



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2010-080

Information Builders (Canada) Inc.

*Decision made
Tuesday, December 21, 2010*

*Decision and reasons issued
Friday, January 7, 2011*

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

INFORMATION BUILDERS (CANADA) 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.

Serge Fréchette
Serge Fréchette
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. U6163-095933/B) by the Department of Public Works and Government Services (PWGSC), on behalf of the Department of Industry (Industry Canada), for the provision of an information intelligence software solution (IISS).

3. According to the RFP, the purpose of the IISS was to extend the value of Industry Canada's enterprise systems and databases by providing a standardized suite of information integration, delivery and analysis tools to extract business intelligence from operational data from various sources in different structures. The objective of the IISS was to implement a capability to obtain information and insight from various sources of data. The procurement included the purchase and development of software and related maintenance, warranty and support services.

4. Information Builders (Canada) Inc. (Information Builders) alleged that Industry Canada improperly met with other bidders during the procurement process, which compromised the integrity of the process, and suggested that, as a result, PWGSC improperly cancelled the requirement.

5. On January 4, 2010, PWGSC issued the RFP. According to the complaint, bids closed on March 15, 2010. On June 2, 2010, PWGSC informed Information Builders that it was the top-ranked compliant bidder and invited Information Builders to the stipulated corporate acceptance test, which was the next phase of the evaluation process. However, on July 7, 2010, PWGSC advised Information Builders that the RFP had been cancelled as a result of funding issues relating to the Government's Strategic Review initiative.

6. According to the complaint, on July 12, 2010, Information Builders sent a letter to the Ministers of Public Works and Government Services and Industry requesting certain information in order to understand the process that led to the decision to cancel the solicitation, including a list of any meetings and e-mail correspondence between vendors that submitted bids and officials from PWGSC and Industry Canada who were involved in the procurement process during the relevant period. It also filed an Access to Information request to obtain a list of bidders to the RFP. On August 13, 2010, Information Builders received the information that it requested via the Access to Information process. On August 18, 2010, Information Builders made another Access to Information request to obtain confirmation of any face-to-face meetings between key officials at Industry Canada and a vendor, namely, IBM Global Services (IBM).

7. On September 21, 2010, Information Builders received a response from the Minister of Public Works and Government Services in which it is stated that all bidders that responded to the RFP were notified of the cancellation of the solicitation on July 9, 2010, and that there were no communications with bidders concerning the evaluation process prior to that date. The letter from the Minister of Public Works

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

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

and Government Services also informed Information Builders that employees of PWGSC were unaware of any meetings during the relevant period between vendors that submitted bids and officials from PWGSC and Industry Canada who were involved in the procurement process.

8. According to the complaint, on November 26, 2010, Information Builders received information as a result of its second Access to Information request that indicated that, contrary to the information that was conveyed by PWGSC on September 21, 2010, a number of meetings between key Industry Canada officials involved in the procurement process and IBM had indeed taken place, one such meeting occurring the day after it was announced that Information Builders was the top-ranked compliant bidder.

9. On December 16, 2010, Information Builders submitted its complaint form, and no other documentation, to the Tribunal. In other words, the complaint did not comply with subsection 30.11(2) of the *CITT Act*, which requires that a complaint include all information and documents relevant to the complaint that are in the complainant's possession.

10. On December 20, 2010, Information Builders submitted a CD with the relevant documents. Accordingly, pursuant to subsection 96(1) of the *Canadian International Trade Tribunal Rules*,³ the complaint was considered to have been filed on December 20, 2010 (the day on which the Tribunal received the information that corrected the deficiencies in the documentation that was filed on December 16, 2010).

11. Subsection 6(1) of the *Regulations* requires a complaint to be filed within 10 working days from the day after the basis of the complaint became known or reasonably should have become known to the potential supplier.

12. 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.”

13. 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.

14. The Tribunal considers that Information Builders became aware, or reasonably should have become aware, of its basis of complaint on November 26, 2010, upon receipt of the Access to Information documentation, that is, when it found out that meetings had taken place between Industry Canada officials and IBM. In order to comply with the time limit stipulated in section 6 of the *Regulations*, the complaint would thus have had to have been filed on December 10, 2010, at the latest. However, as noted above, the complaint was considered to have been filed on December 20, 2010, when the Tribunal received the supporting documents to the complaint. Therefore, the Tribunal finds that the complaint was not filed on time.

3. S.O.R. 91/499.

15. However, even if the complaint had been filed within the time limit prescribed by the *Regulations*, the Tribunal could not have accepted the complaint because it did not relate to a “designated contract”, as required by the *CITT Act* and the *Regulations*. As noted above, subsection 30.11(1) of the *CITT Act* confers on the Tribunal jurisdiction to inquire into any aspect of a procurement process that relates to a “designated contract”. Subsection 7(1) of the *Regulations* states the following: “The Tribunal shall, within five working days after the day on which a complaint is filed, determine whether the following conditions are met in respect of the complaint: . . . (b) the complaint is in respect of a designated contract”

16. Section 30.1 of the *CITT Act* defines a “designated 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”.⁴ By virtue of the above provisions, in the absence of a “designated contract”, the Tribunal lacks jurisdiction to inquire into a complaint.

17. In this case, it is clear that no contract has been awarded and that the requirement has been cancelled, which indicates that no contract for the supply of goods or services “is proposed to be awarded” by PWGSC. In other words, there no longer exists a contract “that has been or is proposed to be awarded by a government institution”, as contemplated by section 30.1 of the *CITT Act*. Therefore, the complaint is not in respect of a “designated contract”. Consequently, the Tribunal does not have jurisdiction to inquire into the complaint.

DECISION

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

Serge Fréchette
Serge Fréchette
Presiding Member

4. While this aspect of the *Regulations* is not relevant in this case, the Tribunal notes that the *Regulations* define a “designated contract” as any contract or class of contracts concerning a procurement of goods or services as described in the applicable provisions of trade agreements to which Canada is a party.