



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2015-049

Venture Healthcare Inc.

*Decision made  
Wednesday, December 30, 2015*

*Decision issued  
Monday, January 4, 2016*

*Reasons issued  
Wednesday, January 6, 2016*

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**

**VENTURE HEALTHCARE 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.

Rose Ritcey \_\_\_\_\_  
Rose Ritcey  
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*<sup>1</sup> provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,<sup>2</sup> 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 a Standing Offer (RFSO) (Solicitation No. ET959-142558/C) issued by the Department of Public Works and Government Services (PWGSC) for the provision of various temporary help services.

3. Venture Healthcare Inc. (Venture Healthcare) alleges that its bid was improperly disqualified by PWGSC for failing to demonstrate the requisite experience. As a remedy, Venture Healthcare requests that it be awarded a contract to provide the requested services.

### BACKGROUND

4. The relevant option period for the RFSO in relation to this complaint closed on November 9, 2015.

5. Venture Healthcare submitted a bid in a timely manner. Its bid related to the provision of registered nurses and community health nurses as temporary help in the Winnipeg and Brandon/Shilo, Manitoba, areas.

6. On December 1, 2015, PWGSC notified Venture Healthcare that its bid was non-responsive and disqualified.

7. The same day, Venture Healthcare requested a debriefing from PWGSC, which took place on December 11, 2015, and alleges that it discovered its ground of complaint at that time, specifically, that a previously undisclosed evaluation criterion would have been applied.

8. On December 23, 2015, Venture Healthcare filed a complaint with the Tribunal.

### ANALYSIS

9. On January 4, 2016, the Tribunal issued its decision, pursuant to subsection 30.13(1) of the *CITT Act*, not to conduct an inquiry into this complaint. The reasons for that decision are as follows.

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

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

10. Pursuant to sections 6 and 7 of the *Regulations*, the Tribunal may conduct an inquiry if the following four conditions are met:

- the complaint has been filed within the time limits prescribed by section 6;<sup>3</sup>
- the complainant is an actual or potential supplier;<sup>4</sup>
- the complaint is in respect of a designated contract;<sup>5</sup> and
- the information provided discloses a reasonable indication that the government institution did not conduct the procurement in accordance with the applicable trade agreements.<sup>6</sup>

11. Venture Healthcare's complaint meets the first three requirements. However, as explained below, the complaint does not meet the fourth requirement because it fails to disclose a breach of the *Agreement on Internal Trade*,<sup>7</sup> which is the only trade agreement to which the RFSO is subject. As such, the complaint does not meet a requirement of section 7 of the *Regulations*, and the Tribunal will therefore not proceed to inquire into this matter.

12. The relevant mandatory requirement of the RFSO provides as follows:

**PART 4 - EVALUATION PROCEDURES AND BASIS OF SELECTION**

...

4) Offeror's Corporate experience related to [services] offered:

...

- ii) Must *demonstrate* that they have previously provided one or more of the offered [services] for a minimum of three (3) months.

[Emphasis added]

13. Venture Healthcare purports to have answered this requirement by stating as follows in its bid:

... For the past 13 years, we have staffed numerous facilities (hospitals, health centres, correctional facilities) across Canada with relief nurses. We have experience staffing in Manitoba, Saskatchewan, Nunavut, NWT, Northern Alberta and Northern Ontario.

14. PWGSC determined that Venture Healthcare did not *demonstrate* its experience. The Tribunal agrees. Venture Healthcare *stated* that it has "13 years" of experience, but it did *not demonstrate* how that statement could be verified. The *Concise Oxford Dictionary*<sup>8</sup> defines the verb "demonstrate" as "... show evidence of . . .; describe and explain by help of specimens or experiments; logically prove the truth of; be

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3. Subsections 6(1) and (2) of the *Regulations*. In this instance, Venture Healthcare learned of its ground of complaint at the debriefing of December 11, 2015, and it filed its complaint with the Tribunal on December 23, 2015; it was therefore within the 10-working-day time frame of the *Regulations*.

4. Paragraph 7(1)(a) of the *Regulations*.

5. Paragraph 7(1)(b) of the *Regulations*.

6. Paragraph 7(1)(c) of the *Regulations*.

7. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<http://www.ait-aci.ca/agreement-on-internal-trade/>> [AIT].

8. Seventh ed.

proof of the existence of.”<sup>9</sup> As such, a plain and ordinary reading of the RFSO leaves no place for ambiguity: a simple statement of experience is no substitute for a demonstration of experience.

15. According to Venture Healthcare, during the debriefing that took place on December 11, 2015, it was informed by PWGSC that its bid could have provided a listing of past or present contracts or clients to which it had provided the services of nurses in order to demonstrate that it met the mandatory requirement of the RFSO relating to the experience duration.<sup>10</sup> Venture Healthcare argues that this amounted to a previously undisclosed evaluation criterion. The Tribunal disagrees. The RFSO expressly required that bidders “demonstrate” their experience; Venture Healthcare did not do that.

16. In its complaint, Venture Healthcare remarked that other solicitations have indicated a listing of experience as a means of demonstrating experience. The Tribunal cannot ascribe any consequence to the absence of a specified means of demonstrating experience in the RFSO (e.g. via a list). In this case, it was incumbent upon Venture Healthcare to seek clarification if it had any doubt as to how it was required to “demonstrate” experience.

17. However, the Tribunal is of the view that it would have been preferable, and more transparent, if the RFSO had elaborated on the manner in which bidders were expected to demonstrate experience. For example, solicitations sometimes contain a blank and formatted table requesting specific information.

18. Nevertheless, the RFSO being unambiguous as issued, the complaint filed by Venture Healthcare does not disclose a reasonable indication that PWGSC did not conduct the procurement in accordance with the *AIT*.

## DECISION

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

Rose Ritcey  
Rose Ritcey  
Presiding Member

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9. *Ibid.*, s.v. “demonstrate”.

10. Detailed Statement of Facts and Arguments - Summarized.