



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

ORDER AND REASONS

File No. PR-2009-058

MetOcean Data Systems

v.

Department of Public Works and
Government Services

*Order and reasons issued
Friday, January 8, 2010*

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

AND FURTHER TO a decision by the Canadian International Trade Tribunal to conduct an inquiry into the complaint pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*;

AND FURTHER TO a motion filed by the Department of Public Works and Government Services on December 14, 2009, pursuant to rule 24 of the *Canadian International Trade Tribunal Rules*, requesting an order that the Canadian International Trade Tribunal cease to conduct the inquiry.

BETWEEN

METOCEAN DATA SYSTEMS

Complainant

AND

**THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT
SERVICES**

**Government
Institution**

ORDER

Pursuant to subsection 30.13(5) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal has ceased to conduct an inquiry into the complaint, and these proceedings are terminated.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary

Tribunal Member: Pasquale Michael Saroli, Presiding Member

Director: Randolph W. Heggart

Investigation Manager: Michael W. Morden

Counsel for the Tribunal: Reagan Walker

Complainant: MetOcean Data Systems

Government Institution: Department of Public Works and Government Services

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STATEMENT OF REASONS

COMPLAINT

1. On November 13, 2009, MetOcean Data Systems (MetOcean) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ concerning a procurement (Solicitation No. F1625-090284/A) by the Department of Public Works and Government Services (PWGSC) for profiling floats.

2. MetOcean submitted that the mandatory performance specifications of the Request for a Standing Offer (RFSO) unfairly limited the competitiveness of the tendering process. Specifically, MetOcean challenged the sixth category of the mandatory requirements, entitled “Ability”, claiming that it would eliminate nearly all potential commercial suppliers. The requirement reads as follows:

MANDATORY SPECIFICATIONS:	Meets	
...		
<i>Ability</i> :-Because of our commitment to a major international program with an emphasis on operational oceanography (as opposed to research), reliability is essential. We require that potential manufacturers demonstrate a track record of success in the construction of this <u>exact</u> type of float. Specifically, manufacturers must provide evidence to the effect that at least 3 floats manufactured on their premises have successfully completed 150 cycles at Argo ^[2] specification, or a close facsimile of Argo specifications. Please list the WMO numbers of 3 floats that have completed 150 cycles over a time period of 1500 days.	Yes	No

3. As a remedy, MetOcean requested that the product performance requirements and specification be updated.

4. On November 23, 2009, the Tribunal informed the parties that the complaint had been accepted for inquiry, as it met the requirements of subsection 30.11(2) of the *CITT Act* and the conditions set out in subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.³

5. On December 14, 2009, PWGSC submitted a letter stating that it had not received any bids in response to the RFSO and that the solicitation at issue had been terminated. As part of that letter, it filed a motion submitting that, as there was no longer a procurement process for review by the Tribunal, the complaint should be dismissed. On December 21, 2009, MetOcean filed its comments on PWGSC’s motion.

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

2. According to the RFSO, “Project Argo is an international program aimed at monitoring the global ocean to supply data on the climatic state of the ocean and the velocity structure of the ocean on global scales. Deployments of equipment in support of project Argo began in 2001. The definition of ‘an Argo float’ has been discussed within IAST (The International Argo Science Team) and certain specifications have been decided by the international team. Floats that do not meet these specifications cannot be considered to be part of the Argo program and do not qualify for this request. Compatibility with the international partners drives the mandatory specifications.”

3. S.O.R./93-602.

TRIBUNAL'S ANALYSIS

6. Pursuant to subsection 30.13(5) of the *CITT Act*, the Tribunal may, at any time, cease conducting an inquiry "... if it is of the opinion that the complaint is trivial ...". The ordinary meaning of "trivial" is "... concerned only with ... unimportant matters."⁴

7. In its December 14, 2009, letter, PWGSC advised that Canada had been participating in Project Argo since its inception in 2001 and had, since that time, issued a series of annual RFSOs for the supply of profiling floats. It stated that the 2007 and 2008 RFSOs were similar to the present one and that PWGSC had received one compliant bid in response to the 2007 RFSO and two compliant bids in response to the 2008 RFSO. PWGSC submitted that, regarding the 2009 RFSO, it had not received any bids. PWGSC submitted that the procurement process had therefore been terminated and that no contract would be awarded as a result of the procurement process under review. PWGSC submitted that, given these circumstances, the subject matter of the complaint no longer existed. PWGSC referred to *TPG Technology Consulting Ltd.*,⁵ in which the Tribunal issued an order ceasing its inquiry under circumstances similar to those present in the current complaint.

8. In its response to PWGSC's motion, MetOcean agreed with PWGSC that the Tribunal should cease its inquiry into the complaint. MetOcean requested that PWGSC consider reviewing the mandatory requirements of the tender and determine why no bids were received.

9. MetOcean, which did not submit a bid in response to the solicitation, had requested, by way of remedy, that PWGSC review and update the specification. The Tribunal considers that, through the cancellation of the solicitation and revisitation of the mandatory requirements as part of any new solicitation, MetOcean has obtained the essential elements of the remedy that it was seeking.

10. The Tribunal also notes that PWGSC's RFSO incorporated by reference a clause indicating it reserved the right to cancel the solicitation at any time.⁶

11. Taking into account the particular circumstances surrounding the procurement in question, as discussed above, and the fact that PWGSC's cancellation of the procurement provides the essential remedy that MetOcean requested, the Tribunal finds that the complaint, since its filing with the Tribunal, has been rendered moot and therefore unimportant or, in other words, trivial. It is therefore the Tribunal's decision, pursuant to subsection 30.13(5) of the *CITT Act*, to cease conducting the present inquiry.

4. *Shorter Oxford English Dictionary*, Vol. 2, (5th ed.), p. 3357.

5. *Re Complaint Filed by TPG Technology Consulting Ltd.* (30 August 2007), PR-2007-020 (CITT).

6. PWGSC's Standard Instructions and Conditions 2006 - Standard Instructions - Request for Standing Offers - Goods or Services - Competitive Requirements (2008-12-12) were incorporated by reference into and formed part of the bid solicitation. Part 10 reads as follows: "Canada reserves the right to ... (d) cancel the RFSO at any time ..."

ORDER OF THE TRIBUNAL

12. Pursuant to subsection 30.13(5) of the *CITT Act*, the Tribunal has ceased to conduct its inquiry into the complaint, and these proceedings are terminated.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member