



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2016-033

HeartZAP Services Inc.

*Decision made
Tuesday, September 13, 2016*

*Decision issued
Thursday, September 15, 2016*

*Reasons issued
Tuesday, September 20, 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.

Serge Fréchette
Serge Fréchette
Presiding Member

The statement of reasons will be issued at a later date.

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 HeartZAP Services Inc. (HeartZAP) concerns a Request for a Standing Offer (RFSO) (Solicitation No. 21120-175580/A) by the Department of Public Works and Government Services (PWGSC), on behalf of the Correctional Service of Canada, for the provision of automated external defibrillator (AED) parts.

3. The RFSO was issued on August 9, 2016, with a closing date of August 24, 2016.

4. On or around August 24, 2016, HeartZAP submitted a bid in response to the RFSO.

5. On August 25, 2016, PWGSC wrote to inform HeartZAP that it was not the successful bidder and that a standing offer would be awarded to BERN Consulting Ltd. (BERN).

6. On August 25, 2016, HeartZAP wrote to PWGSC to object to the award of the standing offer to BERN. HeartZAP contended that, in order to achieve a lower price than its own bid price, BERN must intend to provide AED parts which do not fully conform to the RFSO. As such, HeartZAP informed PWGSC that it would be filing a complaint with the Tribunal.

7. On September 8, 2016, HeartZAP filed its complaint with the Tribunal.

ANALYSIS

8. On September 13, 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.

9. 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

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*.

10. HeartZAP's complaint appears to meet the first three conditions. However, with respect to the fourth condition, HeartZAP's complaint does not disclose a reasonable indication that PWGSC failed to conduct the procurement in accordance with the *Agreement on Internal Trade*,⁷ which is the only trade agreement applicable to this solicitation.

11. The Tribunal notes that there is no allegation that PWGSC unfairly defined its requirements or any specific allegation that it improperly evaluated the bids submitted in response to the RFSO. HeartZAP does contend that, on the basis of the approximate price offered by BERN in its bid,⁸ it does not believe that the goods supplied by BERN will be approved for use on AEDs manufactured by ZOLL Medical Corp., as required by the RFSO.

12. The Tribunal finds that the information provided in the complaint does not allow it to conclude that there is a reasonable indication that the procurement has not been conducted in accordance with the *AIT*. HeartZAP does not provide any specific evidence or documentation to support its claim. As such, HeartZAP's allegations are unfounded. The Tribunal has repeatedly held that unsupported allegations do not constitute sufficient evidence for the Tribunal to proceed with an inquiry.⁹

DECISION

13. 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

7. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<http://www.ait-aci.ca/agreement-on-internal-trade/>> [*AIT*].

8. There is no indication that HeartZAP was given access to the pricing information in BERN's bid. HeartZAP's statements regarding BERN's bid price appears to be based solely on the understanding that BERN was the successful bidder because its offered price was lower than that of HeartZAP.

9. See, for instance, *Tyco International of Canada o/a SimplexGrinnell* (14 April 2011), PR-2011-002 (CITT).