



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2008-056

Canadyne Technologies Inc.

*Decision made
Monday, March 16, 2009*

*Decision and reasons issued
Friday, March 27, 2009*

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

CANADYNE TECHNOLOGIES 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.

Serge Fréchette
Serge Fréchette
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. 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 procurement (Solicitation No. F2586-080018/A) by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of Fisheries and Oceans for the provision of 51,200 feet of 24-inch lay flat oil boom.

3. Canadyne Technologies Inc. (Canadyne) alleges that PWGSC improperly disqualified its proposal because it was not evaluated in accordance with the evaluation criteria specified in the Request for Proposal (RFP) and clarifications.

4. Subsection 7(1) of the *Regulations* sets out three conditions that must be satisfied before the Tribunal can conduct an inquiry in respect of a complaint. One of these conditions is that the complaint be in respect of a designated contract. A “designated contract” is defined in section 30.1 of the *CITT Act* as any contract or class of contracts concerning a procurement of goods or services as described in Article 1001 of the *North American Free Trade Agreement*³, Article 502 of the *Agreement on Internal Trade*⁴, Article I of the *Agreement on Government Procurement*⁵ or Annex Kbis-01.1-2 of Chapter Kbis of the *Canada-Chile Free Trade Agreement*⁶ that has been or is proposed to be awarded by a government institution.

5. According to the information provided in the complaint, on February 26, 2009, PWGSC advised Canadyne that the RFP was cancelled because none of the proposals were compliant. In addition, Canadyne states that it “. . . acknowledges that it has been informed that the funds are no longer available for the contract”⁷

6. Canadyne indicates that there is nothing in the tender documentation that allows the government institution to cancel the solicitation.⁸ However, the RFP incorporates by reference the “2003 (2008-12-12) Standard Instructions – Goods or Services – Competitive Requirements”, which identify the “Rights of Canada” as follows: “Canada reserves the right to . . . (d) cancel the bid solicitation at any time”

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. *Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile*, 1997 Can. T.S. No. 50 (entered into force 5 July 1997) [*CCFTA*].

7. Complaint, at para. 78.

8. Complaint, at para. 76.

7. Given that the solicitation at issue has been legitimately cancelled, there no longer exists a contract “that has been or is proposed to be awarded by a government institution” as contemplated by section 30.1 of the *CITT Act*. Therefore, the complaint is not in respect of a designated contract.

8. In light of the above, the Tribunal does not have jurisdiction to accept the complaint for inquiry and considers the matter closed.

DECISION

9. 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