



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2009-054

Conciergerie Speico inc.

*Decision made
Wednesday, October 21, 2009*

*Decision and reasons issued
Wednesday, November 4, 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

CONCIERGERIE SPEICO INC.

AGAINST

THE DEPARTMENT OF PUBLIC WORKS AND GOVERNEMENT 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.

Diane Vincent
Diane Vincent
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 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. EF053-093737/A) by the Department of Public Works and Government Services (PWGSC) for the provision of interior cleaning and ground maintenance services at the customs complex in St-Bernard-de-Lacolle, Quebec.
3. Conciergerie Speico inc. (Speico) alleged that PWGSC amended the financial requirements of the invitation to tender (ITT) in order to give preference to a particular supplier and to permit it to meet those requirements.
4. Paragraph 7(1)(c) of the *Regulations* requires that the Tribunal determine whether the information provided by the complainant discloses a reasonable indication that the procurement has not been conducted in accordance with whichever of Chapter Ten of the *North American Free Trade Agreement*,³ Chapter Five of the *Agreement on Internal Trade*,⁴ the *Agreement on Government Procurement*⁵ or Chapter Kbis of the *Canada-Chile Free Trade Agreement*⁶ applies. In this case, the four agreements apply.
5. On July 31, 2009, PWGSC issued an ITT for the provision of the said cleaning and maintenance services. The original bid closing date was September 14, 2009. However, further to amendments to the ITT, the bid closing date was changed to October 1, 2009.
6. On September 23, 2009, PWGSC issued Amendment No. 004 to the ITT, which, among other amendments, removed the obligation to provide bid financial security in the form of a security deposit or bond and replaced it with certain requirements concerning financial capability, such as the obligation to provide audited financial statements and other similar documents on demand.
7. Speico alleged that, on September 29, 2009, it made an objection by telephone to a procurement officer at PWGSC with regard to the amendment to the financial requirements of the ITT. According to Speico, it submitted to PWGSC that the amendment was designed to give preference to a particular supplier. However, according to Speico, PWGSC responded as follows: “It is not intended to give preference to anyone” [translation].

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

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

3. *North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2 (entered into force 1 January 1994).

4. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <http://www.ait-aci.ca/index_en/ait.htm>.

5. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm>.

6. *Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile*, 1997 Can. T.S. No. 50 (entered into force 5 July 1997). Chapter Kbis, entitled “Government Procurement”, came into effect on September 5, 2008.

8. On October 1, 2009, Speico filed a complaint with the Office of the Procurement Ombudsman. On October 14, 2009, Speico filed its complaint with the Tribunal.

9. According to Speico, many factors give the impression that the amendment to the financial requirements of the ITT was intended to give preference to a particular supplier. For example, Speico noted that the amendment was made a few days before the bid closing date, that the Government's usual practice with regard to an ITT is to ask for bid financial security and that the Tribunal recently determined, in *Service d'entretien JDH Inc.*,⁷ that PWGSC had awarded a contract to this same supplier even though it had not met a mandatory requirement of the Request for Proposal. According to Speico, it is not logical for PWGSC to request, voluntarily, fewer financial guarantees if only for the convenience of a particular supplier that does not have the capability to secure the necessary guarantees.

10. In this case, the obligation to provide bid financial security was forgone in favour of a more flexible obligation to provide, on demand, documents showing the bidder's financial capability. The Tribunal is of the view that PWGSC does not violate the trade agreements when it amends the requirements of an ITT before the bid closing date and when the scope of an amendment can potentially increase competition, as long as all potential suppliers are informed of the amendment and have enough time to respond to it. Amendment No. 004 of this ITT meets these conditions. The Tribunal also notes that relaxing the financial requirements of the ITT does not in any way change the fact that, to be awarded a contract, a bidder must be evaluated on the basis of the criteria set out in the ITT, including that of being the lowest bidder.

11. The Tribunal is of the view that there is nothing in the documents submitted by Speico, other than the allegations advanced, that discloses a reasonable indication that PWGSC arbitrarily amended the financial requirements of the ITT in order to give preference to a particular supplier. In the end, the Tribunal is not convinced that PWGSC amended the ITT other than to relax a requirement that was restricting competition.

12. As such, the Tribunal concludes that the information does not disclose a reasonable indication that the procurement has not been conducted in accordance with the relevant trade agreements.

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

DECISION

14. Pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal has decided not to conduct an inquiry into the complaint.

Diane Vincent
Diane Vincent
Presiding Member

7. *Re Complaint Filed by Service d'entretien JDH Inc.* (10 August 2009), PR-2008-063 (CITT).