



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2014-042

M. Bourjon

*Decision made
Friday, November 26, 2014*

*Decision and reasons issued
Monday, December 1, 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

M. BOURJON

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.

Daniel Petit

Daniel Petit
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 a Supply Arrangement (RFSA) (Solicitation No. EN966-140305/D) by the Department of Public Works and Government Services (PWGSC) for the modernization of the Translation Bureau's directory of linguistic services suppliers. The Translation Bureau is an agency that reports to PWGSC.

3. PWGSC determined that M. Bourjon's (Ms. Bourjon) proposal was non-compliant on the basis that her experience was insufficient with regard to the requirements of the RFSA and some of her references were unable to validate the relevant experience required in the RFSA.

4. Ms. Bourjon now claims that her proposal was arbitrarily determined to be non-compliant as PWGSC, during its assessment, did not take into account the entire scope of the experience found in her proposal and/or did not correctly evaluate the relevant experience required in the RFSA. She also claims that PWGSC acted unreasonably by contacting only one of her references to validate the experience included in the proposal.

5. The RFSA was posted on February 10, 2014. The solicitation closed on March 31, 2014. Ms. Bourjon submitted her proposal in March 2014.

6. On August 21, 2014, PWGSC informed Ms. Bourjon that it had determined that her proposal was non-compliant. On the same day, Ms. Bourjon requested details on the rationale for this decision; she reiterated her request on August 25, 2014.

7. PWGSC provided certain additional information in an e-mail sent on August 27, 2014, to which Ms. Bourjon replied the same day voicing her disagreement.

8. In an e-mail dated September 2, 2014, PWGSC told Ms. Bourjon that its assessment would remain the same and indicated the various recourse mechanisms at her disposal, such as filing a complaint with the Tribunal.

9. Ms. Bourjon filed her complaint with the Tribunal on November 20, 2014, and additional information and documents on November 24, 2014. The complaint was then considered properly documented.

10. 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."

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

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

11. 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.”

12. Under these provisions, a potential supplier 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 file a complaint with the Tribunal. Moreover, if the potential supplier objects to the government institution, it may file a complaint with the Tribunal within 10 working days from the date on which it was denied relief by the government institution.

13. Based on the information found in the complaint, the Tribunal notes that Ms. Bourjon became aware of her ground of complaint at the latest on August 27, 2014, i.e. when PWGSC provided additional details supporting its decision to reject her proposal. As well, she objected to PWGSC’s evaluation of her proposal on the same day.

14. It is also apparent that on September 2, 2014, PWGSC informed Ms. Bourjon of its decision to maintain its evaluation results. The Tribunal therefore finds that Ms. Bourjon became aware of PWGSC’s denial of relief on September 2, 2014.

15. Consequently, in accordance with subsection 6(2) of the *Regulations*, Ms. Bourjon had 10 working days from September 2, 2014, that is until September 16, 2014, at the latest, to file a complaint with the Tribunal.

16. Therefore, since Ms. Bourjon’s complaint was filed more than two months after September 2, 2014, the complaint was filed outside the time limit established in the *Regulations*.

DECISION

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

Daniel Petit
Daniel Petit
Presiding Member