



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2009-073

Auto Light Atlantic Limited

*Decision made
Wednesday, January 20, 2010*

*Decision and reasons issued
Wednesday, February 3, 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

AUTO LIGHT ATLANTIC LIMITED

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 will not conduct an inquiry into the complaint.

André F. Scott

André F. Scott
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 Request for a Standing Offer (RFSO) (Solicitation No. M1192-082400/A) by the Department of Public Works and Government Services (PWGSC) on behalf of the Royal Canadian Mounted Police (RCMP) for the refit of RCMP vehicles. The purpose of the RFSO was to establish standing offers for the provision of labour, certain materials and supervision necessary to install and remove police emergency equipment, safety equipment and radio/communications equipment in RCMP vehicles on an “if and when” requested basis, over a 12-month period, in Nova Scotia and New Brunswick.

3. Auto Light Atlantic Limited (Auto Light) alleged the following:

- Standing offer holders Scotia Emergency Vehicle Systems (Scotia) and Diesel & Auto Electric Ltd. (Diesel) are not registered with the Department of Transport (Transport Canada) to recertify the vehicles that they modify.
- PWGSC took too long to issue the standing offers.
- Scotia and Diesel have not met the requirements of the solicitation that relate to the secure storage of the vehicles.
- PWGSC issued standing offers for a total amount which exceeds the limit specified in the solicitation documents.

4. On June 13, 2008, PWGSC issued an RFSO for the refit of RCMP vehicles. The bid closing date was July 3, 2008.

5. On October 27, 2009, PWGSC advised Auto Light that standing offers for Halifax, Nova Scotia, had been issued to Scotia, Diesel and Auto Light. According to the complaint, on the same day, Auto Light made an objection in respect of the first three grounds of complaint listed above to two individuals employed by the RCMP. Further, according to the complaint, Auto Light did not receive a response to its objection.

6. On January 14, 2010, Auto Light filed its complaint with the Tribunal.

7. 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 who has made an objection regarding a procurement relating to a designated contract 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.”

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

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

8. These provisions make it clear that 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 relevant government institution or file a complaint with the Tribunal.

9. As Auto Light first became aware, or reasonably should have become aware, of its four grounds of complaint on October 27, 2009, when PWGSC advised it that standing offers had been issued to Scotia, Diesel and Auto Light, it had 10 working days from that date to either object to the relevant government institution or file a complaint with the Tribunal. While Auto Light indicated that it made an objection in respect of the first three grounds of complaint on October 27, 2009, the Tribunal notes that the objection was made to the RCMP and not PWGSC.

10. The time limits established, under subsection 6(2) of the *Regulations*, for the filing of a complaint are only applicable where, among other things, an objection has been made “to the relevant government institution”. However, despite being used in both the *CITT Act* and the *Regulations*, the term “relevant government institution” is not defined in either.

11. As for the term “government institution”, it is defined under section 30.1 of the *CITT Act* as “. . . any department or ministry of state of the Government of Canada, or any other body or office, that is designated by the regulations”. Subsection 3(2) of the *Regulations*, in turn, designates certain government entities and enterprises as government institutions. In particular, paragraph 3(2)(a) of the *Regulations* designates, among others, the federal government entities set out under the heading “CANADA” in Annex 502.1A of the *Agreement on Internal Trade*³ as government institutions.⁴ Both the RCMP and PWGSC are listed in Annex 502.1A of the *AIT* and are thus both designated as government institutions.⁵

12. However, of these two government institutions, the Tribunal is of the view that PWGSC is the “relevant government institution” for purposes of receiving objections relating to the procurement process at issue. PWGSC is the government institution that issued the solicitation documents, conducted the procurement and was responsible for the issuance of the standing offers. This is clearly evident from an examination of the solicitation documents, which indicate that offers were to be submitted to PWGSC and that enquiries were to be submitted in writing to the Standing Offer Authority. Section 5.1 of the standing offer at Part 6 of the RFSO identifies PWGSC as the Standing Offer Authority. It reads as follows:

5.1 Standing Offer Authority

The Standing Offer Authority for this Standing Offer is:

...

Public Works and Government Services Canada

...

-
3. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <http://www.ait-aci.ca/index_en/ait.htm> [*AIT*].
 4. Only the *AIT* applies in this case. The particular services requested fall under Category J, “Maintenance, Repair, Modification, Rebuilding and Installation of Equipment”, “Services with reference to transportation equipment”, of the Common Classification System and, as such, are either specifically excluded from coverage, or not included in the coverage, under the other trade agreements.
 5. The Tribunal notes that, for purposes of the trade agreements other than the *AIT*, PWGSC can only be designated as a government institution pursuant to paragraph 3(2)(a) of the *Regulations* when it procures goods or services on its own account. However, for purposes of the other trade agreements, PWGSC would normally be considered a government institution pursuant to paragraph 3(2)(d) of the *Regulations* when it procures goods or services on behalf of a federal government entity referred to in paragraph 3(2)(a) of the *Regulations* or a government enterprise referred to in paragraph 3(2)(b) of the *Regulations*.

The Standing Offer Authority is responsible for the establishment of the Standing Offer, its administration and its revision, if applicable. Upon the making of a call-up, as Contracting Authority, [it] is responsible for any contractual issues relating to individual call-ups made against the Standing Offer by any Identified User.

13. Therefore, since Auto Light indicated that its objection in respect of the first three grounds of complaint was made to the RCMP, the Tribunal is of the view that Auto Light cannot be considered to have made an objection to the “relevant government institution” in accordance with subsection 6(2) of the *Regulations*. In the absence of such an objection, Auto Light had, in accordance with subsection 6(1), 10 working days from October 27, 2009, to file its complaint with the Tribunal. As it only filed its complaint with the Tribunal on January 14, 2010, the Tribunal considers that the complaint, on the first three grounds, was filed in an untimely manner.

14. With respect to Auto Light’s fourth ground of complaint, there is no indication that it made any objection at all in this regard. Auto Light therefore had, in accordance with subsection 6(1) of the *Regulations*, 10 working days from October 27, 2009, to file its complaint with the Tribunal. As it only filed its complaint with the Tribunal on January 14, 2010, the Tribunal considers that the complaint, on the fourth ground, was also filed in an untimely manner.

15. Even if the complaint, on all four grounds, had been filed in a timely manner, the Tribunal would not have determined that it discloses, as required by paragraph 7(1)(c) of the *Regulations*, a reasonable indication that the procurement has not been conducted in accordance with Chapter Five of the *AIT*.

16. Auto Light’s first ground of complaint is that Scotia and Diesel are not registered with Transport Canada to recertify the vehicles that they are modifying and are therefore not legally allowed to carry out the work outlined in the standing offer. According to Auto Light, standing offer holders must be able to certify that the completed vehicles comply with the *Motor Vehicle Safety Act*⁶ and the applicable regulations.

17. The Tribunal notes that there is no explicit requirement in the RFSO that offerors be registered with Transport Canada in order to be given further consideration. Annex “D” of the RFSO, which lists the mandatory requirements that must be met in order for a proposal to be given further consideration, does not make any reference to such registration. While Annex “A” of the RFSO does state that “[a]ll installations will also be in accordance with National/Provincial standards”, the Tribunal considers that, to the extent that it can be interpreted as a requirement to comply with the *Motor Vehicle Safety Act* and the applicable regulations, this requirement must be met at the time the work is performed by the standing offer holders. As such, the inability of any standing offer holder to meet this requirement would be considered a matter of contract administration, which falls outside the “procurement process” and is thus not within the Tribunal’s jurisdiction.⁷

18. Auto Light’s second ground of complaint is that PWGSC took nearly 16 months from the bid closing date to issue the standing offers. The Tribunal notes that the *AIT* contains no provisions which impose time limits for procuring entities to award contracts or standing offers. Moreover, in this instance, the evidence filed with the complaint indicates that, on two occasions, PWGSC requested extensions to the bid validity period. On both occasions, Auto Light agreed to extend the validity period of its bid.

6. S.C. 1993, c. 16.

7. Subsection 30.11(1) of the *CITT Act* limits the Tribunal’s jurisdiction to “. . . any aspect of the procurement process . . .”, which encompasses all elements of the procurement cycle up to and including contract award.

19. Auto Light's third ground of complaint is that Scotia and Diesel do not meet the requirements of the solicitation that relate to the secure storage of the vehicles. However, the Tribunal considers that, in the absence of any evidence (other than a mere allegation) regarding this ground of complaint, it is unable to determine that there is a reasonable indication that the procurement has not been conducted in accordance with Chapter Five of the *AIT*.

20. Auto Light's fourth ground of complaint is that PWGSC issued standing offers for a total amount which exceeds the limit specified in the solicitation documents. The Tribunal notes that Part 6 of the RFSO limits the total cost resulting from call-ups against the standing offer to \$415,000 for Halifax. This amount is exclusive of the harmonized sales tax applicable in Nova Scotia, which is currently 13 percent. Based on the information included with the complaint, the sum total of the standing offers issued to Scotia, Diesel and Auto Light is \$457,650. However, this amount is indicated as being inclusive of the harmonized sales tax. Therefore, the total amount of the standing offers issued to Scotia, Diesel and Auto Light does not, in reality, exceed the limit specified in the solicitation documents.

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

DECISION

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

André F. Scott
André F. Scott
Presiding Member