



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2009-061

qdata Inc.

*Decision made
Thursday, November 26, 2009*

*Decision and reasons issued
Thursday, December 3, 2009*

IN THE MATTER OF a complaint filed pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47

BY

QDATA 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

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. RFP 2009-JWS-003) by Innovapost Inc. (Innovapost) for the provision of portable data terminal (PDT) scanners and repair services.
3. qdata Inc. (qdata) alleged that Innovapost improperly rejected its proposal for being presented after bid closing time.
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.
5. Innovapost is not expressly covered by the trade agreements. While it is affiliated with Canada Post Corporation, which is covered by *NAFTA*, the *AGP* and the *CCFTA*, it is not possible, with the limited information included in the complaint and without the benefit of submissions from parties, to determine if this affiliation is sufficient to treat Innovapost as Canada Post Corporation for the purposes of the trade agreements.
6. Nevertheless, even if the procurement were subject to any of the trade agreements and Innovapost were found by the Tribunal to be covered by the trade agreements, there would need to be a reasonable indication that the procurement was not conducted in accordance with a trade agreement in order for the Tribunal to conduct an inquiry. The Tribunal will therefore proceed with its analysis.
7. qdata complains that Innovapost should have accepted its bid even though it admitted that it was late by five minutes. According to a letter dated November 9, 2009, from Innovapost to qdata, the submission was received after the bid closing time, which was 10:00 a.m. on November 9, 2009.

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). [*NAFTA*]

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>. [*AGP*]

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. [*CCFTA*]

8. Although the Request for Proposal (RFP) was not presented as part of the complaint, the response from Innovapost, provided by qdata, indicates that qdata's proposal did not arrive prior to the closing time of 10:00 a.m. and that "[t]he closing time was published in the last amendment to the RFP." It is a generally accepted contracting principle that it is the bidder's responsibility to ensure that its proposal is delivered in a timely manner. As such, the Tribunal finds that Innovapost properly rejected qdata's proposal.

9. In light of the foregoing, the Tribunal does not find a reasonable indication that the procurement was not conducted in accordance with the trade agreements. Therefore, the Tribunal will not conduct an inquiry into the complaint and considers the matter closed.

DECISION

10. 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