



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

ORDER AND REASONS

File No. PR-2010-081

Tyco International of Canada o/a
SimplexGrinnell

v.

National Research Council of
Canada

*Order and reasons issued
Wednesday, February 2, 2011*

*Corrigendum issued
Thursday, February 3, 2011*

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IN THE MATTER OF a complaint filed by Tyco International of Canada o/a SimplexGrinnell 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 to conduct an inquiry into the complaint pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*;

AND FURTHER TO an order issued pursuant to subsection 30.13(3) of the *Canadian International Trade Tribunal Act*.

BETWEEN

TYCO INTERNATIONAL OF CANADA O/A SIMPLEXGRINNELL **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 hereby ceases its inquiry into the complaint and terminates all proceedings relating thereto.

Consequently, the order made on January 11, 2011, to postpone the award of any contract in relation to this procurement until the Canadian International Trade Tribunal determined the validity of the complaint is hereby rescinded.

Pasquale Michael Saroli
Pasquale Michael Saroli
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary

STATEMENT OF REASONS

COMPLAINT

1. On January 7, 2011, Tyco International of Canada o/a SimplexGrinnell (SimplexGrinnell) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ concerning a procurement (Solicitation No. 10-22109) by the National Research Council of Canada (NRC) for the provision of services to upgrade its central fire alarm monitoring system.

2. SimplexGrinnell alleged that the Request for Proposal (RFP), as written, was so heavily weighted in favour of one supplier that it was not worth submitting a proposal in response to the RFP. SimplexGrinnell requested, as a remedy, that the evaluation criteria and associated scoring be revised in order to make the process fair for all suppliers.

3. On January 11, 2011, 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*.² On the same day, the Tribunal issued an order to postpone the awarding of a contract, pursuant to subsection 30.13(3) of the *CITT Act*.

4. On January 19, 2011, the NRC filed a letter advising the Tribunal that it had cancelled the solicitation at issue. Furthermore, the NRC advised that it would issue a new RFP that addressed a considerably larger procurement and that the description of the new requirements would be worded as generically as possible. In this regard, the NRC submitted that, since there was no longer a designated contract, the Tribunal should consider ceasing the conduct of its inquiry into the matter.

5. On January 25, 2011, SimplexGrinnell filed comments on the NRC's letter of January 19, 2011, stating that it would be willing to postpone the inquiry into its complaint until the receipt of the re-issued RFP and that it would be prepared to withdraw its complaint if the re-issued RFP presented a fair competitive request.

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."³

7. The cancellation and planned re-tendering of the solicitation provide the essential remedy that SimplexGrinnell requested, thereby effectively rendering the complaint moot and therefore unimportant or, in other words, trivial. Therefore, the Tribunal has decided, pursuant to subsection 30.13(5) of the *CITT Act*, to cease its inquiry into the complaint.

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

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

3. *Shorter Oxford English Dictionary*, 5th ed., s.v. "trivial".

ORDER OF THE TRIBUNAL

8. Pursuant to subsection 30.13(5) of the *CITT Act*, the Tribunal hereby ceases its inquiry into the complaint and terminates all proceedings relating thereto.

9. Consequently, the order made on January 11, 2011, to postpone the award of any contract in relation to this procurement until the Tribunal determined the validity of the complaint is hereby rescinded.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

IN THE MATTER OF a complaint filed by Tyco International of Canada o/a SimplexGrinnell 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 to conduct an inquiry into the complaint pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*;

AND FURTHER TO an order issued pursuant to subsection 30.13(3) of the *Canadian International Trade Tribunal Act*.

BETWEEN

TYCO INTERNATIONAL OF CANADA O/A SIMPLEXGRINNELL **Complainant**

AND

THE NATIONAL RESEARCH COUNCIL OF CANADA **Government
Institution**

ORDER

CORRIGENDUM

In the English version of the order, the name of the government institution should read: “**THE NATIONAL RESEARCH COUNCIL OF CANADA**”.

Pasquale Michael Saroli
Pasquale Michael Saroli
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary