



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2014-046

Monroe Solutions Group Inc.

*Decision made
Monday, December 22, 2014*

*Decision and reasons issued
Tuesday, December 23, 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. EN578-14BCIP/A) by the Department of Public Works and Government Services (PWGSC).

3. Monroe Solutions Group Inc. (Monroe) alleged that, in providing reasons which are inconsistent with the views of global explosive ordnance disposal experts, PWGSC did not properly evaluate its proposal.

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 the 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 5, 2014. On December 5, 2014, PWGSC notified Monroe, by letter, that its proposal was deemed non-compliant and did not proceed to Stage Two - Point-related Criteria. On December 5, 2014, Monroe wrote a series of e-mails objecting to PWGSC. On December 16, 2014, PWGSC indicated that it would conduct another review of Monroe’s proposal.

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

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

7. Thus, as of the date on which the complaint was filed, a final response by PWGSC to Monroe's objection of December 5, 2014, remained pending. No explicit *denial of relief* or copy of a final response to its objection, subsequent to the second review indicated by PWGSC, has been provided to the Tribunal.

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