



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2017-031

CETTEC Digital Imaging Inc.

*Decision made
Friday, October 27, 2017*

*Decision issued
Tuesday, October 31, 2017*

*Reasons issued
Thursday, November 9, 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

CETTEC DIGITAL IMAGING 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.

Jason W. Downey _____

Jason W. Downey
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.

2. On October 24, 2017, CETTEC Digital Imaging Inc. (Cettec) filed a complaint with the Tribunal regarding a Request for Proposal (RFP) (Solicitation No. 7200-170016/A) issued by the Department of Public Works and Government Services Canada (PWGSC) on behalf of the Public Prosecution Service of Canada (PPSC) for the provision of reprographic services for the British Columbia region.

3. Cettec alleged that the contract was improperly awarded to a non-compliant bidder.

4. For the reasons that follow, the Tribunal finds that the complaint is time-barred and that there is no reasonable indication of a breach of the applicable trade agreement.

ANALYSIS

5. Pursuant to sections 6 and 7 of the *Regulations*, the Tribunal may conduct an inquiry if the following four conditions are met:

- 1) the complaint has been filed within the time limits prescribed by section 6;
- 2) the complainant is a potential supplier;
- 3) the complaint is in respect of a designated contract; and
- 4) the information provided discloses a reasonable indication that the procurement process was not conducted in accordance with the applicable trade agreements.

6. The complaint meets the second and the third conditions. The two remaining conditions are addressed below.

7. Pursuant to section 6 of the *Regulations*, a complainant has 10 working days from the day on which it first becomes aware, or reasonably should have become aware, of its ground of complaint to either object to the government institution or file a complaint with the Tribunal. If a complainant objects to the government institution within the designated time, the complainant may file a complaint with the Tribunal within 10 working days after it has actual or constructive knowledge of the denial of relief by the government institution. The relevant provisions read as follows:

6 (1) Subject to subsections (2) and (3), a potential supplier who files a complaint with the Tribunal in accordance with section 30.11 of the Act shall do so not later than 10 working days after the day on which the basis of the complaint became known or reasonably should have become known to the potential supplier.

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

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

(2) A potential supplier who has made an objection regarding a procurement relating to a designated contract 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.

8. On August 30, 2017, PWGSC issued the RFP.

9. PWGSC issued two amendments to the RFP, dated September 15 and 20, 2017, respectively. Amendment No. 002 extended the closing date for bid submissions to September 27, 2017.

10. Cettac submitted a bid in response to the RFP by the bid closing date.

11. On October 5, 2017, PWGSC notified Cettac that a contract was awarded to Ricoh Canada Inc. (Ricoh). Although Cettac's bid complied with the mandatory requirements of the RFP, it was not the lowest-priced. On the same day, Cettac acknowledged receipt of PWGSC's letter. Again on the same day, Cettac wrote to PPSC thanking it for "allowing [Cettac] to provide print services and for being a large part of our success in the last 13 years" and also offering "any help during the transition".

12. On October 20, 2017, PWGSC asked Cettac whether it would be willing to have its current contract extended for one month. On the same day, Cettac requested an explanation as to why PWGSC asked for such an extension. PWGSC replied to Cettac that same day, noting that the reason was to ensure a stable transition process. Later that day, Cettac submitted additional questions to PWGSC concerning the extension request and the compliance of Ricoh's bid to the mandatory requirements. On the same day, PWGSC informed Cettac that Ricoh agreed to the one-month extension of Cettac's contract. PWGSC also mentioned that Cettac would continue to provide the services required under Cettac's contract during the transition period. On October 23, 2017, PWGSC confirmed that a contract had been awarded to Ricoh, whose proposal was identified as the successful bid.

13. On October 24, 2017, Cettac filed the present complaint.

14. Cettac alleged that the contract was improperly awarded to a bidder that did not comply with the mandatory requirements of the solicitation. Specifically, Cettac alleged that Ricoh was not able to meet the security requirement of Part 6 of the RFP at its Vancouver site. It also alleged that Ricoh could not reasonably comply with the service levels for "extremely urgent" and "urgent" work requests, as outlined in sections M.3.2.a and M.3.2.b of the RFP, because of the physical distance between Ricoh's Richmond site and PPSC's location. Finally, Cettac claimed that the request for a month-long extension is unusual and that a winning bidder should be able to comply with the mandatory requirements of the RFP on the contract award date.

15. In light of the evidence presented before it, the Tribunal finds that Cettac knew, or reasonably should have known, the basis of its complaint on October 5, 2017, when it learned that Ricoh had been awarded the contract. PWGSC's extension request of October 20, 2017, regarding Cettac's existing contract does not relate to the procurement at issue and does not affect that conclusion. Cettac's ground of complaint relates to the non-compliance of the winning bidder in the context of the present procurement process. Accordingly, Cettac's ground of complaint was known or reasonably should have become known to it at the time it was notified that the contract was awarded to Ricoh.

16. Therefore, any objection to PWGSC or complaint filed with the Tribunal would have had to have been filed within 10 working days after October 5, 2017 (i.e. by October 20, 2017), in order to have been filed in a timely manner.

17. As the complaint was not filed until October 24, 2017, and the evidence did not indicate that Cettéc had objected to PWGSC prior to that date, the Tribunal finds that it was made outside the prescribed time limits.

18. Therefore, the first condition for conducting an inquiry is not met.

19. Moreover, even if the complaint had been considered timely, the Tribunal is of the view that it failed to contain a reasonable indication that the applicable trade agreement was breached.

20. According to paragraph 7(1)(c) of the *Regulations*, to initiate an inquiry, the Tribunal must find that the complaint discloses a reasonable indication that the procurement has not been carried out in accordance with whichever of the trade agreements listed in that section apply.

21. Cettéc did not file any information to support its allegation that Ricoh was unable to meet the mandatory requirement concerning the service levels for “extremely urgent” and “urgent” work requests as outlined in the RFP. For instance, Cettéc did not provide information on Ricoh’s address or explanation as to why the distance from Ricoh’s place of business and PPSC’s site is indicative that Ricoh cannot reasonably comply with the corresponding mandatory criteria. Nor has Cettéc provided evidence to substantiate its allegation that Ricoh does not meet the security requirements set out in the RFP.

22. Therefore, there is no evidentiary basis for the Tribunal to question the conclusion of the evaluators that Ricoh’s bid was compliant. The Tribunal concludes that the complaint does not disclose a reasonable indication that the contract was improperly awarded to a non-compliant bidder resulting in a breach of the applicable trade agreement. As a result, the fourth condition for conducting an inquiry is not met.

DECISION

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

Jean Bédard, Q.C.

For: Jason W. Downey³
Presiding Member

3. On November 1, 2017, Mr. Jason W. Downey was appointed to the Tribunal administratif du travail du Québec. The same day, upon accepting that appointment, Mr. Downey resigned from the Tribunal. At the time that he made his decision in this matter on October 27, 2017, the present statement of reasons was being finalized for publication and became available for signature only after the date of Mr. Downey’s resignation from the Tribunal. On November 8, 2017, Mr. Downey reviewed this statement of reasons and indicated to me that it correctly reflects the reasons for his decision of October 27, 2017. In my capacity as Acting Chairperson of the Tribunal, I, Jean Bédard, Q.C., have therefore signed the original of this document “for Mr. Downey”. [Original initialed by Jean Bédard, Q.C.].