



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2017-064

Tri-Tech Forensics Inc.

*Decision made
Monday, March 19, 2018*

*Decision issued
Wednesday, March 21, 2018*

*Reasons issued
Monday, March 26, 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

TRI-TECH FORENSICS 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.

Rose Ritcey _____
Rose Ritcey
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.

BACKGROUND

2. On March 14, 2018, Tri-Tech Forensics Inc. (Tri-Tech) filed a complaint regarding a Request for Proposal (RFP) (Solicitation No. M7594-177650/A) issued on October 2, 2017, by the Department of Public Works and Government Services (PWGSC), on behalf of the Royal Canadian Mounted Police (RCMP), for various laboratory equipment and supplies, specifically DNA blood collection kits and DNA buccal collection kits.

3. After having initially been found to be the lowest-priced responsive bid, Tri-Tech's bid was declared non-responsive during the pre-award testing phase of the evaluation because the sample kits it provided failed to meet all the mandatory evaluation criteria.

4. According to PWGSC, Tri-Tech omitted the footer of two forms which were part of the sample kits and some of the outer bags of the sample kits were mislabelled.

5. In its complaint, Tri-Tech acknowledges that it did not conform to the precise requested format of the footer for these two forms. As for the second issue, Tri-Tech describes the processes and timeline that it undertook when assembling the sample kits so as to ensure their integrity with the requirements of the RFP, including their proper labeling. It wonders if the outer bags were switched after they were opened and their contents ascertained.

6. Tri-Tech requests that PWGSC reconsider the evaluation of its proposal, and that the designated contract be awarded to Tri-Tech instead of to the winning bidder, or that the solicitation be retendered.

ANALYSIS

7. Various conditions must be met for the Tribunal to initiate an inquiry.

8. To begin, a complaint must be filed within the prescribed time limits.³ In this instance, the Tribunal finds that Tri-Tech filed its complaint within the prescribed time limits: it learnt of the basis of its complaint on March 2, 2018. It filed its complaint with the Tribunal on March 14, 2018. That time frame is within the 10-working-day period provided for under subsection 6(2) of the *Regulations*.

9. After ascertaining the timeliness of a complaint, further prescribed conditions must be examined before the Tribunal can initiate an inquiry. Specifically, the Tribunal must be satisfied that (a) the complainant is a potential supplier, (b) the complaint is in respect of a designated contract and (c) the

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

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

3. Section 6 of the *Regulations*.

complaint discloses a reasonable indication that the procurement has not been carried out in accordance with the applicable trade agreements.⁴

10. Regarding (a), there is no doubt that Tri-Tech is a potential supplier as it clearly deals in the goods being procured.

11. Regarding (b), the Tribunal notes that the solicitation is covered by various trade agreements – a condition that must be met for a solicitation to qualify as a “designated contract”. Notably the *North American Free Trade Agreement*⁵ is applicable. Tri-Tech is a supplier from the United States. As such, Tri-Tech is entitled to file a complaint with the Tribunal under *NAFTA*.

12. The Tribunal therefore finds that Tri-Tech’s complaint meets conditions (a) and (b).

13. However, for the reasons discussed below, the Tribunal finds that the complaint does not disclose a reasonable indication that the procurement was conducted in breach of *NAFTA* and, therefore, that it fails to meet condition (c).

14. The RFP indicated bids would be evaluated as follows:

PART 4 – EVALUATION PROCEDURES AND BASIS OF SELECTION

4.1.1.2 PRE-AWARD TESTING

Following evaluations, the responsive bid with the lowest aggregated evaluated price will advance to Pre-Award testing. The Bidder will be requested by the Contracting Authority to provide **five (5) of each DNA Collection Kit Blood and Buccal** to the Testing Authority . . . These Kits will be used to confirm compliance to Appendix “A”. Failure of any of the five Kits tested to demonstrate compliance with the mandatory technical criteria will result in the Bidder’s bid being declared non-responsive.⁶

15. Appendix A of the RFP is the Statement of Work. Among other things, it provides the mandatory technical criteria, including the required contents of each kit.

MANDATORY TECHNICAL CRITERIA

7. The Submission Receipt Form (5751) and the Check Lists must be . . . of good workmanship. All labeling, forms and lists must be readable without ink voids in text or graphics.

12. The Fingerprint Identification Form (3801) must be . . . of good workmanship. The labeling and the form must be readable without ink voids in text or graphics.

KIT 1: Blood Collection Kit

1. English/French Fingerprint Identification Form (3801) with bar code (Appendix “D”)
3. English/French Submission Receipt Form (5751) (Appendix “G”)

KIT 2: Buccal Collection Kit

1. English/French Fingerprint Identification Form (3801) with bar code (Appendix “D”)
3. English/French Submission Receipt Form (5751) (Appendix “G”)

4. Subsection 7(1) of the *Regulations*.

5. *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: Global Affairs Canada <<http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/fta-ale/index.aspx?lang=eng>> (entered into force 1 January 1994) [*NAFTA*].

6. RFP, section 4.1.1.2.

16. Forms 3801 and 5751 were provided in Portable Document Format (pdf) in Appendices D and G, respectively, of the RFP.

17. On October 16, 2017, PWGSC published an amendment to the RFP, which dealt with the use of forms in the sample kits.

Q.1

As we are required to submit samples of a proposed kit, will the Crown be providing artwork suitable for the production of actual samples or will reasonable facsimiles of the proposed kit printed with artwork supplied in the tender be accepted for submissions.

A.1

Yes, actual samples of the proposed kit will required for the technical evaluation. All forms, instructions, labels, security seals, and envelopes are bilingual and must be printed from the pdf copies that are provided in the offer

18. As the responsive bidder with the lowest aggregate evaluated price, Tri-Tech advanced to the pre-award testing phase of the evaluation. For that phase, it provided five sample kits of each of the DNA blood and buccal collection kits that were used by the technical authority to confirm compliance with Appendix A of the solicitation.

19. Both Form 3801 and Form 5751 included the “Canada” logo in their footer, as well as being identified as RCMP documents in their header. The forms submitted by Tri-Tech in its DNA blood and buccal sample kits at the pre-award testing phase of the evaluation failed to reproduce the “Canada” logo in their footer. In its complaint, Tri-Tech states that, “[u]nfortunately, this mark [i.e. the “Canada” logo] was intentionally left off [the] forms because in prior bid submissions, marks like this have not been intended to be included on the form. . . . [W]e assumed incorrectly that the multicolored Canada logo was a sort of watermark that was not supposed to be on the actual form. We did not color copy the forms that were provided with the bid solicitation.”

20. The Tribunal is always sympathetic towards bidders that have experienced errors such as submitting an improper form. However, the Tribunal recalls that bidders have the responsibility to exercise all necessary due diligence in the preparation of a proposal to ensure compliance with the terms of a solicitation.⁷ The reason for this is important: as the Tribunal has long stated, compliance with all mandatory requirements of solicitation documents is one of the “cornerstones” of maintaining the integrity of the competitive procurement system; as such, it is expected that a government institution will evaluate mandatory requirements thoroughly and strictly.⁸

21. PWGSC chose to make the use of these specific forms a mandatory requirement. As such, PWGSC properly declared Tri-Tech’s bid as being non-responsive because of its choice to provide sample kits that contained forms other than those which the solicitation documents required.

22. On that basis alone, the Tribunal cannot inquire into this complaint. Accordingly, it is moot for the Tribunal to inquire into whether the packaging for some of the sample kits was switched after receipt by the RCMP as alleged by Tri-Tech. Nevertheless, even though the Tribunal cannot inquire into this complaint, the Tribunal trusts that PWGSC will conduct all necessary verifications to inquire into Tri-Tech’s allegations, and take corrective actions to its procedures should it be discovered that those allegations are founded.

7. *Integrated Procurement Technologies, Inc.* (14 April 2008), PR-2008-007 (CITT) at para. 13.

8. *IBM Canada Ltd.* (5 November 1999), PR-99-020 (CITT) at 7.

DECISION

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

Rose Ritcey
Rose Ritcey
Presiding Member