



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2008-035

Imaging Business Machines LLC

*Decision made
Tuesday, November 18, 2008*

*Decision and reasons issued
Tuesday, December 2, 2008*

IN THE MATTER OF a complaint filed under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47

BY

IMAGING BUSINESS MACHINES LLC

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.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Hélène Nadeau
Hélène Nadeau
Secretary

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. Moreover, 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. Paragraph 7(1)(c) of the *Regulations* requires that the Tribunal determine whether the information provided by the complainant discloses a reasonable indication that the procurement has not been carried out in accordance with whichever of Chapter Ten of the *North American Free Trade Agreement*,³ Chapter Five of the *Agreement on Internal Trade*⁴ or the *Agreement on Government Procurement*⁵ applies.

3. The Department of Public Works and Government Services (PWGSC), on behalf of Statistics Canada, made Solicitation No. 45045-080044/A available through MERX⁶ on August 29, 2008. The procurement was for the provision of a high-speed document scanner and all related maintenance and support infrastructure.

4. Imaging Business Machines LLC (Imaging) alleged that BancTec Inc. (BancTec), the successful bidder, failed to comply with one of the mandatory requirements of the Request for Proposal (RFP). Specifically, Imaging argued that none of the successful bidder's commercially available production scanners were capable of scanning an 11-x-25-inch document. In its complaint, Imaging stated the following: "The published specifications for the winning bidder show that its hardware at the time of contract award was not capable of complying with the requirements set forth in the RFP, namely, a scanner capable of scanning an 11x25 document."⁷ Imaging further argued that, if BancTec did indeed have a scanner with such capabilities, it could only be a "prototype" machine. Therefore, because section A.4.1 of the RFP did not allow for "... prototypes or refurbished scanners ..." to be included in the bidding process, the successful bidder's reliance on a prototype scanner failed to satisfy the mandatory requirements of the RFP.

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

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

3. *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 (entered into force 1 January 1994) [*NAFTA*].

4. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <http://www.ait-aci.ca/index_en/ait.htm> [*AIT*].

5. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm> [*AGP*].

6. Canada's electronic tendering service.

7. Procurement Complaint Form, section 5.A.

5. On October 29, 2008, Imaging sent the following e-mail to PWGSC objecting to the award of the contract to the successful bidder:

...

IBML objects to the award of Solicitation NO. -45045-080044/A to BancTec INC. based on the grounds that BancTec is not compliant with all of the mandatory requirements of the RFP.

Specifically:

...

A.4.1 Scanner Requirement

- No prototypes or refurbished scanners will be accepted.

3. The scanner must be capable of scanning the following form sizes:

- 11 x 25 inches (landscape mode)

According to BancTec's INC. documentation;

<http://www.banctec.com/wp-content/uploads/data-sheet-intelliscan-xds.pdf>,

<http://www.banctec.com/wp-content/uploads/data-sheet-intelliscan-sds.pdf>

The largest documented size their scanner accepts is 18 inches.

Based on this information it is impossible for BancTec, INC. to deliver a non-prototype scanner capable of scanning a 11 x 25 inch size document by November 30, 2008.

...

6. PWGSC's reply e-mail of the same day indicated that a solicitation amendment (amendment No. 002) had been issued on September 9, 2008, and the original requirement had been changed as follows:

...

On August 29th, the solicitation went out, and you are correct, it asked for a scanner capable of scanning 11x25 landscape orientation.

...

On page 4 of 4 of Solicitation Amendment 002, it notes that the 11x25 landscape requirement is changed to 11x25 portrait. As you noted, the largest that Banctec scanners can scan is 18 inches, so it would be capable of the 11x25 in portrait orientation.

...

7. Later that same day, Imaging responded to PWGSC's e-mail as follows:

...

I am aware of the amendment from MERX. The largest document BancTec can scan in any orientation, portrait or landscape is 18 inches.

BancTec does not have a production (non-prototype) scanner that is capable of scanning a 25 inch long document in any orientation.

8. The Tribunal finds that the complaint contains no evidence that the product proposed by the successful bidder was a prototype or that it did not comply fully with the document size requirement in the RFP.

9. In support of its complaint, Imaging provided the Tribunal with hyperlinks to the specifications of two products advertised by BancTec on its Web site. These hyperlinks do not provide support for Imaging's claims for two reasons. First, there is no clear indication that the product proposed by BancTec in response to the RFP was actually one of the two models identified in the hyperlinks. Second, the information provided at the hyperlinks contradicts Imaging's allegation of non-compliance. Imaging did not provide the Tribunal with a hard copy of the information and specifications found at the referenced hyperlinks. Nevertheless, the Tribunal's review of the information located at the listed hyperlinks indicates that one of BancTec's commercially available scanners, the IntelliScan XDS, appears to meet the mandatory requirement at issue. Under the heading "Document Sizes", the IntelliScan XDS specification lists its document size capacity as "Max. 11.9" – 25.5" high".

10. In light of the foregoing, the Tribunal finds that the complaint does not disclose a reasonable indication that PWGSC failed to carry out the procurement process in accordance with the applicable trade agreements when it awarded the contract to BancTec. The Tribunal will therefore not conduct an inquiry into the complaint and considers the matter closed.

DECISION

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

James A. Ogilvy
James A. Ogilvy
Presiding Member