



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2018-009

DMA Security Solutions Ltd.

*Decision made  
Friday, June 29, 2018*

*Decision and reasons issued  
Tuesday, July 3, 2018*

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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**

**DMA SECURITY SOLUTIONS LTD.**

**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

### INTRODUCTION

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. For the reasons provided below, the Tribunal finds the complaint is untimely and, regardless, does not disclose a reasonable indication that any applicable trade agreement has been violated. Accordingly, the Tribunal has decided not to conduct an inquiry into the complaint.

### SUMMARY OF THE COMPLAINT

3. This complaint relates to a Request for Proposal (RFP) (Solicitation No. M5000-18-2940/A) issued on February 1, 2018, by the Royal Canadian Mounted Police (RCMP) for the supply and installation of fire alarm monitoring panels and monitoring services from a ULC-listed monitoring agency for certain RCMP facilities.

4. The complainant DMA Security Solutions Ltd. (DMA) alleges that the RCMP awarded the contract to a supplier who is not ULC-listed and who underpriced its bid for the work. DMA alleges that the successful bidder's price is less than the materials cost without labour for the work and that, as such, it will not be able to complete the project. DMA asks that the Tribunal investigate pricing and order the bids be re-evaluated.<sup>3</sup>

### BACKGROUND

5. On June 8, 2018, the RCMP advised DMA that although its proposal met the mandatory requirements of the solicitation it was not the lowest-priced. As a result, the contract had been awarded to On Guard Security Inc. (On Guard), based on its bid price of \$111,396.<sup>4</sup>

6. On June 11, 2018, DMA filed a complaint with the Tribunal. DMA's complaint alleges that On Guard is not ULC-listed, underbid the work and, as such, may not be able to complete it. The complaint contained no supporting documents. Therefore, on June 12, 2018, the Tribunal issued a letter informing DMA that its complaint would not be considered complete until it had filed (1) copies of all relevant correspondence; (2) information and documents substantiating its allegation that On Guard is not ULC-listed and its price is less than the materials cost without labor for the work; (3) a copy of its financial proposal; and (4) any other relevant evidence.

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

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

3. Complaint Form at 5-6.

4. DMA e-mail dated June 25, 2018, in response to the Tribunal's letter dated June 12, 2018 [DMA RFI Response], at 1-2.

7. On June 12, 2018, DMA filed a request under the *Access to Information Act* with the RCMP for the names of the competitors who bid on the RFP, as well as the financial portions of their bids.<sup>5</sup>

8. On June 14, 2018, DMA e-mailed the Tribunal to inform it that “[a]fter some more research, I did manage to find out that the winning competitor was indeed ULC[-]listed for fire alarm monitoring installations. . . . It seems they could somehow manage to provide the services as requested, but I am surprised that they could do it at the amount quoted. We were very aggressive with our bid and were still 5 times their price . . . .”<sup>6</sup> On the same day, the Tribunal e-mailed DMA asking for clarification if DMA wished to withdraw its complaint. On June 18, 2018, DMA responded, confirming it would like to pursue it.

9. On June 25, 2018, DMA filed a chain e-mail with the Tribunal containing cut-and-paste text from the above communications with the RCMP, along with DMA’s commentary. The e-mail also described certain changes in the requirements of the RFP over the procurement process which, according to DMA, caused “some confusion . . . [which] may have affected the final pricing” submitted by suppliers. The e-mail contains some information regarding the costing DMA deemed appropriate for preparing its financial bid, though DMA did not file a copy of its financial bid or its bid price.<sup>7</sup>

## ANALYSIS

10. Pursuant to sections 6 and 7 of the *Regulations*, upon receipt of a complaint which complies with subsection 30.11(2) of the *CITT Act*, the Tribunal must decide whether the following four conditions have been met before being able to conduct an inquiry: (i) whether the complaint has been filed within the time limits prescribed by section 6 of the *Regulations*; (ii) whether the complainant is a potential supplier; (iii) whether the complaint is in respect of a designated contract; and (iv) whether the information provided by the complainant discloses a reasonable indication that the procurement has not been conducted in accordance with the applicable trade agreements.

11. DMA alleges two grounds of complaint: non-compliance with ULC listing requirements; and underbidding by the contract awardee.

12. There is no evidence to support the first ground, on account of which DMA has withdrawn its allegations.<sup>8</sup> Therefore, this ground of complaint does not disclose a reasonable indication that any trade agreement has been violated.

13. As for the second ground, the Tribunal finds that it is untimely and, regardless, does not disclose a reasonable indication that any trade agreement has been violated.

14. A complainant has 10 working days from the date 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.<sup>9</sup>

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5. DMA RFI Response at 3.

6. *Ibid.* at 4.

7. *Ibid.* at 4-5.

8. *Ibid.* at 4.

9. Section 6 of the *Regulations*.

15. A complaint is not properly filed until all of the information and documents required under section 30.11 of the *CITT Act* are filed with the Tribunal.<sup>10</sup>

16. DMA was notified of the results of the RFP on June 8, 2018. DMA knew the price of the winning bid, which forms the basis of its second ground of complaint, on that day. Its deadline for filing a complete complaint therefore began to run from June 8, 2018. DMA did not make an objection to PWGSC but rather brought the complaint directly to the Tribunal on June 11, 2018. The Tribunal then informed the complainant by letter dated June 12, 2018, that its complaint could not be considered as filed until certain additional documents were provided. DMA did not provide the information requested in the Tribunal's letter dated June 12, 2018, until June 25, 2018 – three days after the 10-working-day deadline expired on June 22, 2018.

17. DMA provided no reason for why it took 14 days to provide any of the information requested. Further, even after two weeks, its response still omitted certain requested documents – specifically, its financial bid; and the actual e-mails with the RCMP as opposed to text cut and pasted from the original documents. These constitute “documents relevant to the complaint that are in the complainant’s possession” under subsection 30.11(2) of the *CITT Act* that must be filed with the complaint. Therefore, as the complaint was filed outside the regulatory time limit, it is untimely and may not proceed.

18. Even assuming the complaint was timely, it still fails because accepting an underpriced bid is not a violation of any of the trade agreements. DMA cites no case in which the Tribunal has held that a government institution cannot accept an underpriced bid. DMA also cites no article of any trade agreement prohibiting accepting an underpriced bid. The Tribunal has consistently held that the trade agreements do not forbid government institutions from accepting underpriced bids.<sup>11</sup>

19. To be sure, if a government institution changes its requirements post evaluation without retendering, that may violate the trade agreements.<sup>12</sup> However, there is no allegation that PWGSC ranked On Guard as the lowest-priced bidder based on its proposal price and then accepted a contract at another (higher) price at which On Guard would have been ranked lower. The contract award price published on Buyandsell.gc.ca (\$142,762) is higher than the contract award price stated in the regret letter to DMA (\$111,396), but, as DMA claims its bid price was “5 times” higher than On Guard’s, this would not have affected the ranking.<sup>13</sup>

20. DMA also raises various related allegations regarding the amendment process generating confusion in bid pricing. However, even if valid, these claims are untimely, as any objection on these grounds should have been raised during the amendment process.<sup>14</sup>

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10. *CORADIX Technology Consulting Ltd.* (21 February 2012), PR-2011-051 (CITT) at paras. 18-20.

11. See, for example, *GlaxoSmithKline Inc.* (16 May 2007), PR-2007-016 at 1; *Valcom Ltd. (Ottawa)* (2 December 2002), PR-2002-014 (CITT) at 9.

12. See *AdVenture Marketing Solutions Inc. v. Department of Public Works and Government Services* (31 March 2011), PR-2010-074 (CITT) at paras. 43-45.

13. RFP at art. 4.2 citing *SACC Manual Clause A0069T (2007-05-25)*, *Basis of Selection*, which reads as follows: “A bid must comply with all requirements of the bid solicitation to be declared responsive. The responsive bid with the lowest evaluated price will be recommended for award of a contract.” RFP available online at: [https://buyandsell.gc.ca/cds/public/2018/02/02/5d4d986db8f032b02197635a90af6253/fire\\_alarm\\_system\\_monitoring\\_final.pdf](https://buyandsell.gc.ca/cds/public/2018/02/02/5d4d986db8f032b02197635a90af6253/fire_alarm_system_monitoring_final.pdf). *SACC Manual Clause A0069T (2007-05-25)* available online at: <https://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual/5/A/A0069T/1>.

14. See *IBM Canada Ltd. v. Hewlett-Packard (Canada) Ltd.*, 2002 FCA 284 (CanLII), at para. 20, holding that potential suppliers “are expected to keep a constant vigil and to react as soon as they become aware or reasonably should have become aware of a flaw in the process.”

21. Based on the above, the Tribunal therefore finds that the second ground of complaint does not disclose a reasonable indication that any trade agreement has been violated.

## **DECISION**

22. 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