



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2017-007

Yeva Vision

*Decision made
Monday, May 8, 2017*

*Decision issued
Thursday, May 11, 2017*

*Reasons issued
Wednesday, May 24, 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

YEVA VISION

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.

Daniel Petit
Daniel Petit
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. Yeva Vision filed a complaint with the Tribunal on May 4, 2017, relating to a Request for a Standing Offer (RFSO) (Solicitation No. W8484-15P2E/A) issued by the Department of Public Works and Government Services (PWGSC), on behalf of the Department of National Defence (DND), for the provision of ballistic eyewear.

3. Yeva Vision submitted that the cancellation of the RFSO by PWGSC, after it was awarded the standing offer, was unjustified. As a remedy, Yeva Vision requested that it be awarded the contract and compensation for lost profits. It also requested its costs incurred in preparing the complaint and its bid preparation costs.

4. Yeva Vision had already filed a complaint with the Tribunal concerning the same RFSO on March 28, 2017 (File No. PR-2016-068). In that case, the Tribunal decided not to conduct an inquiry into the complaint because Yeva Vision had not yet received a denial of relief from PWGSC. In its statement of reasons, the Tribunal indicated that its decision did not preclude Yeva Vision from filing a new complaint within 10 working days of receiving a denial of relief from PWGSC or, if PWGSC failed to respond to Yeva Vision's objection by April 21, 2017, within 10 working days of that date.³

BACKGROUND

5. On May 10, 2016, PWGSC, on behalf of DND, issued the RFSO.

6. On March 1, 2017, a standing offer was awarded to Yeva Vision.

7. On March 27, 2017, PWGSC informed Yeva Vision that the standing offer it was awarded had been cancelled and that a new RFSO would be sent shortly to all suppliers that had been deemed compliant.

8. On March 27, 2017, Yeva Vision made an objection to PWGSC.

9. On March 28, 2017, Yeva Vision filed a complaint with the Tribunal (File No. PR-2016-068).

10. On March 29, 2017, PWGSC replied by email to Yeva Vision's objection.

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

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

3. *Yeva Vision* (31 March 2017), PR-2016-068 (CITT) at paras. 11-12.

11. On March 31, 2017, the Tribunal issued its decision not to conduct an inquiry into the complaint in File No. PR-2016-068.⁴

12. On May 4, 2017, Yeva Vision filed the present complaint with the Tribunal.

ANALYSIS

13. Pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal decided not to conduct an inquiry into the complaint for the reasons that follow.

14. 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;
- 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 government institution did not conduct the procurement in accordance with the applicable trade agreements.

15. In the case at hand, the Tribunal has determined that the complaint cannot be accepted for inquiry on the ground that it was filed outside the time limit set out in section 6 of the *Regulations* and, therefore, that it does not meet the first condition.

16. Specifically, 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, 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.”.

17. In the case at hand, the information contained in the complaint indicates that Yeva Vision made an objection to PWGSC on March 27, 2017, within 10 working days after the day on which it became aware of the basis of its complaint.

18. In File No. PR-2016-068, the Tribunal decided not to inquire into the complaint because it had been filed before Yeva Vision received a denial of relief from PWGSC and it was therefore premature. In its statement of reasons, the Tribunal indicated that its decision did not preclude Yeva Vision to file a new complaint within 10 working days of receiving a denial of relief from PWGSC or, if PWGSC failed to respond to Yeva Vision’s objection by April 21, 2017, within 10 working days of that date.

19. The evidence on the record now shows that Yeva Vision has received a denial of relief from PWGSC in an email dated March 29, 2017. Yeva Vision could therefore file a new complaint with the Tribunal within 10 working days after that date, i.e. at the latest on April 12, 2017.

4. PWGSC’s response, dated March 29, 2017, had not been filed with the Tribunal at the time it issued its decision in File No. PR-2016-068 on March 31, 2017.

20. However, Yeva Vision waited until May 4, 2017, to file its complaint. The complaint was therefore filed outside the prescribed time limit stipulated in the *Regulations*, contrary to the Tribunal's instructions in File No. PR-2016-068. Moreover, the Tribunal points out that it was very clear regarding the procedure and the time limits to file a new complaint with the Tribunal concerning the same RFSO. The Tribunal cannot remedy the complainant's failure to file its complaint within the prescribed time limits.

DECISION

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

Daniel Petit

Daniel Petit

Presiding Member