



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2017-004

SZM Promotions /dba
Promocenter International

*Decision made
Monday, May 1, 2017*

*Decision and reasons issued
Monday, May 8, 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

SZM PROMOTIONS /DBA PROMOCENTER INTERNATIONAL

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

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 SZM Promotions /dba Promocenter International (SZM) concerns a request for proposal (RFP) (Solicitation No. 5P004-16-1034), pursuant to a supply arrangement, for the production of bilingual dog tags. The RFP was issued on March 10, 2017, by the Department of Public Works and Government Services (PWGSC) on behalf of Parks Canada.

3. On March 14, 2017, PWGSC issued an amendment to the RFP which addressed, among other things, the proper printing method to be used.

4. On March 21, 2017, SZM was informed that it was not the successful bidder, as its bid had been deemed non-compliant.

5. On March 21, 2017, SZM wrote to PWGSC to object to its bid being deemed non-compliant.

6. On April 24, 2017, PWGSC informed SZM that its objection was denied.

7. SZM filed a complaint with the Tribunal on April 28, 2017. SZM contended that PWGSC had improperly deemed its bid to be non-compliant.

ANALYSIS

8. On May 1, 2017, pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal decided not to conduct an inquiry into the complaint.

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

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*.

- the information provided discloses a reasonable indication that the government institution did not conduct the procurement in accordance with the applicable trade agreements.⁶

10. In this case, the Tribunal has determined that it has no jurisdiction to inquire into the complaint because it is not in respect of a designated contract and, therefore, does not meet the third condition for inquiry.

11. Section 30.1 of the *CITT Act* defines a “designated contract” as

... a contract for the supply of goods or services that has been or is proposed to be awarded by a government institution and that is designated or of a class of contracts designated by the regulations.

12. Subsection 3(1) of the *Regulations* provides that, for the purposes of the definition of “designated contract” in section 30.1 of the *CITT Act*, any contract or class of contract concerning a procurement of goods or services or any combination of goods or services included in the relevant trade agreements that has been or is proposed to be awarded by a government institution is a designated contract.

13. The solicitation in issue is for the production of bilingual dog tags. As set out in the tender notice for the RFP, these services fall under the category of “T000GA: Communication Promotional Material”,⁷ which is part of a broader group of services listed as “Communications, Photographic, Mapping, Printing and Publication Services”.⁸ Having reviewed the applicable trade agreements, the Tribunal finds that this category of services is not covered by any of the trade agreements.

14. For instance, Annex 1001.1b-2 of the *North American Free Trade Agreement*⁹ specifically lists all classes of “Communications, Photographic, Mapping, Printing and Publications Services” as being excluded from coverage under that agreement. Similarly, both the *Agreement on Internal Trade*¹⁰ and the *Revised Agreement on Government Procurement*¹¹ exclude promotional or advertising services. As such, the solicitation at issue is not a “designated contract” within the meaning of the *Regulations*, and the Tribunal therefore cannot inquire into the complaint.

15. The Tribunal also notes that even had the solicitation been covered by the trade agreements, the complaint did not disclose a reasonable indication that PWGSC failed to conduct the procurement process in accordance with those trade agreements. SZM’s complaint revolves around a misinterpretation of the proper printing method to be used. In particular, SZM stated that while a question was asked specifically about the printing method, the response given by PWGSC did not address the method and instead addressed the number of colours to be printed. SZM argued that the wording of this requirement, and the answers provided by PWGSC in response to questions about it, was confusing.

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

7. <https://buyandsell.gc.ca/procurement-data/tender-notice/PW-CY-019-72670>.

8. <https://buyandsell.gc.ca/procurement-data/goods-and-services-identification-number/gsin/T000GA>.

9. *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: Department of Foreign Affairs, Trade and Development <<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).

10. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<http://www.ait-aci.ca/agreement-on-internal-trade/>>.

11. *Revised Agreement on Government Procurement*, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.htm> (entered into force 6 April 2014).

16. The Tribunal has repeatedly held that in the event of some perceived ambiguity in the tender documents, the onus is on the bidder to seek and gain clarification from the government institution.¹² In the present case, despite the response from PWGSC leading to “confusion”, SZM chose not to seek further clarification, but instead made assumptions about what the proper printing method should be and submitted its bid accordingly. While the government institution should strive to provide clear and direct responses to bidder questions whenever possible, the Tribunal finds that, even if the trade agreements had applied to the procurement at issue, the choice of the bidder not to seek clarification means that there is no reasonable indication that PWGSC breached the trade agreements.

DECISION

17. 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

12. *Azimuth Consulting Group Partnership* (1 February 2016), PR-2015-056 (CITT) at para. 20.