



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2015-069

Pico Envirotec Inc.

*Decision made
Tuesday, March 29, 2016*

*Decision and reasons issued
Wednesday, March 30, 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

PICO ENVIROTECH 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.

Rose Ritcey
Rose Ritcey
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.

SUMMARY OF THE COMPLAINT

2. The complaint relates to a solicitation for a sensitive mobile radiation detector (Solicitation No. W6399-160289/A) by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence. Pico Envirotec Inc. (Pico) alleged that PWGSC improperly evaluated its proposal.

3. The Request for Proposal (RFP) was issued on December 14, 2015, with a bid closing date of January 25, 2016. Pico submitted a bid prior to the bid closing date.

4. On March 3, 2016, PWGSC informed Pico that it would not be awarded a contract, as its bid did not comply with all the mandatory requirements of the solicitation. Specifically, PWGSC indicated that Pico had not met six of the mandatory technical requirements listed in Annex B to the RFP.

5. On March 7, 2016, Pico responded to PWGSC that it was “disappointed” that its bid had been rejected on the basis set out in the letter and requested information on possible appeal mechanisms. On March 8, 2016, PWGSC directed Pico to www.buyandsell.gc.ca for information regarding recourse mechanisms.

6. On March 16, 2016, PWGSC contacted Pico by telephone. Pico responded the same day by e-mail requesting a debriefing on March 23 or 24, 2016.

7. On March 17, 2016, PWGSC indicated that a debriefing would be scheduled for March 24, 2016.

8. On March 21, 2016, Pico filed its complaint with the Tribunal. As a remedy, Pico requested that the bids be re-evaluated.

ANALYSIS

9. On March 29, 2016, pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal decided not to conduct an inquiry into this complaint. The reasons for that decision are as follows.

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;³
- the complainant is an actual or potential supplier;⁴
- the complaint is in respect of a designated contract;⁵ and
- the information provided discloses a reasonable indication that the government institution did not conduct the procurement in accordance with the applicable trade agreements.⁶

11. The Tribunal finds that Pico's complaint is premature.

12. 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."

13. The Tribunal finds that Pico 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 March 7, 2016, and that this was done within 10 working days of Pico having discovered the basis of its complaint.

14. However, given that Pico filed its complaint before the scheduled debriefing on March 24, 2016, the Tribunal finds that Pico 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*.

15. As a result of the foregoing, the Tribunal finds that the complaint is premature.

16. The Tribunal's decision does not preclude Pico from filing a new complaint within 10 working days of receiving a denial of relief from PWGSC. If Pico 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. The complaint is premature.

Rose Ritcey
Rose Ritcey
Presiding Member

3. Subsection 6(1) 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*.