



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2008-016

Rescue 7 Inc.

*Decision made  
Thursday, May 29, 2008*

*Decision and reasons issued  
Thursday, June 5, 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**

**RESCUE 7 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.

Pasquale Michael Saroli  
Pasquale Michael Saroli  
Presiding Member

Hélène Nadeau  
Hélène Nadeau  
Secretary

## 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. 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), it shall decide whether to conduct an inquiry into the complaint.

2. Rescue 7 Inc. (R7) of Markham, Ontario, alleged that the Department of Public Works and Government Services (PWGSC) improperly declared its proposal non-compliant. Specifically, R7 alleged that PWGSC had improperly evaluated its proposal by claiming that information with respect to certain mandatory requirements was missing from its bid.

3. 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*,<sup>3</sup> Chapter Five of the *Agreement on Internal Trade*<sup>4</sup> or the *Agreement on Government Procurement*<sup>5</sup> applies. In this case, all three agreements apply.

4. PWGSC, on behalf of the Correctional Service of Canada, made solicitation No. 21120-088940/A available through MERX<sup>6</sup> on January 11, 2008. The procurement was for the provision of automated external defibrillators. R7 submitted its proposal on the solicitation closing date of February 25, 2008.

5. On April 25, 2008, PWGSC informed R7 that another company had been awarded the contract. On May 5, 2008, PWGSC advised R7 that its bid had been found non-compliant and identified six areas in R7's proposal where it had failed to provide information relating to the mandatory requirements of the solicitation. On May 5, 2008, R7 wrote to PWGSC, stating that it had, in fact, met the requirements identified by PWGSC. On May 8, 2008, PWGSC replied to R7 as follows:

...

Correctional Services Canada's (CSC) Technical Review Committee twice reviewed your bid proposal to ensure that all mandatory requirements were fully and correctly assessed. However, and to ensure no oversight, CSC undertook an additional review but again failed to identify the necessary corroborative evidence for the points cited in my e-mail dated 5 May 2008. An in-house review corroborated CSC's results. Please cross-reference in your proposal dated 25 February 2008 where the stated mandatory specs demonstrate that it meets these requirements.

As per 2.1.2 in the RFP [Request for Proposal] document, it stated that you must provide with your bid a copy of the technical specifications for both your operational and training units. No technical specifications for the training units were submitted with your proposal.

...

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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).
  4. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <[http://www.ait-aci.ca/index\\_en/ait.htm](http://www.ait-aci.ca/index_en/ait.htm)>.
  5. 15 April 1994, online: World Trade Organization <[http://www.wto.org/english/docs\\_e/legal\\_e/final\\_e.htm](http://www.wto.org/english/docs_e/legal_e/final_e.htm)>.
  6. Canada's electronic tendering service.

6. On May 12, 2008, R7 responded to PWGSC that it did “. . . not understand why [PWGSC has] repeatedly mentioned that [it] did not meet the specs for this requirement. . . .” R7 claimed in its e-mail to PWGSC that it had attached a copy of the specifications for the training unit.

7. On May 23, 2008, R7 filed its complaint with the Tribunal. As part of its complaint, R7 submitted copies of both the “Tender Bid” and “Financial Bid” that it had submitted in response to the solicitation. R7 also included, in its complaint letter addressed to the Tribunal, a point-by-point explanation of where certain information identified by PWGSC in its May 5, 2008, correspondence could be found within its proposal.

8. The Tribunal notes that R7’s complaint does not address the allegation in PWGSC’s correspondence of May 8, 2008, that the technical specifications for the training unit had not been included in R7’s proposal. In this regard, the Tribunal can find no evidence, in the complaint package, to demonstrate that the technical specifications of the training unit had indeed been included with R7’s proposal.

9. The Tribunal notes that the RFP contained the following clauses:

...

**Part 4 – EVALUATION PROCEDURES AND BASIS OF SELECTION**

...

All proposals submitted shall be completed in full and provide all of the information requested in the Request for Proposal (RFP) package to enable a full and complete evaluation. If the requirement is not addressed in the bidder’s proposal, the proposal will be considered incomplete or non-responsive and will be rejected. The onus is on the bidder to provide all the information necessary to ensure a complete and accurate assessment.

...

**Annex “A”**

...

**STATEMENT OF TECHNICAL REQUIREMENTS (STR)**

...

2.1.2 All bidders must provide with their bid, a copy of the technical specifications for both their operational and training units being proposed in the bid. . . .

10. Given the above, the Tribunal finds no indication that PWGSC was not acting in accordance with the trade agreements when it declared R7’s proposal non-compliant.

11. In light of the foregoing, the Tribunal will not conduct an inquiry into the complaint and considers the matter closed.

**DECISION**

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

Pasquale Michaele Saroli  
Pasquale Michaele Saroli  
Presiding Member