



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2018-022

Textus Inc.

*Decision made  
Friday, August 17, 2018*

*Decision issued  
Tuesday, August 21, 2018*

*Reasons issued  
Thursday, August 23, 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**

**TEXTUS 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. Since the complainant has not yet received a definitive response to its objection to the government institution, the complaint is premature.

Serge Fréchette  
Serge Fréchette  
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*<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. The complaint concerns a Request for a Standing Offer (RFSO) issued by the Department of Public Works and Government Services (PWGSC) on December 6, 2017, for the provision of investigation services related to complaints of harassment, disclosure of wrongdoing and of workplace violence.
3. In its complaint, Textus Inc. reproaches PWGSC for having erroneously or inconsistently applied the technical point-rated evaluation criteria of the RFSO when it evaluated its bid.
4. On July 17, 2018, Textus Inc. was informed that its bid had been deemed non-compliant. The information on file indicates that on July 17 and 27, 2018, Textus Inc. wrote to PWGSC officials requesting a debriefing on the results of the RSFO process and that its bid be re-evaluated.
5. In this regard, an e-mail from PWGSC dated July 30, 2018, indicates that the file concerning Textus Inc. had been forwarded to the evaluation team for review and promises to provide an update once the team completes its review.
6. Otherwise, on July 31, 2018, Textus Inc. sent to the PWGSC Assistant Deputy Minister of Procurement an “official objection” and a request demanding that the decision not to include it as part of the directory of the National Master Standing Offer pursuant to the RFSO be reviewed.
7. Moreover, the correspondence on file between Textus Inc. and the PWGSC Assistant Deputy Minister, dated August 1, 2 and 10, 2018, indicates that PWGSC “forwarded [the] complaint [of Textus Inc.] to the Special Investigations and Internal Disclosure Branch of Public Services and Procurement Canada”<sup>3</sup> [translation] and that a Branch official would contact Textus Inc. shortly.
8. Subsection 6(2) of the *Regulations* provides that a potential supplier that has made an objection to the relevant government institution, and is denied relief by that government institution, may file a complaint with the Tribunal “. . . within 10 working days after the day on which the potential supplier has actual or constructive knowledge of the denial of relief, if the objection was made within 10 working days after the day on which its basis became known or reasonably should have become known to the potential supplier.”
9. In the present case, the information on file indicates that Textus Inc. has not yet been denied relief, as its objection is still under review by internal authorities at PWGSC. Given the circumstances at hand, Textus Inc. cannot be deemed as having actual or constructive knowledge of a denial of relief by PWGSC within the meaning of subsection 6(2) of the *Regulations*. Its complaint is therefore premature.

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

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

3. Public Services and Procurement Canada is PWGSC’s applied title.

10. The Tribunal's decision does not preclude Textus Inc. from filing a new complaint within 10 working days of receiving, as the case may be, a denial of relief from either authority at PWGSC. Furthermore, if PWGSC fails to respond to Textus Inc.'s concerns within 30 days of the issuance of these reasons, the Tribunal could construe PWGSC's silence as a constructive denial of relief. In that case, Textus Inc. would then be able to file a new complaint with the Tribunal within 10 working days of that date. In any case, Textus Inc. may request that documents already filed with the Tribunal be joined to the new complaint.

11. If Textus Inc. files a new complaint, the Tribunal will decide anew whether to inquire into the complaint, having regard particularly to the regulatory conditions of the *Regulations*.

## **DECISION**

12. 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