



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2009-048

Siva & Associates Inc.

*Decision made
Monday, September 28, 2009*

*Decision and reasons issued
Friday, October 2, 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.

Diane Vincent
Diane Vincent
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 relates to a Request for Proposal (RFP) (Solicitation No. W8482-103418/A) by the Department of Public Works and Government Services (PWGSC) for the provision of flow switches on behalf of the Department of National Defence (DND).
3. Siva & Associates Inc. (Siva) alleged that PWGSC did not provide adequate information to allow it to bid an equivalent product.
4. On September 11, 2009, PWGSC issued the RFP. The bid closing date was September 24, 2009. On September 15, 2009, Siva requested more information from PWGSC on the flow switches in order to quote an equivalent product. On September 21, 2009, PWGSC advised Siva that it was waiting for a reply from DND and that, in the absence of a timely reply from DND, it would extend the deadline for submitting bids. That same day, Siva submitted its complaint to the Tribunal. On September 22, 2009, PWGSC extended the bid closing date to October 22, 2009. On September 23, 2009, the Tribunal requested additional information from Siva in order to ensure that its complaint complied with subsection 30.11(2) of the *CITT Act*. On September 25, 2009, Siva filed the requested information with the Tribunal, and the complaint was determined to be in compliance with the requirements of subsection 30.11(2) on that date.
5. At this time, there is still a question before PWGSC regarding the provision of additional information. Thus, it remains possible that the requested information will be provided to Siva before the bid closing date. Until such time as the provision of that information has been refused by PWGSC, the Tribunal is unable to determine whether there is a reasonable indication that the procurement has not been carried out in accordance with the trade agreements. Consequently, the Tribunal finds that it is premature for Siva to file a complaint at this stage. The Tribunal's decision at this time would not preclude any future complaint by Siva once PWGSC has responded to its request for information or fails to do so within a reasonable amount of time before the expiration of the period for submitting bids. In the event that Siva does file a new complaint, it must do so within the time limits specified in the *Regulations*.

DECISION

6. 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

1. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].
2. S.O.R./93-602 [*Regulations*].