



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2015-042

Oshkosh Defense Canada
Incorporated

*Decision made
Tuesday, December 1, 2015*

*Decision and reasons issued
Tuesday, December 1, 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

OSHKOSH DEFENSE CANADA INCORPORATED

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.

INTRODUCTION

2. 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

3. On June 11, 2015, the Department of Public Works and Government Services (PWGSC), on behalf of the Department of National Defence, awarded a contract to Mack Defense LLC for the provision of military trucks, trailers, armoured protection systems and related goods and services (Solicitation No. W8476-06MSMP/L).

4. On August 27, 2015, PWGSC performed a debriefing for Oshkosh Defense Canada Incorporated (Oshkosh Defense). On August 31, 2015, Oshkosh Defense posed a series of questions to PWGSC regarding the debriefing and related issues.

5. On September 10, 2015, Oshkosh Defense objected to PWGSC's decision by e-mail and courier. In particular, Oshkosh Defense stated that it contested the award of the contract on the basis that PWGSC failed to award it on the basis of the requirements set out in the Request for Proposal and/or applied other undisclosed evaluation criteria. Oshkosh Defense submitted that it also requested relief, including a postponement of the contract award.

6. On November 26, 2015, Oshkosh Defense filed its complaint with the Tribunal, but indicated that PWGSC had not yet provided a response to its objection.³ This is also confirmed in PWGSC's correspondence to Oshkosh Defense of November 13, 2015.⁴

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

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

3. The complaint, at para. 32, states as follows: "According to PWGSC's November 13 response to Oshkosh's August 31 questions, *PWGSC has not yet responded to this objection letter*. However, some of the content of the PWGSC November 13 response deals with issues initially raised in Oshkosh's August 31 questions and repeated in its September 10 objection letter. As such, even if the November 13 PWGSC letter is construed as rejecting (or rejecting in part) the Oshkosh Objection Letter, the present Complaint is nonetheless filed within 10 working days from the rejection of its objection and, therefore, the requirements of section 6(2) of the Procurement Inquiry Regulations are met and the Complaint is timely" [emphasis added]. The Tribunal notes that Oshkosh Defense's objection to PWGSC of September 10, 2015, was made within 10 working days of Oshkosh Defense's debriefing.

4. Confidential version of the complaint, exhibit 7.

ANALYSIS

7. 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.”

8. Given that PWGSC has not provided a response to the objection, the Tribunal finds that Oshkosh Defense 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.

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

10. Upon filing a new complaint, Oshkosh Defense may request that the documentation already filed with the Tribunal be joined to the new complaint. The Tribunal notes the difficulties in presenting the relevant information on the public record but urges Oshkosh Defense to use its best efforts to do this as much as feasible.

DECISION

11. 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