



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2016-052

Playstation Inc.

*Decision made  
Wednesday, February 1, 2017*

*Decision and reasons issued  
Monday, February 6, 2017*

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**

**PAYSTATION 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. The complaint is premature.

Peter Burn  
Peter Burn  
Presiding Member

## 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.

2. Paystation Inc. (Paystation) filed a complaint with the Tribunal concerning a Request for Proposal (W0100-17C049/B) (RFP) issued by the Department of Public Works and Government Services<sup>3</sup> (PWGSC) on behalf of the Department of National Defence for the supply, delivery, and installation of two SEM 2-SSD disintegrators (or equivalent products) as well as on-site training and maintenance.

3. Paystation alleges that the contract was awarded to a non-compliant bid. As a remedy Paystation requests that the bids be re-evaluated or that a new solicitation for the designated contract be issued.

4. Pursuant to sections 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;<sup>4</sup>
- the complainant is a potential supplier;<sup>5</sup>
- the complaint is in respect of a designated contract;<sup>6</sup> and
- the information provided discloses a reasonable indication that the procurement process was not conducted in accordance with the applicable trade agreements.<sup>7</sup>

5. In the case at hand, the Tribunal cannot inquire into the complaint as it does not meet the first condition. 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 . . .”

6. Paystation indicates in its complaint that it filed an objection with PWGSC by email on January 24, 2017, and received a denial of relief on January 25, 2017. However, the email of January 24, 2017, cannot properly be characterized as an objection as Paystation simply asked for confirmation as to the model of the product proposed by the winning bidder.

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

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

3. On November 4, 2015, the Government of Canada gave notice that the name of the Department of Public Works and Government Services would be changed to Public Services and Procurement Canada.

4. Subsection 6(2) of the *Regulations*.

5. Paragraph 7(1)(a) of the *Regulations*.

6. Paragraph 7(1)(b) of the *Regulations*.

7. Paragraph 7(1)(c) of the *Regulations*.

7. Paystation sent a further email to PWGSC on January 25, 2017, suggesting that the product proposed by the winning bidder does not meet the mandatory requirements specified in the RFP and may have performance issues. It is this email which the Tribunal considers to be an objection in accordance with subsection 6(2) of the *Regulations*. The information provided in the complaint indicates that PWGSC has not yet replied to this objection. As Paystation has not yet received a denial of relief from PWGSC, the complaint does not meet the requirements of subsection 6(2) of the *Regulations* and the Tribunal cannot inquire into the complaint as it was filed.

8. This decision does not preclude Paystation from filing a new complaint within 10 working days of receiving a denial of relief from PWGSC. Alternatively, if PWGSC fails to respond to Paystation's concerns within seven working days of the issuance of these reasons, that is by Wednesday, February 15, 2017, the Tribunal will construe PWGSC's silence as constructive denial of relief, and Paystation would be able to file a new complaint with the Tribunal within 10 working days of that date. Upon filing a new complaint, Paystation could request that documents already filed with the Tribunal be joined to the new complaint in order to avoid duplication of submissions.

9. If Paystation files a new complaint, the Tribunal will decide anew whether to inquire into the complaint, having regard to the regulatory conditions described above. Without prejudging the issue of whether it would inquire or not into such a new complaint, the Tribunal notes that unsubstantiated allegations do not constitute a sufficient basis for the Tribunal to conduct an inquiry.

## **DECISION**

10. 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