



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2017-066

BERRN Consulting Limited

*Decision made  
Wednesday, March 21, 2018*

*Decision and reasons issued  
Thursday, March 22, 2018*

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**

**BERRN CONSULTING LIMITED**

**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.

Serge Fréchette  
Serge Fréchette  
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. On March 16, 2018, BERRN Consulting Limited (BERRN) filed a complaint regarding a Request for Proposal (RFP) (Solicitation No. 47419-188627/A) issued by the Department of Public Works and Government Services (PWGSC), on behalf of the Canada Border Services Agency, for laboratory equipment and supplies, specifically for automated external defibrillators.

3. BERRN submitted a bid in response to the above-referenced solicitation, but was unsuccessful in being awarded the designated contract. BERRN alleges that the winning bidder (MediQuest) did not meet all of the mandatory technical specifications of the solicitation. BERRN wrote to the contracting authority on March 6, 2018, objecting to the contract award to MediQuest. BERRN asked the contracting authority to review MediQuest's bid in regard to various requirements of the solicitation regarding the weight of the defibrillators and their ability to function in certain environments. As of March 16, 2018, when BERRN filed its complaint with the Tribunal, it had not yet received a response from the government institution. Since that date, the Tribunal has received no correspondence from BERRN indicating that it would have received a response from the government institution.

4. The complaint is premature. Under subsection 6(2) of the *Regulations*, when a potential supplier, such as BERRN, has objected to a government institution (here PWGSC) in regard to an aspect of a procurement process (here PWGSC's decision to award a contract to MediQuest), the potential supplier must wait until it is "denied relief" by the government institution *before* the Tribunal can be engaged. BERRN has not yet received an answer from PWGSC. Accordingly, the Tribunal cannot inquire into BERRN's claims at this time. Indeed, PWGSC has been seized of this matter only since March 6, 2018.

5. This decision does not preclude BERRN from filing a new complaint within 10 working days of receiving a denial of relief (i.e. a response from PWGSC that BERRN is not satisfied with). Alternatively, if PWGSC fails to respond to BERRN's objection within a reasonable timeframe, BERRN can refile its complaint with the Tribunal directly, and the Tribunal will decide whether or not to initiate an inquiry. In order to avoid unnecessary duplication upon filing of a new complaint, BERRN can ask that the documentation already filed with the Tribunal be added to the new complaint.

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

Serge Fréchette  
Serge Fréchette  
Presiding Member

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1. R.S.C., 1985, c. 47 (4th Supp.) [*CITT Act*].  
2. S.O.R./93-602 [*Regulations*].