Canadian International Trade Tribunal

Tribunal canadien du commerce extérieur

2025 CanLII 59520 (CA CITT)

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File PR-2025-010

Enviro Plus Duct Cleaning

Decision made
Thursday, June 5, 2025

Decision issued
Friday, June 20, 2025

Reasons issued
Thursday, June 26, 2025

IN THE MATTER OF a complaint filed pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*.

BY

ENVIRO PLUS DUCT CLEANING

AGAINST

THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT SERVICES

DECISION

With regard to the mandatory criterion M3, the Tribunal has no reason to dismiss the evaluation made by the Department of Public Works and Government Services with respect to the non-compliance of the bid submitted by Enviro Plus Duct Cleaning (Enviro). Consequently, Enviro's bid is properly dismissed as non-responsive. As a result, the other grounds of the complaint are moot. Consequently, the complaint does not disclose a reasonable indication of a breach of the applicable trade agreements. Therefore, pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal has decided not to conduct an inquiry into the complaint.

Eric Wildhaber
Eric Wildhaber
Presiding Member

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

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STATEMENT OF REASONS

[1] Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*[1] (CITT Act) provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*[2] (Regulations), a potential supplier may file a complaint with the Canadian International Trade 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. Subsection 30.13(1) of the CITT Act provides that, subject to the Regulations, after the Tribunal determines that a complaint complies with subsection 30.11(2) of the CITT Act, it must decide whether to conduct an inquiry into the complaint.

[2] The complaint filed by Enviro Plus Duct Cleaning (Enviro) on June 4, 2025, concerns a request for proposals (solicitation W6854-240353) issued by the Department of Public Works and Government Services (PWGSC), on behalf of the Department of National Defence, for duct cleaning services.

[3] The Tribunal notes that the record did not comply with the Tribunal's *Confidentiality Guidelines*[3] (Guidelines) until Enviro filed, on June 19, 2025, an updated public version and a confidential version of the documents contained in its complaint.

[4] Although Enviro had stated in its complaint form that it would be filing confidential information, all the documents provided were designated as public. Following email exchanges and a follow-up phone call from the Tribunal's Registry on June 9, 2025, Enviro stated that it intended to designate as confidential certain information it had provided.

[5] On June 12, 2025, having not received the documents, the Tribunal sent a letter to Enviro confirming receipt of the complaint and requesting that an updated public version and a confidential version of the documents be filed by June 16, 2025, at the latest, failing which the complaint could be dismissed.[4] Enviro subsequently submitted public and confidential versions of the documents on June 16, 2025; however, those versions still did not comply with the Guidelines. It was not until June 19, 2025, following additional follow-ups by the Registry, that the Tribunal received the public and confidential versions that were compliant with the Guidelines. Due to these circumstances, this decision was slightly delayed.

[6] Enviro alleges that PWGSC did not properly evaluate its bid against two mandatory criteria (M2 and M3) and did not comply with the requirement that the contract be awarded to the lowest bidder. Regarding the evaluation of the two mandatory criteria, Enviro maintains that it submitted the certifications required to satisfy criterion M2 and that it demonstrated the experience required for criterion M3.

[7] For the reasons set out below, the Tribunal has decided not to conduct an inquiry into the complaint.

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1 R.S.C., 1985, c. 47 (4th Supp.).

2 SOR/93-602.

3 *Confidentiality Guidelines*, online: https://www.citt-tcce.gc.ca/en/practices-and-procedures/confidentiality-guidelines.

4 See Exhibit PR-2025-010-02, p. 2–3.

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ANALYSIS

[8] Pursuant to sections 6 and 7 of the Regulations, after receiving a complaint that complies with subsection 30.11(2) of the CITT Act, the Tribunal must determine whether the following four conditions are met before it can conduct an inquiry:

(i) the complaint has been filed within the time limits prescribed by section 6 of the Regulations;
(ii) the complainant is a potential supplier;
(iii) the complaint is in respect of a designated contract; and
(iv) the information provided discloses a reasonable indication that the procurement process has not been conducted in accordance with the relevant trade agreements.[5]

[9] In this case, the Tribunal has decided not to conduct an inquiry into the complaint, since the Tribunal has no reason to dismiss the evaluation made by PWGSC that Enviro's bid did not comply with mandatory criterion M3. Consequently, Enviro's bid was properly dismissed as non-responsive. As a result, the other grounds of the complaint are moot. Consequently, the complaint does not disclose a reasonable indication of a breach of the applicable trade agreements.

[10] After reviewing the elements of the complaint, the Tribunal finds the following. On May 27, 2025, Enviro submitted grounds of objection to PWGSC.[6] On May 29, 2025, PWGSC provided a definitive response to the ground of complaint concerning mandatory criterion M3. This objection was submitted in a timely manner to both PWGSC and the Tribunal in accordance with the requirements of section 6 of the Regulations. The information in the complaint file indicates that PWGSC's response to Enviro's objection regarding mandatory criterion M2 has not yet been provided. However, as noted below, this has no bearing on this matter.

The ground of complaint regarding mandatory criterion M3 does not disclose a reasonable indication of a breach of an applicable trade agreement

[11] Mandatory criterion M3 requires a minimum of five years of experience in providing duct cleaning services and further states that the bidder must demonstrate that this experience includes at least the tasks listed in section 4.1 of the statement of work.[7] Enviro argues that it submitted six projects demonstrating that it had more than five years of experience in duct cleaning, which it believes demonstrates its compliance with criterion M3.

[12] In its correspondence dated May 29, 2025, PWGSC stated that only two of the six projects submitted by Enviro—amounting to less than five years of experience—demonstrated the required experience in relation to section 4.1 of the statement of work.

[13] In general, the Tribunal does not substitute its judgment for that of the bid evaluators, unless the evaluators failed in their obligation to properly evaluate a bidder's proposal, have ignored vital

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5 The Canadian Free Trade Agreement (CFTA) applies in this case.
6 Exhibit PR-2025-010-01.A, p. 73–74.
7 Exhibit PR-2025-010-01.A, p. 128. These tasks include, for example, using compressed air to clean diffusers and registers and cleaning inline lint filters.

information provided in a proposal, have based their evaluation on undisclosed criteria or have otherwise conducted the evaluation in a procedurally flawed way.[8]

[14] In this case, the Tribunal finds no such failure on PWGSC's part in the evaluation of Enviro's bid in respect of mandatory criterion M3. The Tribunal notes that the projects PWGSC evaluated as being non-compliant only state that duct cleaning services were provided at various locations. The Tribunal finds that Enviro did not establish any link between these projects and the tasks listed in section 4.1 of the statement of work. These projects were rejected on the ground that the project information was insufficient to support Enviro's proposal. It was incumbent upon Enviro to explicitly demonstrate the projects' compliance with the mandatory criteria.[9]

[15] Contrary to Enviro's argument, PWGSC is under no obligation to seek clarification from the references provided.[10] As stated in the request for proposals in subparagraph 10.2(a)(ii), PWGSC *may, but is under no obligation to*, contact any references provided to verify the information provided by bidders.[11] Therefore, PWGSC was under no obligation to contact Enviro's references to inquire about its experience. PWGSC was entitled to require an explicit and complete demonstration of Enviro's experience in its bid.

[16] Ultimately, since certain information supporting the required experience was missing from Enviro's bid, PWGSC would have been unable to accept that additional information from references regarding the nature of the tasks provided in these projects would make up for what should have been provided in the bid before the closing date of the request for proposals. A cornerstone of the competitive procurement system is the prohibition on repairing a bid or adding information to it after the bid submission period has closed.[12]

The other grounds of complaint are moot

[17] In short, Enviro's bid is non-responsive because it does not comply with mandatory criterion M3. PWGSC therefore rightly rejected it. Consequently, the other two grounds of complaint are moot.

[18] First, Enviro could not be considered the lowest bidder because its bid was non-compliant.

[19] Second, as stated above, although PWGSC has not yet responded definitively to Enviro's objection regarding evaluation criterion M2, a favourable outcome for Enviro on this point would not

8 *Samson & Associates v. Department of Public Works and Government Services* (13 April 2015), PR-2014-050 (CITT), paras. 35 et seq.; *Excel Human Resources Inc. v. Department of the Environment* (2 March 2012), PR-2011-043 (CITT) [*Excel*], para. 33; *Northern Lights Aerobatic Team, Inc. v. Department of Public Works and Government Services* (7 September 2005), PR-2005-004 (CITT), para. 52.

9 *TekTronix Canada Inc.* (15 December 2015), PR-2015-041 (CITT), para. 16; *Excel*, para. 34. Exhibit PR-2025-010-01.B (protected), p. 74–76.

10 *Rock Networks* (7 August 2019), PR-2019-009 (CITT), para. 23; *Integrated Procurement Technologies, Inc.* (14 April 2008), PR-2008-007 (CITT), para. 13.

11 Exhibit PR-2025-010-01.A, p. 94.

12 See *Ramida Enterprises Ltd. v. Department of the Environment* (9 January 2023), PR-2022-042 (CITT), para. 86; *Francis H.V.A.C. Services Ltd. v. Canada (Public Works and Government Services)*, 2017 FCA 165 (CanLII), para. 22.

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affect its situation, as its bid would still not comply with evaluation criterion M3 and would therefore still be non-responsive.

[20] These two other grounds of complaint are fundamentally moot.

OBSERVATIONS

[21] The Tribunal must make the following observations. The first concerns PWGSC and the second is intended as a general warning.

The tender documents have disappeared from the CanadaBuys and SAP Ariba websites

[22] The Tribunal notes that PWGSC has likely removed the tender documents from the CanadaBuys[13] and SAP Ariba websites, since they are no longer available for consultation. This change in PWGSC's retention practices is not an isolated case, as the Tribunal has observed on several occasions over approximately the past two years.

[23] Since the advent of electronic tendering systems several decades ago already, the continuous and permanent availability of tender documents on electronic sites has served as a historical reference tool, ensuring the transparency of the federal procurement system for the benefit of all stakeholders in this field. Yet the Tribunal has noticed the premature and largely unexplained disappearance of documents relating to awarded contracts, even recently, as in this case. The CanadaBuys and SAP Ariba websites have now been reduced to transactional repositories of only temporary interest. In this case, it appears that the tender documents were removed from the websites in question as soon as the contract was awarded or very shortly thereafter.

[24] Regardless of the reasons that led to this change in how these sites are managed, this new practice by PWGSC risks compromising timely access to justice for aggrieved bidders. The time limit of 10 working days for filing an objection or a complaint is already very restrictive.[14] Thus, the premature removal of reference documents for contracts awarded by PWGSC could have disastrous consequences for bidders looking for information for the purpose of seeking redress.

[25] It is important to note that this new practice prevents the bidding community from consulting the procedures PWGSC has followed in the past. This affects the ability to refer to the history of procurement methods, especially for informational purposes, during a new procurement cycle for

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13 It appears that the tender documents were not published on CanadaBuys in this case. The Tribunal notes that the CanadaBuys website is much easier to access than SAP Ariba, which requires the creation of an online account, while anyone can access the CanadaBuys website without an account.

14 Subsections 6(1) and (2) of the Regulations state the following:

> **6 (1)** Subject to subsections (2) and (3), a potential supplier who files a complaint with the Tribunal in accordance with section 30.11 of the Act shall do so 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.
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> **(2)** A potential supplier who has made an objection regarding a procurement relating to a designated contract 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.

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identical or similar products. Furthermore, the long-term retention of a history of government procurement documents from year to year is in the public interest for *a posteriori* control of the public administration's fulfilment of its responsibilities to use wisely public funds granted by Parliament and collected from taxpayers. This goes well beyond the responsibilities conferred on the Tribunal.

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[26] In the Tribunal's view, the permanent availability of documents relating to the history of public procurement is essential to ensuring the effective administration of administrative justice. Parliament conferred this responsibility on the Tribunal in accordance with the CITT Act and the Regulations. This mission may be complicated, or even compromised, at least in part, by PWGSC's new practice. To give just one reason why the new practice is causing difficulties: the Tribunal can no longer access the source that previously allowed it to conceptualize and verify the procurement processes initiated by the federal government through tender documents when a complaint is filed with the Tribunal.

[27] If PWGSC has not already done so, the Tribunal encourages it to reflect on the above points and, if appropriate, consider reviewing its current practice of removing tender documents. The Tribunal would welcome any observations PWGSC may wish to provide on this matter so that it can refer to them in future.

Artificial intelligence is suspected of having been misused

[28] If there had been an inquiry into this complaint, the Tribunal would have requested explanations from Enviro because it appears at first glance that the complaint was prepared, in whole or in part, by an artificial intelligence (AI) tool without sufficient human oversight. It is important to note that the Tribunal will systematically value any initiative aimed at optimizing access to justice, in particular through the benevolent use of AI.[15] However, in this case, Enviro potentially or likely submitted—not once, but twice—false sources of law that appear to have been created by AI: first when it filed its complaint, and a second time when it later submitted the confidential and public versions of its submissions (with the confidential information redacted). This means that, if there had been human error initially, there would have been at least one opportunity to make an adjustment. However, Enviro did not comment on the supplement to the public version of its complaint. It should be noted that the elements that concern the Tribunal are present in both versions of the complaint.

[29] The two clues or elements that point to a possible or likely misuse of AI are the following. First, Enviro claims at least once that a provision of a trade agreement cited in support of its arguments has some bearing, when in fact the provision does not read that way.[16] Second, the

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15 G7 leaders recently recognized "the potential of a human-centric approach to artificial intelligence (AI) to grow prosperity, benefit societies and address pressing global challenges", see G7 2025 Kananaskis, "G7 Leaders' Statement on AI for Prosperity" (17 June 2025), online: https://g7.canada.ca/en/news-and-media/news/g7-leaders-statement-on-ai-for-prosperity/.

16 See Exhibit PR-2025-010-01, p. 11. Enviro cites article 506(6) of the CFTA and states that it requires that "the criteria be applied in a transparent and objective manner" [translation]. However, article 506(6) is divided into 12 subparagraphs that describe the elements that each tender notice must include.

complaint also contains at least one reference to an alleged Tribunal precedent that simply does not exist.[17]

[30] It is now recognized that the use of AI tools can lead to the creation of legislative and jurisprudential sources of law that simply do not exist. The Tribunal may have witnessed that here.[18]

[31] When AI tools generate such fictitious sources, some say that the AI tool is "hallucinating". In the Tribunal's view, this word is too generous to describe the phenomenon. It implies that the AI tool was under the influence of a justifiable bias, a kind of "electronic brain fever" that prevented it from gaining perspective. The word is also confusing because it may imply somewhat that the creativity of AI is necessarily always benevolent or naive and that any deception is merely a technical obstacle or a temporary stage of development that will disappear on its own with time and experience, in the same way that many humans become wise with age. The Tribunal is reluctant to adopt anthropomorphic terminology for an electronic system, as humans must remain in control of the use of any technology related to our justice system, which is based on the rule of law.

[32] In short, in the Tribunal's view, human responsibility for truthfulness cannot be transferred, be it in our society in general or, more specifically, in interactions with our justice system. When an individual uses a tool that misleadingly suggests the existence of a legal framework that has never been sanctioned, enacted or ratified by a court, deceptions or falsehoods will inevitably occur. Whether they are intentional, "artificial" or not, such deceptions can occur by design or inadvertently.

[33] Whether such situations arise out of economic choice (for example, because of a lack of means to access competent legal counsel), overconfidence in the purported expertise of a given technology or some other reason, this is no excuse for "hallucinations" in submissions, be they intentional or inadvertent.

[34] As a general rule, and particularly before the justice system, it is essential to communicate true information. Any breach of this principle must be noted. In short, the Tribunal is of the opinion that AI must be used in a responsible and controlled manner, with systematic verification.

[35] In short, the Tribunal holds that AI cannot replace good and honest human decision-making.

[36] The Tribunal always gives the benefit of the doubt to everyone who appears before it and will do the same for Enviro despite the circumstances described above. There may be another explanation for the inconsistencies observed by the Tribunal. However, given the outcome of this complaint, and because the statutory and regulatory framework does not provide for it, the Tribunal is not required in this case to seek explanations from Enviro regarding its initial impressions or findings (which may prove to be inaccurate) before issuing these reasons.

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17 See Exhibit PR-2025-010-01, p. 11. Enviro cites a decision entitled *MDS Nordion* (PR-2001-041), which, according to Enviro, establishes "an obligation of reasonable verification prior to any disqualification" [translation]. The Tribunal notes that this decision does not appear to exist; file number PR-2001-041 is associated with a complaint by Fleetway Inc., into which the Tribunal did not conduct an inquiry.

18 V. Magesh et al., *Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools*, (2025) Journal of Empirical Legal Studies, online: https://dho.stanford.edu/wp-content/uploads/Legal_RAG_Hallucinations.pdf.

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[37] Nevertheless, if Enviro wishes to comment on these findings, it may submit its comments to the Tribunal within 15 days of receiving these reasons. If necessary, the Tribunal reserves the right to amend these reasons in the form of a postscript. The Tribunal has jurisdiction to rule on this matter and to amend these reasons if necessary.

[38] As examples, the Tribunal lists below a few cases that have dealt with the phenomenon of the misuse of AI.

[39] In *St. Michaels Investment Group Canada Inc.*,[19] the Tribunal noticed references to sources that appeared to have been fabricated. The Tribunal ordered the parties to ensure that their submissions, including any legal references cited in support of any claims, were accurate.

[40] In *Choi v. Lloyd's Register Canada Limited*,[20] the Canada Industrial Relations Board took a firm stance against the use of fictitious case law.

[41] Finally, in *Ko v. Li*,[21] the Ontario Superior Court of Justice took a similar position, expressing clear reservations about what appeared to be illusions or deceptions created by AI.

[42] These are, of course, just three examples of similar cases that are multiplying in Canada and elsewhere around the world.[22]

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19 *St. Michaels Investment Group Canada Inc. v. Department of Public Works and Government Services* (11 April 2024), PR-2023-042 (CITT), para. 36.

20 *Choi v. Lloyd's Register Canada Limited*, 2024 CIRB 1146, paras. 69, 72–79.

21 *Ko v. Li*, 2025 ONSC 2766, paras. 14–30.

22 See: "Les 'hallucinations de l'IA' s'invitent dans les tribunaux" (3 June 2025), online: https://ici.radio-canada.ca/nouvelle/2169646/intelligence-artificielle-invention-affaires-justice; "Factum containing fake case law likely generated by AI submitted in Ontario litigation (Ko v. Li)" (8 May 2025), online: https://www.grllp.com/blog/Factum-containing-fake-case-law-likely-generated-by-AI-submitted-in-Ontario-litigation-Ko-v.-Li -773; "Artificial Intelligence Hallucinates Case Law Introduced In a Canadian Court" (26 January 2024), online: https://www.gluckstein.com/news-item/artificial-intelligence-hallucinates-case-law-introduced-in-a-canadian-court; "High court tells UK lawyers to stop misuse of AI after fake case-law citations" (6 June 2025), online: https://www.theguardian.com/technology/2025/jun/06/high-court-tells-uk-lawyers-to-urgently-stop-misuse-of-ai-in-legal-work; V. Magesh et al., *Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools*, (2025) Journal of Empirical Legal Studies, online: https://dho.stanford.edu/wp-content/uploads/Legal_RAG_Hallucinations.pdf; "Unchartered Territories: Canadian Courts and Law Societies Grapple with the Use of Generative Artificial Intelligence Tools" (May 23, 2024), online: https://www.bennettjones.com/Insights/Blogs/Unchartered-Territories-Canadian-Courts-and-Law-Societies-Grapple-with-the-Use-of-Generative.

DECISION

[43] With regard to the mandatory criterion M3, the Tribunal has no reason to dismiss the evaluation made by PWGSC with respect to the non-compliance of the bid submitted by Enviro. Consequently, Enviro's bid is properly dismissed as non-responsive. As a result, the other grounds of the complaint are moot. Consequently, the complaint does not disclose a reasonable indication of a breach of the applicable trade agreements. Therefore, pursuant to subsection 30.13(1) of the CITT Act, the Tribunal has decided not to conduct an inquiry into the complaint.

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