



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2010-070

Navair Technologies Inc.

*Decision made
Wednesday, October 20, 2010*

*Decision and reasons issued
Tuesday, October 26, 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

NAVAIR TECHNOLOGIES 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.

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 complaint relates to a Request for a Standing Offer (RFSO) (Solicitation No. M9010-103064/A) by the Department of Public Works and Government Services (PWGSC), on behalf of the Royal Canadian Mounted Police, for the provision of radio test sets.

3. Navair Technologies Inc. (Navair) alleged that PWGSC improperly set aside its standing offer.

4. On June 7, 2010, PWGSC issued an RFSO for the provision of bench type Project 25 (P25) radio test sets. The closing date for the solicitation was June 23, 2010.

5. On July 9, 2010, PWGSC issued a standing offer to Navair. On October 7, 2010, PWGSC advised Navair that it had become aware that its standing offer did not meet the technical requirements set out in the solicitation and that, as a result, it was setting aside the award of the standing offer. PWGSC also advised Navair that it would be issuing a new solicitation with revised technical requirements. On October 12, 2010, Navair objected to PWGSC, arguing that its standing offer was fully compliant and should not have been set aside.

6. On October 15, 2010, Navair filed its complaint with the Tribunal.

7. As indicated above, subsection 30.11(1) of the *CITT Act* provides that, “[s]ubject to the regulations, a potential supplier may file a complaint with 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.”

8. In deciding whether to initiate an inquiry, the Tribunal must first examine whether there is a “designated contract”, as defined in section 30.1 of the *CITT Act*. This section defines such a contract as “. . . a contract for the supply of goods or services that has been or is proposed to be awarded by a government institution and that is designated or of a class of contracts designated by the regulations”.

9. It is well established that, with respect to standing offers, no contract exists until the Government issues a call-up against the standing offer.³ While the complaint does not indicate whether any call-ups were issued against the standing offer between July 9 and October 7, 2010, the Tribunal is of the view that the complaint cannot reasonably be understood to relate to any such potential call-ups (i.e. to contracts that have already been awarded to Navair). Furthermore, given that Navair’s standing offer was set aside and that

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

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

3. See *Re Complaint Filed by Corel Corporation* (21 November 1996), PR-96-011 (CITT) at 2. See, also, PWGSC’s Standard Instructions and Conditions 2006 – Standard Instructions – Request for Standing Offers – Goods or Services – Competitive Requirements (2010-01-11), which were incorporated by reference into and formed part of the RFSO.

PWGSC intended to issue a new solicitation, the Tribunal is of the view that there no longer exists a contract that “. . . is proposed to be awarded by a government institution . . .” in relation to the current solicitation. Therefore, the Tribunal finds that Navair’s complaint does not relate to a “designated contract” and, consequently, the Tribunal does not have jurisdiction to conduct an inquiry.

DECISION

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

Stephen A. Leach
Stephen A. Leach
Presiding Member