at para. 8; and *Heiltsuk Horizon Maritime Services Ltd./Horizon Maritime Services Ltd. v. Department of Public Works and Government Services* (3 May 2021), PR-2020-068 (CITT) at para. 44.

³¹ *Ibid.*

³² *AJL Consulting* at para. 8, citing *Joint Venture of BMT Fleet Technology Limited and NOTRA Inc. v. Department of Public Works and Government Services* (5 November 2008), PR-2008-023 (CITT) at para. 25.

³³ *Menya Solutions Inc. v. Department of Public Works and Government Services* (28 May 2020), PR-2020-003 (CITT) at para. 38.

³⁴ Exhibit PR-2021-032-01 at 10–13, 366.

³⁵ *Ibid.* at 13.

³⁶ *Ibid.* at 14.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.* at 15–16.

- (e) Item 025: mandatory requirement for third order intercept worse case greater than or equal to 7 dBm (guaranteed) across operating frequency range.⁴⁰

Did PWGSC err by not deeming Keysight's bid non-responsive on the basis that its product was not released by the solicitation closing date?

[22] Anritsu claims that the Keysight FieldFox B series models capable of meeting the main mandatory bid requirements were neither released nor available by the closing of the solicitation. Anritsu's claim is based on publicly available documentation, such as data sheets available on Keysight's website that were retrieved in March 2021.⁴¹ Anritsu claims that Keysight's Fieldfox B model featuring specifications meeting the MTC was only publicly launched on March 31, 2021, according to a press release.⁴²

[23] PWGSC submits that in reviewing Keysight's bid, it had no reason to believe that the model was not available when the solicitation closed. When Anritsu objected to Keysight winning the contract, PWGSC reviewed Keysight's bid and followed up with the evaluators.⁴³ PWGSC also accessed Keysight's website and followed up with Keysight to obtain additional information.⁴⁴ PWGSC found that the additional information it reviewed satisfactorily confirmed that the model offered in Keysight's bid was available when the solicitation closed.⁴⁵

[24] In its intervenor submission,⁴⁶ Keysight identifies a December 2020 sale of model N995xB units from the FieldFox B series. The packing list submitted indicates that three N9952B FieldFox 50 GHz analyzers were shipped on February 19, 2021.⁴⁷ Keysight explains that the units' serial numbers reflected in the packing list show these products were produced in the last week of December 2020, before the solicitation closing date.

[25] In its submission responding to the GIR,⁴⁸ Anritsu asserts that the sales information presented by Keysight only demonstrates that the N9952B model was available in December 2020. Anritsu states that it is apparent from the GIR that Keysight's winning bid featured the N9951B model. Anritsu argues that the N9952B and the N9951B models are not the same, because they have different specifications offered at different price points. In Anritsu's view, sales information showing that the N9952B model (which was not the subject of the solicitation) was available in December 2020 does not establish that the N9951B model was available at that time or by the solicitation closing date.

[26] In response to a question from the Tribunal, Keysight explains that "FieldFox model N995xB handheld spectrum analyzer" refers to a family of instrument models. Keysight submits that the N995xB models covered by the data sheet submitted with Keysight's bid included the N9952B

⁴⁰ *Ibid.* at 16–17.

⁴¹ *Ibid.* at 264. Anritsu also submitted video attachments detailing its online search results regarding Keysight products. Exhibit PR-2021-032-01.B.

⁴² *Ibid.* at 253–255.

⁴³ Exhibit PR-2021-032-14A at 122–125.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.* at 12. See also Exhibit PR-2021-032-14B (protected) at 155–157, which provides additional details regarding the information reviewed by PWGSC.

⁴⁶ Exhibit PR-2021-032-15.

⁴⁷ *Ibid.* at 15.

⁴⁸ Exhibit PR-2021-032-16.

and N9951B models. According to Keysight, the only difference between the N9952B and N9951B models is the maximum frequency range of 50 GHz for the former and 44 GHz for the latter.⁴⁹ All other product specifications apply to both models, as reflected in the data sheet Keysight submitted to PWGSC with its bid.⁵⁰ Although it had an opportunity to do so, Anritsu did not comment on Keysight's response to the Tribunal's question.

[27] In response to a question from the Tribunal, PWGSC submits that the entire N995xB product line, including the N9952B and N9951B models, was available for sale in December 2020.⁵¹ Although it had an opportunity to do so, Anritsu did not comment on PWGSC's response to the Tribunal's question.

[28] The Tribunal finds that the record does not support Anritsu's contentions.⁵² PWGSC obtained information from Keysight that led it to conclude the FieldFox B series product presented in the bid was available at the date of bid closing. Upon receiving Anritsu's objections, PWGSC took steps to validate the information. Additional information provided by Keysight confirmed to PWGSC that the product was available prior to the solicitation closing on February 18, 2021. Information provided in the GIR and by the intervener support PWGSC's conclusion that the product presented in Keysight's bid was available by bid closing.

[29] Having considered all information on the record, the Tribunal finds no basis to conclude that PWGSC's evaluation was not reasonable. The Tribunal finds that Anritsu's first ground of complaint does not establish non-compliance with the requirements of any applicable trade agreement. Consequently, the Tribunal finds that the first ground of complaint is not valid.

Did PWGSC err by not deeming Keysight's bid non-responsive on the basis that its product did not meet the MTC in items 001, 006, 015, 020 and 025?

[30] Anritsu claims that the product presented in Keysight's bid did not meet all the MTC. Anritsu's claim seems based on Keysight's data sheet for the FieldFox B series dated May 27, 2021 (whose content differs from the data sheet submitted as part of Keysight's bid) and its interpretation of the MTC terms in the RFP.

[31] In terms of the former, information on the record indicates that Keysight's May 27, 2021, data sheet contains erroneous information.⁵³ Nothing on the record suggests any inaccuracies or errors in the data sheet submitted with Keysight's bid. Therefore, the Tribunal is of the view that it was reasonable for PWGSC to base its evaluation on the data sheet provided as part of Keysight's bid package. Upon receipt of Anritsu's specific objections with respect to compliance with the MTC, PWGSC took steps to verify these allegations. With respect to Anritsu's specific MTC allegations, the Tribunal addresses each in turn below.

⁴⁹ Exhibit PR-2021-032-19 at 1.

⁵⁰ *Ibid.* at 1.

⁵¹ Exhibit PR-2021-032-18 at 2.

⁵² The Tribunal recognizes that Anritsu's assessment of the procurement process was limited to reviewing public information. Pursuant to subsection 45(1) of the CITT Act, Anritsu has not had access to the protected parts of PWGSC's and Keysight's submissions to the Tribunal.

⁵³ Exhibit PR-2021-032-14A at para. 55.

Item 001 (environmental)

[32] Item 001 requires, by reference to the MIL-PRF-28800F class 2 standard,⁵⁴ an operating temperature range of -10 °C to 55 °C. Anritsu claims that Keysight's model does not meet this mandatory criterion. Anritsu asserts that Keysight's May 27, 2021, data sheet shows that in certain modes (e.g. RTSA) or when operating on battery power, the product would not be capable of operating at the high end of the temperature range.

[33] PWGSC notes that item 001 requires compliance with the MIL-PRF-28800F class 2 standard, and the standard does not refer to operation in RTSA mode. PWGSC submits that, therefore, a specific operating temperature range for the product in RTSA mode is not a mandatory criterion under item 001. The mandatory criterion does not specify that compliance should be maintained in specific modes (such as RTSA).

[34] Item 001 requires devices to meet the MIL-PRF-28800F class 2 standard. Item 001 is silent on the operating temperature performance under RTSA mode or battery operations. Once the MTC were published and remained uncontested, the evaluators had to assess bids strictly against the MTC terms. Nothing before the Tribunal establishes that evaluators failed to do so. Bids were evaluated in accordance with the MTC specified in the tender documentation. In such circumstances, the Tribunal shows deference to evaluators' expertise. The Tribunal will not substitute its own views for those of PWGSC in assessing whether the MTC, as drafted, would allow the selection of the best device to serve the needs of the ultimate user.

[35] In the Tribunal's view, PWGSC's determination that Keysight's model complied with item 001 was reasonable.

Item 006 (AC power)

[36] Item 006 requires the provision of a compact AC power supply.⁵⁵ Anritsu submits that Keysight's AC power supply does not allow the FieldFox model to meet the full required temperature range of -10 °C to 55 °C. Anritsu's claim stems from its erroneous interpretation of item 001, based on Keysight's data sheet indicating operating temperatures under AC power in RTSA mode.

[37] PWGSC notes that item 006 simply states that the bidder shall "provide compact AC power supply for the unit to be powered by external 110 VAC 60 Hz power source" and does not stipulate a temperature range. PWGSC claims that therefore, it was reasonable for evaluators to assess compliance with this criterion without referring to operating temperatures.

[38] The Tribunal agrees that PWGSC's evaluation of compliance with this criterion was reasonable. Evaluators had to assess bids on the basis of the published MTC. Nothing before the Tribunal establishes that Keysight's product in the successful bid did not meet the requirements of item 006 as written in the RFP.

⁵⁴ *Ibid.* at 13.

⁵⁵ Exhibit PR-2021-032-01 at 78.

Item 015 (real-time spectrum analysis)

[39] Item 015 requires devices to perform RTSA.⁵⁶ Anritsu makes two claims in this regard: 1) that Keysight's model cannot perform RTSA across the whole required temperature range; and 2) that the RTSA function of Keysight's model is not specified over the full required frequency range as identified in item 013,⁵⁷ which covers tuning frequency range. Specifically, Anritsu argues that the device does not operate over the required full 9 kHz to 40 GHz continuous. Anritsu submits that Keysight's May 27, 2021, data sheet shows that the device's real-time analysis frequency range starts at 1 MHz, which means there is no guarantee of performance between 9 kHz and 1 MHz.

[40] PWGSC notes that performance across specific temperature ranges is not a requirement found in item 015. The requirement is simply for the device to be able to perform RTSA.

[41] The Tribunal agrees that a plain reading of item 015 confirms it does not include a mandatory temperature range requirement, nor does it call for specification over the full required frequency range as specified under item 013. The Tribunal agrees that PWGSC's evaluation of compliance with this criterion was reasonable. Again, evaluators had to assess bids on the basis of the published MTC. Nothing before the Tribunal establishes that Keysight's model in the successful bid did not meet the requirements of item 015 as written in the RFP.

Item 020 (displayed average noise level)

[42] Item 020 requires DANL to be less than or equal to -137 dBm/Hz at frequencies up to 2 GHz.⁵⁸ Anritsu submits that Keysight's data sheet dated May 27, 2021, indicates that, at very low frequencies (9 kHz to 2 MHz),⁵⁹ Keysight's device does not meet the requirements of item 020.

[43] PWGSC, referring to the data sheet included as part of the bid package, notes that Keysight's model met these criteria. In addition, in response to the Tribunal's letter of October 7, 2021, PWGSC noted the evaluation focused on the general capacity of proposed devices to perform "up to 2 GHz". Performance at a very low frequency range such as the one cited by Anritsu (9 kHz to 2 MHz) was not relevant in the assessment.

[44] In response to the same letter from the Tribunal, the intervener Keysight noted that Anritsu's bid did not provide DANL performance at such a low frequency; in fact, it did not provide a figure below 10 MHz.

[45] The Tribunal is of the view that the ground of complaint raised with respect to item 020 is not valid. The Tribunal is satisfied that PWGSC's evaluation of both bids was reasonable. Performance at very low frequencies was equally not considered in the assessment of each bid.

Item 025 (third order intercept)

[46] Item 025 requires third order intercept to be "worse case greater than or equal to +7 dBm (guaranteed) across operating frequency range".⁶⁰ Anritsu, referring to the May 27, 2021, data sheet,

⁵⁶ *Ibid.* at 79.

⁵⁷ *Ibid.*

⁵⁸ Exhibit PR-2021-032-01 at 80.

⁵⁹ Exhibit PR-2021-032-16 at para. 11.

⁶⁰ Exhibit PR-2021-032-01 at 80.

notes that Keysight's model's performance seems to miss the requirements of item 025, at several frequencies.

[47] PWGSC notes that the information provided in Keysight's bid submission differs from the information provided by Anritsu.

[48] In its comments on the GIR, Anritsu seems to withdraw its objection with respect to this particular mandatory criterion.

[49] Upon review of the information presented, the Tribunal concurs with PWGSC that the information provided as part of the bid indicates that Keysight's device meets the requirements of item 025. The Tribunal finds that PWGSC's evaluation pursuant to item 025 was reasonable.

[50] For the reasons above, the Tribunal finds that Anritsu's complaint regarding the MTC in items 001, 006, 015, 020 and 025 is not valid. The evaluation and award were reasonable. PWGSC evaluated bids in accordance with the MTC, as required by applicable trade agreements.

COSTS

[51] Pursuant to section 30.16 of the CITT Act, the Tribunal awards PWGSC its reasonable costs, which are to be paid by Anritsu. The Tribunal does not award costs to Keysight.

[52] In accordance with the *Procurement Costs Guideline* (Guideline), the Tribunal's preliminary indication of the level of complexity for this complaint is Level 1. The procurement process involved a very specific good with clearly defined characteristics. The MTC were clearly written and well defined. The grounds of complaint were clearly expressed, and the matters at issue were straightforward. An oral hearing was not required. While the proceedings were extended to the 135-day time frame, and included an intervener, this did not add much complexity to the proceedings. Therefore, the Tribunal's preliminary indication of the amount of the cost award is \$1,150.

[53] Pursuant to article 4.2 of the Guideline, parties that believe that the preliminary indication is not appropriate may make submissions on the complexity of the case, the amount of the flat rate or the reason why the Guideline should not be followed. The Tribunal reserves jurisdiction to establish the final amount of the compensation.

DETERMINATION

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

Frédéric Seppey
Frédéric Seppey
Presiding Member