

e-document	T-2744-23-ID 1
I S S U E D	FEDERAL COURT COUR FÉDÉRALE December 27, 2023 27 décembre 2023
	Josephine Chan
TOR	1

Court File No.

FEDERAL COURT

B E T W E E N:

UNIVERSAL PROTECTION SERVICE OF CANADA CORPORATION

Applicant

- and -

**ATTORNEY GENERAL OF CANADA and CANADIAN AIR TRANSPORT
SECURITY AUTHORITY**

Respondents

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a Notice of Appearance in Form 305 prescribed by the *Federal Court Rules* and serve it on the Applicant's solicitor, or where the Applicant is self represented, on the Applicant, **WITHIN 10 DAYS** after being served with this Notice of Application.

Copies of the *Federal Court Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGEMENT MAY BE
GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

Date: _____

Issued by: _____
(Registry Office)

Address of court office:

Federal Court of Canada
Toronto Local Office
180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

TO: **ATTORNEY GENERAL OF CANADA**
Department of Justice
284 Wellington Street
Ottawa, Ontario
K1A 0H8

Attention:
Shalene Curtis-Micallef
Deputy Attorney General of Canada

AND TO: **CANADIAN AIR TRANSPORT SECURITY AUTHORITY**
99 Bank Street
13th Floor
Ottawa, Ontario
K1P 6B9

APPLICATION

This is an application for judicial review in respect of a decision dated and communicated on or about November 23, 2023 (the “**Decision**”) to the Applicant, Universal Protection Service of Canada Corporation, by the Canadian Air Transport Security Authority (“**CATSA**”), advising that CATSA has accepted an offer submitted by another supplier for the provision of certain airport screening and security and related services (the “**Services**”). CATSA also advised that based on the Decision, it would be finalizing the contract with the other supplier, and not with the Applicant.

The Decision was issued pursuant to a Request for Proposals RFP23-1695-Stage 2 (“**RFP Stage 2**”) for the Services. The Applicant was a bidder for the supply of the Services.

THE APPLICANT MAKES AN APPLICATION FOR:

1. an Order declaring invalid or unlawful, or an Order to quash or set aside, in whole or in part the Decision;
2. an Order referring the matter back to CATSA for determination in accordance with such directions as the Court considers appropriate, including to act in accordance with its legal obligations and generally in accordance with the law, by conducting a full, prompt, fair and equitable evaluation of the bids submitted by the Applicant and other bidders;

3. an Order to do such acts or things that CATSA has unlawfully failed or refused to do or has unreasonably delayed in doing;
4. an Order declaring that CATSA should refrain from proceeding to finalize the contract with the other supplier pending a decision from this Court in respect of this Application;
5. an Order declaring that CATSA suspend any and all steps in the procurement process, and any other ancillary or related activities, pending a decision from this Court in respect of this Application;
6. an Order to terminate any contract entered into pursuant to the Decision, or alternatively a declaration that any such contract was entered into unlawfully;
7. an Order declaring that any other arrangements entered into, that in any way purport to provide a basis for the procurement of the Services pursuant to the RFP Stage 2, were entered into unlawfully;
8. an Order declaring that CATSA has failed to take appropriate measures as required by its governing legislation to promote transparency, openness, fairness and value for money in the bidding process for the Services;

9. an Order declaring that CATSA has failed to provide disclosure of the basic information on its negotiations of the contract, and any steps taken in finalizing the contract entered into based on the Decision;
10. a declaratory Order finding in favour of the Applicant's position in this proceeding, seeking a declaration of the rights as between the parties, based *inter alia* on the refusal of CATSA to act in accordance with Canadian law including its own governing legislation and procedures;
11. interim Orders to give effect to any of the above requests for relief, that the Court considers appropriate pending the final disposition of the Application;
12. costs of this Application, pursuant to Column V of Tariff B, as stipulated under Rule 400 of the *Federal Court Rules*; and
13. such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE APPLICATION ARE:

1. The authorized officials at CATSA have acted without jurisdiction, acted beyond their jurisdiction or refused to exercise their jurisdiction.
2. The authorized officials at CATSA have failed to conduct the procurement in accordance with rules of natural justice, procedural fairness or other procedure that they were required by law to observe.

3. The authorized officials at CATSA erred in law in making the Decision.
4. The authorized officials at CATSA based the Decision on an erroneous finding of fact without regard for the material before them.
5. The authorized officials at CATSA acted in other ways that were contrary to law.
6. Without limiting the foregoing, the grounds for this Application consist of reviewable errors of jurisdiction, law and fact made by the authorized officials at CATSA, including:
 - (a) Taking certain measures and failing to take other measures, resulting in the violation of the fundamental principles relating to ensuring the integrity of the procurement process, including transparency, openness, fairness, value for money, avoidance of unfair treatment and discrimination, bias and reasonable apprehension of bias, and imposition of arbitrary limitations on the procurement process;
 - (b) Failing to abide by and be subject to the common law duties applicable to the procurement process, including treating all bidders fairly and equitably, failing to act in a non-discriminatory manner and failing to act in good faith;
 - (c) Failing to conduct a competitive, open, transparent, and fair procurement process for the supply of the Services, as required by law and in a system that provides for an open and fair process of procurement;
 - (d) Failing to fully provide disclosure of relevant information concerning the procurement of the Services, including the nature of the work, the supply of goods or the rendering of services pursuant to the RFP Stage 2;

- (e) Failing to carry out the procurement process in a manner that provided equitable treatment;
 - (f) Failing to act in good faith and in a fair manner;
 - (g) Failing to act in a non-discriminatory manner;
 - (h) Engaging in irregular or unlawful conduct before, during and after the procurement process;
 - (i) Taking actions and failing to take actions that have harmed the integrity of the procurement process including by defeating the goal of ensuring the existence of a truly competitive, predictable and transparent bidding process that elicited creative solutions and ingenuity by the bidders in proposing the most cost effective solutions for CATSA; and
 - (j) Failure to strive to obtain best value through a competitive process that is fair, open and transparent.
7. The Applicant will rely on the terms of the RFP Stage 2 and all applicable laws including and without limitation the following: *Canadian Air Transportation Security Authority Act, Contracting Policy of CATSA, CATSA Corporate Bylaw No. 4, Financial Administration Act, Government Contracts Regulations, Crown Liability and Proceedings Act, Treasury Board Contracts Directives, Policy on the Planning and Management of Investments, Directive on the Management of Procurement, Department of Public Works and Government Services Act, Supply Manual prepared by the Acquisitions Policy and Process Directorate of PWGSC, section 18.1 of the Federal Court Act, and Rules 300 to 319 of the Federal Court Rules.*

8. The Applicant will also rely on such further and other grounds as counsel may advise and this Honourable Court may permit.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

1. The record of the procurement process in relation to No. RFP23-1695-Stage 2 for the Services and all other documents and records related to the procurement process, including all submissions made by the various bidders, and correspondence between CATSA and the other bidders related to the procurement process and the rendering of the Decision;
2. Correspondence between CATSA and the Applicant before and after the rendering of the Decision, including the Decision;
3. An affidavit or affidavits in support of the Application;
4. Application Record of the Applicant; and
5. Such further and other materials as counsel may advise and this Honourable Court may permit.

The Applicant requests that the responsible Ministers send a certified copy of the following material that is not in the possession of the Applicant, but is in their possession, to the Applicant and to the Registry, pursuant to Rule 317 of the *Federal Court Rules*:

1. Any material consulted or relied upon by the authorized officials at CATSA in making the Decision, any evaluation matrix, scoring of any bidders proposal, evaluation rubric, memo, handwritten note, minutes of any meeting, and including the overall evaluation results of the Applicant's bid and that of the successful bidder and the rationale for the Decision;
2. The evaluation criteria, selection methodology as well as any other information used in assessing the competing bids and the making of the selection of the successful bidder;
3. Any material on the relative strengths and weaknesses of the successful bidder's submission relative to the bid of the Applicant, including material setting out the strengths, weaknesses and deficiencies of all the competing bids;
4. Any material reporting to CATSA management or the CATSA Board of Directors on the basis of the Decision and awarding the contract to the successful bidder, and the basis of any such report or recommendation;
5. Any by-laws, policies, procedures, documents and records relied upon or used in connection with the assessment and evaluation of the competing bids;
6. Any material related to the issuance of the RFP Stage 2, both before and after issuance, including all amendments and other documents and records issued since issuance in relation to the solicitation and procurement;

7. The materials constituting the record of the procurement process for the Services and all other documents and records related to the procurement process, including all submissions made by the various bidders, and correspondence between CATSA and the other bidders related to the procurement process;

8. Correspondence between CATSA and the other bidders participating in the procurement process, both before and after the rendering of the Decision;

9. The materials related to the negotiation or conclusion of any contract entered into as a result of the Decision, with the successful bidder;

10. In particular, and without limiting the foregoing requested to be filed pursuant to Rule 317, the Applicant specifically requests the following that is in the possession of CATSA that would provide for the terms and conditions of the contract to be negotiated with the successful bidder pursuant to the RFP Stage 2, including:

- (a) The records and documents evidencing the approval of the Treasury Board, Transport Canada or any other Ministry of the Government of Canada, for the issuance of the RFP Stage 2, including the terms of the RFP Stage 2;
- (b) The written approvals obtained pursuant to any government approval process, including of the CATSA Board of Directors and

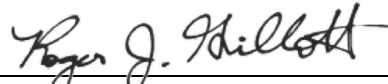
management of CATSA, for the RFP Stage 2 and the resulting contract negotiations and finalized contract;

- (c) The contract requests and authorizations required to be obtained by CATSA, including an accurate description of the terms and conditions requiring approval, and any deviations from applicable policies and procedures;
- (d) All records and documents relied upon by the CATSA Board of Directors, and the management of CATSA, in accordance with the requirements of the CATSA governing legislation, by-laws and procedures with respect to the RFP Stage 2 process, the making of the Decision, and the finalizing of the contract;
- (e) All contractual terms and forms of contract to be entered into with the successful bidder, including all amendments, whether prepared before the issuance of the RFP Stage 2, during the RFP Stage 2 process, and before and after the making of the Decision;
- (f) Any change to the Services or deviation requests made to the CATSA Board of Directors, or the management of CATSA, or to any government body, related to the contract to be finalized with the successful bidder; and

- (g) Any change requests related to the provision of the Services to CATSA by the successful bidder, including in relation to price, qualifications, quality, delivery, or other terms as set out in the RFP Stage 2, and any supporting records and documents.

11. Such further and other documents as this Honourable Court may permit.

Dated at Toronto, Ontario, this 22nd day of December, 2023.



OSLER, HOSKIN & HARCOURT LLP
100 King Street West, Suite 6100
P.O. Box 50
1 First Canadian Place
Toronto, ON M5X 1B8

Roger Gillott
LSO#: 37816L
rgillott@osler.com
(416) 862-6818
(416) 862-6818 (fax)

Solicitors for the Applicant

Universal Protection Service of Canada
Corporation

Court File No.

FEDERAL COURT

B E T W E E N:

UNIVERSAL PROTECTION SERVICE
OF CANADA CORPORATION

Applicant

- and -

ATTORNEY GENERAL OF CANADA
and CANADIAN AIR TRANSPORT
SECURITY AUTHORITY

Respondents

NOTICE OF APPLICATION

Osler, Hoskin & Harcourt LLP
100 King Street West, Suite 6100
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

Roger Gillott
LSO#: 37816L
rgillott@osler.com
(416) 862-6818
(416) 862-6818 (fax)

Solicitors for the Applicant

Universal Protection Service of Canada
Corporation