



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2009-079

Veseys Seeds Limited, doing  
business as Club Car Atlantic

*Decision made  
Wednesday, February 10, 2010*

*Decision and reasons issued  
Friday, February 19, 2010*

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**

**VESEYS SEEDS LIMITED, DOING BUSINESS AS CLUB CAR ATLANTIC**

**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*<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. 5P126-070967/B) by the Department of Public Works and Government Services (PWGSC) on behalf of the Parks Canada Agency for the lease of electric golf cars.

3. Veseys Seeds Limited, doing business as Club Car Atlantic (Veseys), alleged that PWGSC improperly awarded a contract to a non-compliant bidder.

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. According to the complaint, on January 4, 2010, Veseys learned that the contract was awarded to Rafuse Golf Cars Inc. (Rafuse). On January 5, 2010, Veseys sent an e-mail to PWGSC indicating that it was of the view that Rafuse's products failed to meet the mandatory technical evaluation criteria for the solicitation. Communications continued between PWGSC and Veseys until January 19, 2010, when PWGSC confirmed, in writing, that it had reviewed the contract award and that the technical authority had confirmed that Rafuse's products met the specifications as stated in the solicitation documents. On January 22, 2010, Veseys sent an e-mail to PWGSC reiterating its concerns and indicating that it would file a complaint with the Tribunal. On February 4, 2010, Veseys filed its complaint with the Tribunal.

7. The Tribunal finds that Veseys knew, or reasonably should have known, the basis of its complaint on January 4, 2010, when it learned that Rafuse had been awarded the contract. On January 5, 2010, Veseys made an objection to PWGSC concerning the award of the contract. While there were many exchanges between Veseys and PWGSC regarding the issues raised in Veseys' objection, the Tribunal considers that Veseys received a firm denial of relief at the latest on January 19, 2010, when it received written

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

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

confirmation from PWGSC that Rafuse's products were compliant with the specifications. Therefore, in order to meet the requirements of subsection 6(2) of the *Regulations*, Veseys would have had to file its complaint with the Tribunal not later than February 2, 2010 (i.e. 10 working days from January 19, 2010). As Veseys only filed its complaint with the Tribunal on February 4, 2010, the Tribunal considers that the complaint was not filed in a timely manner.

8. Therefore, the Tribunal will not conduct an inquiry into the complaint.

9. Even if the complaint had been filed in a timely manner, the Tribunal is of the view that it is based on mere allegations regarding the compliance of the products actually offered by Rafuse, and as such, would not have constituted sufficient evidence for the Tribunal to proceed with an inquiry. Paragraph 7(1)(c) of the *Regulations* requires that the complaint disclose a reasonable indication that the procurement has not been conducted in accordance with the applicable trade agreements, which in this case are the *Agreement on Internal Trade*,<sup>3</sup> the *North American Free Trade Agreement*,<sup>4</sup> the *Canada-Chile Free Trade Agreement*<sup>5</sup> and the *Agreement on Government Procurement*.<sup>6</sup> In other words, unsupported allegations do not constitute sufficient evidence for the Tribunal to proceed with an inquiry.

10. The Tribunal considers the matter closed.

## DECISION

11. 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

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3. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <[http://www.ait-aci.ca/index\\_en/ait.htm](http://www.ait-aci.ca/index_en/ait.htm)>.

4. *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).

5. *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.

6. 15 April 1994, online: World Trade Organization <[http://www.wto.org/english/docs\\_e/legal\\_e/final\\_e.htm](http://www.wto.org/english/docs_e/legal_e/final_e.htm)>.