



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2016-009

HeartZAP Services Inc.

*Decision made
Friday, May 13, 2016*

*Decision and reasons issued
Tuesday, May 17, 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

HEARTZAP SERVICES 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.

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.

2. This complaint by HeartZap Services Inc. (HeartZap) concerns a Request for Proposal (RFP) (Solicitation No. HT267-150901/A) by the Department of Public Works and Government Services (PWGSC), on behalf of the Department of Health, for the provision of automated external defibrillators, medical and surgical instruments, equipment and supplies. The contract was awarded to Tenaquip Limited (Tenaquip).

3. HeartZap alleged that PWGSC improperly found Tenaquip's bid compliant, as Tenaquip could not have met two of the requirements of the RFP, namely, criteria 3.1.3(d) and specification 6 of Annex A. HeartZap alleged that the pricing provided by Tenaquip was too low to be reflective of a fully compliant bid. As a remedy, HeartZap requested that the bids be re-evaluated.

4. The Tribunal has reviewed the complaint filed by HeartZap. The Tribunal finds that the complaint does not disclose a reasonable indication of a breach of the applicable trade agreements as listed at paragraph 7(1)(c) of the *Regulations*. Consequently, the Tribunal will not conduct an inquiry into this complaint.

BACKGROUND

5. The RFP was issued on September 11, 2015, and bidding closed on January 29, 2016.

6. HeartZap submitted its bid on January 24, 2016.

7. On May 3, 2016, PWGSC informed HeartZap that it had not been awarded the contract, as it was not the lowest compliant bidder.

8. On May 5, 2016, HeartZap wrote to PWGSC to challenge the award of contract to Tenaquip on the basis that Tenaquip could not have met all the mandatory requirements of the RFP. On May 5, 2016, PWGSC responded to HeartZap and denied the allegations, stating that, "... the winning bidder MUST provide everything listed in the requirement otherwise the Contract will be terminated."

9. On May 12, 2016, HeartZap 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

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

- the complaint has been filed within the time limits prescribed by section 6;
- the complainant is an actual or potential supplier;
- the complaint is in respect of a designated contract; and
- the information provided discloses a reasonable indication that the government institution did not conduct the procurement in accordance with the applicable trade agreements, which, in this case, include the *Agreement on Internal Trade*,³ the *North American Free Trade Agreement*,⁴ the *Canada-Peru Free Trade Agreement*,⁵ the *Canada-Colombia Free Trade Agreement*,⁶ the *Canada-Panama Free Trade Agreement*,⁷ the *Canada-Honduras Free Trade Agreement*,⁸ the *Canada-Chile Free Trade Agreement*⁹ and the *Canada-Korea Free Trade Agreement*.¹⁰

11. HeartZap's complaint was timely, as it was filed within 10 working days of the day on which it became aware of the denial of relief from PWGSC. Further, HeartZap's complaint meets the second and third conditions set out above, as HeartZap is an actual supplier, and the complaint is in respect of a solicitation by PWGSC that is acknowledged by that government institution as being covered by the trade agreements. The solicitation is therefore a "designated contract" by virtue of section 30.1 of the *CITT Act* and section 3 of the *Regulations*.

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3. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<http://www.ait-aci.ca/agreement-on-internal-trade/>>.
 4. *North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2, online: Department of Foreign Affairs, Trade and Development <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/text-texte/toc-tdm.aspx?lang=eng>> (entered into force 1 January 1994)
 5. *Free Trade Agreement between Canada and the Republic of Peru*, online: Department of Foreign Affairs, Trade and Development <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/peru-perou/peru-toc-perou-tdm.aspx?lang=eng>> (entered into force 1 August 2009).
 6. *Free Trade Agreement between Canada and the Republic of Colombia*, online: Department of Foreign Affairs, Trade and Development <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/colombia-colombie/can-colombia-toc-tdm-can-colombie.aspx?lang=eng>> (entered into force 15 August 2011).
 7. *Free Trade Agreement between Canada and the Republic of Panama*, online: Department of Foreign Affairs, Trade and Development <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/panama/panama-toc-panama-tdm.aspx>> (entered into force 1 April 2013).
 8. *Free Trade Agreement between Canada and the Republic of Honduras*, online: Department of Foreign Affairs, Trade and Development <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/honduras/toc-tdm.aspx>> (entered into force 1 October 2014).
 9. *Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile*, 1997 Can. T.S. No. 50, online: Department of Foreign Affairs, Trade and Development <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/chile-chili/menu.aspx?lang=en>> (entered into force 5 July 1997). Chapter *Kbis*, entitled "Government Procurement", came into effect on September 5, 2008.
 10. *Free Trade Agreement between Canada and the Republic of Korea*, online: Department of Foreign Affairs, Trade and Development <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/korea-coree/toc-tdm.aspx?lang=eng>> (entered into force 1 January 2015).

12. HeartZap's complaint does not meet the fourth condition, as the information provided does not disclose a reasonable indication that the procurement was not conducted in accordance with the applicable trade agreements. The Tribunal has previously stated that a ground of complaint must have some evidentiary basis to suggest that there was a breach of the relevant trade agreements.¹¹ Beyond an assertion made in its complaint, HeartZap did not provide any documentation to substantiate its claim that Tenaquip's proposal did not meet the requirements in issue.

13. In light of the foregoing, the Tribunal finds that the complaint is speculative and does not consider that it reasonably indicates that PWGSC awarded the contract in a manner that was not in accordance with the applicable trade agreements.

DECISION

14. 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

11. *Toromont Cat* (22 January 2016), PR-2015-054 (CITT) at para. 20; *Flag Connection Inc.* (30 July 2013), PR-2013-010 (CITT) at paras. 23-24; *The Powel Group – TPG Technology Consulting Ltd.* (28 November 2003), PR-2003-065 (CITT).