



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File PR-2021-085

Hone People Development  
Consulting Corporation

*Decision made  
Tuesday, March 29, 2022*

*Decision and reasons issued  
Monday, April 11, 2022*

*Corrigendum issued  
Monday, May 9, 2022*

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

**BY**

**HONE PEOPLE DEVELOPMENT CONSULTING CORPORATION**

**AGAINST**

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

**DECISION**

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

Randolph W. Heggart

Randolph W. Heggart  
Presiding Member

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

**BY**

**HONE PEOPLE DEVELOPMENT CONSULTING CORPORATION**

**AGAINST**

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

### **CORRIGENDUM**

Paragraph 51 of the Statement of Reasons should read as follows :

Paragraph 30.11(2)(c) of the CITT Act provides that a complaint must contain a clear and detailed statement of the substantive and factual grounds of the complaint, while paragraph 30.11(2)(f) requires that a complaint include all information and documents relevant to the complaint that are in Hone's possession.

The second sentence of paragraph 57 of the Statement of Reasons should read as follows :

It also appears to be consistent with the requirement in article 515.5(a) of the CFTA that a procuring entity award the contract to the supplier that has submitted the most advantageous tender based on the evaluation criteria specified in the tender notices and tender documentation.

Randolph W. Heggart

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Randolph W. Heggart

Presiding Member

## STATEMENT OF REASONS

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

## BACKGROUND

[2] The complaint relates to a request for proposal (RFP) (solicitation 0X001-200654/A) by the Department of Public Works and Government Services (PWGSC), on behalf of the Canada School of Public Service (CSPS), for the provision of a behavioural assessment tool to be used in leadership development programs intended for supervisors and managers of the Canadian federal public service.

[3] The solicitation was published on April 22, 2021. Several amendments were issued. The bid closing date was May 11, 2021.<sup>3</sup>

[4] On May 11, 2021, Hone People Development Consulting Corporation (Hone) submitted its bid pursuant to the solicitation.<sup>4</sup>

[5] On August 23, 2021, PWGSC requested clarification regarding Hone's financial proposal, which Hone provided on August 24, 2021.<sup>5</sup>

[6] On August 25, 2021, PWGSC informed Hone that its proposal was determined to be compliant with the eligible mandatory criteria in the solicitation.<sup>6</sup>

[7] On September 23, 2021, PWGSC sent Hone a draft contract for the procurement, which Hone signed and returned the same day.<sup>7</sup>

[8] On September 28, 2021, PWGSC sent Hone an updated draft contract, with a lower dollar value, for signature. In the email transmitting this updated draft contract, PWGSC explained that this lower value was due to a "change in the client's operational budget."<sup>8</sup> Hone signed and returned the updated draft contract the same day.<sup>9</sup>

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<sup>1</sup> R.S.C., 1985, c. 47 (4th Supp.).

<sup>2</sup> SOR/93-602.

<sup>3</sup> Exhibit PR-2021-085-01.A at 47-78; online: <<https://buyandsell.gc.ca/procurement-data/tender-notice/PW-PI-014-79970>>.

<sup>4</sup> Exhibit PR-2021-085-01 (protected) at 10-78.

<sup>5</sup> Exhibit PR-2021-085-01.B at 54-55.

<sup>6</sup> *Ibid.* at 1.

<sup>7</sup> *Ibid.* at 4-23, 50-52.

<sup>8</sup> *Ibid.* at 24-44, 50.

<sup>9</sup> *Ibid.* at 48-50.

[9] Also on September 28, 2021, after returning the signed draft contract, Hone had a discussion with PWGSC's representative, during which pricing was discussed.

[10] On September 29, 2021, PWGSC sent Hone an email requesting clarification regarding the unit pricing in its proposal, to which Hone responded in writing the same day.<sup>10</sup>

[11] On October 7 and 14, 2021, Hone emailed PWGSC to follow up on the status of the solicitation. On October 28, 2021, PWGSC replied that it would contact Hone the following week.<sup>11</sup>

[12] On November 4, 2021, PWGSC sent an email and regret letter, informing Hone that PWGSC would not be proceeding with the contract award. In the email, PWGSC stated that Hone's clarification of September 29, 2021, regarding pricing had prompted PWGSC to review the RFP. PWGSC determined that the language used to request financial proposals was ambiguous and may have caused confusion among bidders. As a result, PWGSC decided to cancel and re-tender the solicitation.<sup>12</sup>

[13] On December 9, 2021, PWGSC published a new RFP (solicitation 0X001-200654/B).<sup>13</sup> This new solicitation contained several amendments from the original RFP, including revised language governing the submission and evaluation of financial proposals, as well as the option for bidders to also submit a new technical proposal alongside their revised financial proposal or to maintain their technical proposal under the previous solicitation (in which case no new technical evaluation would be required). The same day, PWGSC emailed Hone to invite it to submit a proposal under the new solicitation.<sup>14</sup>

[14] On January 10, 2022, Hone submitted a proposal in response to solicitation 0X001-200654/B,<sup>15</sup> including both a new financial proposal and a modified technical proposal.<sup>16</sup>

[15] On March 9, 2022, PWGSC sent Hone a regret letter notifying it that it was unsuccessful in the solicitation and that a contract would be awarded to DHC Training Solutions Inc., with a value of \$125,000.

[16] On March 22, 2022, Hone submitted the present complaint to the Tribunal. The same day, the Tribunal requested additional information from Hone before the complaint could be considered complete.

[17] On March 23, 2022, Hone submitted the requested information.

[18] On March 24, 2022, the Tribunal acknowledged receipt of the complaint.

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<sup>10</sup> *Ibid.* at 46–48.

<sup>11</sup> *Ibid.* at 45–46.

<sup>12</sup> *Ibid.* at 59; Exhibit PR-2021-085-01.A at 84–85.

<sup>13</sup> Exhibit PR-2021-085-01.A at 1–46; online: <<https://buyandsell.gc.ca/procurement-data/tender-notice/PW-PI-014-80708>>.

<sup>14</sup> Exhibit PR-2021-085-01.B at 2.

<sup>15</sup> Exhibit PR-2021-085-01 (protected) at 79–152.

<sup>16</sup> Exhibit PR-2021-085-01.A at 79.

[19] On March 25, 2022, Hone submitted a reiteration of its complaint, including certain new arguments. This is addressed in the final section of these reasons.

[20] On March 29, 2022, the Tribunal decided not to conduct an inquiry into the complaint.

[21] On April 1, 2022, Hone submitted certain additional information regarding the complaint, after the Tribunal's decision had been made but prior to its issuance. This is also addressed in the final section of these reasons.

## ANALYSIS

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

- i. the complaint has been filed within the time limits prescribed by section 6 of the Regulations;<sup>17</sup>
- ii. the complainant is a potential supplier;<sup>18</sup>
- iii. the complaint is in respect of a designated contract;<sup>19</sup> and
- iv. the information provided discloses a reasonable indication that the government institution did not conduct the procurement in accordance with the applicable trade agreements.<sup>20</sup>

### **Grounds of complaint regarding the cancellation of the first solicitation are late**

[23] For the following reasons, the Tribunal finds that the grounds of complaint related to the cancellation of the first solicitation were not filed within the time limits prescribed by section 6 of the Regulations.

[24] Hone challenges PWGSC's decision to cancel and re-tender the solicitation because, according to PWGSC, the request for financial proposals in the first solicitation was ambiguous and may have caused confusion among bidders. Hone questions this rationale for cancelling the first solicitation and argues that PWGSC could instead have sought clarification from each individual bidder regarding their respective financial proposals.

[25] Pursuant to subsections 6(1) and (2) of the Regulations, a potential supplier must either raise an objection with the procuring government institution or file a complaint with the Tribunal no later than 10 working days after the day on which the basis of the complaint became known or reasonably should have become known to the supplier.

[26] Much of Hone's disappointment with the process appears to be based on the belief that the two draft contracts it signed and submitted to PWGSC, on September 23 and 28, 2021, meant that it was being awarded the contract. If Hone believed that the first solicitation was being improperly cancelled after Hone had already been awarded the contract, it was incumbent upon it to bring a complaint within the time limits required by the Regulations. In this regard, the Tribunal considers that Hone should reasonably have become aware of any grounds of complaint relating to the cancellation of the first solicitation when it received PWGSC's regret letter notifying it of the

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<sup>17</sup> Subsection 6(1) of the Regulations.

<sup>18</sup> Paragraph 7(1)(a) of the Regulations.

<sup>19</sup> Paragraph 7(1)(b) of the Regulations.

<sup>20</sup> Paragraph 7(1)(c) of the Regulations.

cancellation on November 4, 2021. As of that date, Hone had 10 working days to file a complaint with the Tribunal.

[27] Alternatively, Hone should reasonably have become aware of any ground of complaint pertaining to the cancellation of the first solicitation when it reviewed the revised provisions governing the submission and evaluation of financial proposals under the new solicitation. To the extent that any changes from the first solicitation would have informed Hone of any concerns surrounding the cancellation and re-tendering, it was incumbent upon Hone to file a complaint with the Tribunal at that time.

[28] At the very latest, the Tribunal finds that Hone ought to have filed a complaint with the Tribunal by the time it submitted its proposal in response to the new solicitation (which conformed to the new financial proposal requirements) on January 10, 2022. There is no indication that Hone objected to PWGSC regarding the cancellation and re-tendering at that time. As the present complaint was first filed on March 22, 2022, the Tribunal finds that any grounds of complaint related to the cancellation of the first solicitation were not filed within the 10-working-day time limit prescribed by section 6 of the Regulations.

[29] As the Federal Court of Appeal stated in *IBM Canada*, “potential suppliers are required not to wait for the attribution of a contract before filing any complaint they might have with respect to the process. They are expected to keep a constant vigil and to react as soon as they become aware or reasonably should have become aware of a flaw in the process.”<sup>21</sup> It is up to the bidder to make sure to consider any issues in a solicitation and to file a complaint in a timely manner.

[30] In this case, Hone neither objected to PWGSC nor complained to the Tribunal at the time the first solicitation was cancelled and re-tendered. Instead, it participated fully in the new solicitation, including by submitting a revised technical proposal. It filed the present complaint only after learning that it was unsuccessful in that process. By then, the timeframe to complain as set out by the Regulations had long passed. As the Tribunal has previously stated, the procurement review process does not provide for grievances to be accumulated and then presented only when the contract is awarded.<sup>22</sup>

[31] To be clear, the Tribunal finds no evidence on the record to indicate that the regret letter of March 9, 2022, provided Hone with new information such as would allow it to become aware of grounds of complaint relating to the cancellation of the first procurement. In the Tribunal’s view, the identity of the awardee and the value of the resulting contract do not, on their own, constitute evidence of preference for an incumbent supplier. As outlined below, the Tribunal finds that the regret letter of March 9, 2022, does not operate to extend the time limits outlined above for filing a complaint regarding the cancellation of the first solicitation.

[32] Strictly speaking, the only grounds of complaint that have been submitted within the time limits are therefore those regarding the evaluation or outcome of the second solicitation. That said, the allegations regarding the cancellation of the first solicitation and the outcome of the second are difficult to separate in practical terms. Therefore, for the sake of completeness and for reasons outlined below, the Tribunal also finds that the complaint does not disclose a reasonable indication of

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<sup>21</sup> *IBM Canada Ltd. v. Hewlett Packard (Canada) Ltd.*, 2002 FCA 284 [*IBM Canada*] at para. 20.

<sup>22</sup> *2040077 Ontario Inc. O/A FDF Group* (2 September 2014), PR-2014-024 (CITT) at para. 14.

a breach of the trade agreements, including any grounds regarding the cancellation and re-tendering of the solicitation or alleged bias in favour of an incumbent supplier.

### **No reasonable indication of a breach of the trade agreements**

[33] Pursuant to subsection 7(1)(c) of the Regulations, the Tribunal may conduct an inquiry into a complaint if the information provided discloses a reasonable indication that the government institution did not conduct the procurement in accordance with the applicable trade agreements, in this case the Canadian Free Trade Agreement (CFTA).<sup>23</sup>

[34] The Tribunal finds no evidence to suggest that the evaluation or outcome of the new solicitation were in any way inconsistent with the requirements of the CFTA. In the Tribunal's view, this finding is sufficient to dispose of the complaint, given the finding above that the grounds of complaint regarding cancellation of the first solicitation are late. However, even if the grounds of complaint relating to the first solicitation had been submitted within the relevant time limits, the Tribunal would nonetheless have found that they do not disclose a reasonable indication of a breach of the CFTA for the reasons that follow.

[35] Hone submits that, but for the verbal conversation of September 28, 2021 between Hone and PWGSC during which they discussed price, PWGSC would not have sent the email of September 29, 2021, requesting further clarification regarding price, and the solicitation would not eventually have been cancelled and re-tendered. Hone suggests that this decision may have been motivated by a preference on the part of PWGSC for the ultimately successful incumbent supplier. It questions PWGSC's stated rationale for re-tendering—that the first solicitation was ambiguous and may have caused confusion among bidders—given that CSPA has previously procured similar services.<sup>24</sup> Finally, Hone argues that PWGSC could have instead sought clarification from each individual bidder regarding its financial proposal.

[36] The Tribunal begins by noting that procuring entities are free to seek clarification from bidders with respect to the content of bids, though they are under no obligation to do so.<sup>25</sup> PWGSC appears to have done so with regard to Hone's financial bid, in writing on August 23, 2021, verbally on September 28, 2021, and again in writing on September 29, 2021.<sup>26</sup>

[37] In their email exchange of September 29, 2021, Hone confirmed to PWGSC that certain products (a "facilitation kit" comprising virtual materials including "presentations, job aids, tools and resources") and services (certification and renewal for individuals intended to train others in using the behavioural assessment tool) did not need to be purchased with each unit (i.e. actual use of the behavioural assessment tool). This fact would logically lower the overall price of a given proposal.

[38] It is obvious from the request for clarification that PWGSC sent to Hone on September 29, 2021, that it was unclear to PWGSC whether these products and services needed to be purchased with every unit. If Hone's bid could be unclear in this regard while still complying with the financial proposal requirements of the solicitation, which the record indicates it did, then it would appear reasonable for PWGSC to be concerned that the structure of the solicitation may also have led

<sup>23</sup> Online: Internal Trade Secretariat <[https://www.cfta-alec.ca/wp-content/uploads/2020/09/CFTA-Consolidated-Text-Final-English\\_September-24-2020.pdf](https://www.cfta-alec.ca/wp-content/uploads/2020/09/CFTA-Consolidated-Text-Final-English_September-24-2020.pdf)> (entered into force 1 July 2017).

<sup>24</sup> Exhibit PR-2021-085-01.A at 80–81.

<sup>25</sup> See *Canada (Attorney General) v. Trittech Group Ltd.*, 2015 FCA 39.

<sup>26</sup> Exhibit PR-2021-085-01.B at 46–48, 54–55.



to other proposals being similarly ambiguous. Once this potential ambiguity was discovered, PWGSC was within its rights to clarify the financial proposal instructions with all bidders. Certainly, nothing in the CFTA obligates a procuring entity to pay more for procured goods and services than bidders actually intend to propose.

[39] PWGSC could arguably have contacted each individual bidder to clarify its proposal, as it did with Hone and as Hone suggests it should have done with the others, but it was not obligated to do so. In the Tribunal's view, the decision to re-tender the solicitation is consistent with both PWGSC's stated rationale for doing so and its obligations under the CFTA.

[40] Similarly, it is difficult to see on what basis PWGSC should have restricted the new solicitation to bidders that had submitted proposals under the first solicitation. Article 510.2 of the CFTA requires procuring entities to publish modifications or amended or re-issued tender notices or tender documentation on the tendering website or system used by the procuring entity and, if appropriate, to extend the final date for the submission of tenders to allow adequate time for suppliers to modify and re-submit amended tenders.

[41] As noted above, much of Hone's disappointment with the process appears to be based on the belief that the two draft contracts it signed and submitted to PWGSC, on September 23 and 28, 2021, were a formal notice of contract award; that impression is conveyed several times in the complaint. If that impression existed, it is, however, an incorrect impression. The cover letters attached to both draft contracts included on the first page the disclaimer that follows:

Please note that this Draft Contract does not constitute a guarantee on the part of Canada that a contract will be awarded. No payment will be made for costs incurred in the preparation and submission of a response to this Draft Contract. This Draft Contract is not to be construed as directing Hone People Development Consulting Corporation to enter into any work thereby accruing financial liability or other indebtedness of Canada, its Departments, Agencies or Representatives.<sup>27</sup>

[42] Consistent with this language in the draft contracts, the regret letter of November 4, 2021, regarding the first solicitation, states that "no contract has been awarded as a result of the solicitation . . ."<sup>28</sup>

[43] The draft contracts could therefore be understood only as one step by PWGSC in preparing to award the contract. However, the evidence indicates that it instead cancelled the first solicitation prior to contract award.

[44] Finally, Hone notes that it was not provided with a compliance assessment report (CAR) confirming that its proposal under the new solicitation complied with the mandatory criteria, as was provided under the first solicitation. Indeed, this appears to have been a required step under clause 4.1.1.3(a) of both solicitations,<sup>29</sup> and its omission under the second solicitation appears to have been irregular. However, PWGSC's regret letter to Hone of March 9, 2022, states that its bid was found

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<sup>27</sup> *Ibid.* at 5, 26.

<sup>28</sup> Exhibit PR-2021-085-01.A at 84.

<sup>29</sup> *Ibid.* at 12, 56.

responsive to the mandatory criteria of the solicitation, which is the same information required to be included in a CAR.<sup>30</sup>

[45] There is no indication that Hone's proposal under the new solicitation was rejected on the basis of non-compliance. In fact, the regret letter of March 9, 2022, makes clear that Hone's proposal underwent the full technical and financial evaluations.<sup>31</sup> The complaint provides no arguments or evidence to suggest that those evaluations were in any way inconsistent with the terms of the solicitation. The Tribunal therefore finds no reasonable indication of a breach of the trade agreements based on PWGSC's omitting to provide Hone with a CAR, although it emphasizes that procuring entities must take care to comply with all terms governing a procurement process.

### Conclusion

[46] The Tribunal finds nothing in the complaint to suggest that PWGSC improperly cancelled and re-tendered the first solicitation or that it improperly conducted the new solicitation. Specifically, there is no evidence suggesting that either was done in order to favour the incumbent and ultimately successful supplier. As the Tribunal has previously stated, mere allegations are insufficient to establish a reasonable indication of a breach of the trade agreements.<sup>32</sup>

[47] Hone's disappointment at being unsuccessful under the new solicitation after getting apparently quite close to being awarded the contract under the first is entirely understandable, especially if it believed that it had actually been awarded the contract. However, the Tribunal finds nothing to suggest improper behaviour on the part of PWGSC.

[48] For the foregoing reasons, the Tribunal finds that the complaint does not disclose a reasonable indication of a breach of the applicable trade agreements.

### **Additional information submitted following acknowledgement of the complaint**

[49] The Tribunal wishes to comment on certain irregularities which occurred in the filing of this complaint. These comments should not be taken as impugning the transparency or integrity of Hone, which was at all times courteous and responsive in communications with the Tribunal (and, the record indicates, with PWGSC). That said, the Tribunal provides these comments to assist this and other self-represented complainants to understand the process and requirements for submitting a complaint.

### Information submitted on March 25, 2022

[50] On March 25, 2022, 1 day after the Tribunal acknowledged receipt of the complaint, Hone reiterated its grounds of complaint in the process of confirming the confidentiality designations of its submissions. This reiteration included new arguments regarding the changing value of the

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<sup>30</sup> Exhibit PR-2021-085-01.B at 53.

<sup>31</sup> *Ibid.*; Exhibit PR-2021-085-01 (protected) at 201.

<sup>32</sup> *1091847 Ontario Ltd.* (10 February 2021), PR-2020-083 (CITT) at para. 34. See also *Manitex Lifting ULC* (20 March 2013), PR-2012-049 (CITT) at para. 22; *Vesey's Seeds Limited, doing business as Club Car Atlantic* (19 February 2010), PR-2009-079 (CITT) at para. 9; *Flag Connection Inc.* (25 January 2013), PR-2012-040 (CITT); *Tyco Electronics Canada ULC* (24 March 2014), PR-2013-048 (CITT) at para. 12.

procurement, which became progressively lower in the two draft contracts under the first solicitation and then the contract ultimately awarded under the new solicitation.<sup>33</sup>

[51] Paragraph 30.11(2)(c) of the CITT Act provides that a complaint must contain a clear and detailed statement of the substantive and factual grounds of the complaint, while paragraph 30.11(2)(c) requires that a complaint include all information and documents relevant to the complaint that are in Hone's possession.

[52] Paragraph 96(1)(b) of the *Canadian International Trade Tribunal Rules*<sup>34</sup> provides that a complaint is considered to have been filed on the day that the Tribunal receives information that corrects deficiencies in order that the complaint comply with that subsection. As outlined in the background section above, the Tribunal requested such information on March 22, 2022, the information was provided on March 23, 2022, and the Tribunal acknowledged receipt of the complaint on March 24, 2022.<sup>35</sup>

[53] Subsection 7(1) of the Regulations requires the Tribunal to determine whether to conduct an inquiry into the complaint within 5 working days after the day on which the complaint is filed, i.e. the date stated in the Tribunal's acknowledgement letter. The Tribunal must therefore be assured that it is in possession of all relevant information, including Hone's substantive and factual grounds of complaint, to decide whether to accept the complaint for inquiry within this relatively short timeframe.

[54] It is therefore incumbent upon complainants to ensure that the complaint contains all relevant facts and arguments in their possession. Complainants cannot continue to add evidence or arguments to their complaint after the Tribunal acknowledges receipt, with the sole exception of information that was not previously available to the complainant (which must be communicated to the Tribunal as soon as possible).

[55] This principle is not only necessary to the Tribunal's ability to decide whether to accept the complaint within 5 working days but also crucial to determining whether the complaint itself was filed within the time limits imposed under subsections 6(1) and (2) of the Regulations, as outlined above. In this case, Hone received the regret letter from PWGSC on March 9, 2022, meaning it had until March 23, 2022, or 10 working days, to file a complaint.

[56] The grounds of complaint regarding the changing value of the procurement, submitted by Hone on March 25, 2022, were therefore filed outside the time limit imposed by the regulation. They were thus late; however, the Tribunal notes that they would not have changed its analysis. As stated above, the revelation that certain goods and services (which each cost significantly more than the units themselves) did not need to be purchased with each unit would naturally have lowered the overall value of the resulting contract, possibly quite substantially.

[57] In the Tribunal's view, the fact that the contract resulting from the new procurement had a significantly lower value than either draft contract signed by Hone under the first procurement is therefore consistent with PWGSC's stated rationale for re-tendering the solicitation. It also appears to

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<sup>33</sup> Exhibit PR-2021-085-04.

<sup>34</sup> SOR/91-499.

<sup>35</sup> Exhibits PR-2021-085-02, PR-2021-085-01.B, PR-2021-085-01.C (protected) and PR-2021-085-03. The request for additional information and the acknowledgement of a complete complaint are required under section 30.12 of the CITT Act.

be consistent with the requirement in article 516.5(a) of the CFTA that a procuring entity award the contract to the supplier that has submitted the most advantageous tender based on the evaluation criteria specified in the tender notices and tender documentation.<sup>36</sup>

[58] Further, there is also no evidence to contradict PWGSC's statement that the difference in value between the first and second draft contracts, both of which Hone signed apparently without objection, was due to a change in the operational budget of CSPS. The Tribunal also notes that any objection or complaint regarding this difference should have been made within 10 working days of Hone's receipt of the updated draft contract under the first solicitation.

#### Information submitted on April 1, 2022

[59] On April 1, 2022, Hone submitted further information in support of its complaint.

[60] Not only was this information submitted outside the time limits imposed by subsections 6(1) and (2) of the Regulations but it was also outside the 5-working-day time limit for the Tribunal's determination under subsection 7(1). The Tribunal therefore could not consider this information in making its decision, which was made on March 29, 2022. However, for Hone's benefit and again for the sake of completeness, the Tribunal notes that this new information would also not have affected its analysis above.

[61] The fact that PWGSC may have previously used similar financial proposal instructions and evaluation criteria in solicitations for similar goods and services imposes no obligation to continue using them in subsequent solicitations. That fact also does not undermine PWGSC's stated rationale for re-tendering, which is that the language of the solicitation was ambiguous. Whether the ambiguity may have affected the conduct or outcome of previous solicitations is unclear. Even if it did not, this would impose no obligation on PWGSC to continue using that language in subsequent solicitations if it is later determined to be ambiguous.

[62] Further, the fact that PWGSC apparently concluded on its own initiative that the first solicitation was ambiguous, and not as a result of questions from parties, does not affect PWGSC's right to amend, modify or cancel a solicitation based on that conclusion. If it had provided clarification in reply to a question from a bidder, it would have been required under article 510.1 of the CFTA to make that clarification available to all suppliers in an open, fair, and timely manner. In this case, it merely had the option to do so. The Tribunal fails to see how PWGSC's exercising that option by cancelling and re-tendering the solicitation was in any way inconsistent with Canada's obligations under the CFTA.

## **CONCLUSION**

[63] For the foregoing reasons, the Tribunal finds that the complaint does not disclose a reasonable indication of a breach of the applicable trade agreements and, furthermore, that the grounds of complaint relating to the cancellation of the first solicitation are late.

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<sup>36</sup> In this case, clause 4.2.1.2 of the RFP provided that the responsive bid with the lowest evaluated price per point would be recommended for contract award, which appears consistent with the regret letter sent to Hone on March 9, 2022. See Exhibit PR-2021-085-01.A at 14.

**DECISION**

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

Randolph W. Heggart

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Randolph W. Heggart

Presiding Member