



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2016-022

CartoVista Inc.

*Decision made
Thursday, July 14, 2016*

*Decision and reasons issued
Monday, July 18, 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

CARTOVISTA 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.

Jason W. Downey _____
Jason W. Downey
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. The complaint concerns a Request for Proposal (RFP) for a visually statistically intelligent adaptive data viewing solution, as well as the services of a contractor for the delivery, configuration and technical support of a perpetual bilingual licence (Solicitation No. 45045-140073/C). The RFP was issued by the Department of Public Works and Government Services (PWGSC) on behalf of Statistics Canada.

3. The RFP was issued on June 13, 2016, and, at the time of drafting of these reasons, it has a closing date of August 5, 2016. CartoVista Inc. (CartoVista) has not yet submitted a proposal.

4. CartoVista objects to a number of requirements in the RFP, in particular on the grounds that they are anti-competitive. Furthermore, CartoVista alleges that the deadline to submit a proposal is too short and that the deadline to finish the project is too tight. CartoVista also objects to the delay in PWGSC's responses to CartoVista's questions during the procurement process.

5. CartoVista filed a complaint with the Tribunal on July 13, 2016.³ As a remedy, CartoVista requested that certain requirements of the RFP be amended, as well as an extension of time to submit a proposal and to finish the project.

ANALYSIS

6. On July 14, 2016, pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal decided not to conduct an inquiry in the complaint at this time for the reasons that follow.

7. Pursuant to sections 6 and 7 of the *Regulations*, the Tribunal may conduct an inquiry if the following four conditions have been met:

- a. the complaint has been filed within the time limits prescribed by section 6;
- b. the complainant is a potential supplier;
- c. the complaint is in respect of a designated contract; and

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

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

3. The Tribunal received a complaint on behalf of CartoVista on July 8, 2016. On July 12, 2016, the Tribunal requested that CartoVista file additional information in order for its complaint to conform to subsection 30.11(2) of the *CITT Act*. CartoVista filed the requested additional information on July 13, 2016. Therefore, having determined that the information in the complaint was sufficient to meet the conditions of subsection 30.11(2) of the *CITT Act*, the Tribunal considered the complaint to have been filed on July 13, 2016, in accordance with subrule 96(1) of the *Canadian International Trade Tribunal Rules*.

- d. the information provided discloses a reasonable indication that the government institution did not conduct the procurement in accordance with the applicable trade agreements.

8. In the case at hand, the Tribunal has determined that the complaint cannot, at this time, be accepted for inquiry, as it has not yet met the first condition.

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."

10. CartoVista made an objection to PWGSC, pursuant to subsection 6(2) of the *Regulations*, concerning the RFP in issue on June 22, 2016, within 10 working days of knowing the basis of its complaint.

11. However, when CartoVista filed its complaint, it had not yet received a denial of relief from PWGSC. The information in the complaint indicates that, on June 22, 2016, PWGSC acknowledged CartoVista's objection and indicated that its objection was being considered. Furthermore, on July 6, 2016, PWGSC informed CartoVista that it was in the process of amending the RFP, thereby possibly providing answers to CartoVista's concerns, and that it intended to respond to CartoVista's objection after the issuance of the amendment.

12. In the Tribunal's view, PWGSC's answers do not constitute, at this time, a denial of relief within the meaning of subsection 6(2) of the *Regulations*. Given that CartoVista filed its complaint before having received a denial of relief from PWGSC, the complaint is premature. The Tribunal takes note of CartoVista's vigilance in this case; however, it cannot consider that the complaint, as drafted, meets the requirements of the *Regulations* at this time. For those reasons, the Tribunal will not conduct an inquiry into the complaint.

13. The Tribunal's decision does not preclude CartoVista from filing a new complaint within 10 working days of receiving a denial of relief from PWGSC. Alternatively, if PWGSC fails to respond to CartoVista's concerns within 10 days of the issuance of these reasons, CartoVista may file a complaint with the Tribunal, within 10 working days following the expiration of this time limit, and the Tribunal will then decide whether or not to initiate an inquiry. Upon filing a new complaint, CartoVista 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.

Jason W. Downey
Jason W. Downey
Presiding Member