



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2017-027

Milspec Consulting Ltd.

*Decision made
Friday, September 29, 2017*

*Decision and reasons issued
Wednesday, October 4, 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

MILSPEC CONSULTING LTD.

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.

Jean Bédard

Jean Bédard
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.

BACKGROUND

2. This complaint by Milspec Consulting Ltd. (Milspec) concerns a request for proposal (RFP) (Solicitation No. W3934-17A123/A) for the repair and renewal of a Cessna L-19 airplane, issued by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence (DND).

3. The RFP was issued on August 28, 2017. On August 29, 2017, Milspec wrote to PWGSC to object to two of the mandatory technical criteria of the RFP: MC1, which requires that a bidder must be an Approved Maintenance Organization (AMO) recognized by Transport Canada; and MC3, which requires that a bidder must have a place of business no further than 200 km from a DND site in Saint-Jean-sur-Richelieu, Quebec. Section 2.5 of the RFP, titled “Location Proximity”, states that this requirement is due to “[c]onstraints related to DND operational requirements”.³

4. Milspec submitted that these specifications are unfairly biased against its U.S.-based client, which had successfully bid on similar procurements in the past. With respect to MC1, Milspec submitted that its client’s U.S. licences had been considered equivalent to Transport Canada’s AMO certification in the past, and requested that this criterion be changed to recognize these equivalent certifications. With respect to MC3, Milspec submitted that operational requirements could not justify this requirement, as its client had successfully performed this work in the past, and requested that PWGSC consider removing this requirement.

5. On August 30, 2017, PWGSC responded to Milspec with respect to MC3 only. PWGSC stated that DND had determined that the proximity requirement was necessary due to personnel implications. On the same day, Milspec responded to PWGSC, stating that the work outlined in the RFP does not involve DND personnel, and that its client had successfully performed similar work many times in the past without this limitation. Therefore, Milspec submitted that there is no justification for this requirement.

6. On September 1, 2017, PWGSC informed Milspec that responses to its questions would be published as an amendment to the RFP no later than September 5, 2017. Amendment 001 to the RFP was issued September 1, 2017, and published on buyandsell.gc.ca on September 5, 2017.

7. With respect to MC1, Amendment 001 provides as follows: “Because of undocumented parts recertification issues with the Cessna L-19, only Canadian Approved Maintenance Organizations are

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

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

3. Solicitation No. W3934-17A123/A at page 3 of 24.

permitted to bid on this task. Canada chooses not to amend this requirement.”⁴ With respect to MC3, Amendment 001 provides as follows:

The number of visits and the season in which they will be conducted imply operational considerations, health and safety concerns along with costs, financial as well as environmental. The visits have a direct effect on the project’s progress and pushing them back for weather concerns could lead to unacceptable delays. Canada chooses not to remove this requirement.⁵

8. On September 5, 2017, Milspec again wrote to PWGSC and stated that the responses provided in Amendment 001 were unacceptable. On September 12, 2017, after telephone discussions between PWGSC and Milspec, PWGSC wrote to Milspec to confirm that MC1 and MC3 would not be changed.

9. On September 27, 2017, Milspec filed its complaint with the Tribunal. With respect to MC1, Milspec argued that it was unaware of any issues with undocumented or uncertified parts, and noted again that its client had successfully performed similar work in the past without encountering these issues.

10. Milspec made the following three arguments with respect to MC3. First, that the location of its work site presents no implications for DND personnel as all of the work is performed by the bidder. Second, that the fact that the work will occur during winter is not a justification for imposing this requirement as it has been done successfully by the U.S. bidder in the past. Third, Milspec argued that “operational requirements” cannot be used as a justification as this RFP does not relate directly to DND operations but to the operation of the civilian Air Cadet program.

11. As a remedy, Milspec requested that the solicitation be cancelled and reissued with “the correct, unbiased criteria”.⁶

ANALYSIS

12. For the following reasons, the Tribunal has decided not to conduct an inquiry into this complaint.

13. Subsection 6(2) of the *Regulations* states that a potential supplier who 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.”

14. While Milspec filed its objection with PWGSC in a timely manner, it did not file its complaint with the Tribunal within 10 days of receiving its final response from PWGSC. Milspec did not file its complaint until September 27, 2017, which is 11 working days after it received its denial of relief on September 12, 2017. As the Tribunal has stated before, the 10-working-day deadline of the *Regulations* is strict and cannot be extended. As a result, Milspec’s complaint is not timely.

15. In this instance, even had Milspec’s complaint been timely, it would have failed on other grounds. Indeed, beyond the timeliness conditions of section 6 of the *Regulations*, subsection 7(1) sets out three other conditions that must be satisfied before the Tribunal may conduct an inquiry in respect of a complaint. One of these conditions is that the complaint must be filed by a potential supplier. “Potential supplier” is defined

4. Amendment 001 to Solicitation No. W3934-17A123/A at 2.

5. Amendment 001 to Solicitation No. W3934-17A123/A at 2.

6. Complaint at 5.

in section 30.1 of the *CITT Act* as “a bidder or prospective bidder on a designated contract.” The Tribunal has previously stated that a bidder is “the party that ultimately bears the rights and obligations concerning the bid.”⁷

16. The complaint states that “I live and work in Canada *writing proposals for clients that seek to bid on government opportunities* and helping them navigate the procurement process. If this matter is not corrected, I loose [*sic*] business with my American clients. This is why I am filing the complaint” [emphasis added].⁸

17. The Tribunal understands from this statement that the complainant may be responsible for filling out the bid documentation, but also that it is Milspec’s client(s) who are bidding on the procurement, as opposed to Milspec itself. There is no evidence that Milspec would in any way be responsible for doing the work under any resulting contract as authorized agent for its client(s).

18. As a result, the Tribunal finds that Milspec is not a potential supplier. Accordingly, the complaint cannot be accepted for inquiry, as the conditions of subsection 7(1) of the *Regulations* are not met.

DECISION

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

Jean Bédard

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Presiding Member

7. *West Atlantic Systems* (19 September 2007), PR-2007-036 to PR-2007-041, PR-2007-043 to PR-2007-052 and PR-2007-055 at 2.

8. Complaint at 6.