



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

---

## DECISION AND REASONS

File No. PR-2016-044

Rebanks Pepper Littlewood  
Architects Inc.

*Decision made  
Wednesday, November 23, 2016*

*Decision issued  
Thursday, November 24, 2016*

*Reasons issued  
Monday, November 28, 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**

**REBANKS PEPPER LITTLEWOOD ARCHITECTS 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.

Peter Burn  
\_\_\_\_\_  
Peter Burn  
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*<sup>1</sup> provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,<sup>2</sup> 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. On November 17, 2016, Rebanks Pepper Littlewood Architects Inc. (Rebanks) filed a complaint regarding a Request for Proposal (RFP) (Solicitation No. M7594-170001/A) by the Department of Public Works and Government Services (PWGSC), on behalf of the Royal Canadian Mounted Police (RCMP), for architectural services for the design and construction of an operation communications centre in Ottawa, Ontario.

3. Rebanks complained that PWGSC improperly refused to evaluate its bid on the grounds that Rebanks had delivered it to the wrong address.

4. As a remedy, Rebanks requested that its proposal be accepted and reviewed by PWGSC.

### BACKGROUND

5. PWGSC issued the RFP on September 1, 2016. The RFP stated that bids would be received in two phases. The first phase was essentially a prequalification screen; the second phase required a substantive proposal regarding the work itself.

6. On October 24, 2016, one day before the closing date for submissions in the first phase, Rebanks submitted its proposal by delivering a physical copy by hand to the RCMP at its premises at 73 Leikin Drive, Ottawa (the RCMP address). Rebanks stated that, when its courier arrived at the RCMP address, an individual from the RCMP's purchasing division was called to come receive the package. That RCMP representative then provided Rebanks with a one-page form titled "Bid Receipt" that included lines for "Solicitation Number", "Title", "Contact", "Closing Date", "Received from", "Signature", and "Date and Time". These lines were each filled out by hand with the relevant information for the procurement. The RCMP representative stamped the form as "RCVD" on "10-24-16 14:19".

7. On October 28, 2016, Rebanks received a couriered package from PWGSC containing its unopened proposal. Rebanks telephoned PWGSC to ask why its proposal was returned. PWGSC stated that it returned the proposal because it had been submitted to the wrong location, as it should have been delivered to PWGSC's bid receiving unit. Although the RCMP forwarded Rebanks' proposal to PWGSC, it was not received until after the closing date set out in the RFP.

8. On the same day, Rebanks e-mailed PWGSC objecting to its disqualification, on the grounds that the RCMP address appears on the cover page of the RFP. Rebanks argued that, in previous solicitation

---

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

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

processes, it had submitted proposals to the RCMP address without issue. Furthermore, Rebanks noted that, when its proposal was delivered, an RCMP official provided Rebanks with a bid receipt completed with the relevant procurement information, leading Rebanks to believe that its proposal had been successfully filed. As a result, Rebanks argued that PWGSC should exercise its discretion to accept Rebanks's proposal, as doing so would confer no unfair advantage on Rebanks.

9. On November 3, 2016, PWGSC denied the objection on the grounds that bidders are solely responsible for ensuring correct and timely delivery of proposals.

10. On November 17, 2016, Rebanks filed this complaint with the Tribunal.

## ANALYSIS

11. To initiate an inquiry, the Tribunal must be satisfied that (a) the complainant is a potential supplier, (b) the complaint is in respect of a designated contract and (c) the complaint discloses a reasonable indication that the procurement has not been carried out in accordance with the applicable trade agreements,<sup>3</sup> which in this case are the *North American Free Trade Agreement*<sup>4</sup> and the *Agreement on Government Procurement*.<sup>5</sup> The complaint must also be filed within the prescribed time limits.<sup>6</sup>

12. The Tribunal finds that Rebanks' complaint meets conditions (a) and (b) and is timely, but it does not disclose a reasonable indication that the procurement was conducted in breach of the applicable trade agreements and, therefore, fails to meet condition (c).

13. The Tribunal observes that Article 1015(2) of the *NAFTA* and Article XV(2) of the *AGP* provide that a procuring entity shall not penalize a supplier whose tender is received late if the delay is "due solely to mishandling" by the procuring entity.

14. In the present case, the RFP cover page included two addresses. On the top left side of the RFP cover page, it stated as follows:

RETURN BIDS TO:  
...  
Bid Receiving – PWGSC ...  
11 Laurier St. ...  
Place du Portage, Phase III  
Core 0B2 ...  
Gatineau, Québec K1A 0S5  
Bid Fax: (819) 997-9776

---

3. Subsection 7(1) of the *Regulations*.

4. *North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2, online: Global Affairs Canada <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/text-texte/toc-tdm.aspx?lang=eng>> (entered into force 1 January 1994) [*NAFTA*].

5. *Revised Agreement on Government Procurement*, online: World Trade Organization <[http://www.wto.org/english/docs\\_e/legal\\_e/rev-gpr-94\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.htm)> (entered into force 6 April 2014) [*AGP*].

6. Section 6 of the *Regulations*.

15. In addition, at the centre of the cover page, the following information was provided:

Destination – of Goods, Services, and Construction:

...

ROYAL CANADIAN MOUNTED POLICE

LEIKIN DR. M1

OTTAWA

Ontario

K1A0R2

Canada

16. The Tribunal finds that the RFP explicitly instructed bidders to return bids to PWGSC's bid receiving unit ("RETURN BIDS TO") at 11 Laurier Street. The Tribunal notes that Rebanks delivered its bid, not to the PWGSC's bid receiving unit, as required by the RFP, but rather to the address listed as the "Destination – of Goods, Services, and Construction."

17. Rebanks submits that clause R1110T (2016-04-04), of the "General Instructions (GI) – Architectural and/or Engineering Services – Two Phase Request for Proposal", incorporated by reference in the RFP, allowed bidders to submit their proposals to any address included in the RFP. However, R1110T GI16 (2014-03-01) "Submission of proposal", provides as follows:

2. It is the Proponent's responsibility to:

...

c. send its proposal *only* to Public Works and Government Services Canada (PWGSC) Bid Receiving Unit specified *on page 1 of the RFP or to the address specified in the RFP*;

d. *obtain clarification of the requirements* contained in the RFP, *if necessary*, before submitting a proposal;

...

4. Timely and correct delivery of proposals to the office designated for receipt of proposals is the sole responsibility of the Proponent. PWGSC will not assume or have transferred to it those responsibilities. All risks and consequences of incorrect delivery of proposals are the responsibility of the Proponent.<sup>7</sup>

[Emphasis added]

18. Moreover, R1110T GI17 (2011-05-16), "Late submissions", provides as follows: "Submissions delivered after the stipulated closing date and time will be returned unopened."<sup>8</sup>

19. Given that PWGSC's address was the only address specified in the RFP for receipt of bids, the Tribunal finds Rebanks erred by failing to ensure timely and correct delivery of its proposal to the office designated in the RFP.<sup>9</sup> As such, the Tribunal finds that PWGSC did not breach the applicable trade agreements by rejecting Rebanks' proposal.

---

7. <https://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual/5/R/R1110T/18>.

8. <https://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual/5/R/R1110T/25#completion-of-submission>.

9. In its complaint, Rebanks admitted that it may have been "lax" in the verification of the submission destination. Complaint at 13.

20. Rebanks also argued that the RCMP lulled it into a false complacency that its proposal had been properly submitted by providing it with a bid receipt. However, the Tribunal notes that the bid receipt simply lists the solicitation number, title, date of closing, and the name of the company submitting the parcel. There is no language in the bid receipt that explicitly or implicitly either warrants or assures Rebanks that it has delivered the proposal to the correct address or that could be read as having changed the terms of the requirements of the RFP in respect of bid delivery.

21. The Tribunal is always sympathetic towards bidders that have had their perhaps otherwise compliant proposals rejected for errors such as the failure to follow proper bid delivery methods. However, the Tribunal has repeatedly held that the integrity of the procurement system depends, to an important degree, on the timely receipt of complete bids at the place specified, and in the precise manner stated, in solicitation documents.<sup>10</sup> Moreover, the Tribunal has previously found that permitting one bidder to benefit from an extension to the bid closing deadline can be unfair to other bidders, which could just as easily give rise to even further complaints to the Tribunal.<sup>11</sup> The Tribunal therefore finds that PWGSC acted reasonably in not allowing Rebanks to submit its bid late.

22. As noted above, this is not the first case in which a bidder has been disqualified for mistaking which of two addresses on solicitation cover pages was the proper one for the delivery of bids. As such, the Tribunal urges PWGSC to consider revising the cover page of RFPs and other procurements to minimize the risk of such errors occurring again. For example, the bid delivery address could be repositioned to a more prominent location on the cover page, or the “Destination” address could be clearly identified as *not* being the bid delivery address.

## DECISION

23. Pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal has decided not to conduct an inquiry into the complaint.

Peter Burn  
Peter Burn  
Presiding Member

---

10. *Promaxis Systems Inc.* (11 January 2006), PR-2005-045 (CITT) (difficulty with fax transmission); *GHK Group* (4 September 2007), PR-2007-031 (CITT) (delivery of bid to the then Canadian International Development Agency [CIDA], the technical authority, instead of to PWGSC, which was conducting the procurement on CIDA's behalf); *Corbel Management Corp.* (25 May 2009), PR-2009-009 (CITT) [*Corbel*] (car accident delayed delivery of bid); *Ex Libris (USA) Inc.* (27 July 2009), PR-2009-034 (CITT) (delivery of bid after bid closing time); *PA Consulting Group* (20 September 2011), PR-2011-030 (CITT) (delivery of bid to recipient of services' address rather than PWGSC); *Headwall Photonics, Inc.* (25 September 2012), PR-2012-017 (CITT) (no evidence of delay of bid receipt attributable to PWGSC's shipping/receiving department); *Falcon Environmental Services Inc.* (13 May 2015), PR-2014-061 (CITT) (delivery of bid to recipient of services' address rather than PWGSC); *Wheel Systems International, Inc.* (15 December 2015), PR-2015-044 (CITT) (delivery of bid to wrong fax number); *Keller Equipment Supply Ltd.* (20 October 2016), PR-2016-038 (CITT) (misunderstanding regarding availability of electronic submission, delivery of physical bid 14 minutes late).

11. *Corbel* at para. 18.