



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2014-009

Monroe Solutions Group Inc.

*Decision made
Monday, May 12, 2014*

*Decision issued
Tuesday, May 13, 2014*

*Reasons issued
Thursday, May 22, 2014*

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

BY

MONROE SOLUTIONS GROUP INC.

AGAINST

THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT SERVICES

DECISION

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.

Ann Penner
Ann Penner
Presiding Member

Gillian Burnett
Gillian Burnett
Secretary

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

STATEMENT OF REASONS

1. Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,² a potential supplier may file a complaint with the Canadian International Trade Tribunal (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. 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 shall decide whether to conduct an inquiry into the complaint.

SUMMARY OF THE COMPLAINT

2. The complaint relates to a Call for Proposals (CFP) (Solicitation No. W2207-12CSSP/B) issued by the Department of Public Works and Government Services (PWGSC) on behalf of Defence Research and Development Canada (DRDC) for projects contributing to the development of science and technology solutions addressing Canada's public safety and security priorities.

3. Monroe Solutions Group Inc. (Monroe) alleged that PWGSC improperly evaluated its proposal by considering part of it to be based on "anecdotal evidence". In Monroe's view, the term "anecdotal evidence" devalued the scoring of its proposed formal week-long testing program that included four active duty Canadian Forces bomb technicians. As a remedy, Monroe requested 10 percent of the contract value (i.e. \$150,000).

BACKGROUND INFORMATION

4. On June 24, 2013, PWGSC issued the CFP with a bid closing date of July 18, 2013. Monroe submitted its synopsis proposal on July 18, 2013.

5. On September 16, 2013, DRDC informed Monroe that its synopsis proposal did not rank high enough to be considered for a full proposal. On October 11, 2013, DRDC sent Monroe the evaluator's comments regarding the technical point-rated evaluation criteria.

6. On November 20, 2013, Monroe requested that PWGSC provide the name of a person to whom it could request further details on where its proposal fell short.

7. On November 21 and 28, 2013, PWGSC responded to Monroe's questions as to whether a particular individual was involved in the evaluation of its proposal. PWGSC repeatedly denied that the particular individual had been involved.

8. On February 19, 2014, Monroe objected to the PWGSC evaluator's conclusion that a week-long testing program by four active duty Canadian Forces bomb technicians was anecdotal evidence. It further asked how this conclusion could have been reached if the particular individual about whom it had already expressed concerns had not been involved in the evaluation.

9. On February 26, 2014, PWGSC responded by stating that it had done a thorough investigation of Monroe's complaints, had informed Monroe of the conclusion of that investigation and now considered the matter closed.

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

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

10. On February 26, 2014, Monroe again asked for an explanation of how PWGSC could consider its proposal as only providing anecdotal evidence.
11. On March 26, 2014, PWGSC provided Monroe with a more fulsome explanation of why projects that scored well were not ultimately selected for funding.
12. On April 28, 2014, Monroe indicated to PWGSC that it was not satisfied with this response and that it was going to submit a formal complaint to the Office of the Procurement Ombudsman.
13. On April 28, 2014, PWGSC left Monroe a voicemail and followed up on May 1, 2014, with an e-mail stating that Monroe's proposal had not received the minimal pass mark and, therefore, could not have been further considered.
14. On May 1, 2014, Monroe filed a formal complaint with the Office of the Procurement Ombudsman. On May 2, 2014, the Office of the Procurement Ombudsman indicated that it was unable to investigate Monroe's complaint, as it related to a contract with a value over \$100,000. It informed Monroe that it could contact the Tribunal, should it wish to pursue its complaint further.
15. PWGSC again addressed Monroe's concerns regarding the evaluation of its proposal, by telephone on May 2, 2014, and by e-mail on May 5, 2014, and confirmed that the evaluation results for Monroe's proposal remained unchanged.
16. On May 9, 2014, Monroe filed its complaint with the Tribunal.

TRIBUNAL ANALYSIS

17. Upon receipt of a complaint that complies with subsection 30.11(2) of the *CITT Act*, the Tribunal must determine whether the complaint complies with the requirements of sections 6 and 7 of the *Regulations*. As the Tribunal typically applies sections 6 and 7 consecutively,³ it will first decide whether the complaint was filed within the time limits prescribed by section 6 before considering whether it meets the conditions set out in section 7.⁴
18. 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."
19. Subsection 6(2) of the *Regulations* 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."

3. *6979611 Canada Inc.* (18 August 2009), PR-2009-039 (CITT) at para. 5; *Agusta Westland International Limited* (24 November 2004), PR-2004-041 (CITT).

4. Section 7 of the *Regulations* sets out the following three conditions: (i) that the complainant is a potential supplier; (ii) that the complaint is in respect of a designated contract; and (iii) that the information provided by the complainant discloses a reasonable indication that the procurement was not conducted in accordance with an applicable trade agreement.

20. The deadlines set out in section 6 of the *Regulations* are rigid and strictly enforced. The Tribunal has consistently held that time is of the essence in procurement matters and that bidders should not take a “wait and see” attitude.⁵ Rather, they must challenge problems as soon as they become aware or reasonably should have become aware of them in order to ensure that their complaints are submitted to the Tribunal in a timely manner.

21. Based on the evidence in the complaint, Monroe did not meet the deadlines of section 6 of the *Regulations*. As noted above, on October 11, 2013, Monroe received the comments from the DRDC evaluator that form the basis of its complaint (i.e. that its proposed week-long testing program was “anecdotal evidence”). Therefore, the Tribunal considers October 11, 2013, to be the date on which Monroe knew or reasonably should have known the basis of its complaint. Nevertheless, Monroe did not take any steps to address its concerns until November 20, 2013, when it requested the name of a person to whom it could speak about the supposed shortcomings of its proposal. November 20, 2013, is clearly past the 10-working-day deadline set out in section 6 for either making an objection to the government institution or filing a complaint with the Tribunal. Thus, Monroe’s complaint is late.

22. Even if the Tribunal were to assume that Monroe had made an objection within the prescribed time period, Monroe should have conclusively known that PWGSC had denied it relief on February 26, 2014 when PWGSC unequivocally declared its investigation into Monroe’s concerns to be “closed”. Once again, Monroe should have filed its complaint with the Tribunal within 10 working days of February 26, 2014 (i.e. by March 12, 2014) to meet the deadlines set out in section 6 of the *Regulations*. Given that it did not do so until May 9, 2014, the Tribunal can only declare Monroe’s complaint to be late.

23. As such, it is not necessary for the Tribunal to consider whether Monroe’s complaint meets the other conditions for inquiry set out in section 7 of the *Regulations*.

DECISION

24. Pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal has decided not to conduct an inquiry into the complaint.

Ann Penner

Ann Penner

Presiding Member

5. *Teledyne Webb Research, a business unit of Teledyne Benthos, Inc.* (20 October 2011), PR-2011-038 (CITT) at para. 17; *The Corporate Research Group Ltd., operating as CRG Consulting* (26 January 2010), PR-2009-075 (CITT) at para. 24; *IBM Canada Ltd. v. Hewlett Packard (Canada) Ltd.*, 2002 FCA 284 (CanLII).