



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2010-066

Quantum Energetics Inc.

*Decision made
Friday, October 1, 2010*

*Decision and reasons issued
Friday, October 8, 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

QUANTUM ENERGETICS 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 Request for Proposal (RFP) (Solicitation No. W8484-09WA16/B) by the Department of Public Works and Government Services (PWGSC) for the provision of impulse cartridges on behalf of the Department of National Defence.

3. Quantum Energetics Inc. (Quantum) alleged that PWGSC incorrectly declared its proposal non-compliant.

4. On June 3, 2010, PWGSC issued the RFP. On June 25, 2010, bids closed.

5. The item description in the RFP reads as follows:³

NSN – NNO: 1377-01-462-5035
CARTRIDGE, IMPULSE,
CCU-136A/A. USED ON THE CF188 AIRCRAFT
NSCM/CAGE – COF/CAGE: 30003
Part No. – N° de la partie :
842AS217
Quality Assurance No. –
N° d'assurance de qualité :
Q

6. The RFP includes by reference a “No Substitute Products” clause from the SACC Manual (B4024T), which reads as follows:

Bidders must provide products that are of the same description, brand name, model and/or part number as detailed in the item description of the bid solicitation. Bidders are advised that substitute products will not be considered.

7. According to the complaint, Quantum’s proposed part number is CAP 07-D6-001 and the part is manufactured by Capco Inc.

8. On September 10, 2010, PWGSC advised Quantum that its proposal was deemed non-compliant. Specifically, PWGSC advised Quantum that the NCAGE associated with its proposed part number is 04099 and “. . . is not a part of the listed cross-references NCAGE under NSN: 1377-01-462-5035.” PWGSC also reminded Quantum that the RFP included a “no substitute product” clause.

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

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

3. NSN = NATO stock number; NSCM = NATO Supply Code for Manufacturers; NCAGE = NATO Commercial and Governmental Entity.

9. Quantum submitted that the cross-referenced data cited by PWGSC are in error and incorrectly list Esterline Defense Technologies as the manufacturer, when it should be its supplier, Capco Inc. Quantum submitted that Capco Inc. is the only approved manufacturer of the required part.

10. On September 23, 2010, Quantum made an objection to PWGSC regarding its decision to declare its proposal non-compliant. On September 24, 2010, Quantum filed its complaint with the Tribunal.

11. Subsection 6(2) of the *Regulations* 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.”

12. At the time of the complaint, Quantum’s objection was still before PWGSC. Thus, it remains possible that PWGSC will provide a positive response to Quantum’s objection and the relief that it requested. Until such time as the requested relief has been denied by PWGSC, the Tribunal is unable to determine whether there is a reasonable indication that the procurement has not been carried out in accordance with the trade agreements. Consequently, the Tribunal finds that it is premature for Quantum to file a complaint at this stage. The Tribunal’s decision at this time would not preclude any future complaint by Quantum once PWGSC has responded to its objection or failed to do so within a reasonable amount of time. In the event that Quantum does file a new complaint, it must do so within the time limits specified in the *Regulations*.

DECISION

13. 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