



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2018-008

Resqtec Zumro BV

*Decision made
Thursday, June 14, 2018*

*Decision and reasons issued
Thursday, June 14, 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

RESQTEC ZUMRO BV

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

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.

SUMMARY OF COMPLAINT

2. This complaint by Resqtec Zumro BV (Resqtec), a company from the Netherlands, concerns a request for standing offer (RFSO) (Solicitation No. W3474-181231/A) by the Department of Public Works and Government Services (PWGSC) for the provision of pneumatic lift bags required by the Department of National Defence.

3. Resqtec submitted that its offer on the aforementioned solicitation was wrongly judged as non-compliant, and claims that it was only informed as to the reasons for this non-compliance after making multiple inquiries with PWGSC over the course of five months. Resqtec argues that PWGSC breached Article XVIII of the *WTO Agreement on Government Procurement*³ for failing to provide it with the reasons for this decision on a timely basis. It also alleges that PWGSC denied it an opportunity to complain, in breach of Article XX of the *AGP*.

4. A new solicitation for this requirement (Solicitation No. W3474-181231/B) was published on January 19, 2018. Although Resqtec's offer was found to be compliant with the requirements of this new solicitation, it lost to another bidder based on pricing. Resqtec alleges that this solicitation was wrongly published and awarded because its offer on the first solicitation should have been found to be compliant.

5. Resqtec asks that the contract awarded in the second solicitation be terminated and that the bids on the first solicitation be re-evaluated.

6. Resqtec filed a complaint with the Tribunal on June 7, 2018.

ANALYSIS

7. On June 14, 2018, the Tribunal decided not to conduct an inquiry into the complaint.

8. Pursuant to sections 6 and 7 of the *Regulations*, the Tribunal may conduct an inquiry 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

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

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

3. *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) [*AGP*].

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

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

- the complaint is in respect of a designated contract;⁶ and
- the information discloses a reasonable indication that the government institution did not conduct the procurement in accordance with the applicable trade agreements.⁷

9. If one or more of the above conditions are not satisfied, the Tribunal cannot conduct an inquiry into the complaint. In this case, the Tribunal has determined for the reasons below that the complaint does not relate to a designated contract.

10. The only trade agreements that Resqtec, being a corporation from the Netherlands, could potentially avail itself of are the *Canada-European Union Comprehensive Economic and Trade Agreement*⁸ and the *AGP*. These are the only trade agreements with Canada to which the Netherlands has negotiated access to procurement proceedings before the Tribunal on behalf of its suppliers.⁹

11. However, for a contract for goods to be considered a “designated contract” for the purposes of the *AGP* or *CETA*, the goods being procured must be valued at equal to or greater than \$237,700.¹⁰ Contracts valued at less than this threshold amount are not subject to the disciplines of the *AGP* or *CETA*.

12. Based on the information supplied with the complaint, the estimated cost of the procurement is expected to be \$162,669.¹¹ Accordingly, the procurement value is below the monetary threshold set by the *APG* and *CETA*. Therefore, the complaint is not in respect of a designated contract.

DECISION

13. 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

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

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

8. *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) [*CETA*].

9. While the solicitation may be subject to certain other of the trade agreements and certain of these other agreements have lower monetary thresholds (for example, the *Canada-Panama Free Trade Agreement* which has a monetary threshold of \$106,000 for goods), Resqtec is not able to benefit from these agreements because its government is not a party to those agreements. See *Northrop Grumman Overseas Services Corp. v. Canada (Attorney General)*, 2009 SCC 50, at para. 44: “If the government of a supplier did not negotiate access to the [Tribunal] for its suppliers, there is no access for them.”

10. <https://www.canada.ca/en/treasury-board-secretariat/services/policy-notice/2017-6.html>.

11. See email dated April 26, 2018, from Vashti Ramnarine to Martijn Poen, included with the complaint.