



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION

File PR-2023-039

Weatherlogics Inc.

v.

Department of the Environment

*Determination issued
Wednesday, February 7, 2024*

IN THE MATTER OF a complaint filed by Weatherlogics 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

WEATHERLOGICS INC.

Complainant

AND

THE DEPARTMENT OF THE ENVIRONMENT

**Government
Institution**

DETERMINATION

The Canadian International Trade Tribunal determines, pursuant to subsection 30.14(2) of the *Canadian International Trade Tribunal Act* (CITT Act), that the complaint is valid in part.

Having considered all relevant circumstances appearing from the record, and the provisions of subsections 30.15(2) and (3) of the CITT Act, the Tribunal recommends the following remedies:

- (1) The Department of the Environment (ECCC) should complete the technical and financial evaluation and scoring of the bids submitted by Weatherlogics Inc. (Weatherlogics) and the contract awardee, Dr. Xu. In doing so, ECCC should use the technical evaluation of Weatherlogics' bid and the technical evaluation of Dr. Xu's bid that were submitted to the Contracting Authority on September 27, 2023 (Original Evaluations), as disclosed on page 5 at paragraph 13 of the Government Institution Report.
- (2) Should any of the Original Evaluations no longer be available, ECCC must advise the Tribunal accordingly by providing a statement under oath, from a person having personal knowledge of the reasons and relevant circumstances to explain why the Original Evaluations are no longer available. Any such statement must be provided to the Tribunal by no later than 30 days from the date of the issuance of the reasons.
- (3) If full evaluation of the bids cannot be completed using the Original Evaluations, the Tribunal recommends that ECCC form an evaluation team composed of new evaluators who have not been involved in any way in the procurement at issue or in a related procurement, to re-evaluate the bids.
- (4) ECCC must advise the Tribunal and the bidders with respect to the outcome of its bid evaluation and scoring within 40 days from the date of the issuance of the reasons.
- (5) Should a completed evaluation of the Original Evaluations or re-evaluation of the bids, as the case may be, determine that Weatherlogics' proposal received the highest overall score, the Tribunal recommends that ECCC compensate Weatherlogics in an amount equal to the profit that Weatherlogics would have earned had it been awarded the full contract. The parties should

negotiate the amount of compensation that would be payable by ECCC to Weatherlogics under those circumstances.

- (6) Should the parties be unable to agree on the amount of compensation that should be payable:
- (a) Weatherlogics shall file a submission with the Tribunal, including evidence to substantiate the amount it is claiming by way of lost profits, within 75 days of the date of the issuance of the reasons, or within such further time as the Tribunal may permit.
 - (b) ECCC may then file responding submissions within 20 days after the receipt of the submissions by Weatherlogics, or within such further time as the Tribunal may permit.
 - (c) Weatherlogics may file a reply within 10 days following receipt of any submission by ECCC, or within such further time as the Tribunal may permit.
- (7) The parties are required to serve each other and file their materials with the Tribunal simultaneously. The Tribunal reserves jurisdiction to establish the final amount of compensation.

The Tribunal awards Weatherlogics its reasonable costs incurred in preparing and proceeding with this complaint, which costs are to be paid by ECCC. In accordance with the Tribunal's *Procurement Costs Guidelines*, the Tribunal's preliminary indication of the level of complexity for this complaint is Level 1, and its preliminary indication of the amount of the cost award is \$1,150. If any party disagrees with the preliminary indication of the level of complexity or the preliminary indication of the amount of the cost award, it may make submissions to the Tribunal, as contemplated in article 4.2 of the *Procurement Costs Guidelines*. The Tribunal reserves jurisdiction to establish the final amount of the cost award.

Susan D. Beaubien

Susan D. Beaubien
Presiding Member

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