



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2009-012

Quelmecc Insurance Adjusters
(Toronto) Ltd.

*Decision made
Friday, June 19, 2009*

*Decision and reasons issued
Friday, July 03, 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

QUELMEC INSURANCE ADJUSTERS (TORONTO) 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

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 in issue relates to a procurement (Solicitation No. EJ112-100063/A) by the Department of Public Works and Government Services (PWGSC) for the provision of insurance claim adjuster services. Quelmec Insurance Adjusters (Toronto) Ltd. (Quelmec) alleges that PWGSC's procurement process was biased.

3. Subsection 6(1) of the *Regulations* provides that a complaint shall be filed with the Tribunal "... not later than 10 working days after the day on which the basis of the complaint became known or reasonably should have become known to the potential supplier." Subsection 6(2) 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."

4. In other words, 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.

5. The due date for the receipt of bids was April 2, 2009. Quelmec submitted a proposal, as did at least two other bidders. According to the complaint, on May 15, 2009, PWGSC informed Quelmec that it was not a successful bidder and that standing offers would be issued to two other companies. On May 21, 2009, Quelmec sent a letter to PWGSC, asking for a debriefing and requesting that the entire process be reviewed, given its belief that the procurement process was biased. Quelmec made this allegation because there had previously been only one standing offer, and now there were two. The incumbent supplier and one of the incumbent's former employees, who had started a new sole proprietorship, were issued standing offers. According to the complaint, on May 29, 2009, PWGSC responded to Quelmec's objection.

6. The Tribunal notes that, on May 29, 2009, Quelmec filed documents with the Tribunal and expressed its wish to file a procurement complaint. On the same date, the Tribunal, pursuant to subsection 30.12(2) of the *CITT Act*, notified Quelmec that it required further information before its complaint could be considered filed. The Tribunal also advised Quelmec that, in order for the complaint to be timely, it had to be filed within the time frames prescribed by section 6 of the *Regulations*. As such, the Tribunal noted that the required information had to be provided as soon as possible. On June 17, 2009, Quelmec filed additional information with the Tribunal.

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

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

7. The Tribunal notes that, despite being requested to do so in the Tribunal's letter of May 29, 2009, Quelmec's complaint did not include copies of all the correspondence that was exchanged between itself and PWGSC. However, based on the information that was included with the complaint, the Tribunal is of the view that the basis of the complaint became known, or reasonably should have become known, to Quelmec on May 15, 2009, when PWGSC provided Quelmec with the identity of the winning bidders. The Tribunal considers that Quelmec's objection of May 21, 2009, was made in a timely manner. Quelmec indicates in the complaint that PWGSC responded to the objection on May 29, 2009. Therefore, the Tribunal considers PWGSC's May 29, 2009, response as the denial of relief further to Quelmec's May 21, 2009, objection.

8. In light of the above, the Tribunal considers that Quelmec had 10 working days from May 29, 2009, i.e. until June 12, 2009, to file its complaint with the Tribunal. As the complaint was not considered filed until June 17, 2009, the Tribunal considers it to have been filed outside the time frame prescribed by subsection 6(2) of the *Regulations*.

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

DECISION

10. 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