



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2016-019

M.D. Charlton Co. Ltd.

*Decision made
Wednesday, July 6, 2016*

*Decision and reasons issued
Thursday, July 7, 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

M.D. 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.

SUMMARY OF COMPLAINT

2. This complaint by M.D. Charlton Co. Ltd. (M.D. Charlton) concerns a Request for a Standing Offer (RFSO) (Solicitation No. W8486-163098/A) by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence for the provision of military police patrol vests. The RFSO was published on June 27, 2016. The deadline for bid submissions is July 28, 2016.

3. M.D. Charlton filed a complaint with the Tribunal on July 5, 2016.

4. In its complaint, M.D. Charlton takes issue with a requirement in the RFSO that products must conform to NIJ 0101.04, which, it claims, is an outdated technical standard that discriminates against its product. According to M.D. Charlton, reliance on this older standard gives other vendors an unfair financial advantage.

ANALYSIS

5. On July 6, 2016, pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal decided not to conduct an inquiry into the complaint. The reasons for that decision are as follows.

6. Pursuant to sections 6 and 7 of the *Regulations*, the Tribunal may conduct an inquiry if the following 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

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

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

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

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*.

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. The Tribunal notes that M.D. Charlton’s objections to PWGSC were made on July 4 and 5, 2016, which was indeed within 10 working days of M.D. Charlton having discovered the grounds of its complaint. Accordingly, M.D. Charlton objected in a timely manner.

9. On July 5, 2016, PWGSC indicated in an e-mail to M.D. Charlton that it would raise these concerns with the technical authority and follow up with M.D. Charlton.

10. On the basis of this correspondence, the Tribunal finds that M.D. Charlton has not yet received a formal denial of relief with respect to the alleged grounds of its complaint, as required by subsection 6(2) of the *Regulations*. For this reason, the Tribunal finds that the complaint is premature.

11. Because the Tribunal has found that the complaint is premature, it does not need to consider whether the other conditions for an inquiry were met.

12. The Tribunal’s decision does not preclude M.D. 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 M.D. Charlton’s objection within 15 days of the issuance of these reasons, M.D. 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, M.D. 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