



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2008-058

Accenture Inc.

*Decision made
Tuesday, March 17, 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

ACCENTURE INC.

AGAINST

ELECTIONS CANADA

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 concerns a procurement (Solicitation No. ECRA-RFSA-2008-05-21) by Elections Canada (EC) for the provision of information management and information technology professional services for short-, medium- and long-term requirements. Accenture Inc. (Accenture) alleges that EC improperly evaluated its proposal.

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 allowable 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. According to the information provided in the complaint, on December 2, 2008, EC advised Accenture that its proposal was non-compliant because it did not meet certain mandatory requirements of the Request for a Supply Arrangement. EC also informed Accenture that supply arrangements had been granted to three other companies. In an e-mail sent on December 16, 2008, EC provided Accenture with a more specific explanation of how its proposal did not meet the mandatory requirements. In that same e-mail, EC also informed Accenture that debriefing sessions would be held at some time in January 2009.

6. On February 5, 2009, EC conducted a debriefing session for Accenture. Any notes taken at that meeting were not submitted with the complaint. On February 10, 2009, Accenture sent a letter to EC objecting to EC's decision and requesting a re-evaluation of its proposal. On February 25, 2009, EC responded to Accenture's objection as follows: “As indicated in the debrief held on February 05, 2009, we will not be re-evaluating Accenture's proposal. . . . We refer you to our e-mail to you of December 16, 2008 wherein we advised you of the reasons for rejecting Accenture's proposal.” On March 11, 2009, Accenture filed its complaint with the Tribunal.

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

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

7. Considering the evidence on the record, the Tribunal is of the view that the basis of the complaint became known (or reasonably should have become known) to Accenture on December 16, 2008, when it was first advised of EC's reasons for rejecting its proposal.

8. Accenture's complaint supports the Tribunal's conclusion. In its complaint,³ Accenture explains the reasons that EC provided as the basis for rejecting its proposal. In doing so, Accenture references the e-mail that it received from EC on December 16, 2008, but does not reference any information that it acquired at the debriefing session held on February 5, 2009. In its complaint,⁴ Accenture goes on to challenge the conclusion reached by EC on December 16, 2008, but again makes no mention of the debriefing session. The Tribunal is of the view that this is an indication that Accenture knew or understood the basis of its complaint as early as December 16, 2008. Accordingly, Accenture should have made its objection to EC or filed a complaint with the Tribunal within 10 working days from December 16, 2008 (i.e. by January 2, 2009). Since Accenture waited until February 10, 2009, to make its objection to EC and did not file its complaint until March 11, 2009, the Tribunal considers Accenture's complaint to have been filed outside the time frame prescribed by the *Regulations*.

9. The Tribunal notes that Accenture made no effort to explain why its complaint should be considered timely despite the concrete notification that it received from EC on December 16, 2008. In its complaint, Accenture did not include any information about any communications that were exchanged between December 16, 2008, and February 5, 2009. As such, the Tribunal is left to speculate as to why Accenture believed that it could wait until February 5, 2009, in order to try to resolve the matter with EC. The Tribunal will not do so.

10. Even if the Tribunal were to consider that Accenture made its objection during the debriefing on February 5, 2009, that objection would not have been made within the time frame prescribed by the *Regulations*. As such, Accenture's complaint would still have been filed outside the time frame prescribed by the *Regulations*.

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.

Serge Fréchette

Serge Fréchette
Presiding Member

3. At para. 19.

4. At para. 20.