



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2015-007

Space2place Design Inc.

*Decision made
Wednesday, May 20, 2015*

*Decision and reasons issued
Wednesday, May 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

SPACE2PLACE DESIGN INC.

AGAINST

PARKS CANADA AGENCY

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.

Jason W. Downey _____
Jason W. Downey
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. The complaint relates to a Request for Standing Offers (RFSO) for landscape architecture services (Solicitation No. 5P301-15-0005) by the Parks Canada Agency (Parks Canada).

3. Space2place Design Inc. (Space2place) alleged that its bid was not properly evaluated and that an undisclosed criterion was used to evaluate its bid.

4. As a remedy, Space2place requested that its bid be found compliant with the requirements of the RFSO and that it be awarded a standing offer.

PROCUREMENT PROCESS

5. On February 17, 2015, the RFSO was issued.

6. On March 27, 2015, Space2place submitted its proposal in response to the RFSO.

7. On May 5, 2015, Parks Canada e-mailed Space2place to inform it that Space2place's bid did not meet the mandatory requirements and that, therefore, Parks Canada did not evaluate the rated requirements in Space2place's bid.

8. On May 6, 2015, a representative from Space2place contacted Parks Canada by telephone in order to seek clarification regarding the reasons for which Space2place's bid was deemed non-compliant. Parks Canada informed Space2place that its bid did not meet the requirement for the licensing of a civil engineering sub-consultant, as required by the mandatory requirements.

9. On May 8, 2015, Space2place wrote to Parks Canada to object to the evaluation of its bid. Space2place requested a response and clarification from Parks Canada, but also noted that it would be pursuing a complaint with the Tribunal.

10. On May 14, 2015, Space2place filed its complaint with the Tribunal.

ANALYSIS

11. 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

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

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

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. The Tribunal notes that Space2place’s objection to Parks Canada of May 8, 2015, was made within 10 working days of Space2place having discovered the ground of its complaint.

13. While the Tribunal acknowledges that the objection was somewhat unusual, in that Space2place simultaneously requested a response and notified Parks Canada of its intention to file a complaint with the Tribunal, the fact remains that Space2place clearly enumerated its concerns regarding the evaluation to Parks Canada.

14. Given that Parks Canada has not provided a response to the objection letter, the Tribunal finds that Space2place 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*.

15. As a result of the foregoing, the Tribunal finds the complaint premature.

16. The Tribunal’s decision does not preclude Space2place from filing a new complaint within 10 working days of receiving a denial of relief from Parks Canada. Alternatively, if Parks Canada fails to respond to Space2place’s objection within 30 days of the issuance of these reasons, Space2place may file a complaint with the Tribunal, within 10 working days following the expiration of this time limit.

17. In either event, upon filing a new complaint, Space2place may request that the documentation already filed with the Tribunal be joined to the new complaint.

DECISION

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

Jason W. Downey
Jason W. Downey
Presiding Member