



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File No. PR-2008-049

ISE Inc.

v.

Department of Public Works and
Government Services

*Determination and reasons issued
Monday, May 25, 2009*

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IN THE MATTER OF a complaint filed by ISE Inc. under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47;

AND FURTHER TO a decision to conduct an inquiry into the complaint under subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

BETWEEN

ISE INC.

Complainant

AND

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

**Government
Institution**

DETERMINATION OF THE TRIBUNAL

Pursuant to subsection 30.14(2) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal determines that the complaint is not valid.

Pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal awards the Department of Public Works and Government Services its reasonable costs incurred in responding to the complaint, which costs are to be paid by ISE Inc. The Canadian International Trade Tribunal's preliminary indication of the level of complexity for this complaint case is Level 1, and its preliminary indication of the amount of the cost award is \$1,000. 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 Canadian International Trade Tribunal, as contemplated in the *Guideline for Fixing Costs in Procurement Complaint Proceedings*. The Canadian International Trade Tribunal retains jurisdiction to establish the final amount of the award.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Hélène Nadeau
Hélène Nadeau
Secretary

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STATEMENT OF REASONS

COMPLAINT

1. On February 17, 2009, ISE Inc. (ISE) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ concerning a Request for a Standing Offer (RFSO) (Solicitation No. E60PQ-080001/B) issued by the Department of Public Works and Government Services (PWGSC) on behalf of various government departments for the provision of free-standing office furniture.
2. ISE's complaint contained a list of allegations relating to the way in which the procurement process was conducted.²
3. On February 25, 2009, the Tribunal informed the parties that the complaint had been accepted, in part, for inquiry, since it met the requirements of subsection 30.11(2) of the *CITT Act* and the conditions set out in subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.³ The Tribunal limited its inquiry to the allegation that PWGSC incorrectly deemed ISE's proposal non-compliant, even though the proposal conformed to the essential requirements of the tender documentation.⁴ In particular, the ground of complaint related to ISE's contention that the tests completed on its proposed product were all that was required to meet the American National Standards Institute/Business and Institutional Furniture Manufacturer's Association (ANSI/BIFMA) requirements, as required under the RFSO. The Tribunal did not issue a postponement of award of contract order under subsection 30.13(3) of the *CITT Act*, since the evidence on file indicated that standing offers had already been issued; this was confirmed on February 27, 2009, when PWGSC informed the Tribunal that 10 standing offers had been issued.
4. ISE requested, by way of a remedy, that the Tribunal recommend that PWGSC terminate the existing contracts and issue a new solicitation, that the Tribunal recommend that PWGSC compensate it for its lost profits, and that ISE be reimbursed its reasonable costs incurred in preparing and proceeding with its complaint. In addition, ISE requested that the Tribunal order the postponement of the award of any contract in relation to the solicitation until the Tribunal determined the validity of the complaint.
5. On March 10, 2009, the Tribunal granted intervener status to BRC Business Enterprises Ltd. On April 6, 2009, PWGSC filed a Government Institution Report (GIR) with the Tribunal in accordance with rule 103 of the *Canadian International Trade Tribunal Rules*.⁵ On April 22, 2009, ISE filed its comments on the GIR. BRC Business Enterprises Ltd. did not make any filings with regard to the inquiry.
6. Given that there was sufficient information on the record to determine the validity of the complaint, the Tribunal decided that an oral hearing was not required and disposed of the complaint on the basis of the written information on the record.

1. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].

2. Complaint, attachments 1, 3.

3. S.O.R./93-602 [*Regulations*].

4. The precise wording of the ground of complaint was as follows: "The tender received from ISE Inc. DID conform to the essential requirements of the tender documentation."

5. S.O.R./91-499.

PRELIMINARY MATTER

7. In addition to the specific ground of complaint that was accepted for inquiry, ISE alleged, in terms of substantive grounds, that:

- “[t]he Technical Specifications created an unnecessary obstacle” to trade;
- “[t]he requirements for Testing of products does NOT speak to the potential supplier’s capability to fulfill the contract, especially in view of the fact that the Purchasing Agency has purchased the products for many years from the potential supplier ISE Inc.”;
- “the designated contract contained requirements that were unduly onerous in that they were never required in previous such Requests”; and
- “the requirements of the Request resulted in a frustration of the process; making it so difficult to meet every requirement that many potential suppliers were rejected”.

It further alleged, in terms of temporal grounds, that:

- “[a]dequate time was NOT given to enable interested suppliers to complete the qualification process”;
- “[t]he prescribed time limits did NOT allow suppliers to prepare and submit tenders before the closing date especially in view of the fact that the tender period included December when most suppliers and testing agencies are on vacation for at least one, if not two weeks”;
- “[t]he timing of events, specifically the timing of the test results prevented ISE Inc. from submitting a complete bid and resulted in its disqualification”;
- “[t]aking into account the complexity of the procurement, specifically the onerous requirement for test reports, a reasonable period of time was NOT provided. Taking into account the volume of test results requested, the limited number of accredited test laboratories and the fact that for many suppliers this was a new requirement, the time period was NOT reasonable”;
- “the time frame allowed in which to submit such reports was unduly short”;
- “the only approved facilities for testing products were unable to comply with the multitude of requests by the required submission date and that PWGSC was notified of this concern and chose to ignore it”;
- “the duration of the actual testing required, for example cycle tests, exceeded the time allowed for test submission”; and
- “the Request failed to allow an extension of time in the event that potential suppliers were unable to meet the submission date through NO FAULT of their own”.

It further alleged, in terms of fairness-related grounds, that:

- “[t]he process of qualifying suppliers WAS USED to disqualify suppliers”;
- “[d]ifferences in qualification process was NOT minimized in that suppliers that happened to possess testing results were favoured over those that required new testing results”;
- “the Request was biased towards those companies that already had the test results”; and
- “[n]o challenge procedure was made available to ISE Inc.”

8. Subsection 6(1) of the *Regulations* provides that a complaint shall be filed with the Tribunal “not later than 10 working days after the day on which the basis of the complaint became known or reasonably should have become known to the potential supplier.” Subsection 6(2) provides that a potential supplier that has made an objection to the relevant government institution, and is denied relief by that government institution, may file a complaint with the Tribunal “within 10 working days after the day on which the potential supplier has actual or constructive knowledge of the denial of relief, if the objection was made within 10 working days after the day on which its basis became known or reasonably should have become known to the potential supplier.”

9. In other words, a complainant has 10 working days from the date on which it first becomes aware (or reasonably should have become aware) of its ground of complaint either to object to the government institution or to file a complaint with the Tribunal. If a complainant objects to the government institution within the designated time, the complainant may file a complaint with the Tribunal within 10 working days after it has actual or constructive knowledge of the denial of relief by the government institution.

10. The solicitation document was issued on October 15, 2008, and the bid closing date was December 2, 2008.

11. The solicitation document clearly outlined the test requirements and the corresponding dates by which the test reports were to be submitted. The original solicitation required test reports and forms to be submitted with the proposal.

12. Amendment No. 001 to the RFSO, dated October 29, 2008, amended the deadline for the submission of test reports and forms. Amendment No. 007, dated November 18, 2008, further amended the deadline for the submission of test reports and forms; they were to be submitted “at bid closing or before December 30, 2008 at 16:00 EST.” For optional additional products, test reports and forms were to be submitted before March 31, 2009. On December 2, 2008, ISE submitted its proposal.

13. The Tribunal is of the view that, with the exception of the ground of complaint relating to the challenge procedure and the ground of complaint accepted for inquiry, ISE became aware, or reasonably should have become aware, of its other grounds of complaint on November 18, 2008, when PWGSC issued amendment No. 007 extending the dates for the submission of test reports or, at the latest, on December 2, 2008, when bids closed, as it would have been fully aware of the substantive and timing requirements of the RFSO and the related implications of each, including as to fairness.

14. Pursuant to section 6 of the *Regulations*, ISE had to have filed its complaint with the Tribunal, or object to PWGSC, within 10 working days from the date on which it became aware or reasonably should have become aware of the basis of its complaint. ISE filed its complaint with the Tribunal on February 17, 2009, which is well beyond the 10-working-day time frame permitted by the *Regulations*.

15. As clearly stipulated in the Federal Court of Appeal’s decision in *IBM Canada Ltd. v. Hewlett Packard (Canada) Ltd.*,⁶ there is an onus on potential suppliers to challenge problems in the procurement process when they become aware of them (or when they reasonably should have become aware of them). Of particular relevance are the following excerpts from that decision:

[20] . . . potential suppliers are required not to wait for the attribution of a contract before filing any complaint they might have with respect to the process. They are expected to keep a constant vigil and to react as soon as they become aware or reasonably should have become aware of a flaw in the process

6. 2002 FCA 284 (CanLII).

[28] . . . If Hewlett-Packard was of the view that such a clear answer contradicted the procurement requirements, it should have filed a complaint then and there. It chose, rather, to ignore answer 95, to adopt a wait-and-see attitude and to make its challenge once the procurement process was over. This is precisely the type of attitude that the procurement process and Regulations seek to discourage.

16. In light of the foregoing, the Tribunal is of the view that the filing of the above-noted grounds of complaint was not timely. Consequently, the Tribunal will not conduct an inquiry into the complaint on those grounds and considers the matter closed in respect thereof.

17. Paragraph 7(1)(c) of the *Regulations* requires that the Tribunal determine whether the information provided by the complainant discloses a reasonable indication that the procurement has not been carried out in accordance with whichever of Chapter Ten of the *North American Free Trade Agreement*,⁷ Chapter Five of the *Agreement on Internal Trade*,⁸ the *Agreement on Government Procurement*⁹ or Chapter Kbis of the *Canada-Chile Free Trade Agreement*¹⁰ applies. In this case, all four trade agreements apply.

18. With respect to ISE's allegation that no challenge procedure was made available to it, the Tribunal is of the view that there is an onus on suppliers to make themselves aware of challenge procedures and that there is significant publicly available information relating to challenge procedures, including, for example, on PWGSC's own Web site.¹¹ The Tribunal also notes that, on February 5, 2009, PWGSC advised ISE that it could file a complaint with the Tribunal. Finally, while the trade agreements contain obligations¹² on the parties (i.e. Canada) or the reviewing authority (i.e. the Tribunal) to make generally available all its bid challenge procedures, there is no specific obligation on the procuring entity to make suppliers aware of any challenge procedures. Therefore, the Tribunal finds that, for this ground of complaint, there is no reasonable indication that the procurement was not carried out in accordance with the applicable trade agreements.

19. In light of the foregoing, the Tribunal will also not conduct an inquiry into the complaint on this ground and considers the matter closed.

PROCUREMENT PROCESS

20. On October 15, 2008, PWGSC issued an RFSO for the provision of free-standing office furniture. There were four different categories of furniture. Bidders could submit proposals for the supply of one or more categories of furniture. Each category specified a list of products ("basket of goods"). Proposals could also be submitted for optional additional products not listed in the basket of goods. The original bid closing date was November 25, 2008.

7. *North American Free Trade Agreement Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2 (entered into force 1 January 1994) [NAFTA].

8. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <http://www.ait-aci.ca/index_en/ait.htm> [AIT].

9. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm> [AGP].

10. *Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile*, 1997 Can. T.S. No. 50 (entered into force 5 July 1997) [CCFTA].

11. *Code of Conduct for Procurement* found at <<http://www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/index-eng.html>>.

12. Article 1017(1)(o) of NAFTA, Article 514(2)(g) of the AIT, Article XX(3) of the AGP and Article Kbis-13(5) of the CCFTA.

21. Paragraph 2.1 of Part 1 of the RFSO provides as follows:
... Offerors must fulfill the requirement in accordance with Annex A ...
NMSOs will be issued to all technically responsive suppliers meeting all the mandatory requirements and within the acceptable price range as detailed in the Request for Standing Offer (RFSO).
22. Paragraph 6.2 of Annex A to the RFSO provides as follows:
All freestanding and *mobile pedestals* and freestanding storage units offered under this solicitation, *must meet the acceptance criteria provided in ANSI/BIFMA X5.9* when tested in accordance with the appropriate test from the referenced standard and purchase description.

[Emphasis added]
23. The RFSO initially required that the mandatory test reports be submitted with the proposals at the time of bid closing. Subparagraph 1.1.1 of Part 4 of the RFSO provides as follows:
Mandatory Technical Criteria must be submitted with the proposal (Failure to do so will render the bid non-responsive)
...
MT4 Test reports detailed at Annex A
MT5 Completion of test report forms as per Annex E
...
24. Annex E to the RFSO provides as follows:
... **TEST REPORT FORMS MUST ALSO BE COMPLETED FOR EACH SERIES OFFERED AND SUBMITTED WITH YOUR OFFER. FAILURE TO DO SO WILL RENDER YOUR OFFER NON-COMPLIANT AND NO FURTHER EVALUATION WILL BE UNDERTAKEN.**
...
25. In Annex E to the RFSO, the test report form for the mobile pedestal requires 12 separate tests from ANSI/BIFMA X5.9.¹³
26. On October 29, 2008, PWGSC issued amendment No. 001 to the RFSO, which extended the date for submitting test reports for products listed in the basket of goods to December 19, 2008, while the test reports for optional additional products were required before March 31, 2009. On November 18, 2008, PWGSC issued amendment No. 007, which extended the bid closing date to December 2, 2008, and further extended the date for submitting test reports for products listed in the basket of goods to December 30, 2008. The date for the submission of test reports for optional additional products remained unchanged.
27. On December 2, 2008, ISE submitted its proposal for the products in category 4, “Freestanding Office Desk Products and Components – General Office – Height Adjustable (seated position)”.
28. According to PWGSC, 23 bids were received in response to the RFSO, of which 10 were for the supply of products in category 4. PWGSC issued two standing offers for this category.

13. GIR, Exhibit 1 at 61.

29. In an e-mail dated December 26, 2008, ISE advised PWGSC that it would be unable to meet the December 30, 2008, deadline for the submission of three outstanding test reports and requested an extension to January 20, 2009.¹⁴ On December 29, 2008, PWGSC denied ISE's request for an extension.¹⁵ That same day, ISE submitted certain additional test reports, including the test report for the mobile pedestal.

30. Subsequent to the December 30, 2008, deadline for the submission of test reports, ISE attempted to submit other additional information. According to PWGSC, none of the information could be accepted for bid purposes, as the deadline for the submission of test reports had passed and, in any event, none of the information was relevant to the requirement for a test report with respect to the mobile pedestal.

31. On January 30, 2009, PWGSC advised ISE that its proposal had been deemed non-compliant, as the test report submitted with respect to the mobile pedestal was not in accordance with paragraph 6.2 of Annex A to the RFSO.

32. On February 5, 2009, ISE made an objection to PWGSC regarding its decision to declare ISE's proposal non-compliant. On February 6, 2009, PWGSC advised ISE that its decision would not change and confirmed that the test report submitted for the mobile pedestal was incomplete and did not meet the acceptance criteria provided in the ANSI/BIFMA requirements. That same day, ISE responded to PWGSC as follows: "It is our understanding that the tests that were completed on the pedestal were all that was required to meet the ANSI/BIFMA requirements."¹⁶

33. On February 17, 2009, ISE filed its complaint with the Tribunal.

TRIBUNAL'S ANALYSIS

34. Subsection 30.14(1) of the *CITT Act* requires that, in conducting an inquiry, the Tribunal limit its considerations to the subject matter of the complaint. Furthermore, at the conclusion of the inquiry, the Tribunal must determine whether the complaint is valid on the basis of whether the procedures and other requirements prescribed in respect of the designated contract have been observed. Section 11 of the *Regulations* further provides that the Tribunal is required to determine whether the procurement was conducted in accordance with the applicable trade agreements, which, in this instance, are *NAFTA*, the *AIT*, the *AGP* and the *CCFTA*.

35. PWGSC submitted that it was a mandatory requirement that suppliers submit specified test reports with respect to all the products that they identified in their bids. In particular, amongst the required test reports specified in Annex E to the RFSO, there is a test report form for mobile pedestals proposed by suppliers.¹⁷ The test report form lists 12 mandatory elements that must be tested based on the referenced ANSI/BIFMA standards, with the results provided with the supplier's bid.

36. PWGSC submitted that ISE's proposal included some of the required test reports, but that others were omitted. Specifically, it submitted that, while the proposal included a test report form with respect to mobile pedestals indicating that testing had been completed, the mandatory test reports substantiating such testing were not included.

14. GIR, Exhibit 4.

15. GIR, Exhibit 5.

16. GIR, Exhibit 13.

17. GIR, Exhibit 1 at 61.

37. In its comments on the GIR, ISE submitted that the ground of complaint accepted by the Tribunal is whether PWGSC incorrectly deemed ISE's proposal non-compliant even though the proposal conformed to the essential requirements of the tender documentation. ISE submitted that, according to the Merriam Webster online dictionary, "essential" means "of the utmost importance" and that, according to the Princeton University Web site at www.Princeton.edu, the word "essential" means "absolutely necessary; vitally necessary". It went on to question whether the delayed tests were absolutely necessary or of the utmost importance in the evaluation of its entire bid.

38. ISE submitted that the test requirements for the mobile pedestal comprised tests measuring strength, stability, safety and durability. The durability tests, by their nature, require the product to be tested over a long period of time. ISE submitted that testing started on November 19, 2008, and was not completed until January 30, 2009. It submitted that it included, with its proposal, results for all tests except the durability tests, as these were not completed in time by the testing lab. ISE submitted that the essential tests would be for strength, stability and safety and that any issues of durability would have been satisfied at the completion of the cycle tests, at which time ISE submitted the results.

39. ISE submitted that the RFSO called for approximately 93 separate tests and that it experienced a delay in submitting 6 of those tests, or roughly 6 percent. It contended that a delay in submitting 6 percent of the results is not sufficient cause to claim that the missing tests were of the utmost importance or absolutely necessary to evaluate its submission. ISE further submitted that the 6 delayed results were for one mobile pedestal out of a total submission of 34 mandatory products and 81 optional products, and that the failure to provide timely tests on a product that constituted less than 1 percent of ISE's total submission would not render it invalid, as this 1 percent would not be absolutely necessary to evaluate its submission.

40. ISE submitted that the basket of goods for which it submitted a response was specifically for height-adjustable desks, while there were other baskets of goods for non-adjustable furniture. It contended that the essential items, i.e. the items that were absolutely necessary to the evaluation, would be those items that provided adjustability; an item that was non-essential to the evaluation would be a fixed-height non-adjustable mobile filing pedestal.

41. The Tribunal notes that the deadline for the submission of mandatory test results was extended twice, first to December 19, 2008, and finally to December 30, 2008. ISE submitted a proposal on December 2, 2008. The Tribunal notes that ISE's proposal included some, but not all, of the required test results. On December 26, 2008, ISE requested a further extension for submitting the test reports. On December 29, 2008, PWGSC denied ISE's request. Subsequently, ISE submitted certain additional test reports, including the test report for the mobile pedestal. In addition, subsequent to the December 30, 2008, deadline for the filing of test reports, ISE attempted to submit other additional information regarding test reports.

42. ISE acknowledged that it was late in submitting six of the required test results.¹⁸ This point is uncontested. However, ISE argued that the missing test results were not "essential" to the evaluation and, therefore, did not provide a justifiable basis for PWGSC to declare its proposal non-compliant.

43. The Tribunal does not accept this argument. The testing requirements were clearly identified in the RFSO, as were the mandatory evaluation criteria. The consequence of failing to provide the required information was also clear: "Mandatory Technical Criteria must be submitted with the proposal (Failure to do so will render the bid non-responsive)".

18. Comments on the GIR at 1.

44. The Tribunal is of the view that it is the prerogative of the procurement authority to define its own procurement needs¹⁹ and, by extension, the mandatory requirements of the solicitation in respect of those needs. The Tribunal has indicated in the past that, “while PWGSC has the right to establish the parameters of an RFP, it must do so reasonably. PWGSC does not have licence to establish conditions that are impossible to meet.”²⁰ Thus, the prerogative of the procurement authority with regard to the definition of procurement needs is circumscribed by reasonableness. “Essential requirements” are those that are clearly “mandatory” under the terms of a solicitation. If a bidder believes any such requirement to be unreasonable, it is incumbent upon the bidder to take steps to seek relief in keeping with the time periods prescribed under section 6 of the *Regulations*. Absent such steps, to allow a bidder to summarily determine which requirements are “essential” and which are not would undermine the functioning and integrity of the procurement system.

45. Article 506(6) of the *AIT* provides as follows:

... The tender documents shall clearly identify the requirements of the procurement, the criteria that will be used in the evaluation of bids and the methods of weighting and evaluating the criteria.

46. Article 1015(4)(a) of *NAFTA* provides as follows:

[T]o be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and have been submitted by a supplier that complies with the conditions for participation.

47. Article XIII(4)(a) of the *AGP* provides as follows:

To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be from a supplier which complies with the conditions for participation. . . .

48. Article *Kbis*-10(1)(a) of the *CCFTA* provides that, at the time at which it is submitted, a tender must “conform to the essential requirements of the tender documentation.”

49. In this regard, in the absence of specific authority in the solicitation, the government institution has no discretion to disregard, modify or relax the mandatory requirements of the solicitation after the deadline for the submission of bids.

50. The responsibility for ensuring that a proposal is compliant with all essential elements of a solicitation ultimately resides with the bidder. In *Trans-Sol Aviation Service Inc.*,²¹ the Tribunal stated as follows:

11. The Tribunal is of the view that the responsibility for ensuring that a proposal is compliant with all essential elements of a solicitation and that it accurately reflects the bidder’s intention ultimately resides with the bidder. Accordingly, it is incumbent upon the bidder to exercise due diligence in the preparation of its proposal and to make sure that it is compliant with all essential elements

19. *Re Complaint Filed by FLIR Systems Ltd.* (25 July 2002), PR-2001-077 (CITT) at 15.

20. *Re Complaint Filed by MTS Allstream Inc.* (5 August 2005), PR-2004-061 (CITT) at para. 67.

21. *Re Complaint Filed by Trans-Sol Aviation Service Inc.* (1 May 2008), PR-2008-010 (CITT) at para. 11.

51. In *IBM Canada Ltd.*,²² the Tribunal stated as follows:

The Tribunal recognizes that compliance by potential suppliers with all the mandatory requirements of solicitation documents is one of the cornerstones to maintaining the integrity of any procurement system. Therefore, procuring entities must evaluate bidders' conformance with mandatory requirements thoroughly and strictly

52. Accordingly, the Tribunal finds that PWGSC did not breach the applicable trade agreements when it declared ISE's proposal non-compliant, in accordance with the terms of the RFSO.

53. In light of the foregoing, the Tribunal determines that the complaint is not valid.

Costs

54. The Tribunal awards PWGSC its reasonable costs incurred in responding to the complaint. In determining the amount of the cost award for the complaint case, the Tribunal considered its *Guideline for Fixing Costs in Procurement Complaint Proceedings* (the *Guideline*), which contemplates classification of the level of complexity of cases based on three criteria: the complexity of the procurement, the complexity of the complaint and the complexity of the complaint proceedings. The Tribunal's preliminary view is that this complaint case has a complexity level corresponding to the first level of complexity referred to in Appendix A of the *Guideline*. The procurement was moderately complex, as the requirement was for various types of furniture, within four different categories, to be provided to government departments and agencies. The complaint was simple, as it dealt with the matter of evaluation of proposals. The complaint proceedings were also simple, as there was only one intervener and no additional submissions. Accordingly, as contemplated by the *Guideline*, the Tribunal's preliminary indication of the amount of the cost award is \$1,000.

DETERMINATION OF THE TRIBUNAL

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

56. Pursuant to section 30.16 of the *CITT Act*, the Tribunal awards PWGSC its reasonable costs incurred in responding to the complaint, which costs are to be paid by ISE. The Tribunal's preliminary indication of the level of complexity for this complaint case is Level 1, and its preliminary indication of the amount of the cost award is \$1,000. 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 the *Guideline*. The Tribunal retains jurisdiction to establish the final amount of the award.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

22. *Re Complaint Filed by IBM Canada Ltd.* (5 November 1999), PR-99-020 (CITT) at 7.