



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2009-052

Groupe-conseil INTERALIA
S.E.N.C.

*Decision made
Friday, October 9, 2009*

*Decision and reasons issued
Tuesday, October 20, 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

GROUPE-CONSEIL INTERALIA S.E.N.C.

AGAINST

THE CANADIAN INTERNATIONAL DEVELOPMENT AGENCY

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

Dominique Laporte
Dominique Laporte
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 that the Tribunal 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 Arrangement (RSOA) (Solicitation No. 2009-CC1015-GEIND) by the Canadian International Development Agency (CIDA) for the provision of gender equality specialist services. The purpose of the RFSO was to establish up to 20 standing offer arrangements for the provision of gender equality advice and consulting services in, in particular, policy analysis and development, policy dialogue, planning, programming and performance assessment.

3. Mandatory criterion M3 of the RSOA required bidders to demonstrate that they had at least five years of full-time work experience in the field of gender equality, specifically in relation to international development cooperation. A year of full-time work experience was defined in the RSOA as the equivalent of at least 150 work days during the year.

4. Groupe-conseil INTERALIA S.E.N.C. (INTERALIA) alleged that CIDA wrongly declared its proposal non-compliant with the requirements of the RSOA because it failed to meet mandatory criterion M3.

5. 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) states 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.”

6. 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.

7. Before determining whether INTERALIA’s grounds warrant conducting an inquiry, the Tribunal must determine whether the complaint was filed within the time limits set out in the *Regulations*. To do so, the Tribunal must determine the date on which INTERALIA knew or should reasonably have known the basis of the complaint.

8. According to the complaint, bidders were given notice of the RSOA on December 8, 2008. The RSOA included six addenda, and the bid closing date was February 6, 2009.

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

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

9. On August 18, 2009, INTERALIA received a letter from CIDA dated August 14, 2009, informing it that its technical proposal had been rejected at the technical selection stage because one of the candidates that it had proposed did not meet one of the mandatory requirements in the RSOA. Specifically, CIDA informed INTERALIA that its technical proposal indicated that the candidate in question did not have the equivalent of at least 150 work days during one of the years submitted for demonstrating experience.

10. On August 21, 2009, INTERALIA made an objection to CIDA submitting that it had not breached any rule in the RSOA and that, further to CIDA's request for clarification, all the information in Form E, from the candidate in question, showed that she met the requirements of mandatory criterion M3 and that she had worked 154 days during the year in question. Consequently, INTERALIA asked CIDA to defer its unfounded decision and to proceed with the technical evaluation of its proposal.

11. On September 4, 2009, CIDA replied to INTERALIA that it was upholding its decision because, on the closing date, its proposal was non-compliant for failing to meet a mandatory criterion of the RSOA. CIDA also submitted in its letter to INTERALIA that it could not accept any new information after the RSOA closing date. Moreover, CIDA informed INTERALIA that if it wanted to challenge that decision, it could file a complaint with the Tribunal.

12. On September 17, 2009, INTERALIA made a second objection to CIDA reminding it that the facts that INTERALIA had stated in Form E, from the candidate in question, regarding her experience during the year in question, namely 154 days, were true, that no new facts had ever been added regarding the validity of that total and that INTERALIA's answer to CIDA's question was intended only to correct a minor involuntary error that in no way changed the stated facts.

13. On September 24, 2009, CIDA replied to INTERALIA that it was upholding its decision of non-compliance.

14. The facts demonstrate that INTERALIA's objection filed with CIDA on August 21, 2009, was on time, namely, within 10 working days after the date on which the basis of the objection became known to INTERALIA. The facts also demonstrate that, in its letter of September 4, 2009, in reply to that objection, CIDA clearly denied relief to INTERALIA by confirming that it would not change its decision regarding the non-compliance of its proposal and stating that it could file a complaint with the Tribunal if it wanted to challenge that decision.

15. On September 4, 2009, when INTERALIA received CIDA's denial of relief, it then had, given the time limit set out in subsection 6(2) of the *Regulations*, until September 21, 2009, to file its complaint with the Tribunal regarding those grounds of objection. The fact that INTERALIA instead decided to file a second objection identical or similar to the first in no way affects the relevant dates for calculating the time limits set out in subsection 6(2). As for the issue of when a complainant becomes aware of a government institution's denial of relief following an objection, it is important to note that the Tribunal's jurisprudence clearly indicates that when the response to an objection from the government institution is unambiguous with regard to its denial of relief, and does not suggest any possibility that the issue could be reconsidered at a later date, the time limit for filing a complaint set out in subsection 6(2) is calculated from the date of that response.³

3. *Re Complaint Filed by Barer Engineering International* (31 October 2008), PR-2008-032 (CITT) at 2; *Re Complaint Filed by Joncas Postexperts, a Division of Quebecor World Inc., on behalf of the consortium composed of Joncas Postexperts, Enveloppe Concept Inc. and The Data Group of Companies* (8 December 2005), PR-2005-028 (CITT) at 3; *Re Complaint Filed by Trans-Cycle Industries Inc.* (4 August 2000), PR-2000-015 (CITT) at 5.

16. Given that the complaint was not filed until October 7, 2009, the Tribunal finds that it was not filed within the time limit set out in section 6 of the *Regulations* and, consequently, it will not conduct an inquiry into the complaint.

DECISION

17. 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