



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2014-058

2040077 Ontario Inc.  
o/a FDF Group

*Decision and reasons issued  
Friday, February 27, 2015*

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**

**2040077 ONTARIO INC. O/A FDF GROUP**

**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.

Peter Burn  
Peter Burn  
Presiding Member

## STATEMENT OF REASONS

1. Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,<sup>2</sup> 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) issued by the Department of Public Works and Government Services (PWGSC), on behalf of the Department of National Defence, for the supply of urethane dumbbells for the Stadacona Sports and Fitness Centre (Solicitation No. W010S-15A032/A).
3. 2040077 Ontario Inc. o/a FDF Group (FDF) alleged that the contract was awarded to a supplier that did not meet the mandatory criteria set forth in the RFP. Specifically, the bid solicitation documents required that the dumbbells be “100% manufactured in the US”. FDF alleged that the products to be supplied by the successful bidder are assembled in the United States using parts manufactured in China.
4. FDF has requested that the bids be re-evaluated.
5. The solicitation was issued by PWGSC on November 12, 2014. PWGSC additionally issued three amendments to the solicitation on November 21, December 12 and December 15, 2014. Amongst other changes (which are not relevant to this complaint), the second amendment added the “100% manufactured in the US” specification to Annex A – Statement of Requirement,<sup>3</sup> and the third amendment changed the delivery date from January 18 to March 31, 2015.<sup>4</sup>
6. The bid closing date was December 18, 2014.
7. The contract was awarded on January 28, 2015.
8. On February 2, 2015, FDF sent a letter of objection to PWGSC explaining its concerns that the contract had been awarded to a non-compliant bidder.
9. Between February 2 and February 4, 2015, FDF made additional attempts to contact PWGSC.
10. On February 4, 2015, PWGSC replied that it was “looking into this”, but that it “can’t discuss [the matter] any further at this time.”<sup>5</sup>
11. On February 19, 2015, FDF filed its complaint with the Tribunal.
12. 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

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

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

3. See Solicitation Amendment No. 002 filed with the Tribunal on February 19, 2015.

4. See Solicitation Amendment No. 003 filed with the Tribunal on February 19, 2015.

5. See e-mail correspondence filed with the Tribunal on February 19, 2015, “RE: W010S-15A032/A Question?”.

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.”

13. The Tribunal notes that FDF’s objection to PWGSC on February 2, 2015, was made within 10 days of FDF having discovered the ground of its complaint. However, PWGSC’s response states that it is looking into the matter and that it cannot discuss the issue *at this time*, indicating that it intends to discuss the matter with FDF at a later time. Thus, it is clear that FDF has not yet received a formal denial of relief with respect to its alleged ground of complaint, as set out in subsection 6(2) of the *Regulations*.

14. As a result of the foregoing, the Tribunal finds that the complaint is premature.

15. The Tribunal’s decision does not preclude FDF from filing a new complaint within 10 working days of receiving a denial of relief from PWGSC. Alternatively, if PWGSC fails to give a response to FDF’s objection within a reasonable time, FDF may file another complaint with the Tribunal. In either event, upon filing a new complaint, FDF may request that the documentation already filed with the Tribunal be joined to the new complaint.

## **DECISION**

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

Peter Burn

Peter Burn

Presiding Member