



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2015-019

Adirondack Information
Management Inc.

*Decision made
Monday, July 20, 2015*

*Decision and reasons issued
Tuesday, July 21, 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

ADIRONDACK INFORMATION MANAGEMENT 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.

Peter Burn
Peter Burn
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 complaint relates to a Request for Proposal (RFP) for project management services (Solicitation No. EZ899-160201/A) by the Department of Public Works and Government Services (PWGSC).

3. Adirondack Information Management Inc. (Adirondack) alleged that PWGSC improperly disqualified its proposal for being non-responsive as a result of the fact that portions of its proposed resources' résumés were blacked out. Adirondack submitted that it did not intend to black out any portion of its bid and that PWGSC's facsimile machine must have printed certain highlighted portions of its proposal too darkly. Finally, Adirondack submitted that PWGSC could have sought clarification from Adirondack upon noticing that sections of its bid were blacked out.

4. As a remedy, Adirondack requested that the designated contract be terminated, that a new solicitation be issued and that the bids be re-evaluated.

PROCUREMENT PROCESS

5. On June 9, 2015, the RFP was issued.

6. On June 25, 2015, Adirondack submitted its proposal in response to the RFP.

7. On July 8, 2015, PWGSC informed Adirondack that its bid was non-responsive, as it did not comply with all the mandatory requirements of the RFP. In particular, Adirondack's bid failed to establish that each of the proposed resources had the relevant education and professional certification required by mandatory technical criteria A.1.0.b), c) and d).

8. On July 8, 2015, a representative from Adirondack wrote to PWGSC objecting to the disqualification of its proposal and explaining its belief that the facsimile machine at PWGSC printed certain highlighted portions of its bid too darkly. That same day, PWGSC acknowledged Adirondack's correspondence and indicated that it would look into the matter and provide a response.

9. On July 13, 2015, Adirondack contacted PWGSC to see if any progress had been made in connection with Adirondack's objection and indicated that its next course of action would be to file a complaint with the Tribunal. On July 14, 2015, PWGSC informed Adirondack that the matter was still under review and that it would endeavour to provide a response as soon as possible.

10. On July 17, 2015, Adirondack filed its complaint with the Tribunal.

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

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

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 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 finds that Adirondack 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 on July 8, 2015, and that this was done within 10 working days of Adirondack having discovered the basis of its complaint.

13. Given that PWGSC has not provided a response to Adirondack’s objection, the Tribunal finds that Adirondack 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. As a result of the foregoing, the Tribunal finds that the complaint is premature.

15. The Tribunal’s decision does not preclude Adirondack from filing a new complaint within 10 working days of receiving a denial of relief from PWGSC. Alternatively, if PWGSC fails to respond to Adirondack’s objection within a reasonable amount of time, Adirondack may file a new complaint with the Tribunal.

16. In either event, if Adirondack does file a new complaint, it may request that the documentation already filed with the Tribunal be joined to 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.

Peter Burn
Peter Burn
Presiding Member