



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2015-003

Juniper Networks

*Decision made
Wednesday, April 29, 2015*

*Decision issued
Thursday, April 30, 2015*

*Reasons issued
Thursday, May 7, 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

JUNIPER NETWORKS

AGAINST

SHARED SERVICES CANADA

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.

Ann Penner
Ann Penner
Presiding Member

The statement of reasons will be issued at a later date.

STATEMENT OF REASONS

1. Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ (the *CITT Act*) provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,² (the *Regulations*), 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. The *Regulations* set out further conditions to be met in order for the Tribunal to initiate an inquiry into a complaint.

SUMMARY OF COMPLAINT

2. On April 24, 2015, Juniper Networks (Juniper) filed a complaint regarding a Request for Proposal (RFP) (Solicitation No. 10042466) by Shared Services Canada (SSC) for the provision of router equipment for data centres. Juniper stated that the resulting contract for the procurement was awarded to Cisco.³

3. Juniper alleged that the requirements of the RFP, and the manner in which those requirements were evaluated, were biased in favour of Cisco. Juniper argued that, had the requirements been drafted in a neutral manner and had the technical evaluation been conducted on an impartial basis, it would have been awarded the contract.

4. Juniper also alleged that officials from SSC committed to “look into” and/or discuss its concerns in response to its many objections about the requirements of the RFP. Furthermore, Juniper suggested that officials from SSC “[a]greed . . . [that] [t]he RFP was poorly written and designed for a CISCO product” and that the “. . . structure of the RFP unfairly advantaged CISCO.”⁴

5. On April 29, 2015, pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal decided not to conduct an inquiry into the complaint. The reasons for that decision are as follows.

ANALYSIS

6. At the outset, the Tribunal is concerned by Juniper’s allegations that SSC may have agreed that the RFP was designed to give Cisco an unfair advantage. Fairness and transparency are the hallmarks of a healthy and competitive procurement system. Any potential departures from these principles put the entire system at risk.

7. Nevertheless, the Tribunal cannot accept Juniper’s complaint for inquiry, as it does not meet the requirements of subsection 7(1) of the *Regulations* or section 30.1 of the *CITT Act*.

8. Subsection 7(1) of the *Regulations* stipulates that, before deciding to conduct an inquiry into the complaint, the Tribunal must determine, *inter alia*, whether the complainant is a potential supplier.

1. R.S.C., 1985, c. 47 (4th Supp.) [*CITT Act*].
2. S.O.R./93-602 [*Regulations*].
3. No other or further corporate name was provided.
4. See objection No. 13 in the procurement complaint form.

9. Section 30.1 of the *CITT Act* defines “potential supplier” as follows: “. . . subject to any regulations made under paragraph 40(f.1), a bidder or prospective bidder on a designated contract.”

10. When the Tribunal has applied these provisions to procurement complaints, it has found that “. . . there must be concordance between the identity of the supplier and that of the complainant.”⁵ To accept otherwise could lead to an untenable situation where a complaint is brought without the support of the actual bidder.

11. In this case, the bid documents demonstrate that Juniper was not the bidder on the RFP at hand.⁶ Rather, the bid was filed by IBM.⁷ There is no evidence that the bid was submitted jointly by IBM and Juniper or that IBM itself filed any materials to support Juniper’s complaint. The technical bid, the financial bid and the certifications were all provided and executed solely by a technical specialist at IBM, ostensibly on behalf of IBM.

12. While Juniper’s goods may have been part of the bid put forward by IBM, Juniper was not party to the contractual procurement process. As the bid documents clearly demonstrate, IBM, not Juniper, was the potential supplier in this procurement.

13. Accordingly, as Juniper did not bid on the RFP, it does not have standing to file a complaint relating to that RFP, as required by the *CITT Act* and *Regulations*.

DECISION

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

Ann Penner

Ann Penner
Presiding Member

5. *Alliance agricole internationale, made up of the Centre canadien d'étude et de coopération internationale, the Société de coopération pour le développement international and L'Union des producteurs agricoles–Développement international v. Canadian International Development Agency* (21 August 2006), PR-2006-003 (CITT) at para. 18.

6. Financial bid, technical bid and certifications attached to the procurement complaint form.

7. *Ibid.*