



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2014-044

Monroe Solutions Group Inc.

*Decision made
Thursday, December 18, 2014*

*Decision and reasons issued
Monday, December 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.

Serge Fréchette

Serge Fréchette
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 related to a Request for Proposal (RFP) (Solicitation No. W2207-12CSSPE) by the Department of Public Works and Government Services (PWGSC) on behalf of Defence Research and Development Canada (DRDC). According to the *Canadian Safety and Security Program Call for Proposals (CFP): Bidder Guidebook – Call 003* attached to the RFP, the call for proposal process consisted of three stages: Stage One – Synopsis, Stage Two – Full Proposal and Stage Three – Contracting. The information provided from the bidders on Stage One and Stage Two was used to establish a pool of pre-qualified bidders while Stage Three focussed on the contracting process.

3. Monroe Solutions Group Inc. (Monroe) alleged that PWGSC did not properly evaluate its proposal based on reasons which are inconsistent with the views of Explosive Ordnance Disposal (EOD) experts and the project's supporters.

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. The Tribunal finds that Monroe made an *objection*, within the meaning of that term for purposes of subsection 6(2) of the *Regulations*, to PWGSC regarding the procurement at issue, within 10 working days from the date on which it became aware of its ground of complaint, which the Tribunal considers to be December 3, 2014. On December 3, 2014, PWGSC notified Monroe that "the Synopsis Proposal entitled

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

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

‘CSSP 0103 Improved Bomb Detection Robotics’ was not recommended to submit a full proposal from the Review Committee due to Multi-year program direction.” On December 10, 2014, Monroe wrote an e-mail of objection to PWGSC.

7. However, as of the date on which the complaint was filed, a response by PWGSC to Monroe’s e-mail of December 10, 2014, remains pending. No explicit *denial of relief* or copy of a response to its objection has been provided to the Tribunal. In fact, it is noteworthy that in PWGSC’s notification to Monroe on December 3, 2014, PWGSC additionally indicated the following: “. . . if you have any questions regarding your evaluation we will be answering them after the CSSP awards announcements.”

8. With a reply from PWGSC to Monroe’s objection pending and apparently forthcoming, and in the absence of a *denial of relief*, as required by subsection 6(2) of the *Regulations*, the complaint is premature.

9. The Tribunal’s decision does not preclude the possibility of a future complaint if and when Monroe receives a denial of relief in response to its objection from PWGSC.

10. Should Monroe file a new complaint, it must do so within the time limits prescribed by subsection 6(2) of the *Regulations*. In that event, Monroe may request that the documentation already filed with the Tribunal be joined to the new 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.

Serge Fréchette
Serge Fréchette
Presiding Member