



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File PR-2022-031

Higher Standard Sales

v.

Department of Public Works and
Government Services

*Determination and reasons issued
Wednesday, December 14, 2022*

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IN THE MATTER OF a complaint filed by Higher Standard Sales 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

HIGHER STANDARD SALES

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 Higher Standard Sales. In accordance with the Procurement Costs Guidelines (Guidelines), the Tribunal's preliminary indication of the level of complexity for this complaint case is Level 1, and its preliminary indication of the amount of the cost award is \$1,150. Any party that disagrees with the preliminary level of complexity or the preliminary indication of the amount of the cost award may make submissions to the Tribunal, in accordance with article 4.2 of the Guidelines. The Tribunal reserves jurisdiction to establish the final amount of the cost award.

Frédéric Seppey

Frédéric Seppey
Presiding Member

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STATEMENT OF REASONS

SUMMARY OF THE COMPLAINT

[1] This complaint relates to a request for proposal (RFP) issued by the Department of Public Works and Government Services (PWGSC) under solicitation W0130-21GC31,¹ on behalf of the Department of National Defence, for the acquisition of sea containers for storage.

[2] This is the second complaint made by Higher Standard Sales (HSS) with respect to the procurement at issue. The Canadian International Trade Tribunal concluded that the first complaint was premature, as HSS's bid had not yet been rejected by the procuring entity.² In this second complaint, HSS claims that PWGSC improperly declared its bid unresponsive and that the successful bidder offered a price that was abnormally low. As a remedy, HSS requests that the bids be re-evaluated, that the designated contract be terminated and awarded to HSS, and further requests compensation for lost profits, complaint costs and bid preparation costs.

[3] The Tribunal accepted the complaint for inquiry in accordance with subsection 30.13(1) of the *Canadian International Trade Tribunal Act* (CITT Act)³ and subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (the Regulations).⁴

[4] Following its inquiry into the complaint, and for the reasons that follow, the Tribunal finds that the complaint is not valid.

BACKGROUND

Procurement process

[5] The RFP was published on May 2, 2022.⁵ PWGSC subsequently issued three amendments, on May 11, May 12 and May 20, 2022. As a result of these amendments, three mandatory technical criteria (MTC) were eliminated from the RFP. The final version of the MTC of the RFP reads as follows:⁶

9.3 Mandatory Technical Criteria
9.3.1 The containers must be 20 ft. long × 8 ft. wide × 8½ ft. high.
9.3.2 The container must be new ("new" being defined here as having been used for one-way shipment only)
9.3.3 These dry cargo containers must be built to meet the ISO 668 and ISO 1496-1 standards.
9.3.4 Loaded and unloaded containers must have forklift pockets.
9.3.5 The CSC (Convention for Safe Containers) approval reference must be erased as this container will no longer be used for international shipments.
9.3.6 The serial number on each container must be kept.

¹ The solicitation documents also refer to WS3390107314 as the solicitation number.

² *Higher Standard Sales v. Department of Public Works and Government Services* (26 July 2022), PR-2022-023 (CITT).

³ R.S.C., 1985, c. 47 (4th Supp.).

⁴ SOR/93-602.

⁵ Online: <<https://canadabuys.canada.ca/en/tender-opportunities/tender-notice/ws3390107314-doc3391233825>>.

⁶ Exhibit PR-2022-031-14.A at paras. 7–13.

[6] The bidding period closed on May 27, 2022. PWGSC received 11 bids in total, including a bid from HSS.⁷

[7] On July 5, 2022, HSS received an email from PWGSC requesting to confirm where the information related to MTC 9.3.3 (International Organization for Standardization [ISO] standards) and 9.3.6 (serial number) could be found in its proposal.⁸ In a series of emails sent on July 6 and July 7, 2022, HSS replied that its supplier confirmed that it could provide “factory certifications” for the container and that it was implied in its bid that the sea containers met the ISO standards listed in MTC 9.3.3 and, therefore, it would have been redundant to include this information. HSS further replied that the requirement concerning the serial number found in MTC 9.3.6 was removed by the amendment of May 20, 2022, but attached supporting documentation from its supplier confirming that its proposed containers will have serial numbers.⁹ PWGSC informed HSS on July 6, 2022, that no additional information could be added after the closing date of the tender.¹⁰

[8] On July 22, 2022, HSS received a regret letter from PWGSC informing it that its bid had not demonstrated how it met MTC 9.3.3 and 9.3.6 and that it would not be awarded a contract.¹¹ A contract was awarded to the successful bidder, 11644157 Canada Inc., in the amount of \$228,800.25 on July 22, 2022 (contract CW2231685).¹²

Complaint proceedings

[9] HSS filed this second complaint (PR-2022-031) regarding this procurement process on August 4, 2022, requesting that all the documents submitted in the context of its first complaint (PR-2022-023) be added to the second complaint. The grounds of complaint were as follows:

- PWGSC wrongly determined that HSS’s bid did not comply with MTC 9.3.3 (“These dry cargo containers must be built to meet the ISO 668 and ISO-1496-1 standards”);
- PWGSC wrongly determined that HSS’s bid did not comply with MTC 9.3.6 (“The serial number on each container must be kept”); and
- The successful bidder offered a price that is abnormally low.¹³

[10] The complaint was accepted for inquiry on August 11, 2022.¹⁴

[11] On September 12, 2022, PWGSC filed public and protected versions of its Government Institution Report (GIR) with the Tribunal.¹⁵ On September 20, 2022, the Tribunal requested PWGSC to file the evaluation grid used to review the bids as well as the evaluation of HSS’s bid. As

⁷ *Ibid.* at para. 14.

⁸ Exhibit PR-2022-031-01.C at 13.

⁹ *Ibid.* at 14–15.

¹⁰ *Ibid.* at 15.

¹¹ Exhibit PR-2022-031-01 at 33.

¹² Online: <<https://canadabuys.canada.ca/en/tender-opportunities/award-notice/ws3390107314-cw2231685-acm168100741>>.

¹³ Exhibit PR-2022-031-01 at 8.

¹⁴ Exhibits PR-2022-031-08 and PR-2022-031-09.

¹⁵ Exhibits PR-2022-031-14.A, PR-2022-031-14.B (protected) and PR-2022-031-14.C (protected).

a result, the Tribunal's inquiry was extended to 135 days.¹⁶ PWGSC filed the requested documents on September 23, 2022.¹⁷ HSS then had until October 5, 2022, to file its comments on the GIR and other documents filed by PWGSC.¹⁸

[12] On October 6, 2022, HSS advised the Tribunal that it intended to file comments on the GIR but could not understand the evaluation of its bid, as it was in French.¹⁹ On October 14, 2022, HSS formally requested an extension to file its comments on the GIR, which the Tribunal granted.²⁰ HSS also requested a translation in English of the evaluation of its bid submitted by PWGSC.²¹ At the Tribunal's request, PWGSC filed a translation in English of the evaluation of HSS's bid on October 26, 2022.²²

[13] As HSS did not file comments on the GIR, the Tribunal advised the parties, on November 8, 2022, that the record was now closed and that the case would be decided on the basis of the evidence and submissions on record.²³

ANALYSIS

[14] Subsection 30.14(1) of the CITT Act requires that, in conducting an inquiry, the Tribunal limits 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.

[15] 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, include the Canadian Free Trade Agreement (CFTA).

[16] The relevant provisions of the CFTA raised by the allegations made by HSS can be found in Appendix I and can be summarized as follows:

- Article 507(3)(b) provides that a procuring entity must base its evaluation on the conditions that it has specified in advance in its tender notices or tender documentation;
- Article 515(4) requires that, to be considered for an award, a tender shall comply with the essential requirements set out in the tender notices and tender documentation; and
- Article 515(6) provides that a procuring entity may, when receiving a bid that is abnormally low, verify with the supplier that it is capable of fulfilling the terms of the contract.

[17] The Tribunal will now analyze HSS's grounds of complaint against the legislative framework and trade agreement obligations.

¹⁶ Exhibit PR-2022-031-16.

¹⁷ Exhibits PR-2022-031-17 and PR-2022-031-17.A (protected).

¹⁸ Exhibit PR-2022-031-16.

¹⁹ Exhibit PR-2022-031-18.

²⁰ Exhibit PR-2022-031-22 at 1.

²¹ Exhibit PR-2022-031-21 at 1.

²² Exhibit PR-2022-031-17.B.

²³ Exhibit PR-2022-031-24.

Ground 1: PWGSC's evaluation of HSS's bid was reasonable with respect to MTC 9.3.3 (conformity with ISO 668 and ISO 1496-1), as HSS failed to demonstrate compliance

[18] According to HSS, the ISO 668 standard refers to an “ISO international standard which classifies intermodal freight shipping containers nominally, and standardizes their sizes, measurements and weight specifications.” ISO 1496-1 “specifies the basic specifications and testing requirements for ISO series 1 freight containers of the totally enclosed general purpose types and certain specific purpose types (dosed, vented, ventilated or open top) which are suitable for international exchange and for conveyance by road, rail and sea, including interchange between these forms of transport.”²⁴

[19] HSS claims that its bid met MTC 9.3.3, as the technical criteria sheet it provided as part of its bid indicates in three separate areas that the offered containers are ISO certified. It also alleges that its supplier, Sea Box, has won numerous bids using the same specification sheet. Finally, HSS argues that the fact that its proposed containers have NATO Stock Numbers (NSN) and are “built in accordance with [United States] Army Spec[ification] ATPD-2339A”, as stipulated on the technical criteria sheet, provide further indication that the containers are compliant with ISO standards.²⁵

[20] PWGSC submits that, because HSS's bid did not indicate that the containers met the specific standards (ISO 668 and ISO 1496-1), it could not make an inference of compliance based on the information provided.²⁶ It adds that HSS could not expect PWGSC to infer from such mentions as “ISO Cargo Container” or “manufactured to the latest ISO standards” that the proposed containers met the ISO 668 and ISO 1496-1 requirements. PWGSC claims that there are several possible ISO standards that such a container could meet.²⁷ PWGSC further submits that the onus is on the bidder to *explicitly* demonstrate compliance with the solicitation criteria, that bidders must exercise due diligence when preparing a bid²⁸ and that it is not incumbent on, or permissible for, government institutions to give bidders the benefit of the doubt where compliance cannot be clearly established.²⁹

[21] When considering the manner in which bids are evaluated, the Tribunal has applied the standard of reasonableness. 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 information on undisclosed criteria or have otherwise not conducted the evaluation in a procedurally fair way. The government institution's determination will be considered reasonable if it is supported by a tenable explanation, regardless of whether the Tribunal itself finds that explanation compelling.³⁰

²⁴ Exhibit PR-2022-031-01 at 32; Exhibit PR-2022-031-14.A at 98.

²⁵ Exhibit PR-2022-031-01 at 8, 25.

²⁶ Exhibit PR-2022-031-14.A at para. 51.

²⁷ *Ibid.* at para. 57.

²⁸ *Ibid.* at paras. 41–42, referring to *Madsen Diesel & Turbine Inc. v. Department of Public Works and Government Services* (26 June 2014), PR-2014-018 (CITT) [*Madsen Diesel*] at paras. 24, 30.

²⁹ Exhibit PR-2022-031-14.A at para. 43, referring to *Valcom Consulting Group Inc. v. Department of National Defence* (14 June 2017), PR-2016-056 (CITT) [*Valcom*] at para. 70 (upheld by the Federal Court of Appeal, 2019 FCA 1 [CanLII]).

³⁰ See e.g. *Enveloppe Concept Inc. v. Department of Public Works and Government Services* (14 January 2022), PR-2021-042 (CITT) at para. 19. See also *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247 at para. 55.

[22] The Tribunal notes that the manufacturer's technical specification sheet that is part of HSS's bid details both the external and internal dimensions of the proposed containers and indicates the following:³¹

- ISO Cargo Container (twice);
- All new containers are manufactured to the latest ISO standard;
- Built in accordance with Army Spec ATPD-2339A;
- Built in accordance with ATPD 2339;
- NSN #8150-01-528-7571; and
- ISO 9001.

[23] The Tribunal agrees with PWGSC that the term "ISO Cargo Container" cannot be assumed to mean that the container necessarily complies with the specific ISO standards referred to in the RFP. In fact, HSS's bid indicating that the proposed containers are "ISO 9001", which is not a requirement for the procurement at issue, clearly suggests that there are indeed a number of possible ISO standards that containers may meet.

[24] The Tribunal has repeatedly made clear that the burden is on the bidder to demonstrate compliance in its bid.³² In *Falcon Environmental Inc. v. Department of Public Works and Government Services*, the Tribunal stated the following:³³

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 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, emphasis added]

[25] Section 9.1 of the RFP stated that "[t]he Bidder must submit documents and/or technical drawings of the goods offered at Section 9.2 and **should indicate at Section 9.3 where each of the technical criteria are demonstrated within their submitted documents and/or technical drawings**"³⁴ [bold in original]. In section 9.3 of its bid, against MTC 9.3.3, HSS simply indicated "TACOM.pdf" (referring to the supplier's technical criteria sheet included in the bid) without further explanations.³⁵

[26] In its objection to PWGSC, HSS claimed that there is a connection between the technical criteria sheet detailing the exterior and interior dimensions, measurements and weight of the

³¹ Exhibit PR-2022-031-01 at 25.

³² *Madsen Diesel* 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) at para. 37.

³³ (11 January 2021), PR-2020-034 (CITT) at para. 64.

³⁴ Exhibit PR-2022-031-10.A at 17. Section 4.1.2.1 of the RFP contains very similar instructions; see Exhibit PR-2022-031-10.A at 13.

³⁵ Exhibit PR-2022-031-01 at 20.

proposed containers and ISO 668.³⁶ The Tribunal considers that HSS has failed to “connect the dots” by not clearly demonstrating in its bid how the proposed containers were complying with both ISO 668 and ISO 1496-1. The burden was on HSS to demonstrate how its bid was clearly and fully compliant with all the mandatory requirements of the solicitation, even if that meant that it would be redundant. In light of the specific instructions contained in sections 4.1.2.1 and 9.1 of the RFP, the Tribunal considers that HSS should have directly mentioned the specific ISO standards required by the RFP instead of relying on the evaluators to make assumptions.

[27] In *Valcom*, the Tribunal stated that, where it is not clear whether a bid is compliant, this means that the bid is non-compliant, adding that the onus to show compliance rests on the bidder. The Tribunal was of the view that it is not incumbent on, or permissible for, government institutions to give bidders the benefit of the doubt where compliance cannot be clearly established.³⁷ In the current case, the Tribunal sees no reason to reach a different conclusion. HSS’s bid lacked clarity with respect to demonstrating compliance with ISO 668 and ISO 1496-1. In fact, the bid does not refer to these standards at all.

[28] Likewise, in its bid, HSS does not establish any connection between MTC 9.3.3 and the fact that the offered containers are “built in accordance with Army Spec ATPD – 2339A” or have an NSN. On several occasions, the Tribunal has stipulated that it is not appropriate for an evaluator to apply personally held knowledge that goes beyond the realm of general knowledge or to go outside the bid to supply information that is missing.³⁸ The alleged fact that United States Army Specification ATPD-2339A may be equivalent to ISO standards or that an NSN implies compliance with ISO standards is not a matter of general knowledge. It could not have been reasonably expected for PWGSC to infer from this information that the offer was compliant with MTC 9.3.3.

[29] Finally, HSS submits that its supplier has won numerous bids using the same technical criterion. The fact that a particular bidder or supplier has been successful in past procurements is not relevant.³⁹ As it has often been affirmed by the Tribunal, bidders must treat each solicitation independently, and the onus is on bidders to demonstrate that they meet the criteria in any given solicitation.⁴⁰ The Tribunal considers that the fact that HSS’s supplier may have won previous bids using the same technical criteria does not make HSS’s bid compliant in the context of the procurement at issue.

[30] The Tribunal concludes that PWGSC’s evaluation of HSS’s bid with respect to MTC 9.3.3 was reasonable, as HSS failed to clearly demonstrate compliance with that criterion in its bid. HSS’s first ground of complaint is therefore not valid.

[31] Given that HSS’s bid did not comply with MTC 9.3.3, it follows that it did not comply with each and every one of the mandatory criteria of the RFP. As such, PWGSC properly concluded that HSS’s bid must be disqualified and, therefore, the additional question of whether the bid complied

³⁶ *Ibid.* at 32.

³⁷ *Valcom* at para. 70.

³⁸ *Northern Lights Aerobatic Team, Inc. v. Department of Public Works and Government Services* (7 September 2005), PR-2005-004 (CITT) at para. 60; *Imstrat Corporation Inc.* (2 October 2009), PR-2009-049 (CITT) at paras. 12–13.

³⁹ *Eclipsys Solutions Inc. v. Canada Border Services Agency* (21 March 2016), PR-2015-038 (CITT) at para. 33.

⁴⁰ *Ottawa Metro Towing/Metro Tow Trucks* (2 May 2019), PR-2019-008 (CITT) at para. 17.

with MTC 9.3.6 is moot. However, the Tribunal addresses this second ground of complaint for completeness, as it may be useful to HSS in approaching future bids.

Ground 2: PWGSC's evaluation of HSS's bid was reasonable with respect to MTC 9.3.6, as the bid omitted information in this regard

[32] HSS argues that its bid complied with MTC 9.3.6 (requiring that the serial number on each container be kept), as ISO containers are required to be manufactured with serial numbers. HSS alleges that, if the offered containers were not ISO certified, they would not include serial numbers in accordance with ISO standards.⁴¹

[33] PWGSC submits that HSS's bid was found non-compliant against MTC 9.3.6 because it was unable to find the information addressing the serial number requirement, adding that it was not the evaluators' responsibility to "connect the dots" and assume that the containers met the ISO requirements because they had an NSN. PWGSC further submits that HSS answering, "Yes, confirmed with supplier. TACOM.pdf", in its bid, with no additional information, was insufficient to ensure compliance with the serial number requirement, as it did not include such confirmation from the supplier, nor did the specification sheet make any mention of how the container would conform to the serial number requirement.⁴² It is only once PWGSC sought clarification, after bid closing, that HSS obtained confirmation from its supplier that the containers would have serial numbers.⁴³

[34] Under this ground, the Tribunal does not find any basis to interfere with the evaluators' conclusion that HSS failed to demonstrate that its bid complied with the MTC related to serial numbers. Sections 4.1.2 and 9.1 of the RFP required that bidders demonstrated compliance with each of the MTC with documents and/or technical drawings.⁴⁴ As pointed out by PWGSC, in respect of MTC 9.3.6, HSS's bid simply says, "Yes, confirmed with supplier. TACOM.pdf."⁴⁵ The technical criteria sheet submitted by HSS as part of its bid and referred to as "TACOM.pdf" provides no indication related to serial numbers⁴⁶ and the picture of a container on that sheet does not show any serial numbers.

[35] The only confirmation found on the record that the container would have serial numbers is in an email exchange between HSS and its supplier dated July 6, 2022, and provided the same day to PWGSC (i.e. several weeks after bid closing on May 27, 2022).⁴⁷ In this exchange, HSS asked, "To conform [*sic*], the units will have serial numbers?", to which Seabox replied, "Yes, something like ABCU-123456-7." The Tribunal has consistently held that a bidder cannot modify or supplement its bid with *new* information after bid closing and doing so can lead to bid repair, which is a violation of trade agreements.⁴⁸ PWGSC was entitled to seek clarification on an *existing* aspect of HSS's bid,⁴⁹ which it did in its email to HSS of July 5, 2022, by asking⁵⁰ that HSS indicate where in its bid the

⁴¹ Exhibit PR-2022-031-01 at 8.

⁴² Exhibit PR-2022-031-14.A at para. 66.

⁴³ *Ibid.* at para. 72.

⁴⁴ Exhibit PR-2022-031-10.A at 13, 17.

⁴⁵ Exhibit PR-2022-031-01 at 20.

⁴⁶ *Ibid.* at 25.

⁴⁷ *Ibid.* at 34, 36.

⁴⁸ *Textus Inc.* (16 November 2018), PR-2018-039 (CITT) at para. 24.

⁴⁹ Exhibit PR-2022-031-14.A at para. 44, referring to *Mechron Energy Ltd.* (3 October 2000), PR-95-001 (CITT).

⁵⁰ Exhibit PR-2022-031-14.A at 46-47.

required information could be located; instead, HSS sent PWGSC *additional* information not contained in its bid.

[36] Moreover, section 9 of part 05 (2022-01-24) Submission of bids of the Standard Acquisition Clauses and Conditions Manual, which were incorporated by reference and formed part of the RFP, clearly states that Canada will evaluate only the documentation provided with a bid.⁵¹ Accepting additional information can be considered bid repair if it leads to a substantial change in the bid. As mentioned by the Federal Court of Appeal in *Francis H.V.A.C. Services Ltd. v. Canada (Public Works and Government Services)*, “bidders cannot make material corrections or amend their bids after the bid’s closing date... ‘Bid repair,’ as it has come to be known, is considered to be an indirect way of allowing a late bid.”⁵²

[37] In light of the above, the Tribunal does not find any basis to interfere with the evaluators’ conclusion that HSS failed to demonstrate that its bid complied with MTC 9.3.6, the criterion requiring that serial numbers be kept. Accepting as evidence of compliance the clarification HSS provided several weeks after bid closing would have constituted bid repair and would have violated trade obligations. HSS’s second ground of complaint is not valid.

Ground 3: Acceptance of a low bid does not constitute a breach of obligations

[38] As a third ground of complaint, HSS submits that the pricing, at \$199,000.00, of the awarded contract was abnormally low and could not allow the contract awardee, Multiblast, to make any type of profit. To support its claim, HSS compares the prices advertised on Multiblast’s website with Multiblast’s bid price.

[39] Article 515(6) of the CFTA provides that, if a procuring entity receives a tender from a supplier with a price that is abnormally lower than the prices in other submitted tenders, it *may* verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.

[40] PWGSC submits that all compliant bids (5 out of 11) offered total prices that fell within the same range, in line with market prices.⁵³ HSS provided a bid that was higher than the proposed prices of all 5 compliant bidders.⁵⁴

[41] PWGSC also confirmed that the winning bid did meet all the MTC, including MTC 9.3.2, which required that the container be new (“new being defined here as having been used for one-way shipment only”).⁵⁵ There is no evidence on the record that would suggest a reason to doubt PWGSC’s assessment that the successful bidder is capable of fulfilling the terms of the contract.

[42] The Tribunal has repeatedly held that accepting a significantly lower bid does not in and of itself indicate a failure of the procuring entity to follow the requirements of the trade agreements.⁵⁶

⁵¹ Exhibit PR-2022-031-10.A at 4.

⁵² 2017 FCA 165 (CanLII) at para. 22.

⁵³ Exhibit PR-2022-031-14.A at paras. 33–36.

⁵⁴ *Ibid.* at para. 100.

⁵⁵ Exhibit PR-2022-031-01 at 32.

⁵⁶ 9359-6716 *Québec Inc. o/a Prestige Pelouse et Fleurs* (27 April 2021), PR-2021-003 (CITT) [9359-6716 *Québec Inc.*] at para. 18; *Smiths Detection Montreal Inc.* (5 August 2020), PR-2020-016 (CITT) at para. 24; *DMA Security Solutions Ltd.* (3 July 2018), PR-2018-009 (CITT) at para. 18.

As such, the mere fact that the successful financial bid was low does not indicate a breach of the provisions of the applicable trade agreements.⁵⁷ In the absence of any indication that Multiblast's bid was non-compliant with the MTC, PWGSC would have been obligated to award the contract in accordance with the stated RFP criteria.

[43] For these reasons, the Tribunal considers this third ground of complaint not valid.

Conclusion

[44] For the above reasons, the Tribunal concludes that the complaint is not valid.

COSTS

[45] Both HSS and PWGSC have requested their costs relating to the complaint. Pursuant to section 30.16 of the CITT Act, the Tribunal awards PWGSC its reasonable costs incurred in responding to the complaint, which costs are to be paid by HSS.

[46] In accordance with the Procurement Costs Guidelines (Guidelines),⁵⁸ the Tribunal's preliminary indication of the level of complexity for this complaint is Level 1. The procurement process involved a very specific good with clearly defined characteristics. The MTC were clearly written and well defined. The grounds of complaint were also clearly expressed, and the matters at issue were straightforward. An oral hearing was not required. While the proceedings were extended to the 135-day timeframe following the Tribunal's request for additional information from PWGSC, this did not add much complexity to the proceedings. Therefore, the Tribunal's preliminary indication of the amount of the cost award is \$1,150.

DETERMINATION

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

[48] Pursuant to section 30.16 of the CITT Act, the Tribunal awards PWGSC its costs in the amount of \$1,150 for responding to the complaint, which costs are to be paid by HSS. Any party that disagrees with the preliminary indication of the level of complexity or the preliminary indication of the amount of the cost award may make submissions to the Tribunal, in accordance with article 4.2 of the Guidelines. The Tribunal reserves jurisdiction to establish the final amount of the cost award.

Frédéric Seppey

Frédéric Seppey

Presiding Member

⁵⁷ 9359-6716 *Québec Inc.* at para. 18.

⁵⁸ Online: <<https://www.citt-tcce.gc.ca/en/procurement-inquiries/procurement-costs-guidelines>>.

APPENDIX 1: 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.

...

6. If a procuring entity receives a tender from a supplier with a price that is abnormally lower than the prices in other submitted tenders, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.