



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2018-013

Insight Safety and Sports Inc.

*Decision made
Tuesday, July 24, 2018*

*Decision issued
Tuesday, July 24, 2018*

*Reasons issued
Friday, August 3, 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.).

BETWEEN

INSIGHT SAFETY & SPORTS INC.

AND

**THE DEPARTMENT OF PUBLIC WORKS AND GOVERNEMENT
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.

Ann Penner

Ann Penner

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. For the reasons that follow, the Tribunal has decided not to conduct an inquiry into the complaint.

SUMMARY OF THE COMPLAINT

3. On July 12, 2018, Insight Safety and Sports Inc. (Insight) filed a complaint with the Tribunal regarding a procurement (Solicitation No. 21120-18950/A) issued on January 5, 2018, by the Department of Public Works and Government Services (PWGSC) on behalf of Correctional Service Canada (CSC) for the provision of high-strength puncture-resistant gloves³.

4. Insight alleged that the score achieved by the successful bidder raised questions regarding the evaluation conducted by PWGSC. In support of its allegations, Insight presented calculations, using the formula defined in the Request for Proposal (RFP) and the successful bidder's technical merit score, to suggest that the successful bidder's proposed gloves would have achieved a puncture resistance of 466.67 newton (N): a score it considered inconceivable and one that had never been attained by any other large and/or well-recognized firms. According to Insight, the maximum puncture resistance that the winning bidder's product could have achieved, according to its testing, was 300 N. Insight also questioned the price bid by the successful bidder given the supposed quality of the product and high costs related to production. Finally, Insight argued that successful bidder could not have supplied the product as it was not advertised on its website.

5. As a remedy, Insight requested that the designated contract be terminated and the bids be re-evaluated by having the puncture resistance test conducted by an independent laboratory.

BACKGROUND TO THE COMPLAINT

6. On July 11, 2018, Insight was informed by e-mail that its bid was unsuccessful and that the resulting contract had been awarded to Martin & Levesque (1983) Inc. for a total amount of CAD 219,027.38. Insight learned that even though its bid was fully compliant with the terms of the RFP, the successful bidder had received a score of 93 (combined rating of technical merit and price), whereas it had only received a combined rating score of 55.

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

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

3. The Request for Proposal for this solicitation describes the requirement as being for "Protective Search Gloves, Male & Female, Goatskin or Cowhide Leather with a cut, tear and puncture resistant high strength, lightweight, synthetic fiber/fibers knitted lining, with a cuff and an elasticized wrist, floating thumb and fourchettes construction. The glove must fit snugly, allow the required dexterity for effective frisking and must provide cut-resistance through the entire glove."

7. On July 12, 2018, Insight made an objection to PWGSC, challenging the puncture resistance score of the successful bidder. PWGSC responded later that same day, denying the basis of the objection and confirming the technical score of the winning bid, indicating that its puncture result score was not above 400 N.

8. Also on July 12, 2018, Insight filed its complaint with the Tribunal. The Tribunal requested further documentation, including correspondence between Insight and PWGSC, and Insight's bid. Upon receipt of these documents, the Tribunal deemed the complaint to be complete and properly filed on July 18, 2018.

ANALYSIS

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

- the complaint has been filed within the time limits prescribed by section 6;⁴
- the complainant is an actual or potential supplier;⁵
- the complaint is in respect of a designated contract;⁶ and
- the information provided discloses a reasonable indication that the government institution did not conduct the procurement in accordance with the applicable trade agreements.⁷

10. In this case, the Tribunal finds that the fourth condition has not been met: Insight's complaint does not disclose a reasonable indication that the applicable trade agreements were breached.⁸

11. The applicable trade agreements require that procuring entities base their evaluations upon the stated (mandatory) requirements of tender notices or documentation.⁹ Only bidders that comply with those requirements may be considered for an award.¹⁰

12. In this case, the RFP stated that the procurement would be awarded on the basis of a formula that combined a puncture resistance test and price: 70% of the total score would be allotted for the puncture resistance test and 30% for price. Section 4.1.1.2 ("Technical Merit") of the RFP stated that the "scoring of

4. Subsection 6(1) of the *Regulations*.

5. Paragraph 7(1)(a) of the *Regulations*.

6. Paragraph 7(1)(b) of the *Regulations*.

7. Paragraph 7(1)(c) of the *Regulations*.

8. The applicable trade agreements in the solicitation at issue are the following: *Canadian Free Trade Agreement*, online: Internal Trade Secretariat <<https://www.cfta-alec.ca/wp-content/uploads/2017/06/CFTA-Consolidated-Text-Final-Print-Text-English.pdf>> (entered into force 1 July 2017) [*CFTA*]; *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); *Revised Agreement on Government Procurement*, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.htm> (entered into force 6 April 2014); *Canada-European Union Comprehensive Economic and Trade Agreement*, online: Global Affairs Canada <<http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/toc-tdm.aspx?lang=eng>> (entered into force provisionally 21 September 2017).

9. See, for example, Article 507(3)(b) of the *CFTA*.

10. See, for example, Article 515(4) of the *CFTA*.

the technical is done by giving full marks to the highest result of the puncture resistance test with the other bids being given a prorated score". Accordingly, the successful bidder's technical score for puncture resistance would necessarily be 70/70.

13. As noted above, Insight attempted to use the winning bidder's total score to calculate its puncture resistance score. The Tribunal finds, however, that Insight's calculations cannot be used to determine the puncture resistance score of the successful bidder. More specifically, Insight's calculations do not demonstrate that the successful bidder's puncture resistance score was over 450 N. No evidence was adduced and the calculations were solely based on hypothetical assumptions.

14. Consequently, the Tribunal finds that the complaint does not disclose a reasonable indication that the procurement was not conducted in accordance with the applicable trade agreements.

DECISION

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

Ann Penner
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Presiding Member