



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR--2016-029

Construction Longer Inc.

*Decision made
Thursday, August 24, 2016*

*Decision and reasons issued
Monday, August 29, 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

CONSTRUCTION LONGER 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 because it is premature.

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. Construction Longer Inc. (Construction Longer) filed a complaint with the Tribunal on August 22, 2016. The Tribunal decided not to inquire into the complaint for the reasons that follow.

SUMMARY OF COMPLAINT

3. The complaint concerns a Request for Proposal (RFP) for the major renovation of the hydraulic heating and cooling networks of the existing building for the Research and Development Centre in Sherbrooke located in Sherbrooke, Quebec (Solicitation No. EF944-170110/A). The RFP was issued by the Department of Public Works and Government Services (PWGSC), on behalf of the Research and Development Centre in Sherbrooke.

4. Construction Longer alleged that it should have been awarded the contract because the reason given for not accepting its bid relates to a minor irregularity which should not have been considered that serious. As a remedy, Construction Longer requested 8 percent of the value of the bid, which represents the loss of profit relating to the contract further to an evaluation of the profit made by it over the last five years.

ANALYSIS

5. Pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal has decided not to inquire into the complaint for the reasons that follow.

6. Pursuant to section 6 and 7 of the *Regulations*, the Tribunal may conduct an inquiry if the following four 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 the case at hand, the Tribunal has determined that it cannot inquire into the complaint because it has not yet met the first condition.

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

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

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

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. Construction Longer made an objection to PWGSC, within the meaning of subsection 6(2) of *Regulations*, concerning the RFP at issue on August 22, 2016, within 10 working days after the basis of the complaint became known.

10. However, at the time of the filing of the complaint, Construction Longer had not yet been denied relief from PWGSC. Given that Construction Longer filed its complaint before being denied relief by PWGSC, the complaint is premature. The Tribunal notes Construction Longer’s vigilance in this case, but considers that the complaint, as drafted, does not meet the statutory requirements at this time. For these reasons, the Tribunal cannot inquire into the complaint at this time.

11. The Tribunal’s decision does not however preclude Construction Longer from filing a new complaint within 10 working days of receiving, as the case may be, a denial of relief from PWGSC. Alternatively, if PWGSC fails to respond to Construction Longer’s concerns within 20 days of the issuance of these reasons, the Tribunal will construe PWGSC’s silence as a constructive denial of relief. In that case, Construction Longer would then be able to file a new complaint with the Tribunal within 10 working days afterwards, and the Tribunal could then decide whether or not to inquire in the complaint. Upon filing a new complaint, Construction Longer could request that documents already filed with the Tribunal be joined to the new complaint in order to avoid duplication of submissions.

DECISION

12. Pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal has decided not to conduct an inquiry into the complaint because it is premature.

Jason W. Downey

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Presiding Member