



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File PR-2021-042

Enveloppe Concept Inc.

v.

Department of Public Works and
Government Services

*Determination and reasons issued
Friday, January 14, 2022*

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IN THE MATTER OF a complaint filed by Enveloppe Concept Inc. pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*;

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

ENVELOPPE CONCEPT INC.

Complainant

AND

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

**Government
Institution**

DETERMINATION

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

Pursuant to section 30.16 of the CITT 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 Enveloppe Concept Inc. In accordance with the *Procurement Costs Guideline* (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 Guideline. The Tribunal reserves jurisdiction to establish the final amount of the cost award.

Georges Bujold

Georges Bujold

Presiding Member

Tribunal Panel:	Georges Bujold, Presiding Member
Tribunal Secretariat Staff:	Emilie Audy, Counsel Sarah Perlman, Counsel Matthew Riopelle, Registrar Officer
Complainant:	Enveloppe Concept Inc.
Counsel for the Complainant:	Marc-Alexandre Hudon
Government Institution:	Department of Public Works and Government Services
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Intervener:	12363623 Canada Inc.
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STATEMENT OF REASONS

SUMMARY OF THE COMPLAINT

[1] Enveloppe Concept Inc. (ECI) filed this complaint with the Canadian International Trade Tribunal, under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*,¹ regarding a request for proposal (RFP) (Solicitation No. EN893-220033/A) issued by the Department of Public Works and Government Services (PWGSC) for the procurement of envelopes for the cheques of the Receiver General for Canada.

[2] In this complaint, ECI alleges that the successful bidder submitted false or misleading certifications, including regarding the requirement to offer Canadian services, and that its bid was therefore non-compliant. More specifically, ECI raises the four following grounds:

- 1) The successful bidder's certification regarding the proposed facilities and sites is non-compliant;
- 2) The successful bidder's certification regarding the requirement that the services must be Canadian is non-compliant;
- 3) The successful bidder does not meet the requirements set out in Annex A: Statement of Work, particularly with respect to the requirement regarding #24 Natural Kraft (kraft paper) and the ability to make and print the volume of envelopes set out in the RFP;
- 4) The successful bidder does not have the required experience.

[3] After determining that the complaint meets the conditions set out in subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,² the Tribunal decided, pursuant to subsection 30.13(1) of the CITT Act, to investigate the complaint on September 17, 2021.

[4] Following its investigation, the Tribunal found that the complaint is not valid for the following grounds.

PROCEDURAL BACKGROUND

[5] On May 26, 2021, PWGSC published the RFP, whose closing date was July 2, 2021. PWGSC received five bids, including that of ECI.

[6] On August 5, 2021, PWGSC informed ECI that it had awarded the contract to 12363623 Canada Inc. (Canada Inc.).³

[7] On August 16, 2021, ECI and PWGSC held a debrief session by videoconference, as set out in section 1.3 of the RFP. During this session, ECI shared its concerns regarding Canada Inc., including its inability to operate in Canada. On the same day, ECI emailed an objection to PWGSC,

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

² SOR/93-602 [Regulations].

³ Exhibit PR-2021-042-01 at 71-72; Exhibit PR-2021-042-01.A (protected) at 13.

requesting that Canada Inc.'s bid be declared non-compliant and that the contract be awarded to the compliant bidder with the lowest bid.⁴

[8] On August 27, 2021, PWGSC informed ECI that it would not act on its objection.⁵

[9] On September 8, 2021, ECI filed this complaint with the Tribunal.

[10] On September 10, 2021, the Tribunal requested additional information under subsection 30.12(2) of the CITT Act. On the same day, ECI submitted the requested information, and the complaint was then considered to have been filed.

[11] On September 20, 2021, the Tribunal informed the parties that it had accepted the complaint for investigation on September 17, 2021.

[12] On September 27, 2021, the Tribunal requested ECI's comments regarding the possibility that the Tribunal review this complaint in conjunction with that in case PR-2021-043.⁶ On September 29, 2021, ECI's counsel asked the Tribunal "not to join the two cases"⁷ [translation]. On October 1, 2021, the Tribunal informed the parties that the cases would be kept separate.⁸

[13] On October 4, 2021, Canada Inc. submitted a request to the Tribunal to participate in this proceeding.⁹ The following day, the Tribunal granted it intervenor status.¹⁰

[14] On October 13, 2021, PWGSC requested an extension of time to file the Government Institution Report (GIR), namely, from October 18 to 28, 2021.¹¹ Despite ECI's objection,¹² the Tribunal granted this request and, as a result, applied the extended 135-day process in accordance with paragraph 12(c) of the Regulations.

[15] On October 28, 2021, PWGSC filed its GIR.¹³

[16] On November 4 and 16, 2021, respectively, Canada Inc.¹⁴ and ECI¹⁵ informed the Tribunal that they would not provide comments on the GIR.

ANALYSIS

[17] Subsection 30.14(1) of the CITT Act requires that in conducting its inquiry, the Tribunal shall limit its considerations to the subject matter of the complaint. The Tribunal determines the validity of the complaint based on the criteria and procedures determined by regulation for the

⁴ Exhibit PR-2021-042-01 at 73.

⁵ *Ibid.* at 74-78.

⁶ Exhibit PR-2021-042-10.

⁷ Exhibit PR-2021-042-11.

⁸ Exhibit PR-2021-042-13.

⁹ Exhibit PR-2021-042-14. Canada Inc. did not provide comments with respect to this complaint.

¹⁰ Exhibit PR-2021-042-15.

¹¹ Exhibit PR-2021-042-17.

¹² Exhibit PR-2021-042-19.

¹³ Exhibit PR-2021-042-21; Exhibit PR-2021-042-21.A (protected); Exhibit PR-2021-042-21.B (protected); Exhibit PR-2021-042-21.C (protected).

¹⁴ Exhibit PR-2021-042-23.

¹⁵ Exhibit PR-2021-042-24.

specific contract. Section 11 of the Regulations provides that the Tribunal must determine whether the procurement process was followed in accordance with the requirements of the applicable trade agreements, in this case the Canadian Free Trade Agreement.¹⁶

[18] It appears from ECI's complaint that the relevant provisions of the CFTA are articles 507(3), 515(1), 515(4), and 515(5), which are reproduced in Annex 2 of these reasons. In particular, paragraphs 4 and 5 of article 515 of the CFTA provide that, to be taken into consideration for the contract award, a bid must comply with the mandatory requirements set out in the tender documentation, and the government institution must award the contract in accordance with the criteria and the mandatory requirements set out in the tender documentation.

[19] When considering whether bids are evaluated and contracts are awarded in keeping with these provisions, the Tribunal applies the standard of reasonableness, typically according a great deal of deference to an evaluation panel with respect to its evaluation of proposals. The Tribunal does not, therefore, generally substitute its judgment for that of the evaluators, unless the evaluators have not applied themselves in evaluating a bidder's proposal, have ignored vital information provided in a proposal, have based their evaluation on undisclosed criteria or have otherwise not conducted the evaluation in a procedurally fair way. The government institution's determination shall be considered reasonable if it is supported by a tenable explanation, regardless of whether or not the Tribunal finds that explanation compelling.¹⁷

[20] In this case, for the following grounds, the evaluation of Canada Inc.'s proposal was reasonable, and the Tribunal finds that ECI did not demonstrate sufficient grounds or errors in the evaluation to justify its intervention. Therefore, the complaint is not valid.

First ground: The successful bidder's certification regarding the proposed facilities and sites is non-compliant

[21] ECI states that Canada Inc. has no production facilities or sites, such that it does not comply with section 3.1.3 of the RFP, as the two addresses associated with it in the public registries do not correspond, based on its research, to an envelope manufacturing company. The first address is a private residence that is currently for sale,¹⁸ while the second address is a facility of CEL Electrical Contractors,¹⁹ which is apparently unrelated to the envelope manufacturing industry, as evidenced by a photograph from Google Maps.²⁰ ECI also submits that, considering PWGSC's duty to exercise

¹⁶ 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) [CFTA].

¹⁷ *J.A. Larue inc. v. Department of Public Works and Government Services* (7 August 2020), PR-2020-004 (CITT) at para. 26; *Toromont Material Handling, a division of Toromont Industries Ltd.* (11 March 2020), PR-2019-063 (CITT) at para. 19; *Heiltsuk Horizon Maritime Service Ltd. and Horizon Maritime Services Ltd. v. Department of Public Works and Government Services* (18 October 2019), PR-2019-020 (CITT) at para. 47; *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; *Northern Lights Aerobatic Team, Inc. v. Department of Public Works and Government Services* (7 September 2005), PR-2005-004 (CITT) at para. 52, citing *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247 at para. 55.

¹⁸ Exhibit PR-2021-042-01 at 86-97.

¹⁹ *Ibid.* at 98.

²⁰ *Ibid.* at para. 21 and at 98.

due care, the “red flags” [translation] raised by this public information about Canada Inc. required that it conduct immediate and thorough verifications.²¹

[22] First, PWGSC claims that it was under no obligation to seek clarification or to check the accuracy of all information provided by bidders in accordance with paragraph 16 of the Standard Instructions – Goods or Services – Competitive Requirements of the Standard Acquisition Clauses and Conditions (SACC) Manual.²² In addition, PWGSC points out that, in reading the bid, there was nothing obvious that would call into question the information provided by Canada Inc.

[23] In addition, PWGSC submits that ECI’s allegations concerning the addresses provided by Canada Inc. are ill-founded. In its technical bid, Canada Inc. stated that the first address was its business address, while the second address was that of its facilities.²³ However, on August 16, 2021, when PWGSC was informed of ECI’s concerns regarding Canada Inc.’s addresses and facilities, PWGSC proceeded to verify with Canada Inc.²⁴ Canada Inc. then reiterated that the second address was that of a commercial building it occupies and where its facilities are located, in addition to submitting as evidence a letter confirming it all.²⁵ Thus, the photograph from Google Maps dated September 2018 submitted by ECI is not current in 2021.²⁶ In addition, regarding the first address, PWGSC argues that the fact the residence is for sale is not relevant for the purposes of the evaluation of the bid and does not change the fact that it is still currently Canada Inc.’s address of incorporation and its principal place of business.

[24] The Tribunal is of the view that the successful bidder’s certification regarding the proposed facilities and sites is compliant. PWGSC was under no obligation to seek clarification or to check the accuracy of all the information provided by Canada Inc., particularly because there was nothing obvious in reading the proposal that called into question the accuracy of the information that was provided. The evaluation was therefore conducted in compliance with paragraph 16 of the SACC. Interpreting this paragraph as not imposing any obligation to conduct verifications is consistent with the Tribunal’s case law.²⁷ As indicated in *Access Corporate Technologies*, if there is no reason for the government institution to question a bidder’s certification during the bid evaluation phase, it is entitled to rely on the certification and is not required to conduct verifications.²⁸

[25] In any case, even though it was not required to do so, PWGSC checked the address of Canada Inc.’s sites or facilities. The evidence indicates that, contrary to ECI’s allegations, the second address is indeed that of a commercial building it occupies and where its facilities are located.²⁹ Regarding the first address, as PWGSC argues, the fact that the residence is for sale is not relevant

²¹ *Ibid.* at 80-98.

²² The Tribunal notes that these standard instructions were included in the terms and conditions of the RFP under section 2.1 and thus formed an integral part of it.

²³ Exhibit PR-2021-042-21 at para. 37; Exhibit PR-2021-042-21A (protected) at 113.

²⁴ Exhibit PR-2021-042-21 at para. 45 and at 106-107.

²⁵ Exhibit PR-2021-042-21.A (protected) at para. 46 and at 145-146.

²⁶ Exhibit PR-2021-042-01 at 98.

²⁷ *Piatt Training and Consulting Ltd.* (24 March 2020), PR-2019-069 (CITT) at para. 34.

²⁸ *Access Corporate Technologies Inc. v. Department of Transport* (14 November 2013), PR-2013-012 (CITT) [*Access Corporate Technologies*] at para. 43. See also *Central Automotive Inspections Records & Standards Services (CAIRSS) Corp.* (31 October 2012), PR-2012-025 (CITT) [*Central Automotive*] at paras. 23-26; *Sanofi Pasteur Limited* (12 May 2011), PR-2011-006 (CITT) [*Sanofi*] at paras. 22-23; *Airsolid Inc.* (18 February 2010), PR-2009-089 (CITT) [*Airsolid*] at para. 11.

²⁹ Exhibit PR-2021-042-21, Appendix 17; Exhibit PR-2021-042-21C (protected), Appendix 18.

for the purposes of the evaluation of the bid and does not change the fact that it was Canada Inc.'s address of incorporation and its principal place of business at the time of it submitted its proposal. Canada Inc.'s administrators will have the opportunity to make the required changes in the Business Register if this property is sold, if necessary.

[26] As a result, in fact, the Tribunal believes that PWGSC's conclusion that Canada Inc.'s bid showed that it complied with clause 3.1.3 of the RFP was reasonable.

Second ground: The successful bidder's certification regarding the requirement that the services must be Canadian is non-compliant

[27] ECI claims that Canada Inc. cannot attest that the manufacture and printing of envelopes will be "Canadian services" [translation], given that Canada Inc. has neither the production facilities nor sites to manufacture or print envelopes in Canada.

[28] PWGSC argues that clause 5.2.3.1 of the RFP required only that the bidder attest that "the services offered are Canadian services as defined in paragraph 2 of clause A3050T" [translation],³⁰ not that the bidder provide evidence supporting the validity of the certification. PWGSC again submits that the RFP allowed it to conduct verifications but did not require it to do so or to request additional information, in accordance with part 5 of the RFP.

[29] PWGSC also submits that complying with the Canadian content requirement falls under contract administration. Section 6.9.1 of the resulting contract clauses of RFP contract set out the following: "Unless specified otherwise, the continuous compliance with the certifications provided by the Contractor in its bid or precedent to contract award . . . are conditions of the Contract and failure to comply will constitute the Contractor in default. Certifications are subject to verification by Canada during the entire period of the Contract."³¹ PWGSC submits that the Tribunal indicated several times that issues regarding contract administration are outside of its jurisdiction.³²

[30] The Tribunal agrees with PWGSC that the RFP requires only that the bidder attest that the services offered are Canadian services. That is what Canada Inc. did. As PWGSC rightly points out, there is no requirement in the RFP regarding providing evidence supporting the validity of the certification or obligations, as part of the evaluation process, which required PWGSC to independently determine, prior to contract award, whether the services offered were indeed eligible as "Canadian services."

[31] In fact, when an invitation to tender requires bidders to attest to some information in their proposal regarding their accuracy or comprehensiveness, the procuring entity is entitled to rely on these certifications when evaluating bids.³³ This lack of an obligation to conduct verifications or to request additional information regarding the certification of "Canadian services" is evident in the

³⁰ The English version of the RFP erroneously referred to Canadian goods rather than services, which was addressed in amendment 003 to the RFP.

³¹ Exhibit PR-2021-042-08 at 61.

³² *Newland Canada Corporation* (5 August 2020), PR-2020-011 (CITT) at paras. 11-12; *Sunny Jaura o/a Jaura Enterprises* (22 February 2013), PR-2012-043 (CITT) at para. 10; *WW-ISS Solutions Canada* (16 December 2019), PR-2019-050 (CITT) at para. 15; *Vidéotron Ltée v. Shared Services Canada* (5 October 2018), PR-2018-006 (CITT) at para. 16.

³³ *Access Corporate Technologies* at para. 39. See also *Central Automotive* at paras. 24-25; *Sanofi* at paras. 22-23; *Airsolid* at para. 11.

wording of part 5 of the RFP. Moreover, in *Chaussures Régence Inc.*, the Tribunal considered a similar requirement regarding the certification of Canadian content and found that “PWGSC was not obligated to verify the validity of the certification provided by each bidder and could accept each one at face value.”³⁴ In this case, this is what PWGSC did with the certification of all bidders.

[32] Under part 5 of the RFP, the Contracting Authority can request additional information (without being required to do so) to verify that the bidders comply with the certification before or after contract award. In the Tribunal’s opinion, there is no indication that PWGSC had any reason whatsoever to doubt Canada Inc.’s certification during the bid evaluation period, and it was entitled to rely on its certification related to the provision of “Canadian services” during the bid evaluation period.

[33] The parties do not contest that ECI’s concerns regarding Canada Inc.’s proposal were only raised with PWGSC after the contract had been awarded, on the basis of information that, as stated above, turned out to be incorrect anyway. In fact, it appears that Canada Inc. does in fact have a production facility to manufacture or print envelopes in Canada. The fact remains that it was only after the contract was awarded that PWGSC became aware of the fact that Canada Inc.’s certification may not be compliant. In this case, the subsequent verification of the certification by the contracting authority was therefore conducted as part of the administration of the contract. In *Tyco Electronics*, the Tribunal considered the issue of whether the Canadian content requirement is a matter of contract administration. The Tribunal then indicated that it could not conduct verifications regarding the certifications “as to do so would amount to nothing less than, at best, embarking into the realm of contract administration (which is outside of its jurisdiction), or worse, a ‘fishing expedition’.”³⁵

[34] ECI’s allegations relating to the non-compliance of Canada Inc.’s certification therefore raise an issue of contract administration that is outside the Tribunal’s jurisdiction. For this reason, the Tribunal cannot, in these circumstances, start its own assessment of the issue of whether Canada Inc. can provide “Canadian services”. In short, this ground of complaint is not valid as it does not raise valid grounds to interfere with the judgment of the evaluators. Rather, it amounts to asking the Tribunal to decide on an alleged breach by Canada Inc., as a contractor, of the terms and conditions of the contract, which is outside the Tribunal’s jurisdiction.

Third ground: The successful bidder does not meet the requirements set out in Annex A, Statement of Work

[35] ECI claims that Canada Inc. does not meet the requirements set out in Annex A: Statement of Work, particularly with respect to the following: (a) the successful bidder does not meet the requirement related to kraft paper; and (b) the successful bidder does not have the capacity to make and print the volume of envelopes set out in the RFP.

³⁴ *Chaussures Régence Inc.* (26 April 2007), PR-2006-044 (CITT) at para. 27: “In the Tribunal’s view, PWGSC, working within the terms of the RFP, was justified in applying the Canadian content provision and in setting aside those proposals that did not have the certification of Canadian content. The Tribunal is also of the view that PWGSC was not obligated to verify the validity of the certification provided by each bidder and could accept each one at face value. Accordingly, the Tribunal is satisfied that there is no evidence to indicate that, once the Canadian content provision was brought into play, the evaluation was conducted in any manner that was in violation of the terms of the RFP.”

³⁵ *Tyco Electronics Canada ULC* (24 March 2014), PR-2013-048 (CITT) at para. 17. See also *Dominion Diving Ltd. v. Department of Public Works and Government Services* (29 March 2016), PR-2015-048 (CITT) at para. 51.

[36] To support its allegations, ECI relies on PWGSC's responses to questions 6 and 7 of amendment 003.³⁶ On the one hand, response 6 indicates that it is possible to use kraft paper produced outside Canada and that "it is the bidder's obligation that they meet all requirements of Annex A – Statement of work."³⁷ On the other hand, response 7 indicates that each bidder is responsible for ensuring their own supply of raw materials, including kraft paper, and concludes that "[i]t is the obligation of any eventual contractor to provide the final deliverables as detailed in Annex A – Statement of Work."³⁸

[37] PWGSC argues that the requirements set out in Annex A are not mandatory under the conditions of the solicitation but that, rather, they are contract administration requirements. The requirement related to the statement of work is set out in section 6.1 of the resulting contract clauses of the RFP, which provides as follows:

PART 6 – RESULTING CONTRACT CLAUSES

The following clauses and conditions apply to and form part of any contract resulting from the bid solicitation.

6.1 Statement of Work

The Contractor must perform the Work in accordance with the Statement of Work at Annex "A".

[38] The Tribunal is satisfied with the merits of PWGSC's arguments on this issue. The conditions listed in Annex A were not part of the mandatory requirements of the solicitation, i.e. they were not mandatory technical evaluation criteria that a proposal had to meet to be declared responsive. Since these conditions are related to the subsequent contract, they concern requirements related to the work that the contractor will have to perform after the contract award and, therefore, the administration of the resulting contract. As noted above, issues regarding contract administration are outside the Tribunal's jurisdiction.

[39] The Tribunal is unable to find that PWGSC's responses to questions 6 and 7 had the effect of including the conditions of Annex A in the evaluated mandatory requirements, with regard to which the bidders were required to demonstrate their compliance in their proposals. Such a finding would be contrary to the clear terms of amendment 003 of the RFP, in which these responses were provided by PWGSC. The introductory statement of amendment 003 states the following: "The purpose of this amendment is to answer solicitation questions and to amend the *statement of work* in consequence" [emphasis added].

[40] Only one irrelevant clause of the statement of work in this case was amended by amendment 003. The mandatory technical requirements and the requirements the bidders had to satisfy for their proposal to be declared responsive were not amended in any way. In particular, following amendment 003, part 6 of the RFP, which indicates that the requirements of Annex A (i.e. the statement of work) apply to the subsequent contract (not the evaluation of bids), remained unchanged. In other words, amendment 003 did not change the selection method and the mandatory technical evaluation criteria for a bid to be declared responsive. Moreover, this amendment

³⁶ Exhibit PR-2021-042-01 at para. 28.

³⁷ Exhibit PR-2021-042-08 at 43.

³⁸ *Ibid.* at 44.

specifically states that all the other conditions of the solicitation remain the same. In this context, it is therefore unreasonable, or even impossible, to interpret amendment 003 as adding the requirements of Annex A to the requirements related to the evaluation of the bids.

[41] For these reasons, the Tribunal finds that the bidders were not required to comply with the requirements of Annex A during the procurement process and that this ground of complaint is not valid as it raises questions related to contract administration, which is outside the Tribunal's jurisdiction.

[42] Alternatively, even assuming for the sake of argument that the Tribunal had jurisdiction to consider ECI's arguments in this respect, the evidence does not substantiate ECI's claims regarding Canada Inc.'s inability to meet the requirements related to kraft paper and the manufacture or printing of the volume of envelopes set out in the RFP. Although ECI claims that the successful bidder will not be able to procure kraft paper in Canada, the confidential evidence on the record indicates that this allegation is unfounded, as the successful bidder appears to be able to comply with this requirement.³⁹ Furthermore, nothing prevents Canada Inc. from procuring recycled kraft paper 24 elsewhere than on the Canadian market as long as the contractor is able to maintain the requirement concerning Canadian content. In addition, the evidence on file appears to demonstrate that ECI's allegations—that Canada Inc. lacks the capacity to manufacture and print approximately 32 million envelopes annually in Canada—are false.⁴⁰

Fourth ground: The successful bidder does not have the required experience

[43] ECI claims that Canada Inc. does not meet mandatory technical criterion "M.1 Corporate Experience" (criterion M.1) of clause 4.1.1. of the RFP, which requires the bidder to demonstrate that it was bound by two contracts, with one or more external clients, to provide the manufacture, printing, and delivery of a minimum quantity of 500,000 double-window envelopes for each contract.

[44] ECI points out that the successful bidder became incorporated on September 23, 2020.⁴¹ ECI maintains that: it is highly unlikely that Canada Inc. manufactured, printed, and delivered a million envelopes between September 2020 and July 2021, in particular given that Canada Inc.'s director is not a known player in the envelope industry in Canada; that it is impossible that the site located at the first address could have been used for the large-scale manufacturing and printing of envelopes; that it is unlikely that the site located at the second address has the equipment required for these operations; that a *greenfield*-type factory needs a minimum period of several months to acquire the required machinery and to train operators; and that Canada Inc. is unable to procure kraft paper,⁴² etc. Thus, according to ECI, PWGSC had to be particularly careful regarding Canada Inc.'s representations and should have conducted verifications.

[45] PWGSC submits, once again, that it was under no obligation to check the references submitted regarding Canada Inc.'s experience. PWGSC nonetheless submits that Canada Inc.'s technical bid demonstrates that it previously had at least two contracts with the Department of Employment and Social Development during the relevant period.⁴³ Furthermore, PWGSC argues that

³⁹ Exhibit PR-2021-042-21.A (protected) at 123.

⁴⁰ *Ibid.* (protected) at paras. 72, 73.

⁴¹ Exhibit PR-2021-042-01 at 80-85. ECI erroneously indicated the date of September 23, 2021, in its argument.

⁴² Exhibit PR-2021-042-01.A (protected) at para. 46 and at 15.

⁴³ Exhibit PR-2021-042-21.A (protected) at 115-117.

nothing in the RFP indicates that the criterion of clause 4.1.1 cannot be met if the previous work was partly subcontracted.⁴⁴

[46] As noted above, the Tribunal previously found that, in the absence of any contrary indication, a government institution is entitled to rely on information provided by the bidder.⁴⁵ Thus, following its case law and its previous interpretation on this issue,⁴⁶ the Tribunal is not persuaded by ECI's arguments. It finds that, in these circumstances, PWGSC was under no obligation to conduct verifications of the information submitted by Canada Inc. to demonstrate that it had the required experience. The Tribunal believes that there were insufficient grounds to lead PWGSC to doubt Canada Inc.'s certification regarding its compliance with criterion M.1.

[47] In this respect, as indicated above, Canada Inc.'s technical bid demonstrates that it met this requirement. Note that criterion M.1 requests the following information for each contract submitted as experience: (a) a description of the double-window envelopes provided under the contract; (b) the quantity of double-window envelopes provided for each print run and the total quantity provided per year for each contract; (c) the start or end date of the contract, to show that the contract started or ended after April 1, 2014; and (d) the client information for the contract. Canada Inc.'s technical bid provides this information.⁴⁷

[48] The Tribunal is of the view that in this case, the evidence therefore does not indicate that the evaluators did not apply themselves reasonably in evaluating Canada Inc.'s proposal; that they gave an incorrect interpretation of the scope of a requirement; that they did not consider vital information provided in a bid; that they based their evaluation on undisclosed criteria; or that the evaluation was not carried out in a procedurally fair way. As a result, it would be inappropriate to interfere or to substitute its judgment for that of the evaluators.

[49] In the Tribunal's view, PWGSC's interpretation that nothing in the RFP indicated that criterion M.1 could not be met if the previous work was partly subcontracted, is reasonable. On this point, the wording of criterion M.1 does not, in fact, specifically require the bidder to have been the entity that manufactured, printed, and delivered 500,000 envelopes. In other words, it does not exclude subcontracting work in whole or in part, or considering work as a general contractor as sufficient experience.

[50] Ultimately, the circumstances in this case do not lend themselves to consideration by the Tribunal of the issue of whether Canada Inc. actually had the required experience. In addition, the Tribunal is not persuaded by ECI's arguments that the circumstances of the recent incorporation of Canada Inc., its recent arrival in the envelope industry in Canada, or the doubts of one of its competitors as to Canada Inc.'s capacity for the large-scale manufacture and printing of envelopes should have been a warning for PWGSC with respect to the qualifications of this resource and would have therefore compelled PWGSC to conduct a verification.

[51] In any case, it appears that PWGSC considered the concerns about Canada Inc. raised by ECI regarding the "red flags" [translation] after contract award, and the confidential evidence suggests

⁴⁴ Exhibit PR-2021-042-21 at para. 81.

⁴⁵ *Access Corporate Technologies* at para. 43. See also *Lions Gate Risk Management Group v. Department of Public Works and Government Services* (18 December 2020), PR-2020-024 (CITT) at para. 37.

⁴⁶ *Ibid.*

⁴⁷ Exhibit PR-2021-042-21.A (protected) at 115-117.

that they are unfounded. Therefore, the Tribunal cannot find that, even if PWGSC had conducted verifications with Canada Inc. during the bid evaluation period, which it was under no obligation to do, it would have declared Canada Inc.'s bid non-compliant with criterion M.1 and would have disqualified it on that ground.

[52] As a result, the Tribunal believes that it was reasonable and in compliance with the requirements of the RFP for PWGSC to find that, based on its bid, Canada Inc. had the required experience.

COSTS

[53] ECI sought reimbursement of its costs incurred in preparing its complaint and its bid. PWGSC claimed its costs incurred in preparing its response to the complaint. Canada Inc. made no such claim.

[54] 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 only involved one type of service, the matters at issue were straightforward and the proceedings were not complicated as a public hearing was not required. Therefore, the Tribunal's preliminary indication of the amount of the cost award is \$1,150.

DETERMINATION

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

[56] Pursuant to section 30.16 of the CITT Act, the Tribunal awards costs to PWGSC in the amount of \$1,150 for responding to the complaint, which costs are to be paid by ECI. 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 reserves jurisdiction to establish the final amount of the cost award.

Georges Bujold

Georges Bujold
Presiding Member

ANNEXE 1 – TENDER EN893-220033/A**PART 1 – GENERAL INFORMATION**

...

1.2 Summary

Public Works and Government Services Canada (PWGSC) requires the printing and custom manufacturing to final format and delivery as specified in Annex A: Statement of Work of double-window envelopes for the Receiver General for Canada cheques (approximately 30 million envelopes annually). ...

PART 2 – BIDDER INSTRUCTIONS**2.1 Standard Instructions, Clauses and Conditions**

...

The 2003 (2020-05-28) Standard Instructions - Goods or Services - Competitive Requirements, are incorporated by reference into and form part of the bid solicitation.

...

PART 3 – BID PREPARATION INSTRUCTIONS

...

Section III : Certifications

Bidders must submit the certifications and additional information required under Part 5.

3.1.3 Bidder's Proposed Site(s)

3.1.3.1 The Bidder must provide the full address(es) of the Bidder's site(s) or premises required for Work Performance⁴⁸ :

Name:

Address: Street Number / Street Name, Unit / Suite / Apartment Number

City, Province, Territory / State

Postal Code / Zip Code

Country

...

⁴⁸ It should be noted that the English version of this clause differs slightly from the French version, as it does not mention the “*mesures de sauvegarde*”.

PART 4 – EVALUATION PROCEDURES AND BASIS OF SELECTION

4.1 Evaluation Procedures

a) Bids will be assessed in accordance with the entire requirement of the bid solicitation including the technical evaluation criteria.

...

4.1.1 Technical Evaluation

4.1.1.1. Mandatory Technical Criteria

Definitions for the purposes of the mandatory technical criteria.

External client(s): means clients exterior to the Bidder's own legal entity (or joint venture partnership) and excludes the parent, subsidiaries or other affiliates of the Bidder.

Internal client(s): means clients within the Bidder's own legal entity (or joint venture partnership) and includes the parent, subsidiaries and other affiliates of the Bidder

M.1 CORPORATE EXPERIENCE

The Bidder must demonstrate that it has been contractually bound to an external client (outside of the Bidder's own company) or to external clients* for two (2) contracts to manufacture and print to final format and delivery to the destination address or addresses. Each of these two (2) contracts must have been for a minimum of 500,000 double-window envelopes for each contract.

The Contracts must have been started or completed after April 01, 2014.

*During the evaluation no corporate experience gained through internal clients will be accepted or reviewed. . . .

PROPOSALS NOT MEETING ALL OF THE MANDATORY REQUIREMENTS WILL BE CONSIDERED NON RESPONSIVE AND GIVEN NO FURTHER CONSIDERATION.

...

4.2 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.

...

PART 5 – CERTIFICATIONS AND ADDITIONAL INFORMATION

Bidders must provide the required certifications and additional information to be awarded a contract.

The certifications provided by Bidders to Canada are subject to verification by Canada at all times. Unless specified otherwise, Canada will declare a bid non-responsive, or will declare a contractor in default if any certification made by the Bidder is found to be untrue, whether made knowingly or unknowingly, during the bid evaluation period or during the contract period.

The Contracting Authority will have the right to ask for additional information to verify the Bidder's certifications. Failure to comply and to cooperate with any request or requirement imposed by the Contracting Authority will render the bid non-responsive or constitute a default under the Contract.

...

5.2.3 Additional Certifications Precedent to Contract Award

5.2.3.1 Canadian Content Certification

This procurement is limited to Canadian goods.

The Bidder certifies that:

() the good(s) offered are Canadian goods as defined in paragraph 1 of clause A3050T.⁴⁹

5.2.3.1.1 SACC Manual clause A3050T (2020-07-01) Canadian Content Definition

...

ANNEX “A” STATEMENT OF WORK

DOUBLE-WINDOW ENVELOPES

Background: Public Works and Government Services Canada requires envelopes for the Receiver General for Canada cheques (approximately 32 million envelopes annually based on the Envelope Order History (Appendix E)). . . .

SPECIFICATIONS:

See specifications at Appendix A and B to Annexe “A” Statement of Work and the artwork provided by the Project Authority for further details.

...

STOCK: # 24 Natural Kraft (24 lb recycled paper)

⁴⁹ As discussed above, this clause erroneously referred to Canadian goods rather than services, as addressed in amendment 003 of the RFP.

APPENDIX A – TO ANNEX A STATEMENT OF WORK –**SPECIFICATIONS FOR 3- 3/4” OR 3- 7/8” x 9- 1/4” RECEIVER GENERAL ENVELOPE**

...

Stock: #24 Natural Kraft (24 lb. recycled paper)

...

APPENDIX B - TO ANNEX A STATEMENT OF WORK –**SPECIFICATIONS FOR 4- 1/4” x 9- 1/4” RECEIVER GENERAL ENVELOPE**

...

Stock: #24 Natural Kraft (24 lb. recycled paper)

SOLICITATION AMENDMENT 001**Question 1) 1. M.1 CORPORATE EXPERIENCE**

...

For corporate experience, please confirm that the external client can be the same for 2 different contracts in previous years with a required double window of minimum 500,000 envelopes.

Answer 1) That is correct. There is no prohibition on having both provided contracts having been with the same client.

Question 2) C - Paper – Adjustment Contract

...

● **There are only selected suppliers other than mills which are ultimately resale from mill purchases. If an international paper supplier provides a grade specified in NPP will that be acceptable with 5.2.3.1 Canadian Content Certification? [raw paper rolls]**

...

Answer 2)

...

● Bidders should take note that the Canadian Content Certification applies to both goods and services provided under this potential contract.

SOLICITATION AMENDMENT 003

Question 6) In part 5 certifications in point 5.2.3.1 Canadian content certification it is stated that this purchase is limited to Canadian services as defined in paragraph 2 of clause A53050T, the initial 1 of clause A53050T Canadian product is not mentioned in part 5, does that mean we can use Kraft paper produced outside of Canada?

Answer 6) That is correct, assuming that it is identical to the paper being requested in the RFP. Please note that it is the bidder's obligation that they meet all requirements of Annex A – Statement of work. For greater certainty, please see the following amendment as there is an error in the English version of the certification:

Question 7) We are looking for a few additional clarifications and questions.

...

i. When a requirement is covered by the Canadian Content Policy, the contracting officer must first determine whether there are two or more eligible suppliers in the marketplace. Eligible suppliers are those supplying Canadian goods and/or services that could potentially meet the requirement.

- **As per our knowledge there is only 1 supplier that meets the requirements of paper mentioned in the contract.**

- **There are several printers who can print the content on the envelopes. But importantly there is only a single Canadian supplier for paper envelopes as per contract. i.e Rolland**

...

Answer 7) The identification regarding the number of eligible suppliers refers to companies able to provide the service – suppliers of the final product. In essence, if we believe there are not at least two companies capable of providing the end product (capable of supplying printed envelopes in this case), the other provisions of the policy will apply.

The policy **does not** create such obligations regarding sub-contractors/suppliers of the eventual contractor, and so does not create the same obligation regarding where they choose to obtain the required paper to produce the envelopes. It is every bidder's responsibility to ensure their own supply of raw materials for the production of all deliverables under the contract. PSPC will not recommend or provide a list of suppliers for industry to use.

It is the obligation of any eventual contractor to provide the final deliverables as detailed in Annex A – Statement of Work.

Standard Instructions – Goods or Services – Competitive Requirements**04 (2007-11-30) Definition of Bidder**

"Bidder" means the person or entity (or, in the case of a joint venture, the persons or entities) submitting a bid to perform a contract for goods, services or both. It does not include the parent, subsidiaries or other affiliates of the Bidder, or its subcontractors.

...

16 (2008-05-12) Conduct of evaluation

1. In conducting its evaluation of the bids, Canada may, but will have no obligation to, do the following:
 - a. seek clarification or verification from bidders regarding any or all information provided by them with respect to the bid solicitation;
 - b. contact any or all references supplied by bidders to verify and validate any information submitted by them;
 - c. request, before award of any contract, specific information with respect to bidders' legal status;
 - d. conduct a survey of bidders' facilities and/or examine their technical, managerial, and financial capabilities to determine if they are adequate to meet the requirements of the bid solicitation;
 - ...
 - f. verify any information provided by bidders through independent research, use of any government resources or by contacting third parties;
 - ...

SACC A3050T, CANADIAN CONTENT DEFINITION

2. **Canadian service:** A service provided by an individual based in Canada is considered a Canadian service. Where a requirement consists of only one service, which is being provided by more than one individual, the service will be considered Canadian if a minimum of 80 percent of the total bid price for the service is provided by individuals based in Canada.

ANNEXE 2 – CANADIAN FREE TRADE AGREEMENT**Article 507: Conditions for Participation**

...

3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity shall:

(a) evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and

(b) base its evaluation on the conditions that the procuring entity has specified in advance in its tender notices or tender documentation

...

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

1. 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.

...

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.

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

(a) the most advantageous tender; or

(b) if price is the sole criterion, the lowest price.