



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2014-036

Bosch Rexroth B.V.

*Decision made
Wednesday, October 29, 2014*

*Decision and reasons issued
Thursday, October 30, 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

BOSCH REXROTH B.V.

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. Since the complainant has not yet received a response to its objection to the government institution, the complaint is premature.

Ann Penner
Ann Penner
Presiding Member

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 (Solicitation No. 31184-143772/A) issued on May 15, 2014, by the Department of Public Works and Government Services (PWGSC) on behalf of the National Research Council of Canada for the provision of a segmented wave generator.
3. Bosch Rexroth B.V. (Bosch) alleged that PWGSC incorrectly declared its proposal non-compliant. Specifically, Bosch alleged that its proposal had been scored incorrectly during the technical evaluation process. Bosch also alleged a lack of transparency on the part of PWGSC, as it was not able to compare its rating to those of its competitors and, in particular, to that of the successful bidder, Akamina Technologies Inc.
4. On October 28, 2014, Bosch sent a letter of objection to PWGSC regarding its decision to declare its proposal non-compliant. Bosch filed its complaint with the Tribunal that same day.
5. 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.”
6. In this case, it is clear that Bosch has not yet received a denial of relief because its letter of objection was sent to PWGSC on the very same day as its complaint was filed. Therefore, it remains possible that PWGSC will provide a positive response to Bosch’s objection and grant the requested relief. Until such time as the requested relief is denied by PWGSC, the Tribunal is unable to determine whether there is a reasonable indication that the procurement was not carried out in accordance with the trade agreements. Consequently, the Tribunal finds that Bosch’s complaint is premature.
7. The Tribunal’s finding does not however preclude Bosch from filing a complaint in the future if and when PWGSC responds to its letter of objection or fails to do so within a reasonable amount of time. In the event that Bosch does file a new complaint, it must do so within the time limits specified in the *Regulations* and ensure that the complaint is accompanied by all relevant documentation, as required by subsection 30.11(1) of the *CITT Act*. The Tribunal notes that not all documents required by that provision were provided by Bosch with the current complaint; accordingly, it should remedy any deficiencies if and when it decides to file a new complaint.

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

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

DECISION

8. 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