



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File Nos. PR-2010-047 and
PR-2010-048

Enterasys Networks of Canada
Ltd.

*Decision made
Friday, August 20, 2010*

*Decision and reasons issued
Wednesday, September 1, 2010*

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

BY

ENTERASYS NETWORKS OF CANADA LTD.

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 complaints.

Stephen A. Leach
Stephen A. Leach
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 complaints relate to procurements (Solicitation Nos. HT218-100143/A [RVD 767] and 5Z011-110019/A [RVD 768])³ by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of Health and the Library and Archives of Canada for the supply of networking equipment. The RVDs were issued under National Master Standing Offer (NMSO) No. EN578-030742/007/EW.

3. Enterasys Networks of Canada Ltd. (Enterasys) alleges that PWGSC: (1) did not confirm with the client departments that the line items in the above-noted RVDs, which were to be limited to category 1.2 Local Area Network (LAN) switches, met the minimum technical requirements for those categories, as defined in the NMSO; (2) did not obtain proof from the client departments that the installed base of products was procured competitively; (3) included products from other categories, as defined in the NMSO, in the above-noted RVDs; (4) issued RVDs that included industry-standard components with a specific brand name, thus not allowing “best of breed” components from other manufacturers to be proposed; (5) did not provide adequate time for potential bidders to prepare their bids; (6) misused the provisions of the “Equivalents” section of article 14 of the NMSO by not describing the requirement without the use of a specific brand name, model or part number; (7) failed to provide bidders the operational requirements without the use of a brand name or product codes; and (8) allowed certain original equipment manufacturers (OEMs) to add out-of-scope products to their respective Published Price Lists (PPLs), while not allowing Enterasys to update its PPL.

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.”

5. Subsection 6(2) of the *Regulations* states that “[a] potential supplier who 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.”

6. 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.

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

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

3. The two RVDs in question were each considered to be separate procurement processes and were assigned separate file numbers, i.e. PR-2010-047 and PR-2010-048.

7. On June 18, 2010, PWGSC issued RVD 767 and RVD768. The due date for the receipt of bids for both RVDs was June 25, 2010.

8. Enterasys indicates that it made an objection to PWGSC on July 8, 2010, in the form of questions regarding RVD 767 and RVD768. According to the complaints, Enterasys made this objection as a direct result of the Tribunal's determination regarding File Nos. PR-2009-080 to PR-2009-087, PR-2009-092 to PR-2009-102 and PR-2009-104 to PR-2009-128.⁴ In its e-mail accompanying the objection, Enterasys requested that PWGSC re-issue RVD 767 and RVD768, as the grounds of complaint regarding the RVDs were the same grounds that had been found valid in the Tribunal's June 21, 2010, determination regarding other complaints concerning similar RVDs. In its reply dated July 29, 2010, PWGSC advised Enterasys that contracts under RVD 767 and RVD768 had already been awarded. Enterasys then filed its complaints with the Tribunal on August 13, 2010.

9. In order to meet the requirements of subsection 6(2) of the *Regulations*, Enterasys would have had to make its objection to PWGSC not later than July 6, 2010 (i.e. 10 working days after June 21, 2010). As the objection was not made until July 8, 2010, the Tribunal finds that it was filed outside the time limit prescribed by the *Regulations*.

10. In light of the foregoing, the Tribunal will not conduct an inquiry into the complaints and 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 complaints.

Stephen A. Leach
Stephen A. Leach
Presiding Member

4. *Re Complaints Filed by Enterasys Networks of Canada Ltd.* (21 June 2010) (CITT). Enterasys filed three previous sets of complaints containing similar grounds of complaint relating to similar RVDs that had been issued under the same NMSO as in the present complaints. Of the 44 complaints at issue in the June 21, 2010, determination, 40 were found to be valid in part.