



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2009-022

Siva & Associates Inc.

*Decision made  
Wednesday, July 22, 2009*

*Decision and reasons issued  
Friday, July 24, 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**

**SIVA & ASSOCIATES 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

Susanne Grimes  
Susanne Grimes  
Acting 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 procurement (Solicitation No. W8482-102358/A) by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence for the provision of globe valves.

3. Siva & Associates Inc. (Siva) alleged that PWGSC did not provide adequate information to allow it to bid an equivalent product.

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 May 20, 2009, PWGSC issued the solicitation document. Bid closing was set for June 30, 2009. On June 3, 2009, Siva requested more information on the globe valves from PWGSC in order for it to bid an equivalent product. As of June 26, 2009, Siva had not received a response from PWGSC. On June 29, 2009, Siva submitted its complaint to the Tribunal. However, the Tribunal considered that the complaint was incomplete, as it did not contain all the information relevant to the complaint, specifically, the estimated dollar value of the proposed procurement. On June 30, 2009, the Tribunal advised Siva by telephone of the need for the estimate, and Siva indicated that it would provide the information. The information was not received and, on July 13, 2009, the Tribunal requested in writing that Siva provide the information not later than July 15, 2009. Siva filed the information with the Tribunal on July 16, 2009.

7. The Tribunal notes that, on June 3, 2009, Siva requested additional information on the globe valves from PWGSC. The Tribunal considers that Siva must have decided, on June 29, 2009, when it submitted its complaint to the Tribunal, and most certainly on June 30, 2009, when bids closed, that it would not receive that information. In order to meet the requirements of subsection 6(1) of the *Regulations*, Siva would have

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

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

had to file its complete complaint with the Tribunal not later than July 15, 2009. The Tribunal considers that the complaint was filed on July 16, 2009, when it received the requested information from Siva. Consequently, the Tribunal is of the view that Siva failed to file its complaint with the Tribunal within the prescribed time limit and considers that it was therefore filed in an untimely manner.

8. In light of the above, the Tribunal will not conduct an inquiry into the complaint 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