



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DETERMINATION AND REASONS

File PR-2022-018

GCPROC LTD.

v.

Department of Public Works and  
Government Services

*Determination and reasons issued  
Wednesday, October 26, 2022*

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IN THE MATTER OF a complaint filed by GCPROC LTD. 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**

**GCPROC 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 valid.

Frédéric Seppey  
\_\_\_\_\_  
Frédéric Seppey  
Presiding Member

Tribunal Panel:	Frédéric Seppey, Presiding Member
Tribunal Secretariat Staff:	Emilie Audy, Counsel Morgan Oda, Acting Senior Registrar Officer Kaitlin Fortier, Registrar Officer
Complainant:	GCPROC Ltd.
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## STATEMENT OF REASONS

### SUMMARY OF THE COMPLAINT

[1] GCPROC LTD. (GCPROC) filed this complaint with the Canadian International Trade Tribunal, pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act* (CITT Act)<sup>1</sup>, concerning a request for proposal (RFP) (solicitation 01804-220556/A) issued by the Department of Public Works and Government Services (PWGSC), on behalf of the Department of Agriculture and Agri-Food (AAFC), for the provision of insect rearing chambers capable of precise temperature and humidity control to raise colonies of live insects for laboratory experiments.

[2] This is the second complaint by GCPROC with respect to the procurement at issue. The Tribunal concluded that the first complaint (PR-2022-016) was premature, as a response to GCPROC's objection was still pending. In both complaints, GCPROC alleged that its disqualification by PWGSC for failing to comply with two mandatory requirements of the solicitation was unjustified, and requested, as a remedy, that it be awarded the contract.

[3] The Tribunal accepted the complaint for inquiry in accordance with subsection 30.13(1) of the CITT Act and subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (Regulations).<sup>2</sup>

[4] Following its inquiry into the complaint, and for the reasons that follow, the Tribunal finds that the complaint is valid.

### BACKGROUND

#### Procurement process

[5] The RFP was published on Buyandsell.gc.ca<sup>3</sup> (now called CanadaBuys) on March 3, 2022, with an initial closing date of April 6, 2022. Amendment 003 extended the closing date to April 20, 2022. GCPROC submitted its technical and financial proposal on March 10, 2022. GCPROC was offering its proposed product for \$42,080.90.<sup>4</sup>

[6] A contract was awarded to Maple MultiTech Canada Inc. (MMTC) in the amount of \$44,716 on May 18, 2022 (contract 01804-220556/001/HAL).<sup>5</sup>

[7] On May 24, 2022, GCPROC received a regret letter informing it that its bid did not comply with two mandatory requirements: one relating to the electrical service for which the chambers had to be designed; and one relating to the temperature range of the chambers.<sup>6</sup> The same day, GCPROC wrote to PWGSC to seek confirmation as to why its proposed product was deemed not compliant, pointing to elements in its proposal that demonstrated, in its view, compliance with these requirements.<sup>7</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> Online: <<https://canadabuys.canada.ca/en/tender-opportunities/tender-notice/pw-hal-507-11492>>.

<sup>4</sup> Exhibit PR-2022-018-01.A at 53–54.

<sup>5</sup> Online: <<https://canadabuys.canada.ca/en/tender-opportunities/award-notice/01804-220556001hal>>.

<sup>6</sup> Exhibit PR-2022-018-01.A at 64–65.

<sup>7</sup> *Ibid.* at 62–63.

[8] PWGSC responded to GCPROC on May 25, 2022, maintaining its position with respect to non-compliance. It stated: “Your electrical specification of 115 V is not compliant with the required 120 V. Your temperature specification of +10°C to +50°C is outside the required window (+16°C is the minimum).”<sup>8</sup> GCPROC replied that there is no difference in this voltage, as 115 V and 120 V are the same, and that the solicitation did not state a minimum or maximum of temperature, but only the range that should be met. GCPROC further indicated that it would like to formally appeal the decision.<sup>9</sup>

[9] On the same day, GCPROC filed an objection with the appropriate team leader at PWGSC.<sup>10</sup> On May 30, 2022, having not received an acknowledgement of its objection, GCPROC followed up with PWGSC. PWGSC indicated that the objection was still under review.<sup>11</sup>

[10] On June 2, 2022, GCPROC followed up again with PWGSC.<sup>12</sup> On June 3, 2022, PWGSC replied that it was waiting for a response from AAFC before it could respond to GCPROC.<sup>13</sup>

### Complaint proceedings

[11] On June 10, 2022, GCPROC filed its first complaint with the Tribunal (PR-2022-016). On June 15, 2022, the Tribunal concluded that the complaint was premature, as a response to GCPROC’s objection was still pending. The same day, GCPROC advised the Tribunal that it had received a denial of relief from PWGSC by phone and later by email.<sup>14</sup>

[12] GCPROC filed its second complaint (PR-2022-018) with the Tribunal on June 16, 2022, and requested that all the documents submitted in PR-2022-016 be added to the second complaint.

[13] On June 23, 2022, the Tribunal advised GCPROC and PWGSC that the complaint had been accepted for inquiry.<sup>15</sup>

[14] On July 19, 2022, PWGSC filed a public version of the Government Institution Report (GIR) with the Tribunal, advising that the GIR did not contain confidential information. GCPROC filed its comments on the GIR on July 21, 2022.<sup>16</sup>

[15] On July 25, 2022, MMTC submitted a request to participate in the proceedings.<sup>17</sup> The next day, the Tribunal granted MMTC intervener status.<sup>18</sup> However, MMTC advised the Tribunal on August 8, 2022, that it would no longer be participating in the proceedings.

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<sup>8</sup> Exhibit PR-2022-018-01.A at 61.

<sup>9</sup> *Ibid.*

<sup>10</sup> Exhibit PR-2022-018-01.A at 57.

<sup>11</sup> *Ibid.* at 56–57.

<sup>12</sup> *Ibid.* at 55–56.

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

<sup>14</sup> Exhibit PR-2022-018-01 at 1.

<sup>15</sup> Exhibits PR-2022-018-08; PR-2022-018-09.

<sup>16</sup> Exhibits PR-2022-018-11; PR-2022-018-11.A.

<sup>17</sup> Exhibit PR-2022-018-15 (protected).

<sup>18</sup> Exhibit PR-2022-018-16.

## ANALYSIS

[16] Subsection 30.14(1) of the CITT Act requires that, in conducting an inquiry, the Tribunal limit its considerations to the subject matter of the complaint. At the conclusion of the inquiry, the Tribunal must determine whether the complaint is valid on the basis of whether the procedures and other requirements prescribed in respect of the designated contract have been observed.

[17] Section 11 of the Regulations specifies that the Tribunal must determine whether the procurement was conducted in accordance with the requirements set out in the applicable trade agreements, which, in this instance, includes the Canadian Free Trade Agreement (CFTA).<sup>19</sup>

[18] The relevant provisions of the CFTA are articles 507(3)b) and 515(1) and (4). The text of these provisions can be found in the appendix. In short, Article 507(3)b) of CFTA requires that a procuring entity base its evaluation on the conditions that the procuring entity has specified in advance in its tender notices or tender documentation. Article 515(1) imposes on a procuring entity the obligation to guarantee the fairness and impartiality of the procurement process, while Article 515(4) requires that, to be considered for award, a tender must comply with the essential requirements set out in the tender notices and tender documentation.

### Ground 1: Temperature requirement

[19] GCPROC argues that its disqualification by PWGSC for failing to comply with the following mandatory requirement of the solicitation was unjustified: “Chambers must meet the following temperature ranges: +16°C to +50°C.”<sup>20</sup>

[20] GCPROC’s proposal specified a chamber with a temperature range of +10 °C to +50 °C.<sup>21</sup> While PWGSC’s regret letter dated May 24, 2022, indicated that GCPROC’s bid did not meet the temperature requirement, PWGSC now acknowledges in its GIR that it did fall within the requested specifications.<sup>22</sup>

[21] By admitting that GCPROC’s bid complied with the temperature requirement, PWGSC acknowledges that it failed to evaluate GCPROC’s bid in accordance with mandatory evaluation criterion 3. Accordingly, this ground of complaint is valid.

### Ground 2: Electrical requirement

[22] GCPROC also argues that its disqualification for failing to comply with the following mandatory requirement of the solicitation was unjustified: “Chambers must be designed for the following Electrical Service: 120 V, 15 Amp.”<sup>23</sup>

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<sup>19</sup> 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). Section 1.3 of the RFP lists all the applicable trade agreements, which include the CFTA.

<sup>20</sup> Exhibit PR-2022-018-10.A at 17.

<sup>21</sup> Exhibit PR-2022-018-01.A at 49.

<sup>22</sup> Exhibit PR-2022-018-11.A at 12.

<sup>23</sup> Exhibit PR-2022-018-10.A at 17.

[23] GCPROC submits that its machine is designed to work with 120 V, as the unit plugs into a standard Canadian wall outlet.<sup>24</sup>

[24] This criterion was developed in response to the requirement established by Dr. Blatt, a research entomologist with AAFC, who consulted an electrician for the electrical requirements of the room in which the chambers would be used. Based on the advice that the electrician provided, Dr. Blatt understood that 120 V and 15 Amps would be the only acceptable electrical specifications for the chamber of equivalent size and capable of providing the temperature and humidity needs of her work.<sup>25</sup>

[25] GCPROC's proposal offered a chamber that requires "115V/60Hz/1ph/15a dedicated circuit"<sup>26</sup>, which is, according to the complainant, the same as required in the RFP from an electrical outlet point of view.<sup>27</sup> GCPROC submits that 115 V and 120 V are equivalent and, by indicating in its bid that the "unit plugs into standard wall outlet" and that it is "designed for quick plug and use", it confirmed that the electrical requirement was met.<sup>28</sup> GCPROC further submits that it did not know that this point had to be further developed, as it is considered "general knowledge" for which no technical background is required.<sup>29</sup>

[26] PWGSC submits that GCPROC's proposal did not explicitly draw connections between its proposed chamber's 115 V requirement and the mandatory electrical requirement of 120 V. It further submits that GCPROC did not expressly establish that its proposed chamber was compatible with a 120 V electrical service, but rather, it only raised that 115 V and 120 V were functionally equivalent after it received the regret letter.<sup>30</sup>

[27] PWGSC further submits that, during the procurement process, only one question was raised regarding the electrical requirement, but none of the questions otherwise dealt with the potential equivalency of 115 V and 120 V, adding that it is incumbent on bidders to seek clarification if they are uncertain about a requirement.<sup>31</sup>

[28] The Tribunal has repeatedly made clear that the onus is on the bidder to demonstrate compliance in its bid.<sup>32</sup> In *Falcon Environmental*, the Tribunal stated the following<sup>33</sup>:

[64] The Tribunal has also been clear that bidders bear the onus of demonstrating that their bids meet the mandatory criteria of a solicitation. In other words, bidders bear the

<sup>24</sup> Exhibit PR-2022-018-01.A at 10.

<sup>25</sup> Exhibit PR-2022-018-11.A at 63, para. 9.

<sup>26</sup> Exhibit PR-2022-018-01.A at 49.

<sup>27</sup> *Ibid.* at 6.

<sup>28</sup> *Ibid.* at 44, 49.

<sup>29</sup> Exhibit PR-2022-018-14 at 1.

<sup>30</sup> Exhibit PR-2022-018-11.A at 8.

<sup>31</sup> *Ibid.* at 9.

<sup>32</sup> *Madsen Diesel & Turbine Inc. v. Department of Public Works and Government Services* (26 June 2014), PR-2014-018 (CITT) at para. 24. 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 to PR-2013-008 (CITT) [*Valcom*] at para. 37.

<sup>33</sup> *Falcon Environmental Inc. v. The Department of Public Works and Government Services* (11 January 2021), PR-2020-034 (CITT) at para. 64. See also: *Valcom Consulting Group Inc. v. Department of National Defence* (14 June 2017), PR-2016-056 (CITT) at para. 54.



responsibility of “connecting the dots”—they must take care to ensure that any and all supporting documentation in their bids clearly demonstrates compliance. As such, while the Tribunal has encouraged evaluators to resist making assumptions about a bid, ultimately, it is incumbent upon the bidder to exercise due diligence in the preparation of its proposal to ensure that it is unambiguous and properly understood by the evaluators.

[Footnotes omitted]

[29] As noted above, Article 507(3)b) of CFTA requires that a procuring entity base its evaluation on the conditions that it has specified in advance in its tender notices or tender documentation. In addition, Article 515(4) requires that, to be considered for an award, a tender comply with the essential requirements set out in the tender notices and tender documentation.

[30] In this case, the RFP states that the chambers must be *designed* for 120 V or, in French, “*L’enceinte doit être conçue en fonction de l’alimentation en électricité suivante: 120 V.*” It appears that GCPROC indeed offered a chamber that was *designed* to operate with a 120 V electrical outlet, which is considered a standard wall outlet.

[31] While the burden was on GCPROC to demonstrate how its bid was fully compliant with all the mandatory requirements of the solicitation, PWGSC was also required to evaluate the conformance of the bids with mandatory requirements *thoroughly* and strictly.<sup>34</sup> The Oxford Learner’s Dictionary defines “thoroughly” as “completely and with great attention to detail”<sup>35</sup>, whereas the Cambridge Dictionary defines it as “in a detailed and careful way”.<sup>36</sup>

[32] In the Tribunal’s opinion, it is clear from the evidence that GCPROC’s chambers were designed for 120 V or a standard wall outlet. In fact, its proposal clearly indicated, “Electrical requirement . . . Unit plugs into standard wall outlet.”<sup>37</sup> In evaluating bids, evaluators need to apply their knowledge of both common and technical usage of pertinent vocabulary to interpret what is being said.<sup>38</sup> The Tribunal is of the view that PWGSC should have known that the chambers they were purchasing could plug into a standard North American wall outlet. As such, it was reasonable for GCPROC to believe that PWGSC knew that a product that plugs into a standard wall outlet would meet the requirement of the solicitation.

[33] Consequently, the Tribunal concludes that, by finding that GCPROC’s bid was non-compliant with respect to the mandatory electrical requirement, PWGSC failed to apply itself in evaluating GCPROC’s bid, which resulted in an evaluation that the Tribunal considers unreasonable.

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<sup>34</sup> *Siemens Westinghouse Inc. v. Canada (Minister of Public Works and Government Services)*, 2000 CanLII 15611 (FCA) at para. 18. See also: *Bio-Rad laboratories (Canada) Ltd.* (18 December 2017), PR-2017-044 (CITT) at para. 11; *Re Complaint Filed by IBM Canada Ltd.* (5 November 1999), PR-99-020 (CITT) at 7; *Re Complaint Filed by Bell Mobility* (14 July 2004), PR-2004-004 (CITT) at para. 36.

<sup>35</sup> <https://www.oxfordlearnersdictionaries.com/definition/english/thoroughly>

<sup>36</sup> <https://dictionary.cambridge.org/dictionary/english/thoroughly>

<sup>37</sup> Exhibit PR-2022-018-01.A at 49.

<sup>38</sup> *Northern Lights Aerobatic Team, Inc.* (5 October 2005), PR-2005-004 (CITT) at para. 59.

**Did the complainant's bid contain a condition?**

[34] After GCPROC requested that its bid be re-evaluated, PWGSC determined that it contained a condition, which led to an additional finding of non-compliance.<sup>39</sup> Indeed, the manufacturer's product specification sheet included in GCPROC's bid contained an asterisk with the following statement: "Specifications are based on 20°C ambient and standard voltage. Specifications are subject to change without notice." The statement only applied to the specifications relating to the temperature range (expressed in degrees Celsius) and relative humidity range (expressed in percentage terms).<sup>40</sup>

[35] GCPROC submits that its bid is not conditional. Rather, it argues that the statement is standard and necessary because the chamber cannot provide the indicated temperature range if it is used in extreme temperatures. GCPROC further submits that it is not a statement that contradicts anything in the solicitation or PWGSC's standard terms and conditions.

[36] PWGSC submits that, while the first sentence of the condition indicates that the specifications are based on an ambient temperature of 20 °C, the second sentence more broadly states that specifications are subject to change without notice. This suggests that the specifications could differ for any number of reasons, not just the ambient temperature where the chamber is installed, making GCPROC's bid non-compliant due to this condition.<sup>41</sup>

[37] It is well established that a bidder who includes an alternate or additional set of standard terms and conditions introduces elements of uncertainty and ambiguity regarding its acceptance of the mandatory requirements of the solicitation, and ultimately the compliance of its bid. A procuring entity can reasonably disqualify such a bid, as its acceptance would be contrary to the requirement of the CFTA that a tender must comply with the essential requirements of the solicitation to be considered for the award.<sup>42</sup>

[38] In this case, the Tribunal is of the view that GCPROC did not include in its bid a condition that introduced an element of uncertainty and ambiguity regarding its acceptance of the mandatory requirements of the solicitation. While the statement that "[s]pecifications are subject to change without notice" was included in GCPROC's proposal, it only appeared in the manufacturer's product specification sheet and only applied to the specifications relating to the temperature range and relative humidity range. It was not a condition drafted and added by GCPROC. Moreover, the statement could not reasonably be interpreted as a counteroffer or an initial step to negotiate the terms and conditions of the RFP.<sup>43</sup> Indeed, GCPROC's proposal clearly indicated that its chamber

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<sup>39</sup> Exhibit PR-2022-018-01 at 3.

<sup>40</sup> Exhibit PR-2022-018-01.A at 49.

<sup>41</sup> *Ibid.* at 13.

<sup>42</sup> *MacGregor's Custom Machining Ltd.* (5 August 2021), PR-2021-026 (CITT) at para. 37; *Bio-Rad Laboratories (Canada) Ltd.* (18 December 2017), PR-2017-044 (CITT) at para. 12.

<sup>43</sup> In *Intercall Canada* (11 June 2009), PR-2009-011 (CITT), the Tribunal noted that the condition clause appeared in the technical section, as well as in the original and amended financial sections of the proposal, making it clear that the condition was included as part of the bid. The Tribunal also noted that InterCall did not consider its proposal to be its final response to the RFP, but rather an initial step in negotiations between it and PWGSC. These negotiations would probably have led to changes in the terms and conditions of the RFP, reflected in any future contract.

met the temperature requirement and there is nothing to suggest that this was contingent on any other condition or event.<sup>44</sup>

[39] Thus, the statement in question cannot reasonably be interpreted to mean that GCPROC could supply chambers that do not meet the mandatory requirements of the solicitation and is therefore not fatal to its bid.

## Conclusion

[40] For the above reasons, the Tribunal concludes that the complaint is valid.

## REMEDY

[41] Subsection 30.15(2) of the CITT Act provides that, where the Tribunal determines that a complaint is valid, it may recommend a remedy that it considers appropriate, including one or more of the following: (1) the issuance of a new solicitation; (2) the re-evaluation of the bids; (3) the termination of the designated contract; (4) the award of the designated contract to the complainant; (5) the payment of compensation to the complainant.

[42] Subsection 30.15(3) of the CITT Act further provides that, in recommending an appropriate remedy, the Tribunal must consider all the circumstances relevant to the procurement in question, including the following: (1) the seriousness of the deficiencies found; (2) the degree to which the complainant and all other interested parties were prejudiced; (3) the degree to which the integrity and efficiency of the competitive procurement system was prejudiced; (4) whether the parties acted in good faith; and (5) the extent to which the contract was performed.

[43] Typically, the objective of a remedy is to place the complainant in the position in which it would have been absent the government's breach or breaches.

[44] In the present complaint, GCPROC requested that it be awarded the contract, whereas PWGSC recommended that, should the Tribunal find the complaint valid or valid in part, the parties undertake negotiations for lost profit, since the chambers under the contract awarded to MMTC have already been ordered and they are urgently required by AAFC.

[45] The Tribunal is of the view that, given these circumstances, the payment of compensation to GCPROC for its lost profits is the most appropriate remedy in this case. This will, in effect, place GCPROC in the position in which it would have been but for PWGSC's unreasonable evaluation of the bid. Having submitted a proposal with a lower price than the contract awarded to MMTC, the product proposed by GCPROC would have been selected. Accordingly, the Tribunal recommends that, using the pricing submitted by GCPROC in its bid, the parties negotiate the amount of

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<sup>44</sup> For example, in *Labrador Airways Ltd. v. Canada Post Corp.* [2001] N.J. No. 28, the court found that the inclusion of conditions rendered the bid non-compliant, as the bidder's pricing response was made contingent on it obtaining 100% of the mail volume on all routes whereas the RFP indicated that Canada Post was to have the right to split the contract. Similarly, in *Inter-Rail Auto Handling Inc. (c.o.b. Inter-Rail Canada) v. Canadian Pacific Ltd.* [2000] B.C.J. No. 1297, the bidder had substituted the prescribed rate bid form with its own form and had inserted the following reservations and conditions, "based on completion of a satisfactory contract".

compensation. The parties are to refer to the Tribunal's *Procurement Compensation Guidelines*<sup>45</sup> for guidance.

## **COSTS**

[46] Pursuant to section 30.16 of the CITT Act, the Tribunal may award costs of, and incidental to, any procurement complaint proceedings.

[47] Normally, the successful party is entitled to its reasonable costs incurred in relation to the Tribunal's proceeding. However, GCPROC did not request its complaint costs, and this, in both PR-2022-016 and PR-2022-018.<sup>46</sup>

[48] The general principle is that no complaint costs will be awarded where no claim for costs is filed.<sup>47</sup> In accordance with its usual practice, the Tribunal will therefore not award costs.

## **DETERMINATION**

[49] Pursuant to subsection 30.14(2) of the CITT Act, the Tribunal determines that the complaint is valid.

[50] Pursuant to subsections 30.15(2) and (3) of the CITT Act, the Tribunal recommends, as a remedy, that PWGSC compensate GCPROC for the profits that it lost in not being awarded the contract at issue. The Tribunal further recommends that, using the pricing submitted by GCPROC in its bid, GCPROC and PWGSC negotiate the amount of compensation and, within 60 days of the date of this determination, report back to the Tribunal on the outcome of the negotiations.

[51] Should the parties be unable to agree on the amount of compensation for lost profits, GCPROC must file with the Tribunal, within 90 days of the date of this determination, a submission on the issue of compensation. PWGSC will then have seven working days after the receipt of GCPROC's submission to file a response. GCPROC will then have five working days after the receipt of PWGSC's reply submission to file any additional comments. The parties are required to serve each other and file with the Tribunal simultaneously. The Tribunal reserves jurisdiction to establish the final amount of compensation.

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<sup>45</sup> <https://www.citt-tcce.gc.ca/en/procurement-inquiries/procurement-compensation-guidelines>.

<sup>46</sup> GCPROC requested that all the documents submitted in PR-2022-016 be added to PR-2022-018.

<sup>47</sup> D. Attwater, *Procurement Review: A Practitioner's Guide* at 2:253; *Joe Parsons Construction Ltd.* (23 April 2021), PR-2020-065 at para. 80; *eVision Inc., SoftSim Technologies Inc., in Joint Venture* (22 August 2019), PR-2019-011 (CITT) at para. 46; *Autopos Marine Inc. d.b.a. AutoNav* (5 June 2019), PR-2018-057 (CITT) at para. 60; *Vintage Designing Co.* (13 April 2018), PR-2017-050 (CITT) at para. 63; *Island Temperature Controls* (2 February 2018), PR-2017-038 (CITT), at para. 29; *Valcom Consulting Group Inc.* (14 June 2017), PR-2016-056 (CITT) at para. 108; *Alcohol Countermeasure Systems Corps* (24 April 2014), PR-2013-041 (CITT) at para. 53; *Tritech Group Ltd.* (31 March 2014), PR-2013-035 (CITT) at para. 48; *ML Wilson Management* (6 June 2013), PR-2012-047 (CITT) at para. 64. See *Exeter v. Attorney General of Canada*, 2013 FCA 134 (CanLII), in which the Federal Court of Appeal held that parties must request their costs in order to be awarded any.

[52] Each party will bear its own costs.

Frédéric Seppey  

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Frédéric Seppey  
Presiding Member

**APPENDIX: EXCERPTS OF THE CFTA****Article 507: Conditions for Participations**

...

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

...

(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**

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

...

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.