



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION

File PR-2023-006

Chantier Davie Canada Inc. and
Wärtsilä Canada Inc.

v.

Department of Public Works and
Government Services

*Determination issued
Wednesday, September 6, 2023*

IN THE MATTER OF a complaint filed by Chantier Davie Canada Inc. and Wärtsilä Canada 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

**CHANTIER DAVIE CANADA INC. AND WÄRTSILÄ CANADA
INC.**

Complainants

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 valid in part.

Pursuant to subsection 30.15(4) of the CITT Act, the Tribunal awards Chantier Davie Canada Inc. and Wärtsilä Canada Inc. (the complainants) their reasonable bid preparation costs, which costs are to be paid by the Department of Public Works and Government Services (PWGSC).

Pursuant to subsections 30.15(2) and (3) of the CITT Act, the Tribunal recommends, as a remedy, that PWGSC compensate the complainants for their lost opportunity to profit but only if there were no responsive bids with an evaluated price equal to or lower than that of Heddle Marine Service Inc. If compensation for lost opportunity is payable, the Tribunal recommends that the amount of compensation be reduced by an amount equal to the complainants' reasonable bid preparation costs.

Pursuant to section 30.16 of the CITT Act, the Tribunal awards the complainants their reasonable costs incurred in preparing and proceeding with this complaint, which costs are to be paid by PWGSC. In accordance with the *Procurement Costs Guidelines*, the Tribunal's preliminary indication of the level of complexity for this complaint is Level 3, and its preliminary indication of the amount of the cost award is \$4,700.

The Tribunal asks the parties to make best efforts to negotiate and report back to it on the outcome of discussions regarding bid preparation costs, the amount of compensation for lost opportunity and litigation costs within 60 days of the date of issuance of its reasons. The Tribunal encourages parties to share all relevant information with maximum transparency, at least among counsel who filed a confidentiality undertaking, but only after having considered public release of information to the greatest extent possible. Should the parties be unable to agree on these issues, the Tribunal will advise as to next steps. The Tribunal reserves jurisdiction to establish the final amounts for bid preparation costs, compensation for lost opportunity and litigation costs.

Eric Wildhaber

Eric Wildhaber

Presiding Member

The statement of reasons will be issued at a later date.