



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DETERMINATION AND REASONS

File PR-2024-057

Axxys Construction Group

v.

Department of Public Works and  
Government Services

*Determination and reasons issued  
Monday, March 31, 2025*

## TABLE OF CONTENTS

DETERMINATION.....	i
STATEMENT OF REASONS .....	1
SUMMARY OF COMPLAINT .....	1
BACKGROUND .....	1
ANALYSIS.....	8
Preliminary matters.....	9
The context of the initial complaint.....	9
The Tribunal’s role in a procurement inquiry.....	10
The Tribunal’s jurisdiction in a procurement inquiry.....	11
General concept of fairness.....	11
The conduct of a private entity .....	11
Procurement process versus contract administration.....	12
Alleged new grounds of complaint filed in the comments to the GIR .....	13
Applicable trade agreements.....	13
Analysis of each ground of complaint .....	14
Ground 1: Novalta misrepresented its project experience in its bid.....	14
Validity of the ground of complaint.....	15
Ground 2: PWGSC should not have found Novalta’s bid to be responsive because Novalta subcontracted work.....	15
Timeliness of the ground of complaint.....	15
Validity of the ground of complaint.....	16
Ground 3: PWGSC should not have found Novalta’s bid to be responsive because Novalta did not submit notices as stipulated under Quebec provincial law.....	18
Timeliness of the ground of complaint .....	18
Validity of the ground of complaint.....	19
Ground 4: PWGSC accepted more projects from Novalta than was requested in the solicitation ...	19
Timeliness of the ground of complaint.....	20
Validity of the ground of complaint.....	20
Ground 5: PWGSC did not verify the bid information submitted by Novalta .....	21
Timeliness of the ground of complaint.....	21
Validity of the ground of complaint.....	22
Ground 6: The confidentiality requirements imposed by PWGSC, through the ATIP disclosure request process, limited Axxys’s ability to gather the information required to bring forward this complaint.....	24
Validity of the ground of complaint.....	24
REMEDY .....	26
COSTS.....	26
DETERMINATION .....	27

IN THE MATTER OF a complaint filed by Axxys Construction Group pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act* (CITT Act);

AND FURTHER TO a decision to conduct an inquiry into the complaint pursuant to subsection 30.13(1) of the CITT Act.

**BETWEEN**

**AXXYS CONSTRUCTION GROUP**

**Complainant**

**AND**

**THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT  
SERVICES**

**Government  
Institution**

**DETERMINATION**

Axxys Construction Group (Axxys) filed a complaint that relates to the award of a request for standing offer to 9411-6118 Quebec Inc., doing business as Novalta Construction (Novalta), in September 2023, by the Department of Public Works and Government Services (PWGSC) for decontamination and demolition services.

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

The Tribunal finds that the following ground of complaint is valid:

- PWGSC did not verify Novalta's bid information, in violation of Article 515.4 of the Canadian Free Trade Agreement, after Axxys first called into question the accuracy of this information in February 2024.

The Tribunal finds that the following grounds of complaint are not valid:

- Novalta misrepresented its project experience in its bid.
- The confidentiality requirements imposed by PWGSC, through the Access to Information and Privacy disclosure request process, limited Axxys's ability to gather the information required to bring forward this complaint.

The Tribunal finds that the following grounds of complaint are late and are also not valid:

- PWGSC should not have found Novalta's bid to be responsive because Novalta subcontracted work.
- PWGSC should not have found Novalta bid to be responsive because Novalta did not submit notices as stipulated under Quebec provincial law.
- PWGSC accepted more projects from Novalta than was requested in the solicitation.

The Tribunal finds that Axxys is not entitled to any of the remedies listed in subsection 30.15(2) of the CITT Act.

As the success of this complaint is divided, each party will bear its own costs.

Susana May Yon Lee

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Susana May Yon Lee  
Presiding Member

Tribunal Panel:	Susana May Yon Lee, Presiding Member
Complainant:	Axxys Construction Group
Government Institution:	Department of Public Works and Government Services
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## STATEMENT OF REASONS

### SUMMARY OF COMPLAINT

[1] Axxys Construction Group (Axxys), the complainant, was awarded a standing offer (SO) on September 27, 2023, following a request for standing offer (RFSO) issued by the Department of Public Works and Government Services (PWGSC) (solicitation WS4082835679), for decontamination and demolition services. Three other bidders were also awarded SOs, including 9411-6118 Quebec Inc., doing business as Novalta Construction (Novalta).

[2] Axxys argued that PWGSC should not have found Novalta's bid to be responsive, as it did not meet certain mandatory technical criteria in the solicitation. Axxys also claimed that PWGSC did not verify whether Novalta met these mandatory requirements before offering Novalta a SO, even after Axxys questioned the accuracy of the bid information Novalta provided. Finally, Axxys claimed that the confidentiality requirements imposed by PWGSC, through the Access to Information and Privacy (ATIP) disclosure request process, limited Axxys's ability to gather the information required to bring forward this complaint.

[3] Axxys filed an initial complaint with the Tribunal on October 7, 2024, (Initial Complaint) alleging similar grounds of complaint as in the current complaint.<sup>1</sup> The Tribunal found Axxys's Initial Complaint to have been prematurely filed, as Axxys had not yet heard back from PWGSC about an objection it filed on August 8, 2024.<sup>2</sup>

[4] On November 25, 2024, Axxys filed the current complaint with the Tribunal after it had received a response from PWGSC regarding its letter of August 8, 2024.<sup>3</sup> On November 29, 2024, the Tribunal decided to conduct an inquiry into this complaint.<sup>4</sup>

[5] Having conducted an inquiry into this matter, the Tribunal finds that the complaint is valid in part. The Tribunal finds that PWGSC violated Article 515.4 of the Canadian Free Trade Agreement (CFTA) by failing to verify the bid information submitted by Novalta after Axxys first questioned the accuracy of this information in February 2024. The Tribunal finds that Axxys's other grounds of complaint were not valid, and some were also filed late.

### BACKGROUND

[6] On July 18, 2023, PWGSC published an RFSO to obtain decontamination and demolition services. This includes the removal and disposal of hazardous materials containing asbestos, mould, lead and bird droppings, as well as for insulation, demolition and/or deconstruction work.<sup>5</sup>

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<sup>1</sup> *Axxys Construction Group* (17 October 2024), PR-2024-047 (CIIT) [Axxys]. See also Exhibit PR-2024-047-01, p. 9–10.

<sup>2</sup> *Axxys*, paras. 16–17.

<sup>3</sup> Exhibit PR-2024-057-01; Exhibit PR-2024-057-01.A; Exhibit PR-2024-057-01.B.; Exhibit PR-2024-057-03.

<sup>4</sup> Exhibit PR-2024-057-06, p. 1.

<sup>5</sup> Exhibit PR-2024-057-01, p. 20–24. See also tender notice EF928-230131 – Standing offer for decontamination and demolition services, Quebec Region, CanadaBuys, online: <https://canadabuys.canada.ca/en/tender-opportunities/tender-notice/ws4082835679-doc4104673195>.

[7] The solicitation document indicated that potential suppliers would be evaluated based on the mandatory technical evaluation criteria and their financial bid. Specifically, the RFSO provided as follows: “[a]n offer must comply with the requirements of the [RFSO] and meet all mandatory technical evaluation criteria to be declared responsive. The responsive offer with the lowest evaluated price will be recommended for issuance of a standing offer.”<sup>6</sup>

[8] The solicitation contained four mandatory technical criteria that bidders must meet for their bid to be declared responsive, as follows:

**Mandatory criterion No. 1:**

A description of the work and services you offer.

**Mandatory criterion No. 2:**

Your company’s organizational chart.

Contractor’s experience

**Mandatory criterion No 3:**

*(What to include in your proposal)*

Three (3) projects successfully completed within the last five (5) years which show that your company has worked in each of the specialties\* required (4), i.e.:

**Work involving materials containing asbestos – Work involving materials contaminated with mould – Work involving materials containing lead – Work involving materials contaminated with bird droppings**

For each project submitted, the following information must be provided:

- date and location of project;
- client (name and telephone number of the client representative);
- project cost;
- description and scope of the project;
- specialties\* covered in the project

*\* Specialties can be combined within a given project; you must cover at least two of the four (4) above specialties.*

**Mandatory criterion No 4:**

Two (2) projects successfully completed within the last five (5) years which show that your company has worked in each of the specialties\* required (2), i.e.:

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<sup>6</sup> Exhibit PR-2024-057-09.A, p. 34.

**Work involving demolition/deconstruction - Insulation work**

For each project submitted, the following information must be provided:

- date and location of project;
- client (name and telephone number of the client representative);
- cost of completed project;
- description and scope of the project;
- specialties\* covered in the project

*\* Specialties can be combined within a given project; you must cover the two (2) above specialties.<sup>7</sup>*

[9] PWGSC then issued clarification in Amendment 001 on mandatory criteria 3 and 4, as follows:

**Mandatory Criterion No. 3:**

For the reference projects requested under mandatory criterion No. 3, the bidder must ensure that, in all, for the three reference projects requested, at least two of the four specialties requested are covered.

**Mandatory Criterion No. 4:**

For the reference projects requested under mandatory criterion No. 4, the bidder must ensure that, in all, for the two reference projects requested, two of the specialties requested are covered.<sup>8</sup>

[10] The solicitation document also stated that “[o]nly those proposals having met the criteria below will be considered for the financial evaluation”.<sup>9</sup>

[11] PWGSC indicated that it intended to authorize up to four standing offers, each for a two-year period from the date of issue, with the possibility of two option years. It further stated that the percentage of work volume allocation, based on call-ups under the SO, would be 30% to the first-ranked offeror, 30% to the second-ranked offeror, 20% to the third-ranked offeror and 20% to the fourth-ranked offeror.<sup>10</sup>

[12] The bidding process closed on August 31, 2023.<sup>11</sup> The Tribunal understands that PWGSC received a total of nine timely bids in response to the solicitation,<sup>12</sup> five of which PWGSC found to be responsive, meaning they complied with the requirements of the RFSO and met all the mandatory technical evaluation criteria.<sup>13</sup>

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<sup>7</sup> *Ibid.*, p. 33–34.

<sup>8</sup> *Ibid.*, p. 137–138.

<sup>9</sup> *Ibid.*, p. 33.

<sup>10</sup> Exhibit PR-2024-057-01, p. 20–21; Exhibit PR-2024-057-015.A, p. 4–5.

<sup>11</sup> Exhibit PR-2024-057-01, p. 20.

<sup>12</sup> Exhibit PR-2024-057-15.A, p. 4.

<sup>13</sup> Exhibit PR-2024-057-01, p. 458; Exhibit PR-2024-057-15.A, p. 24.



[13] PWGSC found Axxys's and Novalta's bids to be responsive.<sup>14</sup> On September 27, 2023, PWGSC awarded standing offers to four bidders. Out of the responsive bids, Novalta was found to be the lowest price bidder, and therefore qualified as the first-ranked offeror with a distribution of 30% of the call-up work volume allocated under the SO. Axxys was found to be the third-lowest price bidder and qualified as the third-ranked offeror, receiving 20% of the call-up work volume.<sup>15</sup>

[14] Based on the information available to the Tribunal, Novalta was awarded at least the following two call-ups under the SO: contract CW2332129, dated September 27, 2023; and contract CW2320885, dated November 28, 2023.<sup>16</sup>

[15] On February 16, 2024, Axxys emailed PWGSC requesting confirmation that Novalta had met the mandatory technical criteria to be considered a qualified bidder for the solicitation. In addition, Axxys asked whether PWGSC had considered that Novalta had only been registered as a business in Quebec since January 14, 2020, and that Novalta had only obtained its license under the *Quebec Building Act* on February 14, 2020. In the email, Axxys questioned whether Novalta met the experience requirements under mandatory criteria 3 and 4 of the solicitation, given that Novalta had only been in operation for 2.5 years at the time bids were due. Axxys questioned whether Novalta had executed the projects it submitted in its bids, or whether another company had carried out those projects.<sup>17</sup>

[16] On February 19, 2024, PWGSC replied to Axxys, beginning by thanking Axxys for the information. PWGSC then stated that, due to confidentiality concerns, it could not discuss Novalta's bid with Axxys. However, PWGSC confirmed in the email that Novalta was the highest-ranked bidder, as it had met all the mandatory technical criteria, including demonstrating that it had the necessary experience.<sup>18</sup>

[17] On that same day, Axxys thanked PWGSC for its reply. Axxys then indicated that it was not seeking any confidential information regarding Novalta's financial bid but was instead only requesting information on Novalta's technical qualifications. Axxys further suggested that, based on its search, Novalta had not been awarded any other contracts at the provincial or federal level. Axxys also stated that this solicitation marked the first encounter it had with Novalta. Given the rarity of the projects related to the experience required in the solicitation, Axxys argued that it was unlikely that Novalta could have completed them in the short time it had been in business. Axxys then alleged that Novalta's website indicated that it was leasing labour to complete certain projects and expressed the view that leasing labour may be illegal. Finally, Axxys asked PWGSC whether it would be advisable for Axxys to file an access to information request to verify its allegations.<sup>19</sup>

[18] On February 21, 2024, PWGSC replied to Axxys noting that for confidentiality reasons, it could not discuss any aspect of Novalta's technical bid with Axxys. PWGSC reiterated that a company awarded a standing offer must have met all the mandatory technical criteria, including demonstrating that it had the necessary experience.<sup>20</sup> PWGSC concluded by stating that any

<sup>14</sup> Exhibit PR-2024-057-01, p. 458. Aside from Axxys, the other three bidders found to be responsive were ASBEX LTD., Inflector Environmental Services and Demospec Decontamination Inc.

<sup>15</sup> Exhibit PR-2024-057-01, p. 458.

<sup>16</sup> Exhibit PR-2024-057-15.A, p. 6.

<sup>17</sup> Exhibit PR-2024-057-01, p. 31–32.

<sup>18</sup> *Ibid.*, p. 31.

<sup>19</sup> *Ibid.*, p. 29–30.

<sup>20</sup> *Ibid.*, p. 31.

Canadian citizen, permanent resident or individual or legal entity residing in Canada has the right to file access to information request under the *Access to Information Act* (ATI Act).

[19] Axxys filed an initial ATIP request in accordance with the ATI Act, on February 22, 2024 (Initial ATIP Request).<sup>21</sup>

[20] On March 22, 2024, PWGSC wrote to Axxys indicating that because Axxys's Initial ATIP Request includes third-party information (i.e., Novalta's information), PWGSC was proceeding with third-party consultation. As a result, PWGSC informed Axxys that it would require an extension to fulfill Axxys's Initial ATIP Request.<sup>22</sup> PWGSC also informed Axxys in this correspondence that it was entitled to file a complaint regarding the process of this Initial ATIP Request.<sup>23</sup>

[21] On May 6, 2024, the indicated that, on April 24, 2024, it received from Axxys a complaint against PWGSC filed under the ATI Act. The OIC issued a notice of intention to investigate whether PWGSC "took an unreasonable extension of time under subsection 9(1) [of the ATI Act] to respond to [Axxys's] access request(s)".<sup>24</sup>

[22] The next day, on May 7, 2024, PWGSC responded to Axxys's Initial ATIP Request.<sup>25</sup> This response contained a copy of the bid submitted by Novalta, which included Novalta's organizational chart<sup>26</sup> and a list of the 11 projects it submitted in response to mandatory criteria 3 and 4 of the RFSO. Certain information, such as the phone number of the client and the cost of the projects, was redacted.<sup>27</sup>

[23] On June 11, 2024, the OIC issued a notice that it was ceasing its investigation on whether PWGSC took an unreasonable extension of time to reply to Axxys's Initial ATIP Request. It indicated that there was no longer a practical purpose in investigating given that PWGSC had provided a response.<sup>28</sup>

[24] On May 27, 2024, Axxys filed another access to information request (Second ATIP Request) under ATI Act to request information on contracts CW2332129 and CW2320885 relating to the call-ups.<sup>29</sup> Axxys received a response to this Second ATIP Request on June 7, 2024.<sup>30</sup>

[25] In June, July and August 2024, Axxys made several additional ATIP requests pursuant to provincial legislation with respect to certain construction projects Novalta had listed in its bid. Those requests were fulfilled over the course of the summer, with the final response dated August 29, 2024.<sup>31</sup>

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<sup>21</sup> *Ibid.*, p. 35–43.

<sup>22</sup> *Ibid.*, p. 48, 103.

<sup>23</sup> *Ibid.*, p. 48.

<sup>24</sup> *Ibid.*, p. 40–41, 464–465.

<sup>25</sup> *Ibid.*, p. 52–53. The Tribunal considers that the date on which the Access to Information Team Leader signed the response letter to the Initial access request to be the time at which Axxys received the response.

<sup>26</sup> Exhibit PR-2024-057-01, p. 56.

<sup>27</sup> *Ibid.*, p. 57–76.

<sup>28</sup> *Ibid.*, p. 50–51, 474–475.

<sup>29</sup> *Ibid.*, p. 54–55, 94–102.

<sup>30</sup> Exhibit PR-2024-047-01, p. 257–258. The Tribunal considers the date on which the Access to Information team leader signed the response letter to the Initial ATIP Request as the time at which Axxys received the response.

<sup>31</sup> Exhibit PR-2024-047-01.C, p. 18–44.

[26] On August 30, 2024,<sup>32</sup> Axxys wrote to PWGSC and made a formal complaint with respect to the award of offers under the solicitation in issue. In essence, Axxys explained that Novalta could not have met the mandatory technical criteria set out in the solicitation because the experience it listed in its bid was limited to providing leased labour through subcontracted work. Among other things, Axxys wrote that the scope of the work Novalta had presented in its bid was “exaggerated and crafted to meet the bid requirements”. Axxys then claimed that “this unreliable information was accepted by Public Services without proper verification”. It further stated that “Public Services ... demonstrat[ed] a negligent and careless approach to the Standing Offers’ selection methods.”<sup>33</sup>

[27] On September 3, 2024, PWGSC wrote back to Axxys with the following response: “[w]e have taken your concerns into consideration and an analysis is currently underway. We will contact you shortly once the analysis is complete” [translation].<sup>34</sup>

[28] On October 7, 2024, Axxys filed its Initial Complaint with the Tribunal.<sup>35</sup> The Tribunal considers Axxys’s letter of August 30, 2024, to be an objection within the meaning of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (Regulations).<sup>36</sup> As Axxys had not heard back from PWGSC regarding its objection, the Tribunal found that Axxys prematurely filed its Initial Complaint.<sup>37</sup> The Tribunal indicated that if Axxys were to consider itself aggrieved after receiving a response from PWGSC, it may file a new complaint with the Tribunal within 10 working days of the response. Alternatively, if PWGSC did not provide a response by October 31, 2024, Axxys would then have 10 working days to file a new complaint with the Tribunal.<sup>38</sup>

[29] On October 24, 2024, PWGSC wrote back to Axxys, indicating that since receiving Axxys’s letter in late August, it had been conducting its due diligence in response to the statement made in the letter. PWGSC indicated that this included both fact verifications and a legal interpretation of the requirements to qualify for a standing offer.<sup>39</sup>

[30] Later that day, Axxys wrote back to PWGSC claiming that PWGSC’s letter “lack[ed] content, any decisive action and timeline for correcting this matter.”<sup>40</sup> Axxys further claimed that it had provided PWGSC with “written proof from documents received from the projects that Novalta listed on their qualification remitted to [PWGSC]” and that it had “interviewed contractors on the listed projects and made numerous requests via access to information laws.”<sup>41</sup> Axxys also indicated that PWGSC had “... failed to verify any of [its] statements and any documents that were shown to

<sup>32</sup> Exhibit PR-2024-057-01, p. 114–116; Exhibit PR-2024-047-01, p. 206–208. The Tribunal notes that Axxys’s letter is dated August 28, 2024; however, its email correspondence and PWGSC’s acknowledgement email show that the letter was sent and received on August 30, 2024. In the circumstances, the Tribunal considers that the letter was communicated to PWGSC on August 30, 2024. Exhibit PR-2024-047-01, p. 227–228.

<sup>33</sup> Exhibit PR-2024-047-01, p. 207.

<sup>34</sup> *Ibid.*, p. 227.

<sup>35</sup> *Ibid.*; Exhibit PR-2024-047-01.A; Exhibit PR-2024-047-01.B; Exhibit PR-2024-047-0C; Exhibit PR-2024-047-03, p. 1–3. Axxys submitted materials regarding its Initial Complaint to the Tribunal on September 30 and October 7, 2024. The Tribunal considered the Initial Complaint to have been filed on October 7, 2024, as it received all the information required under subsection 30.12(2) of the CITT Act on that date.

<sup>36</sup> Axxys, para. 14.

<sup>37</sup> *Ibid.*, paras. 15–16.

<sup>38</sup> *Ibid.*, para. 16.

<sup>39</sup> Exhibit PR-2024-057-01, p. 141.

<sup>40</sup> *Ibid.*, p. 142.

<sup>41</sup> *Ibid.*, p. 142.

[PWGSC]” and that it “had more than a year to review”. It added that it found it “quite disturbing that [PWGSC] ha[d] taken no action in all these months.”<sup>42</sup> Finally, Axxys claimed the following: “the government was being difficult in providing any information to us, and the information given was blacked-out (hidden). It is almost done in a deliberate manner in order to hide this matter and avoid us from getting the truth.”<sup>43</sup>

[31] On November 8, 2024, PWGSC wrote back to Axxys communicating as follows:

- Axxys did not raise its concerns with PWGSC regarding Novalta’s bid until February 16, 2024, nearly five months after the award of the SO.
- PWGSC does not have an obligation to verify the information received in Novalta’s offer, even though the instructions in the RFSO give PWGSC the right to verify information submitted with the offer.
- PWGSC now considers this matter to be one of contract administration, given the amount of time which has passed.
- PWGSC does not owe any compensation to Axxys because PWGSC properly evaluated, in good faith, the information presented in Novalta’s offer.<sup>44</sup>

[32] On November 15, 2024, Axxys responded to PWGSC, indicating that it disagreed with PWGSC’s conclusions.<sup>45</sup>

[33] On November 25, 2024, Axxys filed the present complaint with the Tribunal.<sup>46</sup> With Axxys’s consent, the Tribunal incorporated the documents filed with the Initial Complaint into the current complaint.<sup>47</sup>

[34] On November 29, 2024, the Tribunal made the decision to accept the complaint for inquiry.<sup>48</sup>

[35] On December 16, 2024, PWGSC wrote to Axxys reiterating its conclusion in its November 8, 2024, letter and provided further details respecting its grounds of complaint. PWGSC indicated that Axxys’s August 28, 2024, letter “express[ed] the same concerns Axxys raised in February 2024”.<sup>49</sup> PWGSC claimed that the December 2024 letter was sent to attempt to resolve the matter without a full adjudication of the complaint before the Tribunal.<sup>50</sup>

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<sup>42</sup> *Ibid.*, p. 142.

<sup>43</sup> *Ibid.*, p. 142.

<sup>44</sup> *Ibid.*, p. 144–145.

<sup>45</sup> Exhibit PR-2024-057-15.A, p. 29.

<sup>46</sup> Exhibit PR-2024-057-01; Exhibit PR-2024-057-01.A; Exhibit PR-2024-057-01.B; Exhibit PR-2024-057-03. Axxys submitted materials regarding this complaint to the Tribunal on November 19, 20 and 25, 2024. The Tribunal considers this complaint to have been filed on November 25, 2024, as it received all the information required under subsection 30.12(2) of the CITT Act on that date.

<sup>47</sup> Exhibit PR-2024-057-03, p. 1.

<sup>48</sup> Exhibit PR-2024-057-06.

<sup>49</sup> Exhibit PR-2024-057-15.A, p. 28.

<sup>50</sup> *Ibid.*, p. 28–30.

[36] Based on the information available to the Tribunal, on December 20, 2024, Axxys wrote back to PWGSC stating that it disagreed with PWGSC's position. Axxys also indicated to PWGSC that it would not be withdrawing the complaint.<sup>51</sup>

[37] PWGSC filed its government institution report (GIR) with the Tribunal on January 6, 2025.<sup>52</sup> The GIR was filed following a short extension granted to PWGSC by the Tribunal. Axxys filed its comments to the GIR on January 22, 2025.<sup>53</sup> These comments also followed an extension granted by the Tribunal, pursuant to the *Canadian International Trade Tribunal Rules* (CITT Rules).<sup>54</sup>

[38] PWGSC wrote to the Tribunal on January 28, 2025, arguing that Axxys had alleged new grounds of complaint in certain parts of its reply to the GIR.<sup>55</sup> The Tribunal provided Axxys with the opportunity to comment on PWGSC's allegation and provided PWGSC with the opportunity to reply to these comments.<sup>56</sup> The Tribunal received Axxys's comments on February 3, 2025,<sup>57</sup> and PWGSC's reply on February 7, 2025,<sup>58</sup> respectively.

[39] On February 6, 2025, the Tribunal received additional information from Axxys regarding its complaint. The Tribunal considered the documents to have been filed late and requested that Axxys make a formal request for late filing of the documents, pursuant to rule 24.1 of the CITT Rules by February 11, 2025.<sup>59</sup> Having not received a formal request for late filing by the deadline, the Tribunal rejected Axxys's additional submission.<sup>60</sup>

[40] On February 12, 2025, the Tribunal issued a letter to Axxys indicating that it now considered the record closed, except for any formal request for late filing made pursuant to the CITT Rules. The Tribunal indicated that it had sufficient information and evidence on the record to make a determination in this matter.<sup>61</sup>

## ANALYSIS

[41] In the present procurement inquiry, Axxys alleged the following six grounds of complaint:

- Novalta misrepresented its project experience in its bid.
- PWGSC should not have found Novalta's bid to be responsive because Novalta subcontracted work.

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<sup>51</sup> *Ibid.*, p. 9.

<sup>52</sup> Exhibit PR-2024-057-15; Exhibit PR-2024-057-15.A.

<sup>53</sup> Exhibit PR-2024-057-19.

<sup>54</sup> Exhibit PR-2024-057-17; Exhibit PR-2024-057-18.

<sup>55</sup> Exhibit PR-2024-057-20.

<sup>56</sup> Exhibit PR-2024-057-21.

<sup>57</sup> Exhibit PR-2024-057-22.

<sup>58</sup> Exhibit PR-2024-057-25; Exhibit PR-2024-057-25.A (protected). The Tribunal notes that on February 10, 2025, Axxys filed a reply to PWGSC's February 7, 2025, reply. As the reply was not solicited by the Tribunal and made outside the regular procedural process under the CITT Rule, the Tribunal rejected Axxys's reply. See Exhibit PR-2024-057-29.

<sup>59</sup> Exhibit PR-2024-057-26.

<sup>60</sup> Exhibit PR-2024-057-29.

<sup>61</sup> *Ibid.*

- PWGSC should not have found Novalta bid to be responsive because Novalta has only been in operation for three years and did not submit any notices of construction work to the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (CNESST), as stipulated under Quebec provincial law.
- PWGSC accepted more projects from Novalta than the five projects requested in the solicitation.
- PWGSC did not verify the bid information submitted by Novalta, resulting in significant damages and financial losses to other qualified candidates and impacting the trust and fairness of the bidding process.
- The confidentiality requirements imposed by PWGSC, through the ATIP disclosure request process, limited Axxys's ability to gather the information required to bring forward this complaint.<sup>62</sup>

[42] The Tribunal will first address several preliminary matters before analyzing each of the above grounds of complaint.

### **Preliminary matters**

#### The context of the initial complaint

[43] As noted above, Axxys filed an Initial Complaint with the Tribunal, alleging similar grounds of complaint, on October 7, 2024.<sup>63</sup> At that time, Axxys had not heard back from PWGSC regarding a formal complaint it filed with it on August 30, 2024, with respect to PWGSC's award of an SO to Novalta under the RFSO.<sup>64</sup> Evaluating the context of the complaint as a whole, the Tribunal found in the Initial Complaint that Axxys's letter to PWGSC of August 30, 2024, constituted an objection within the meaning of the Regulations.<sup>65</sup> The Tribunal therefore found the Initial Complaint as a whole was prematurely filed.<sup>66</sup>

[44] When Axxys filed the present complaint with the Tribunal on November 25, 2024, it had already heard back from PWGSC, which had denied relief for the overall objection Axxys made to PWGSC in August 2024.<sup>67</sup> In this case, the Tribunal is therefore in a position to consider each of Axxys's six grounds of complaint independently and on their own merit, including whether they were filed in a timely manner.

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<sup>62</sup> Exhibit PR-2024-057-01, p. 15.

<sup>63</sup> Exhibit PR-2024-047-01; Exhibit PR-2024-047-01.A; Exhibit PR-2024-047-01.B; Exhibit PR-2024-047-0C; Exhibit PR-2024-047-03, p. 1–3.

<sup>64</sup> Axxys, para. 15.

<sup>65</sup> *Ibid.*, para. 14.

<sup>66</sup> *Ibid.*, para. 16.

<sup>67</sup> Exhibit PR-2024-057- 01, p. 144–145; subsection 6(2) of the Regulations.

### The Tribunal's role in a procurement inquiry

[45] At the outset, the Tribunal commends Axxys for its dedication to gathering **complete evidence** for each of its grounds of complaint, on its own initiative, before filing this complaint with the Tribunal. The Tribunal acknowledges that this process took over six months.

[46] To file a complaint before the Tribunal, a complainant must gather **sufficient** evidence that discloses a reasonable indication that the procurement has not been conducted in accordance with an applicable trade agreement.<sup>68</sup> With sufficient evidence that meets the reasonable indication standard, the Tribunal can initiate an inquiry into the government institution's conduct as it pertains to any aspect of the procurement process.<sup>69</sup>

[47] In the Tribunal's view, Parliament intends for the Tribunal's procurement inquiry process to be the forum in which the Tribunal administers the complete evidentiary gathering process when addressing issues brought by the complainant on a covered federal procurement.<sup>70</sup> The CITT Act, the CITT Rules and the Regulations set up the procurement inquiry procedures and timelines that the Tribunal and the parties should follow for each step of the inquiry process.<sup>71</sup>

[48] The Tribunal procurement inquiry process includes an evidence-gathering phase through the GIR process.<sup>72</sup> In the GIR, the government institution responsible for the procurement must file the following with the Tribunal:

- The solicitation, including the specifications or portions of it that are relevant to the complaint.
- All other documents that are relevant to the complaint.
- A statement that sets out all findings, actions and recommendations of the government institution and that responds fully to all allegations that are contained in the complaint.
- Any additional evidence or information that may be necessary to resolve the complaint.<sup>73</sup>

[49] In this specific case, PWGSC was required to provide copies of Novalta's bid, along with all other documents and evidence relevant to resolving the complaint in the GIR. Axxys should not have needed to request this evidence through the ATIP process or by attempting to contact and interview Novalta's clients directly before filing this complaint with the Tribunal.

[50] The Tribunal procurement inquiry process then permits the complainant, Axxys in this case, to file comments on all the documents and evidence submitted by the government institution in the GIR before the Tribunal makes and issues a determination regarding the inquiry, within the stated

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<sup>68</sup> Subsections 6(1), 6(2) and paragraph 7(1)(c) of the Regulations.

<sup>69</sup> *Canadian International Trade Tribunal Act*, R.S.C., 1985, c. 47 (4th Supp.) (CITT Act), subsection 30.11(1).

<sup>70</sup> See the CITT Procurement Inquiries Guide, online: [www.citt-tcce.gc.ca/en/procurement-inquiries/procurement-inquiries-guide](http://www.citt-tcce.gc.ca/en/procurement-inquiries/procurement-inquiries-guide).

<sup>71</sup> See the CITT Procurement Inquiries Guide, online: [www.citt-tcce.gc.ca/en/procurement-inquiries/procurement-inquiries-guide](http://www.citt-tcce.gc.ca/en/procurement-inquiries/procurement-inquiries-guide).

<sup>72</sup> CITT Rules, rule 103.

<sup>73</sup> *Ibid.*, rule 103(1).

statutory timeline.<sup>74</sup> The inquiry process therefore allows the Tribunal to gather complete evidence and resolve procurement disputes between parties in a timely matter.

### The Tribunal's jurisdiction in a procurement inquiry

#### **General concept of fairness**

[51] Throughout this inquiry process, Axxys made several claims that PWGSC and Novalta acted in a generally unfair manner. Specifically, Axxys alleged that PWGSC's and Novalta's actions eroded public trust and undermined the integrity of the procurement process.<sup>75</sup> In certain instances, Axxys appears to suggest that the Tribunal should find against PWGSC and Novalta, even if the Tribunal were to find that they did not act inconsistently with the law. This would be in instances where PWGSC and Novalta allegedly did not act fairly or follow best practices. Axxys claimed these instances resulted in a potential violation of PWGSC's and Novalta's general professional, moral and ethical obligations to the public.<sup>76</sup>

[52] The Tribunal's jurisdiction in a procurement inquiry process is limited to determining if a procurement was conducted in accordance with the requirements of the applicable trade agreements.<sup>77</sup> It does not extend to inquiring into whether a government institution, PWGSC in this case, behaved in a procedurally fair, professional, moral and ethical manner in the abstract, independent of the relevant provisions of the trade agreements.<sup>78</sup>

#### **The conduct of a private entity**

[53] Section 11 of the Regulations provides as follows: "If the Tribunal conducts an inquiry into a complaint, it shall determine **whether the procurement was conducted** in accordance with the requirements set out in [the applicable trade agreements]" [emphasis added].<sup>79</sup>

[54] While not determinative in all cases, the government institution—such as PWGSC—vested with the authority to award a designated contract in a federal procurement, is usually the entity responsible for the full conduct of the procurement process. A private entity—such as Novalta—usually has no say on how the government institution conducts the procurement and selects a winner after it submits its bid. As such, the Tribunal's jurisdiction in a procurement inquiry, as stated in the Regulations, is limited to the actions of the entity or entities in charge of the conduct of a procurement process.

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<sup>74</sup> *Ibid.*, rule 104.

<sup>75</sup> See, for example, Exhibit PR-2024-057- 01, p. 15. For example, Axxys wrote that "[w]hile submitting 11 projects is not strictly against the rules, it raises concerns about following the solicitation's exact requirements. The 5 required projects are meant to set a clear standard for evaluating qualifications, ensuring fairness and consistency."

<sup>76</sup> See, for example, Exhibit PR-2024-057-19, p. 5, where Axxys wrote that "[a]lthough not explicitly required by law, it should be considered best practice—and in the current situation, a professional, moral, and ethical obligation—for PWGSC to ensure that all bidders meet the necessary qualifications and legal standards before awarding contracts, particularly in complex or regulated industries such as construction."

<sup>77</sup> *Giamac Inc. dba AutoRail Forwarders* (25 November 2009), PR-2009-037 (CITT), para. 51. *Thomas & Schmidt Inc.* (20 June 2024), PR-2024-020 (CITT), para. 33.

<sup>78</sup> *Ibid.*

<sup>79</sup> Section 11 of the Regulations.



Procurement process versus contract administration

[55] Subsection 30.11(1) of the CITT Act states the following: “Subject to the regulations, a potential supplier may file a complaint with the 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” [emphasis added].

[56] The Tribunal’s jurisdiction is therefore limited to challenges related to the procurement process, which begins after an entity has decided on its procurement requirement and continues through the contract award. Matters subsequent to the award of a contract, that is, matters of contract administration, such as issues that arise as a contract is performed and managed, are not within the Tribunal’s jurisdiction.<sup>80</sup>

[57] PWGSC’s position is that the present complaint is now a matter of contract administration given the amount of time that has passed before Axxys raised its concern with PWGSC regarding Novalta’s bid.<sup>81</sup>

[58] The Tribunal acknowledges that matters of contract administration are outside the Tribunal’s jurisdiction. However, in the Tribunal’s view, the issues raised by Axxys in this complaint involve PWGSC’s procurement process for evaluating and awarding the SOs in this solicitation. More specifically, the grounds of complaints alleged by Axxys focused on challenging whether Novalta should have been found to be a responsive bidder **during the procurement process**.

[59] In this case, there was a lapse of time between the award of the SOs on September 27, 2023, and Axxys first bringing its concerns about Novalta’s bid to PWGSC’s attention on February 16, 2024. The Tribunal also recognizes that there were at least two call-up contracts issued to Novalta following the award of the SO during this period. However, it is the substance of whether each ground of complaint relates to the procurement process itself, and not the amount of time that passes, which determines whether grounds of complaint relate to matters of contract administration. The Tribunal also notes that timeliness to file a complaint is already governed by section 6 of the Regulations. In other words, contract administration pertains to the performance and management of a contract. The amount of time that has passed is not a criterion for determining whether an issue is one of contract administration.

[60] Given the above, the Tribunal therefore cannot accept PWGSC’s submission that the present complaint relates to matters of contract administration.

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<sup>80</sup> *Vidéotron Ltée* (5 October 2018), PR-2018-006 (CITT), para. 16. See also *J.A. Larue inc.* (7 August 2020), PR-2020-004 (CITT), para. 48; *Aerospace Facilities Group, Inc.* (12 October 2017), PR-2017-015 (CITT), para. 31; *Valcom Consulting Group Inc. v. Department of National Defence* (14 June 2017), PR-2016-056 (CITT) [*Valcom*], para. 32; *HDP Group Inc.* (28 December 2016), PR-2016-047 (CITT), para. 10; *ML Wilson Management v. Parks Canada Agency* (6 June 2013), PR-2012-047 (CITT), para. 36.

<sup>81</sup> Exhibit PR-2024-057-15.A, p. 7, 28–29.

Alleged new grounds of complaint filed in the comments to the GIR

[61] On January 28, 2025, PWGSC wrote to the Tribunal claiming that Axxys improperly raised new grounds of complaint, or changed and supplemented existing grounds of complaint, in certain parts of Axxys's reply to the GIR.<sup>82</sup>

[62] Pursuant to subsection 30.14(1) of the CITT Act, the Tribunal must limit its considerations in an inquiry to the subject matter of the complaint. The Tribunal therefore agrees with PWGSC that new grounds of complaint should not be introduced by a complainant in its comments on the GIR, consistent with Tribunal case law.<sup>83</sup> A complainant introducing new grounds of complaint at this late stage of the Tribunal's procurement inquiry process raises procedural fairness concerns. Pursuant to the CITT Rules, the complainant's comments in the GIR are usually the last participatory stage in the procurement inquiry process before the Tribunal considers the evidence and arguments submitted by the parties to render a determination in the dispute.

[63] Having considered both PWGSC's and Axxys's submissions on this matter, the Tribunal does not agree with PWGSC that Axxys raised new grounds of complaint or changed or supplemented its original six grounds of complaint filed in its reply to the GIR. In the Tribunal's view, PWGSC's main issue with Axxys's reply submission was that Axxys cited to new case law and legislation that had not been referenced in the original complaint. However, all parties are entitled to cite to new legislation and case law to reply to evidence and arguments made by opposing parties. In addition, the Tribunal finds that Axxys was not trying to supplement any of its original grounds of complaint when it provided a more precise explanation of its position on these grounds in reply to the evidence and arguments made by PWGSC in the GIR.

[64] For the above reasons, the Tribunal will keep on the record of this procurement inquiry the entirety of Axxys's reply to the GIR, submitted on January 22, 2024.

**Applicable trade agreements**

[65] In conducting a procurement inquiry, the Tribunal's mandate is to determine whether the procurement was conducted in accordance with the requirements set out in the applicable trade agreements, pursuant to section 11 of the Regulations.<sup>84</sup> The tender notice on the CanadaBuys website indicates that 12 trade agreements apply to this solicitation, including the CFTA.<sup>85</sup>

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<sup>82</sup> Exhibit PR-2024-057-20.

<sup>83</sup> See, for example, *Falconry Concepts v. Department of Public Works and Government Services* (29 December 2010), PR-2010-046 (CITT), para. 76; *Chamber of Shipping of British Columbia v. Departments of Fisheries and Oceans* (24 March 2010), PR-2009-069 (CITT), para. 16; *1091847 Ontario Ltd. v. Shared Services Canada* (6 May 2021), PR-2020-070 (CITT) [1091847 Ontario], para. 58.

<sup>84</sup> Section 11 of the Regulations.

<sup>85</sup> See tender notice EF928-230131 – Standing offer for decontamination and demolition services, Quebec Region, CanadaBuys, online: <https://canadabuys.canada.ca/en/tender-opportunities/tender-notice/ws4082835679-doc4104673195>. The RFSO indicated that the following trade agreements apply: CFTA; Canada-Chile Free Trade Agreement; Canada-Colombia Free Trade Agreement; Canada-European Union Comprehensive Economic and Trade Agreement; World Trade Organization Agreement on Government Procurement (WTO-AGP); Canada-Honduras Free Trade Agreement; Canada-Korea Free Trade Agreement; Canada-Panama Free Trade Agreement; Canada-Peru Free Trade Agreement; Comprehensive and Progressive Agreement for Trans-Pacific Partnership; Canada-Ukraine Free Trade Agreement; and Canada-UK Trade Continuity Agreement.

[66] Axxys did not explicitly allege the breach of any specific provision of a trade agreement in its complaint or in its reply to the GIR. PWGSC, however, indicated that the applicable provisions were articles 515.4 and 516 of the CFTA, and equivalent articles of other applicable trade agreements.<sup>86</sup> In its GIR, PWGSC also made submissions regarding Article 517 of the CFTA.<sup>87</sup>

[67] The Tribunal finds that the following provisions of the CFTA are relevant to this complaint.

### **Article 515: Treatment of Tenders and Award of Contracts**

#### **Evaluation and Award of Contract**

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.

[68] In the Tribunal's view, Article 515.4 of the CFTA is relevant for evaluating the validity of grounds 2, 3, 4 and 5 below.

### **Article 516: Transparency of Procurement Information**

#### **Information Provided to Suppliers**

1. A procuring entity shall promptly inform participating suppliers of its contract award decisions, and, on the request of a supplier, shall do so in writing. Subject to Article 517, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the procuring entity did not select its tender.

### **Article 517: Disclosure of Information**

1. Notwithstanding any other provision of this Chapter, a procuring entity shall not provide to any particular supplier information that might prejudice fair competition between suppliers.

[69] In the Tribunal's view, articles 516.1 and 517.1 of the CFTA are relevant for evaluating the validity of Ground 6 below.

### **Analysis of each ground of complaint**

#### **Ground 1: Novalta misrepresented its project experience in its bid**

[70] Axxys claimed that Novalta misrepresented its project experience in the bid that it submitted to PWGSC.<sup>88</sup> Axxys argued that Novalta exaggerated its involvement in projects, which compromised the integrity of the bidding process.<sup>89</sup>

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<sup>86</sup> Exhibit PR-2024-057-15.A, p. 9–10.

<sup>87</sup> *Ibid.*, p. 22–23.

<sup>88</sup> Exhibit PR-2024-057-01, p. 15.

<sup>89</sup> *Ibid.*, p. 15.

## Validity of the ground of complaint

[71] The Tribunal's mandate in a procurement inquiry is to determine whether a procurement was conducted in accordance with the requirements set out in the applicable trade agreement, as explained above.<sup>90</sup> In this case, PWGSC is solely responsible for conducting the procurement, including evaluating the bids and awarding the SOs. As such, the Tribunal has no jurisdiction in the context of this procurement to evaluate what Novalta, a private company, decided to include in its bid. The Tribunal's jurisdiction, in this procurement, is limited to the conduct of PWGSC regarding this procurement process.

[72] The Tribunal therefore finds that this ground of complaint is not valid.

### Ground 2: PWGSC should not have found Novalta's bid to be responsive because Novalta subcontracted work

[73] Axxys alleged that PWGSC should not have found Novalta's bid to be responsive because it subcontracted work that was completed through "leased labour".<sup>91</sup>

## Timeliness of the ground of complaint

[74] A potential supplier must either raise an objection with the procuring government institution or file a complaint with the Tribunal no later than 10 working days after the day on which the basis of each ground of complaint became known or reasonably should have become known to the supplier, pursuant to section 6 of the Regulations.<sup>92</sup>

[75] The Federal Court of Appeal and the Tribunal have found that a complainant must raise any issue with the procurement process in a timely manner. The complainant should not adopt a "wait-and-see" approach where it does not raise a concern until later in the process.<sup>93</sup>

[76] The Tribunal has also consistently held that the 10-working-day timeline, pursuant to section 6 of the Regulations, starts after the day on which the basis of a ground of complaint became known or reasonably should have become known to the complainant, and not after the day on which new evidence concerning this ground of complaint is discovered.<sup>94</sup> Moreover, the Tribunal has found that the discovery of new evidence related to a ground of complaint in another forum (e.g., the ATIP process) later on does not restart the clock for filing a complaint with the Tribunal. If the Tribunal were to hold otherwise, it would be faced with the possibility of multiple collateral attacks on

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<sup>90</sup> Section 11 of the Regulations.

<sup>91</sup> Exhibit PR-2024-057-01, p. 15.

<sup>92</sup> Section 6 of the Regulations. See, for example, *M.D. Charlton Co. Ltd. v. Department of Public Works and Government Services* (1 December 2022), PR-2022-045 (CITT) [*M.D. Charlton*], para. 20; *Global Total Office* (25 July 2024), PR-2023-064 (CITT) [*Global Total Office*], para. 31.

<sup>93</sup> *IBM Canada Ltd. v. Hewlett Packard (Canada) Ltd.*, 2002 FCA 284, paras. 18–20; *West Coast Tug and Barge Ltd.* (8 April 2021), PR-2020-101 (CITT), para. 24; *Accruent/VFA Canada Corporation* (15 December 2020), PR-2020-059 (CITT), para. 16.

<sup>94</sup> *TA Instruments* (23 September 2011), PR-2011-029 (CITT) [*TA Instruments*], para. 9; *TPG Technology Consulting Ltd.* (5 December 2016), PR-2016-045 (CITT) [*TPG Technology Consulting*], para. 8.

completed complaint proceedings.<sup>95</sup> The issue of timeliness, therefore, relates to the time of knowledge of the basis of a complaint rather than the time of receipt of new evidence.<sup>96</sup>

[77] Here, the basis of this ground of complaint is that PWGSC should not have found Novalta's bid to be responsive, as Novalta did not provide valid evidence of direct employment related to the projects it submitted. In the Tribunal's view, the basis of this ground of complaint became known to Axxys at the latest on February 19, 2024, based on the content of the reply email Axxys sent to PWGSC. Specifically, Axxys suggested that Novalta may be completing its projects through "leased labour" instead of direct employment. In fact, Axxys even supported this claim by citing Novalta's website in its email to PWGSC in February 2024. While Axxys may have obtained more complete and new evidence to support this ground of complaint later through the ATIP process and by directly contacting and interviewing Novalta's clients, the Tribunal finds that the basis of this ground of complaint was known to Axxys by February 19, 2024.

[78] As such, Axxys had 10 working days from February 19, 2024, to either raise a formal objection with PWGSC or file a complaint with the Tribunal on this ground of complaint. Axxys did not do so.

[79] The Tribunal must therefore find that this ground of complaint was not filed in a timely manner.

### **Validity of the ground of complaint**

[80] The Tribunal has decided to complete a validity analysis on this ground of complaint for the purpose of determining the potential remedy that Axxys would be entitled to if PWGSC had verified Novalta's bid in a timely manner, as further discussed below.

[81] As noted above, Axxys took issue with PWGSC's finding that Novalta's bid was responsive, even though most of the previous projects Novalta submitted in its bid were completed through subcontracted work. After gathering information on the 11 projects that Novalta submitted in its bid through the ATIP process, it is the Tribunal's understanding that Axxys directly reached out to Novalta's clients to attempt to confirm that the work on most of these projects was completed through subcontracted work.<sup>97</sup>

[82] PWGSC did not contest that the projects submitted by Novalta's bid may have been completed through subcontracted work.<sup>98</sup> Instead, PWGSC's position is that nothing in the solicitation regarding past experience prevented PWGSC from considering projects in which a bidder subcontracted work.<sup>99</sup> In fact, PWGSC argued that requiring that the work be conducted through direct employment by the bidder would have involved introducing an undisclosed evaluation criterion to the solicitation.<sup>100</sup>

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<sup>95</sup> *TPG Technology Consulting*, para. 9; *Netgear, Inc.* (5 May 2009), PR-2009-001 to PR-2009-004 (CITT), para. 15.

<sup>96</sup> *TA Instruments*, para. 9.

<sup>97</sup> Exhibit PR-2024-057-19, p. 2.

<sup>98</sup> See Exhibit PR-2024-057-15.A.

<sup>99</sup> *Ibid.*, p. 15–16.

<sup>100</sup> *Ibid.*, p. 15.

[83] PWGSC noted that in *Enveloppe Concept Inc.*, the Tribunal found that a mandatory criterion requiring a bidder to demonstrate that it was bound to “provide the manufacture, printing, and delivery of a minimum quantity of 500,000 double-window envelopes”<sup>101</sup> could be met through subcontracting this work, in whole or in part.<sup>102</sup>

[84] In response, Axxys indicated that the solicitation required that a bidder “assume the role of general contractor (maître d’œuvre) and comply with all safety regulations”.<sup>103</sup> Axxys then argued that a company that only subcontracts work does not assume the responsibility for overall project management or oversight of the project.<sup>104</sup> This may not meet the role of a “general contractor”, as contemplated under Quebec’s *Building Act*.<sup>105</sup>

[85] Axxys then cited to *Ministère des Transports du Québec et Jean-Paul et Denis Tremblay Limitee (MTQ et JPDT Limitee)*,<sup>106</sup> which examined the different duties and responsibilities of an owner and a contractor on a construction project. Axxys stated that the provincial court in that case found that a contractor is responsible for executing the entire scope of the work, but the owner can give instructions and request changes.<sup>107</sup> Axxys argued that here the entire contract was awarded to the “general contractor”, as per the solicitation document.<sup>108</sup>

[86] The Tribunal notes that the French version of the solicitation does use the term “maître d’œuvre”, as Axxys submitted.<sup>109</sup> However, the equally authoritative English version of the solicitation<sup>110</sup> uses the term “principal contractor”<sup>111</sup> rather than “general contractor”, contrary to Axxys’s submission. As such, the Tribunal does not find the definition of “general contractor” provided by Axxys to be compelling in this case.

[87] Furthermore, if Axxys is concerned that the wording of the solicitation states that SOs are to be awarded to “contractors” rather than “owners”, it should have challenged this wording within the 10-working-day deadline, pursuant to section 6 of the Regulations, when the RFSO was first published on July 18, 2023. At this time, it is too late to challenge the wording of the solicitation before the Tribunal.

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<sup>101</sup> *Enveloppe Concept Inc. v. Department of Public Works and Government Services* (14 January 2022), PR-2021-042 (CITT) [*Enveloppe Concept*], para. 43.

<sup>102</sup> Exhibit PR-2024-057-15.A, p. 15, citing to *Enveloppe Concept*, paras. 45, 49.

<sup>103</sup> Exhibit PR-2024-057-19, p. 2. The *Regulation respecting the professional qualification of contractors and owner-builders* (chapter B 1.1, r. 9) at Article 4 provides that a “general contractor’s licence is required of any contractor whose main activity consists in organizing, coordinating, carrying out or having carried out, in whole or in part, construction work in the licence subclasses in the general contractor class, or in making or submitting tenders personally or through an intermediary for the purpose of carrying out or having such work carried out in whole or in part.”

<sup>104</sup> Exhibit PR-2024-057-19, p. 2–3.

<sup>105</sup> *Ibid.*, p. 2–3, citing to the *Building Act*, chapter B-1.1 (Quebec).

<sup>106</sup> 1987 CanLII 6080 (QC CALP).

<sup>107</sup> Exhibit PR-2024-057-19, p. 3–4, citing to *MTQ et JPDT Limitee*.

<sup>108</sup> Exhibit PR-2024-057-19, p. 3–4.

<sup>109</sup> See, for example, Exhibit PR-2024-057-09.B, p. 140.

<sup>110</sup> *Douglas Barlett Associates Inc.* (7 June 1999), PR-98-050 (CITT), p. 4–5, *RTG Protech Inc. v. Department of Public Works and Government Services* (7 August 2020), PR-2019-072 (CITT), paras. 37–41; *Beckman Coulter Canada LP* (3 January 2025), PR-2024-065 (CITT), para. 43.

<sup>111</sup> See, for example, Exhibit PR-2024-057-09.A, p. 136.

[88] Given the Tribunal's previous finding in *Enveloppe Concept*, and specifically the wording of mandatory criteria 3 and 4, the Tribunal finds here that there is no requirement in the wording of this solicitation, or in any applicable trade agreements, which requires that past projects not be completed through subcontracted work, in whole or in part.

[89] The Tribunal therefore finds that this ground of complaint is not valid, and that PWGSC did not act inconsistently with Article 515.4 of the CFTA.

Ground 3: PWGSC should not have found Novalta's bid to be responsive because Novalta did not submit notices as stipulated under Quebec provincial law

[90] Axxys indicated to the Tribunal that the Quebec Business Registry showed that Novalta registered as a corporation on January 14, 2020, and had only been in operation for three years when it submitted its bid for the solicitation in July 2023.<sup>112</sup> Axxys submitted that Quebec's provincial construction regulations require that corporations report their construction work to the CNESST.<sup>113</sup> Axxys informed the Tribunal that the CNESST had no record of any construction work submitted by Novalta. On this basis, Axxys is of the view that PWGSC should not have found Novalta to be a responsive bidder.<sup>114</sup>

**Timeliness of the ground of complaint**

[91] As noted in the Tribunal's analysis of the first ground of complaint above, a complainant must either raise an objection with the procuring government institution or file a complaint with the Tribunal no later than 10 working days after the day on which the basis of the ground of complaint became known or reasonably should have become known to the supplier, pursuant to section 6 of the Regulations.<sup>115</sup> New evidence that is later discovered with regard to a known ground of complaint does not restart the clock for filing a complaint on that ground with the Tribunal.<sup>116</sup>

[92] Here, the Tribunal finds that the basis of this ground of complaint became known to Axxys on February 16, 2024. In its email to PWGSC that day, Axxys specified that based on its knowledge, Novalta had only been registered as a corporation since January 14, 2020, and it questioned whether a company that has been in operation for such a short time can meet the mandatory requirements of the solicitation.<sup>117</sup> Although Axxys later discovered new evidence related to this ground of complaint through the ATIP process, the record shows that the basis of this ground of complaint became known to it, at the latest, on February 16, 2024.

[93] Since Axxys neither raised a formal objection with PWGSC nor filed a complaint with the Tribunal on this ground of complaint within 10 working days of February 16, 2024, the Tribunal finds that this ground of complaint is untimely.

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<sup>112</sup> Exhibit PR-2024-057-01, p. 15.

<sup>113</sup> *Ibid.*, p. 15.

<sup>114</sup> *Ibid.*, p. 15.

<sup>115</sup> Section 6 of the Regulations. See, for example, *M.D. Charlton*, para. 20; *Global Total Office*, para. 31.

<sup>116</sup> *TA Instruments*, para. 9; *TPG Technology Consulting*, para. 8.

<sup>117</sup> Exhibit PR-2024-057-01, p. 31–32.

### Validity of the ground of complaint

[94] The Tribunal will also assess the validity of this ground of complaint for the same reason as Ground 2.

[95] Axxys informed the Tribunal that Novalta had only been in business for three years. In addition, Axxys stated that Quebec's provincial construction regulations require that corporations report their construction work to the CNESST.<sup>118</sup> Axxys also informed the Tribunal that the CNESST had no record of any construction work submitted by Novalta.<sup>119</sup> In its reply to the GIR, Axxys suggested that Novalta may not have been required to report its construction work to the CNESST because it is not the true employer of these projects, citing to *Uréthane Superior de Québec inc. et Commission de la Construction du Québec*.<sup>120</sup> Axxys then submitted that reporting construction work to the CNESST is essential to ensure compliance with mandatory labour requirement and safety measures, in accordance with articles 4 and 7 of the *Regulation respecting the professional qualification of contractors and owner-builders*.

[96] PWGSC's position is that the solicitation does not require a bidder to be registered with the Quebec Business Registry for any specific length of time.<sup>121</sup> PWGSC is also of the view that it had no obligation in the context of evaluating Novalta's bid to ask the CNESST whether Novalta had reported its construction work.

[97] The Tribunal agrees with PWGSC's position. First, mandatory criteria 3 and 4 in the solicitation only specify that a bidder is to provide evidence of projects "completed within the last five (5) years".<sup>122</sup> These criteria do not require a bidder to have been in business for all these last five years. Second, PWGSC had no positive obligation under the applicable trade agreements to check whether Novalta, as a private entity, was complying with Quebec's provincial regulations on labour requirement and safety measures. The Tribunal's mandate in this procurement inquiry is similarly limited to inquiring into whether PWGSC's conduct is consistent with the applicable trade agreements throughout the procurement process. The Tribunal has no mandate to look into whether Novalta's conduct, in general, is consistent with Quebec provincial law.

[98] The Tribunal therefore finds that this ground of complaint is not valid. PWGSC did not act inconsistently with Article 515.4 of the CFTA.

#### Ground 4: PWGSC accepted more projects from Novalta than was requested in the solicitation

[99] Axxys submitted that the solicitation specified that bidders were to submit 5 projects (3 for mandatory criteria 3 and 2 for mandatory criteria 4). Novalta instead submitted 11 projects.<sup>123</sup>

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<sup>118</sup> *Ibid.*, p. 15.

<sup>119</sup> *Ibid.*, p. 15.

<sup>120</sup> *Uréthane Supérieure de Québec inc. et Commission de la Construction du Québec*, C.I.C., 2004-06-30.

<sup>121</sup> Exhibit PR-2024-057-15.A, p. 8.

<sup>122</sup> Exhibit PR-2024-057-09.A, p. 33-34.

<sup>123</sup> Exhibit PR-2024-057-01, p. 15; See also Exhibit PR-2024-057-01, p. 57-76.



### Timeliness of the ground of complaint

[100] The Tribunal finds that the basis of this ground of complaint became known to Axxys on May 7, 2024, when it received a response to its Initial ATIP Request.<sup>124</sup> It was on this date that Axxys received a copy of Novalta's redacted bid submitted in July 2023. The redacted bid showed that Novalta had submitted 11 projects in response to mandatory criteria 3 and 4 of the RFSO.<sup>125</sup>

[101] Axxys did not raise a formal objection with PWGSC or file a complaint with the Tribunal on this ground of complaint within 10 working days of May 7, 2024. The Tribunal must therefore find this ground of complaint to be untimely.

### Validity of the ground of complaint

[102] The Tribunal will assess the validity of this ground of complaint, despite its untimely filing, for the same reasons as grounds 2 and 3 above.

[103] Axxys indicated that submitting more than the five projects requested in the solicitation is "not strictly against the rules".<sup>126</sup> However, its position is that "[t]he 5 required projects are meant to set a clear standard for evaluating qualification, ensuring fairness. Submitting more than required could lead to inconsistencies in how the bids are assessed."<sup>127</sup> Furthermore, Axxys is of the view that submitting additional projects raises questions about whether these projects were completed through direct labour by Axxys or through subcontracted work.<sup>128</sup>

[104] PWGSC's position is that there is no requirement in the solicitation that prevents a bidder to submit more than five projects. Moreover, PWGSC indicated that the winning bidders were selected based on the lowest price, once a bidder was found to be responsive, rather than on the quality or number of projects submitted. The projects submitted were only used in the evaluation of the bid to check off that a bidder met the prerequisite past experience to be considered a responsive bidder.<sup>129</sup>

[105] The Tribunal agrees with PWGSC's position. Even Axxys acknowledged that submitting more than five projects may not be against the requirements of the solicitation. In the Tribunal's view, submitting additional projects also does not violate the applicable trade agreements, provided the additional projects do not give Novalta a competitive advantage in the bid evaluation process. In this case, the Tribunal finds that it did not. As set out in the solicitation, the SOs were awarded based on the lowest price once a bidder had been found to be responsive to the mandatory criteria. The projects were submitted solely to determine whether a bidder is responsive, and not used to ultimately determine which responsive bidders would be awarded an SO. Lastly, as the Tribunal found above, Novalta is permitted to submit projects in which it subcontracted work.

[106] Given the above, the Tribunal finds that this ground of complaint is not valid, and that PWGSC did not act inconsistently with Article 515.4 of the CFTA.

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<sup>124</sup> Exhibit PR-2024-057-01, p. 52–53.

<sup>125</sup> *Ibid.*, p. 57–76.

<sup>126</sup> *Ibid.*, p. 15.

<sup>127</sup> *Ibid.*, p. 15.

<sup>128</sup> Exhibit PR-2024-057-19, p. 6.

<sup>129</sup> Exhibit PR-2024-057-15.A, p. 19–20.

Ground 5: PWGSC did not verify the bid information submitted by Novalta

[107] Axxys alleged that PWGSC had a responsibility to thoroughly verify the information that Novalta submitted in its bid.<sup>130</sup> PWGSC did not verify Novalta's bid information before the award of the SO, nor did it do so the first time after Axxys brought alleged deficiencies in Novalta's bid to PWGSC's attention in February 2024. Axxys is therefore of the view that PWGSC's conduct violated the applicable trade agreements.

**Timeliness of the ground of complaint**

[108] The Tribunal finds that this ground of complaint has been filed in a timely manner. Unlike grounds 2, 3 and 4 discussed above, the Tribunal finds that the basis of this ground of complaint only became known to Axxys on October 24, 2024. On that date, PWGSC wrote to Axxys confirming for the first time that since receiving Axxys's letter on August 30, 2024, PWGSC had been conducting its due diligence in response to Axxys's concerns. The due diligence efforts included "fact verifications". PWGSC then informed Axxys that it was still continuing this due diligence process.<sup>131</sup> Before October 24, 2024, there is no evidence on the Tribunal's record that Axxys was notified that PWGSC had in fact not verified Novalta's bid.

[109] On that same day, Axxys wrote back to PWGSC indicating that PWGSC "ha[d] failed to verify any of [its] statements and any documents that were shown to [PWGSC]. [PWGSC] ha[s] had more than a year to review, and [Axxys] find[s] it quite disturbing that [PWGSC has] taken no action in all these months".<sup>132</sup> The Tribunal finds that Axxys's reply email to PWGSC on October 24, 2024, constitutes an objection to this ground of complaint within the meaning of subsection 6(2) of the Regulations.

[110] An objection made by a complainant to a relevant government institution may take any form.<sup>133</sup> Specifically, Tribunal case law is clear that there is no "one-size-fits-all approach" to the form or content of an objection required under the Regulations, and each case must be reviewed on its own facts.<sup>134</sup> The Federal Court of Appeal has determined that an objection must be sufficiently precise to identify the aspects of the procurement process with which the complainant takes issue.<sup>135</sup> However, the objection itself does not have to demand a specific remedy explicitly, but it should request some form of relief.<sup>136</sup>

[111] Axxys's reply email to PWGSC indicates the precise aspects of the procurement process to which it takes issue, which is that PWGSC failed to verify the content of Novalta's bid. In addition, Axxys indicated that PWGSC's ongoing verification efforts were slow, which, in the Tribunal's

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<sup>130</sup> Exhibit PR-2024-057-01, p. 15.

<sup>131</sup> *Ibid.*, p. 141.

<sup>132</sup> *Ibid.*, p. 142.

<sup>133</sup> See David M. Attwater, *Procurement Review: A Practitioner's Guide* (Toronto, Carswell, 2024) at Chapter 2:129 – Objections to the Relevant Government Institution.

<sup>134</sup> *JK. Engineering Ltd.* (16 December 2015), PR-2015-045 (CITT), para. 23; *Sani Sport* (17 March 2015), PR-2014-064 (CITT), para. 26; *1091847 Ontario*, para. 30; *KEVEREST Technologies Inc.* (2 April 2024), PR-2023-065 (CITT), para. 23.

<sup>135</sup> *Cougar Aviation Ltd. v. Canada (Minister of Public Works and Government Services)*, 264 NR 49, 2000 CanLII 16572 (FCA), para. 74.

<sup>136</sup> *Édu-Performance Canada Inc., PME Création de Valeur Inc., in Joint Venture* (18 July 2023), PR-2023-019 (CITT), para. 21; *Global Total Office*, para. 41.

view, can be interpreted as Axxys requesting a relief that PWGSC finish its verification efforts quickly. The Tribunal therefore finds that Axxys made an objection to PWGSC on this ground of complaint on October 24, 2024.

[112] On November 8, 2024, PWGSC wrote back to Axxys indicating that it has not finished its due diligence process.<sup>137</sup> It also informed Axxys that PWGSC was not obligated to verify the information received in Novalta's offer, even though the instructions in the RFSO gave PWGSC the right to do so.<sup>138</sup> In the Tribunal's view, PWGSC's reply to Axxys on November 8, 2024, constitutes a denial of relief by the government institution on this ground of complaint, pursuant to subsection 6(2) of the Regulations.

[113] Axxys then filed a complaint with the Tribunal, including this ground of complaint, on November 25, 2024, within the 10-working-day deadline set out in subsection 6(2) of the Regulations.<sup>139</sup>

[114] The Tribunal therefore considers this ground of complaint to have been filed in a timely manner.

### Validity of the ground of complaint

[115] Axxys alleged that PWGSC had a responsibility to thoroughly verify the information that Novalta submitted in its bid.<sup>140</sup>

[116] PWGSC's position, however, is that it was not obligated to verify the information submitted in Novalta's bid, and no general verification obligation exists under an applicable trade agreement.<sup>141</sup> To support its position, PWGSC cited past Tribunal case law, which indicates that a procuring entity is entitled to rely on the information provided in a bid to evaluate its conformity with the mandatory requirements of a solicitation.<sup>142</sup>

[117] The Tribunal's prior findings on this issue are consistent with the Supreme Court of Canada's decision in *Double N Earthmovers Ltd. v. Edmonton (City) (Double N Earthmovers)*, where it was held that procuring entities are under no obligation to verify the information and certifications submitted by potential suppliers.<sup>143</sup> In addition, the Tribunal had considered the decision in *Double N*

<sup>137</sup> Exhibit PR-2024-057- 01, p. 144–145.

<sup>138</sup> *Ibid.*, p. 144–145.

<sup>139</sup> The Tribunal notes that Remembrance Day (November 11, 2024) was a Tribunal holiday, so the Tribunal considers Axxys's complaint, filed on November 25, 2024, to have been filed on day 10 under subsection 6(2) of the Regulations. See "Holidays" for the purpose of Tribunal proceedings, online: [www.citt-tcce.gc.ca/en/practices-and-procedures/holidays-purpose-tribunal-proceedings](http://www.citt-tcce.gc.ca/en/practices-and-procedures/holidays-purpose-tribunal-proceedings).

<sup>140</sup> Exhibit PR-2024-057-01, p. 15.

<sup>141</sup> Exhibit PR-2024-057-15.A, p. 17.

<sup>142</sup> *ECA Robotics Canada Inc.* (31 January 2023), PR-2022-062 (CITT) [*ECA Robotics Canada*], para. 18; *Enveloppe Concept*, paras. 24, 31. The Tribunal notes the existence of additional case law on this issue: *Newland Canada Corporation v. Department of National Defence* (19 December 2022), PR-2022-037 (CITT), para. 41; *Airsolid Inc.* (12 March 2010), PR-2009-089 (CITT), paras. 11–12, 16; *3202488 Canada Inc. o/a Kinetic Solutions* (3 March 2011), PR-2010-089 (CITT), paras. 18–19; *SoftSim Technologies Inc. v. Department of National Defence* (19 December 2018), PR-2018-032 (CITT), paras. 36–37.

<sup>143</sup> 1 S.C.R. 116, 2007 SCC 3.

*Earthmovers*, even though it was decided under the common law, as a useful guide in informing its analysis of obligations under the trade agreements.<sup>144</sup>

[118] However, the Tribunal has previously found that when a government institution, such as PWGSC, becomes aware of red flags questioning the accuracy of the information that a bidder submitted, the government institution may be obligated to verify that information.<sup>145</sup> The Federal Court of Appeal and the Tribunal have found that it is a violation of the fair bidding process for the government institution not to correct errors when discovered.<sup>146</sup> It follows that if errors are discovered after red flags are raised during the procurement process, the government institution is then obligated to correct those errors.

[119] In this case, Axxys first called into question the accuracy of Novalta's bid information on February 16, 2024. Through Axxys's correspondence with PWGSC, Axxys challenged whether PWGSC should have found Novalta's bid to be responsive during the procurement process.<sup>147</sup> PWGSC should have taken the correspondence with Axxys in February 2024 as a red flag that called into question the accuracy of the information submitted in Novalta's bid. PWGSC should have begun the verification process at that time;<sup>148</sup> however, it waited until August 30, 2024, when it received subsequent notice from Axxys of "the same concerns Axxys raised in February 2024"<sup>149</sup> before initiating a verification process of Novalta's bid.

[120] The Tribunal agrees with PWGSC that the results of the verification process, regardless of when it would have been conducted, would have been the same: Novalta's bid, as submitted in August 2023, was responsive, based on the Tribunal's analysis of grounds 2, 3 and 4 of the above complaint. However, PWGSC was obligated to start this verification the first time the issue was raised, consistent with Tribunal case law.

[121] The Tribunal therefore finds this ground of complaint to be valid, and that PWGSC's conduct violated Article 515.4 of the CFTA.

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<sup>144</sup> *ECA Robotics Canada*, para. 18, citing to *Double N Earthmovers*.

<sup>145</sup> *Enveloppe Concept*, paras. 24, 46.

<sup>146</sup> See *Francis H.V.A.C. Services Ltd. v. Canada (Public Works and Government Services)*, 2017 FCA 165, para. 33; *SoftSim Technologies Inc. v. Department of Foreign Affairs, Trade and Development* (26 March 2020), PR-2019-057 (CITT), para. 24; *Telecore v. Department of Public Works and Government Services* (10 October 2017) PR-2017-021 (CITT), para. 12; *Valcom*, para. 52.

<sup>147</sup> As discussed in the Preliminary Matters section above, the Tribunal finds that this ground of complaint pertains to the procurement process, rather than being a matter of contract administration, because the substance of the ground of complaint relates to the procurement process.

<sup>148</sup> In the Tribunal view, in its February 16, 2024, email to PWGSC, Axxys was inquiring about whether Novalta's bid met the conditions for participation outlined in Article 515.4 of the CFTA, which states that to be considered for an award, a tender must be from a "supplier that satisfies the conditions for participation". This request is distinguishable from a situation where the Tribunal has found that a complainant has requested to be debriefed on why it had lost a solicitation to a competitor. See, for example, *Stericycle, ULC v. Correctional Service of Canada* (7 December 2023), PR-2023-024 (CITT), paras. 25–37.

<sup>149</sup> Exhibit PR-2024-057-15.A, p. 28.

Ground 6: The confidentiality requirements imposed by PWGSC, through the ATIP disclosure request process, limited Axxys's ability to gather the information required to bring forward this complaint

[122] Axxys alleged that the confidentiality requirements imposed by PWGSC through the ATIP disclosure request process significantly impacted Axxys's ability to gather complete evidence and arguments to bring forward this complaint to the Tribunal.<sup>150</sup>

**Validity of the ground of complaint**

[123] Axxys filed several ATIP requests to gather information on Novalta's bid between February and August 2024.<sup>151</sup> The first of these ATIP request was filed on February 22, 2024, and answered by PWGSC on May 7, 2024, after PWGSC requested an extension to fulfill Axxys's request due to the existence of third-party confidential information contained within Novalta's bid.<sup>152</sup> Axxys had filed a complaint with the OIC office on April 24, 2024, due to PWGSC's delay in responding to Axxys's Initial ATIP Request.<sup>153</sup> The OIC office initiated an investigation into this matter on May 6, 2024,<sup>154</sup> before ceasing its investigation on June 11, 2024. The reason for ceasing the investigation was that PWGSC had responded to the Initial ATIP Request on May 7, 2024.<sup>155</sup> Axxys's position is that PWGSC should not have taken this much time to respond to its Initial ATIP Request because Axxys was not seeking any of Novalta's confidential information.<sup>156</sup>

[124] However, PWGSC's position is that the Tribunal has no jurisdiction on this ground of complaint, as it pertains to the ATIP process.<sup>157</sup> PWGSC also suggested that it no longer had an obligation under the trade agreements to consider tender documentation as confidential after the contract is awarded and a debrief has been given to an unsuccessful bidder.<sup>158</sup> Given the time that had passed since the SO was awarded to Novalta in September 2023, PWGSC considered the debriefing period to be completed.

[125] The Tribunal acknowledges that the disclosure provisions under the applicable trade agreements, such as articles 516 and 517 of the CFTA, and the ATIP process, are distinctive.<sup>159</sup> The Tribunal does not have jurisdiction over the ATIP process.

[126] However, the Tribunal cannot agree with PWGSC that, given the time elapsed since the SOs were awarded and the subsequent debriefing period, the confidential process under the CFTA is no longer applicable in this case.

<sup>150</sup> Exhibit PR-2024-057-01, p. 15.

<sup>151</sup> *Ibid.*, p. 54–55, 94–102; Exhibit PR-2024-047-01.C, p. 18–44. Exhibit PR-2024-057-01, p. 35–43.

<sup>152</sup> Exhibit PR-2024-057-01, p. 52–53.

<sup>153</sup> *Ibid.*, p. 40–41, 464–465.

<sup>154</sup> *Ibid.*, p. 40–41, 464–465.

<sup>155</sup> *Ibid.*, p. 50–51, 474–475.

<sup>156</sup> *Ibid.*, p. 45.

<sup>157</sup> Exhibit PR-2024-057-15.A, p. 21–22, citing to *BMCi Consulting Inc.* (8 October 2008), PR-2005-049 (CITT).

<sup>158</sup> Exhibit PR-2024-057-15.A, p. 21–22, citing to *CGI Information Systems and Management Consultants Inc. v. Canada Post Corporation and Innovapost Inc.* (27 August 2014), PR-2014-006 (CITT) [*CGI Information Systems and Management Consultants*], para. 72.

<sup>159</sup> See, for example, *CGI Information Systems and Management Consultants*, para. 72.

[127] On the contrary, given that the grounds of complaint brought by Axxys relate to the procurement process rather than contract administration, the Tribunal can still issue a remedy in evaluating this complaint, including terminating or retendering the SO, as requested by Axxys in the complaint.<sup>160</sup> The confidentiality requirements under the applicable trade agreements continue to apply until matters involving the procurement process have been resolved.

[128] The Tribunal finds that the confidentiality and disclosure requirements under articles 516 and 517 of the CFTA to be applicable in this instance. The Tribunal understands the value of transparency in fostering public trust in the government procurement system. The debriefing requirements in the applicable trade agreements provide for such transparency by “allow[ing] unsuccessful bidders insight into how they can better respond to future procurement opportunities, thereby assisting the procuring entity, in that it will have superior proposals to review in future solicitations.”<sup>161</sup> At the same time, the Tribunal acknowledges that provisions such as paragraph 517(2)(b) of the CFTA are also necessary to further foster public trust in the system. The disclosure of certain information in the procurement process might prejudice fair competition between suppliers in the current procurement or for future procurement opportunities. PWGSC, therefore, must balance its obligations under articles 516 and 517 of the CFTA in the procurement process.

[129] In the Tribunal’s view, PWGSC has properly balanced its obligation under articles 516 and 517 of the CFTA, in this case.<sup>162</sup> The Tribunal acknowledges Axxys’s position that PWGSC should have fulfilled Axxys’s request faster, as Axxys was not seeking any of Novalta’s confidential trade secrets, financial details, or technical and commercial information.<sup>163</sup> However, the initial bid documents submitted by Novalta contained confidential text embedded within certain documents submitted with the bid. In the Tribunal’s view, Article 517 of the CFTA requires that PWGSC redact confidential text specifically from those documents before they can be released to Axxys. As the entirety of the bid pertained to Novalta’s business information, PWGSC, in fulfilling its obligations under the CFTA, needed to confirm with Novalta which information was public and which was confidential before disclosing any of Novalta’s information to a third party.<sup>164</sup> Given the process, the Tribunal finds that the time it took (i.e., 75 days) for PWGSC to address Axxys’s request is not unreasonable, pursuant to articles 516 and 517 of the CFTA.

[130] Furthermore, the timeliness to bring a ground of complaint before the Tribunal is determined based on when the basis of a ground of complaint became known or should have become known to the complainant, and not when new evidence is discovered on that ground of complaint, as discussed above. Therefore, any delay in the disclosure of new evidence to Axxys by PWGSC did not hinder Axxys’s ability to bring this complaint to the Tribunal. It is the Tribunal’s role, through the procurement inquiry process, to compel government institutions, such as PWGSC, to provide persuasive and complete evidence relating to the grounds of complaint that challenge the

<sup>160</sup> Exhibit PR-2024-057-01, p. 12.

<sup>161</sup> *Tireerankinjv v. Department of Public Works and Government Services* (27 January 2005), PR-2004-038 (CITT), para. 30, in reference to paragraph 1015(6)(b) of North American Free Trade Agreement and paragraph XVIII(2)(c) of the WTO-AGP.

<sup>162</sup> See, for example, *TYR Tactical Canada ULC v. Department of Public Works and Government Services* (1 October 2024), PR-2024-025 (CITT), para. 42.

<sup>163</sup> Exhibit PR-2024-057-01, p. 45.

<sup>164</sup> The Tribunal does not have jurisdiction over the ATIP process. However, the Tribunal does have jurisdiction to evaluate PWGSC’s conduct throughout a procurement process, even if it arises in the context of a parallel ATIP process, if it is relevant to PWGSC’s obligations under the CFTA.

procurement process. As discussed, the complainant is to bring sufficient evidence to demonstrate that there is a reasonable indication of a breach of an applicable trade agreement before the Tribunal can initiate an inquiry into a matter.

[131] Given the above, the Tribunal therefore finds that this ground of complaint is not valid.

## REMEDY

[132] In recommending a remedy, the Tribunal is guided by the criteria set out in subsection 30.15(3) of the CITT Act.<sup>165</sup>

[133] In considering the circumstances surrounding this procurement, the Tribunal finds that Axxys was not significantly prejudiced by PWGSC's error. PWGSC should have started to verify Novalta's bid information in February 2024, as soon as Axxys raised concerns about the accuracy of the bid information submitted by Novalta. The fact that PWGSC only started this verification process in August 2024, after receiving a formal complaint from Novalta, caused delays in both the verification process and the resolution of this dispute.

[134] However, the results of the verification process would have been the same regardless of whether PWGSC had started this verification process in February or in August 2024. PWGSC would still have found that Novalta was a responsive bidder. Therefore, the Tribunal finds that PWGSC's deficiency regarding the conduct of this procurement process was not serious enough to prejudice the integrity and efficiency of the competitive procurement process or system. Furthermore, the fact that PWGSC eventually conducted a verification of Novalta's bid suggests to the Tribunal that it acted in good faith and the failure to begin the verification process earlier was an oversight.

[135] The Tribunal accordingly finds that Axxys is not entitled to any of the remedies listed in subsection 30.15(2) of the CITT Act.

## COSTS

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

[137] As the success in this complaint is divided between Axxys and PWGSC, each party will bear its own costs.

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<sup>165</sup> Subsection 30.15(3) of the CITT Act provides that "[t]he Tribunal shall, in recommending an appropriate remedy under subsection (2), consider all the circumstances relevant to the procurement of the goods or services to which the designated contract relates, including (a) the seriousness of any deficiency in the procurement process found by the Tribunal; (b) the degree to which the complainant and all other interested parties were prejudiced; (c) the degree to which the integrity and efficiency of the competitive procurement system was prejudiced; (d) whether the parties acted in good faith; and (e) the extent to which the contract was performed."

**DETERMINATION**

[138] Having completed an inquiry, the Tribunal determines that the complaint is valid in part pursuant to subsection 30.14(2) of the CITT Act.

[139] The Tribunal finds that the following ground of complaint is valid:

- PWGSC did not verify Novalta's bid information, in violation of Article 515.4 of the CFTA, after Axxys first called into question the accuracy of this information in February 2024.

[140] The Tribunal finds that the following grounds of complaint are not valid:

- Novalta misrepresented its project experience in its bid.
- The confidentiality requirements imposed by PWGSC, through the ATIP disclosure request process, limited Axxys's ability to gather the information required to bring forward this complaint.

[141] The Tribunal finds that the following grounds of complaint are late and are also not valid:

- PWGSC should not have found Novalta's bid to be responsive because Novalta subcontracted work.
- PWGSC should not have found Novalta bid to be responsive because Novalta did not submit notices as stipulated under Quebec provincial law.
- PWGSC accepted more projects from Novalta than was requested in the solicitation.

[142] The Tribunal finds that Axxys is not entitled to any of the remedies listed in subsection 30.15(2) of the CITT Act.

[143] As the success of this complaint is divided, each party will bear its own costs.

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Susana May Yon Lee  
Susana May Yon Lee  
Presiding Member