



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2015-040

MD Charlton Co. Ltd.

*Decision made
Friday, November 20, 2015*

*Decision and reasons issued
Wednesday, November 25, 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

MD CHARLTON CO. LTD.

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.

Serge Fréchette

Serge Fréchette
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 solicitation for night vision equipment (Solicitation No. W6399-15GC76/A) by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence. MD Charlton Co. Ltd. (MD Charlton) alleged that PWGSC did not conduct the procurement process in conformity with its government policies and the applicable trade agreements by not issuing an advance contract award notice and allegedly sole-sourcing the contract.

3. As a remedy, MD Charlton requested that the Tribunal postpone the contract award, terminate the designated contract and order that PWGSC issue a new solicitation for the designated contract.

4. For the reasons provided below, the Tribunal has decided that the complaint is premature, pursuant to subsection 30.13(1) of the *CITT Act*, and will not conduct an inquiry into the complaint at this time.

PROCUREMENT PROCESS

5. On November 10, 2015, PWGSC awarded a contract to M&P Tactical Operational Support Services, Inc. for night vision equipment.

6. On November 12, 2015, PWGSC published this award.

7. On November 16 and 17, 2015, MD Charlton objected to PWGSC's decision by e-mail and telephone. In particular, MD Charlton stated that it contested the award on the basis that PWGSC did not publish a solicitation for the contract at issue and that it improperly sole sourced the contract. MD Charlton submitted that it also requested that PWGSC retender the bid in a competitive manner.

8. On November 17, 2015, MD Charlton filed its complaint with the Tribunal, but indicated that PWGSC had not yet provided a response to its objection.

ANALYSIS

9. 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."

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

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

10. The Tribunal notes that MD Charlton's objection to PWGSC of November 16 and 17, 2015, would have been made within 10 working days of MD Charlton having discovered the grounds of its complaint.

11. Given that PWGSC has not provided a response to the objection, the Tribunal finds that MD Charlton has not yet received a formal denial of relief with respect to its alleged grounds of complaint, as set out in subsection 6(2) of the *Regulations*. For this reason, the Tribunal finds the complaint premature.

12. The Tribunal's decision does not preclude MD Charlton from filing a new complaint within 10 working days of receiving a denial of relief from PWGSC. Alternatively, if PWGSC fails to respond to MD Charlton's objection within 15 days of the issuance of these reasons, MD Charlton may file a complaint with the Tribunal, within 10 working days following the expiration of this time limit.

13. Upon filing a new complaint, MD Charlton may request that the documentation already filed with the Tribunal be joined to the new complaint.

DECISION

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

Serge Fréchette
Serge Fréchette
Presiding Member