



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2016-025

Solutions Serafin Inc.

*Decision made
Tuesday, August 9, 2016*

*Decision and reasons issued
Monday, August 15, 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

SOLUTIONS SERAFIN 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.

2. Solutions Serafin Inc. (Solutions Serafin) filed a complaint with the Tribunal on August 8, 2016.³ The Tribunal decided not to inquire into the complaint for the reasons that follow.

SUMMARY OF COMPLAINT

3. This complaint concerns a Request for Proposal (RFP) for spare parts for stock replenishment (Solicitation No. W8486-163083/A). The RFP was issued by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence.

4. Solutions Serafin alleged that PWGSC did not inform it that contracts had been partially awarded and that the request for the remainder of the goods had been cancelled.

5. As a remedy, Solutions Serafin asked that the designated contract be terminated and that it be compensated by 10 percent of the value of the awarded contracts, which represents, according to Solutions Serafin, its loss, net of delivery and administration expenses.

ANALYSIS

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;
- the complainant is a potential supplier;
- the complaint is in respect of a designated contract; and
- the information provided discloses a reasonable indication that the procurement process was not conducted in accordance with the applicable trade agreements.

7. In this case, the Tribunal has determined that it cannot inquire into the complaint, as it does not meet the first condition.

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 Solutions Serafin on August 3, 2016. On August 4, 2016, the Tribunal informed Solutions Serafin that certain supplementary information needed to be filed in order for the complaint to comply with subsection 30.11(2) of the *CITT Act*. Solutions Serafin filed the requested supplementary information on August 8, 2016. Consequently, having determined that the information contained in the complaint was sufficient to meet the conditions of subsection 30.11(2) of the *CITT Act*, the Tribunal considered, in accordance with subrule 96(1) of the *Canadian International Trade Tribunal Rules*, that the complaint was filed on August 8, 2016.

8. 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.”

9. In other words, a complainant has 10 working days from the date on which it first becomes aware, or reasonably should have become aware, of its ground of complaint to either object to the government institution or file a complaint with the Tribunal. If a complainant objects to the government institution within the designated time, the complainant may file a complaint with the Tribunal within 10 working days after it has actual or constructive knowledge of the denial of relief by the government institution.

10. The RFP was issued on December 4, 2015. The closing date for the submission of bids was February 18, 2016. Solutions Serafin filed its bid on February 18, 2016.

11. Solutions Serafin alleged that it objected to PWGSC by e-mail on July 7, 2016; however, upon review of the documents filed, the Tribunal is not convinced that Solutions Serafin’s e-mail to PWGSC on July 7, 2016, was an actual objection. On the contrary, the e-mail is more akin to a request for information than to an objection.

12. In any case, the Tribunal is of the opinion that Solutions Serafin became aware or should have become aware of its ground of complaint when it was informed by PWGSC in an e-mail dated July 8, 2016, that contracts had been partially awarded and that certain elements of the RFP had been withdrawn. At that time, Solutions Serafin had until July 22, 2016 (that is, 10 working days after July 8, 2016) either to object to PWGSC or to file a complaint with the Tribunal.

13. The Tribunal also notes that, even if Solutions Serafin had objected to PWGSC in its telephone message on July 11, 2016, which is not clear, the complaint would have nevertheless been time-barred.⁴ At that time, Solutions Serafin would have had until July 25, 2016, to file a complaint with the Tribunal. Since the complaint was not filed until August 8, 2016, the Tribunal determines that Solutions Serafin has not met the time limits set out in section 6 of the *Regulations*. Consequently, the Tribunal determines that Solutions Serafin’s complaint was filed late.

14. In light of the above, the Tribunal determines that the complaint was not filed within the designated time limits and that, consequently, it cannot inquire into the complaint.

DECISION

15. 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

4. PWGSC replied to Solutions Serafin’s telephone message by e-mail on July 11, 2016, as follows: “To follow-up with your phone message, as per the Supply Manual clauses, I am not authorized to give you the requested information. Please refer to following link for further information. <https://buyandsell.gc.ca/policy-and-guidelines/supply-manual/section/7/45>.” Solutions Serafin did not indicate that it followed up on this e-mail.