



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2009-013

RTG Protech Inc.

*Decision made  
Thursday, June 4, 2009*

*Decision and reasons issued  
Wednesday, June 10, 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**

**RTG PROTECH INC.**

**AGAINST**

**THE DEPARTMENT OF HEALTH**

**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.

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Serge Fréchette  
Presiding Member

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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. 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 relates to a Request for a Standing Offer (RFSO) (Reference No. 1000091901) by the Department of Health (Health Canada) for the provision of translation services.

3. RTG Protech Inc. (RTG) alleged that Health Canada improperly declared its proposal non-compliant. RTG also alleged that Health Canada was inconsistent in evaluating its proposal for a similar RFSO (Reference No. 1000091902).

4. 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.”

5. 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.

6. On August 29, 2008, Health Canada issued RFSO Reference No. 1000091901. On September 26, 2008, bids closed. In a letter dated April 9, 2009, Health Canada advised RTG that its proposal was deemed non-compliant with criterion 13.2 R1.1.<sup>3</sup> On April 21, 2009, Health Canada provided RTG with information regarding the evaluation of its proposal. Later that day, RTG made an objection to Health Canada regarding the evaluation of its proposal.<sup>4</sup> On May 8, 2009, Health Canada provided RTG with additional information regarding the evaluation of its proposal and effectively denied RTG the relief that it requested. On May 30, 2009, RTG filed its complaint with the Tribunal.

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

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

3. The Tribunal notes that it is not known when RTG received this letter.

4. In attachment 1 to the complaint, RTG characterizes its communication with Health Canada as a complaint relating to the rejection of its bid. This communication must amount to what RTG characterized, in its complaint form, as an objection by “Email” to Health Canada.

7. The Tribunal is of the opinion that RTG made its objection within the time limit specified in subsection 6(2) of the *Regulations* and that it had knowledge of Health Canada's denial of relief on May 8, 2009. In order to meet the requirements of subsection 6(2), RTG had to file its complaint with the Tribunal not later than May 25, 2009.

8. Consequently, the Tribunal is of the view that RTG failed to file its complaint with the Tribunal within the prescribed time limit and considers that the complaint was therefore filed in an untimely manner.

9. In light of the above, 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.

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Serge Fréchette  
Presiding Member