



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2014-013

Marathon Management Company

*Decision made
Tuesday, May 27, 2014*

*Decision and reasons issued
Wednesday, May 28, 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

MARATHON MANAGEMENT COMPANY

AGAINST

THE ROYAL CANADIAN MOUNTED POLICE

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.

Pasquale Michael Saroli
Pasquale Michael Saroli
Presiding Member

Gillian Burnett
Gillian Burnett
Secretary

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.
2. The complaint relates to a Request for Proposal (RFP) (Solicitation No. M0077-13-G308) by the Royal Canadian Mounted Police (RCMP) for the provision of tamperproof evidence bags of various sizes.
3. Marathon Management Company (Marathon) alleged that the RCMP unfairly disqualified its pre-award sample because of minor deviations. Marathon argued that, had it been notified by the RCMP of these deviations, it would have been able to make new pre-award samples in a timely manner.
4. 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) states that “[a] potential supplier who 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” [emphasis added].
5. 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 to either 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. By “actual knowledge of the denial of relief”, the *Regulations* contemplate explicit rejection of a complainant’s requested relief (for example, in a written reply rejecting the complainant’s position). In past instances, the Tribunal has interpreted “constructive knowledge of the denial of relief” as other non-explicit situations constituting the effective *denial of relief*, including where, after the passage of a reasonable period of time, the complainant’s position has yet to be addressed by the government institution.
6. On the basis of the information contained in Marathon’s complaint form, the Tribunal finds that Marathon made an *objection*, within the meaning of that term for the purposes of subsection 6(2) of the *Regulations*, to the RCMP within 10 working days from the date on which it became aware of its ground of complaint. In this regard, the Tribunal considers that Marathon became aware of its ground of complaint in respect of the procurement in issue on May 14, 2014, when the RCMP sent it an e-mail of the same date attaching a letter dated May 9, 2014, which advised that its proposal was not technically compliant. Having been notified by the RCMP on May 14, 2014, that its pre-contract award sample was unacceptable and had therefore been disqualified for technical non-compliance, Marathon, according to the complaint, made an objection to the RCMP on May 26, 2014, followed by a complaint to the Tribunal on the same day.

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

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

7. However, as of the date on which the complaint was filed, a response from the RCMP to Marathon's objection of May 26, 2014, remains pending, with no explicit *denial of relief* or copy of a response to its objection having been provided to the Tribunal.

8. With a reply from the RCMP to Marathon's objection pending, and in the absence of a *denial of relief*, as required by subsection 6(2) of the *Regulations*, the complaint is premature.

9. Of course, the Tribunal's decision does not preclude the possibility of a future complaint if and when Marathon receives a denial of relief in response to its objection from the RCMP.

10. Should Marathon file a new complaint, it must do so within the time limits prescribed by subsection 6(2) of the *Regulations*. In that event, Marathon may request that the documentation already filed with the Tribunal be joined to the new complaint. It must also ensure that the complaint is properly documented (including a copy of the solicitation itself, Marathon's complete proposal, a clear and detailed statement of the substantive and factual grounds of the complaint, and any documents supporting the allegations made in the complaint).

DECISION

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

Pasquale Michaele Saroli

Pasquale Michaele Saroli
Presiding Member