



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File PR-2021-072

Nacris Inc.

*Decision made  
Thursday, February 3, 2022*

*Decision and reasons issued  
Monday, February 21, 2022*

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

**BY**

**NACRIS INC.**

**AGAINST**

**THE CORRECTIONAL SERVICE OF CANADA**

**DECISION**

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

Serge Fréchette  
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Serge Fréchette  
Presiding Member

## STATEMENT OF REASONS

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

### SUMMARY OF THE COMPLAINT

[2] This complaint relates to a solicitation issued by the Correctional Service of Canada (CSC) for the provision of accommodation and meal services for CSC's Correctional Training Program in Saskatoon (solicitation 50200-22-3964749A).

[3] In its complaint to the Tribunal, the complainant Nacris Inc. (Nacris), alleges that CSC "has [no authority] to request the long form to review the findings of the audit"<sup>1</sup> and that its bid was unfairly disqualified when it provided its licence to operate a public eating establishment instead of a health inspection of its restaurant.<sup>2</sup>

### BACKGROUND

[4] On January 12, 2022, CSC published the solicitation, with a closing date of January 27, 2022.

[5] Nacris submitted a bid on or before the closing date.

[6] On January 31, 2022, CSC sent Nacris a regret letter, advising that its bid was found to be non-responsive and subsequently disqualified because it failed to comply with all the mandatory requirements of the solicitation.<sup>3</sup>

[7] On that same day, Nacris emailed CSC to clarify why it had been disqualified and send its licence again. CSC emailed Nacris back and indicated that the mandatory criteria in the request for proposals (RFP) required the provision of a proof of inspection, not a licence.<sup>4</sup>

[8] On February 2, 2022, Nacris filed a complaint with the Tribunal.

### ANALYSIS

[9] 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>5</sup>

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<sup>1</sup> Exhibit PR-2021-072-01.B at 6.

<sup>2</sup> *Ibid.* at 4.

<sup>3</sup> Exhibit PR-2021-072-01 at 55.

<sup>4</sup> *Ibid.* at 51.

<sup>5</sup> Subsection 6(1) of the Regulations.

- ii. the complainant is a potential supplier;<sup>6</sup>
- iii. the complaint is in respect of a designated contract;<sup>7</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>8</sup>

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

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

[11] Nacris alleges that CSC had no authority to ask for the findings of the health inspection and that the licence should have been enough to “[prove] to all members of the public that the hotel and its restaurant have been inspected . . . and [have] met all the requirements of the [Saskatchewan] Health Authority.”<sup>9</sup>

[12] On this matter, the Tribunal finds that Nacris did not raise a reasonable indication that a trade agreement has been breached. It is well established that a “procuring entity is entitled to structure the RFP . . . in a manner which fulfills its legitimate operational requirements.”<sup>10</sup> Procuring entities can therefore set their own requirements according to their needs. In this case, Nacris offered no information that could reasonably indicate that CSC’s mandatory technical criterion M5, requiring that a restaurant health inspection be provided, was illegitimate.

[13] Nacris also alleges that it has been unfairly disqualified because it provided a licence to operate its hotel restaurant in place of a health inspection to satisfy criterion M5.<sup>11</sup> Nacris’ claim is as follows:

The . . . licence is meant to demonstrate that the Saskatchewan Health Authority has conducted their audit with a satisfactory result. If the mandatory criteria is looking for health inspection audit findings, then it should be clearly stated. Most recent health inspection is meant to refer to the Licence.<sup>12</sup>

[14] As per criterion M5 of the RFP, the bidder had to “provide a copy of their most recent Restaurant Health Inspection done by the Saskatchewan Health Authority.”<sup>13</sup>

[15] Although Nacris does not appear to equate the licence delivered by the Saskatchewan Health Authority with the restaurant health inspection, it does argue that the delivery of a licence demonstrates that the Saskatchewan Health Authority “has conducted their audit with a satisfactory result.”<sup>14</sup>

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<sup>6</sup> Paragraph 7(1)(a) of the Regulations.

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

<sup>8</sup> Paragraph 7(1)(c) of the Regulations.

<sup>9</sup> Exhibit PR-2021-072-01.B at 6.

<sup>10</sup> *Vaisala Oyj v. Department of Public Works and Government Services* (29 December 2017), PR-2017-022 (CITT) at para 82; *2040077 Ontario Inc. o/a FDF Group* (27 August 2014), PR-2014-024 (CITT) at para. 19; *Accent on Clarity* (13 June 2012), PR-2012-005 (CITT) at para. 20; *Almon Equipment Limited v. Department of Public Works and Government Services* (3 January 2012), PR-2011-023 (CITT) at paras. 60, 65, 70; *Bajai Inc.* (7 July 2003), PR-2003-001 (CITT); *Eurodata Support Services Inc.* (30 July 2001), PR-2000-078 (CITT).

<sup>11</sup> Exhibit PR-2021-072-01.B at 4.

<sup>12</sup> Exhibit PR-2021-072-01 at 53.

<sup>13</sup> *Ibid.* at 55.

<sup>14</sup> *Ibid.* at 53.

[16] In its email of January 31, 2022, CSC specified that criterion M5 indicated that “the bidder [had to] provide a copy of their most recent Restaurant Health Inspection”,<sup>15</sup> adding that Nacris had attached a copy of its licence, not the inspection.<sup>16</sup>

[17] The Tribunal finds that Nacris did not meet criterion M5. A licence to operate a public eating establishment is not “a copy of the most recent Restaurant Health Inspection done by the Saskatchewan Health Authority.” This requirement, as worded, is sufficiently clear to indicate that CSC did not refer to a licence.

[18] In *Greenbank*, the Tribunal found that “it is incumbent upon a potential supplier to seek clarification or raise any concerns about a requirement, especially a mandatory one, at the earliest possible instance.”<sup>17</sup> The Tribunal has also consistently found that “the responsibility for ensuring that a proposal is compliant with all essential elements of a solicitation ultimately resides with the bidder.”<sup>18</sup>

[19] The Tribunal therefore also finds that it was incumbent on Nacris to seek clarification on which document it had to send if it believed that the RFP did not provide a clear statement of the intended requirement. As emphasized by the Tribunal in the past, the onus lies on the bidder to exercise due diligence in the preparation of its bid to ensure that it is unambiguous and properly understood by the procuring entity.<sup>19</sup>

## DECISION

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

Serge Fréchette

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Serge Fréchette

Presiding Member

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<sup>15</sup> *Ibid.* at 51.

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

<sup>17</sup> *Greenbank Custom Woodworking Ltd. v. Department of Public Works and Government Services* (14 October 2009), PR-2009-032 (CITT) [*Greenbank*] at para. 21.

<sup>18</sup> *Pennecon Hydraulic Systems v. Department of Public Works and Government Services* (4 September 2019), PR-2019-007 (CITT) at para. 35; see also *Raymond Chabot Grant Thornton Consulting Inc. and PricewaterhouseCoopers LLP v. Department of Public Works and Government Services* (25 October 2013), PR-2013-005 and PR-2013-008 (CITT) [*Raymond Chabot and PricewaterhouseCoopers*] at para. 37.

<sup>19</sup> *DSS Marine Inc. v. Department of Public Works and Government Services* (30 August 2018), PR-2018-005 (CITT) at para. 25; See also *Raymond Chabot and PricewaterhouseCoopers; Integrated Procurement Technologies Inc.* (14 April 2008), PR-2008-007 (CITT) at para. 13; *Tri-Tech Forensics Inc.* (19 March 2018), PR-2017-064 (CITT) at para. 20; *BRC Business Enterprises Ltd. v. Department of Public Works and Government Services* (27 September 2010), PR-2010-012 (CITT) at para. 51.