



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2015-008

Simex Defence Inc.

*Decision made
Monday, May 25, 2015*

*Decision and reasons issued
Tuesday, May 26, 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

SIMEX DEFENCE 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. 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.

COMPLAINT

2. This is a complaint by Simex Defence Inc. (Simex) concerning a Request for Proposal (RFP) (Solicitation No. W8482-156490/A) for the supply of five data diodes of part FDD/HW/FFHDD by the Department of Public Works and Government Services (PWGSC). PWGSC administered the procurement process for the Department of National Defence.

3. Simex complained that PWGSC disqualified its bid by relying on inaccurate product literature from the manufacturer. It argued that PWGSC wrongly concluded that the data diodes failed to meet the mandatory requirements of the RFP and then awarded the contract to EMCC Electronics Inc. (EMCC), even though EMCC supplied the same product as Simex had bid, but at a higher cost.

4. As a remedy, Simex requested that PWGSC terminate the contract with EMCC and award it to Simex. Alternatively, Simex requested that PWGSC compensate it by an amount equal to its loss of profit.

PROCUREMENT PROCESS

5. On March 5, 2015, PWGSC issued the RFP.

6. On March 10, 2015, Simex submitted its proposal in response to the RFP.

7. On April 1, 2015, PWGSC informed Simex that its proposal did not meet the mandatory requirements and that PWGSC had disqualified its proposal as a result.

8. On April 1, 2015, Simex e-mailed PWGSC to inquire as to why PWGSC had deemed its proposal non-compliant. PWGSC did not respond.

9. On May 14, 2015, Simex e-mailed PWGSC again to seek clarification. On May 15, 2015, Simex e-mailed PWGSC yet again, alleging that the winning bidder's proposal was also non-compliant. As of this date, no response from PWGSC has been filed with the Tribunal.

10. On May 20, 2015, Simex filed its complaint with the Tribunal.

ANALYSIS

11. Subsection 6(2) of the *Regulations* provides that a potential supplier may file a complaint with the Tribunal where it has made an objection to the relevant government institution and that government

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

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

institution has denied it relief. This is to be “. . . 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. Simex made its objection to PWGSC on April 1, 2015. The Tribunal notes that this is within 10 working days of when Simex discovered the ground of its complaint. As noted above, PWGSC did not respond.

13. On May 15, 2015, Simex provided PWGSC with additional information to consider as part of its objection that was still unanswered. Given that PWGSC has not provided a response to the objection made by Simex, the Tribunal finds that Simex has not yet received a denial of relief with respect to its alleged ground of complaint, as set out in subsection 6(2) of the *Regulations*.

14. Consequently, the Tribunal finds the complaint to be premature.

15. The Tribunal’s decision does not preclude Simex from returning to the Tribunal within 10 working days of receiving a denial of relief from PWGSC. Specifically, if PWGSC fails to give a response to Simex’s objections within 30 days of the issuance of these reasons, the Tribunal will deem the failure to respond to be a constructive denial of relief. Simex may then file a new complaint with the Tribunal, within 10 working days following that date.

16. In the event that Simex files a new complaint, the Tribunal directs Simex to pay particular attention to the filing requirements of subsections 30.11(1) and (2) of the *CITT Act*. In particular, Simex should demonstrate that the complaint relates to a designated contract subject to the trade agreements, in accordance with section 3 of the *Regulations*, and provide the complete solicitation documents. Simex may also request that the Tribunal consider the documents that it has already filed alongside the new complaint.

DECISION

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

Ann Penner
Ann Penner
Presiding Member