

Ottawa, Friday, October 31, 1997

File No.: PR-97-010

IN THE MATTER OF a complaint filed by Équipement Industriel Champion Inc. under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985, c. 47 (4th Supp.), as amended;

AND IN THE MATTER OF a decision to conduct an inquiry into the complaint under subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

DETERMINATION OF THE TRIBUNAL

Pursuant to section 30.14 of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal determines that the complaint is not valid.

Raynald Guay
Member

Michel P. Granger
Secretary

Date of Determination: October 31, 1997

Tribunal Member: Raynald Guay

Investigation Manager: Randolph W. Heggart

Counsel for the Tribunal: Joël J. Robichaud

Complainant: Équipement Industriel Champion Inc.

Government Institution: Department of Public Works and Government Services

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FINDINGS OF THE TRIBUNAL

INTRODUCTION

On June 27, 1997, Équipement Industriel Champion Inc. (EIC) filed a complaint under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ (the CITT Act) concerning the procurement by the Department of Public Works and Government Services (the Department) for the supply and installation of a motor vehicle lift for the Department of National Defence (Solicitation No. TNB W8486-7-TD0H/00/A).

EIC alleged that the Department's decision to reject its offer was unjust, as the Department accepted for award an offer which failed to meet certain mandatory requirements of the Request for Proposal (RFP), specifically the requirements for a clear floor design and a 550-V, three-phase electric motor.

EIC requested, as a remedy, that it be awarded the contract.

BACKGROUND

On July 2, 1997, the Tribunal determined that the conditions for inquiry set forth in section 7 of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*² (the Regulations) had been met in respect of the complaint and decided to conduct an inquiry. On August 5, 1997, the Department filed with the Tribunal a Government Institution Report (GIR) in accordance with rule 103 of the *Canadian International Trade Tribunal Rules*.³ After the failure of a contracted courier to deliver the GIR to EIC, EIC was granted an extension of time in order to comment on the Department's response to the complaint. On September 12, 1997, EIC submitted comments on the GIR.

Given that there was sufficient information on the record to determine the validity of the complaint, the Tribunal decided that a hearing was not required and disposed of the complaint on the basis of the information on the record.

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1. R.S.C. 1985, c. 47 (4th Supp.).
 2. SOR/93-602, December 15, 1993, *Canada Gazette* Part II, Vol. 127, No. 26 at 4547, as amended.
 3. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912, as amended.

PROCUREMENT PROCESS

On April 15, 1997, the Department posted an RFP on the Open Bidding Service. The RFP with a bid closing date of May 1, 1997, included, in part, the following:

MANDATORIES:

1. DESIGN:

- WIDTH, 10 FT. ELECT MOTOR 220 OR 550 V, 60 HZ, 3 PHASE;
- HYD ON RUNWAY TO BE STAINLESS STEEL TUBING, CLEAR FLOOR DESIGN;
- CSA APPROVED; 5 YEAR WARRANTY PARTS, LABOUR AND SERVICING.

GARAGE FLOOR IS 7 IN THICK REINFORCED 5/8 IN REBAR, 18 IN APART 3 IN DOWN (PSI UNKNOWN). SUPPLIER RESPONSIBLE TO VERIFY FLOOR AND BUILD FOOTING.

2. AN AUTHORIZED REPRESENTATIVE OF YOUR COMPANY MUST ATTEND THE MANDATORY SITE VISIT.

On the occasion of the mandatory site visit, the Department informed bidders that, due to the characteristics of the electrical circuit in the building, the only acceptable motor was a 550-V, three-phase motor.

Five bids were received by the Department, and only the one from Mohawk Resources Ltd. (Mohawk) was determined to be technically compliant. In its bid, Mohawk offered lift model TR-50. The electric motor capacity of the product that it offered was 550/660 V. Further, there was no particular deviation mentioned in respect of the "clear floor design" requirement in Mohawk's offer.

VALIDITY OF THE COMPLAINT

EIC's Position

EIC based its allegations on the technical specifications found on a specification sheet relating to a TR-series heavy-duty lift offered by Mohawk. According to EIC, the floor of the building where the lift is to be installed would require significant modification, at a cost of around \$15,000. EIC believed that, for the price of the contract awarded, Mohawk must have proposed using steel plates to reinforce the floor, which would be contrary to the specified requirement of a clear floor design.

EIC also alleged that the motor offered was not the required 550/660-V, three-phase one, considering that the specification sheet stated a 220-V motor.

In its response to the GIR, EIC submitted that its proposal complied with the requirements and that it was the only bidder to take into consideration the ability of the floor to support the lift and its loads in complete safety.

Department's Position

With respect to the requirement for a clear floor design, Mohawk's proposal did not include any reinforcing plates nor did it propose to alter the floor. The Department pointed out that a report by Intertek Testing Services specifically referred to the manufacturer's installation instructions, and the Department was relying on Mohawk's attestation that its installation would meet the required standards. The Department

stated that the concrete requirements in the previously referred to Mohawk specification sheet did not constitute the manufacturer's installation instructions.

With respect to the motor, the Department stated that Mohawk's proposal offered the required 550-V electric motor. According to the Department, the resulting contract contained an error, in that it included a choice between a 220-V and a 550-V motor, and Mohawk brought this error to the Department's attention after it had received the contract.

Tribunal's Decision

Section 30.14 of the CITT Act requires that, in conducting an inquiry, the Tribunal limit its considerations to the subject matter of the complaint. Furthermore, at the conclusion of the inquiry, the Tribunal must determine whether the complaint is valid on the basis of whether the procedures and other requirements prescribed in respect of the designated contract have been observed. Section 11 of the Regulations further provides, in part, that the Tribunal is required to determine whether the procurement was conducted in accordance with the requirements set out in the *North American Free Trade Agreement*⁴ and the *Agreement on Internal Trade*.⁵

With respect to the claim that the Department failed to take into consideration all the requirements specified in the RFP, in particular the requirement for a 550/660-V, three-phase electric motor and the requirement for a clear floor design, the Tribunal finds that the Department did evaluate the proposals in a manner consistent with the RFP. Mohawk's proposal offered the 550-V motor and met the requirement for a clear floor design. The Department reasonably relied on the manufacturer's (Mohawk) certification that the lift met the required standards for design and installation. EIC based a significant portion of the grounds of its complaint on the specification sheet for the Mohawk TR-series lifts. The Tribunal notes that the specification sheet contains the following clause: "Mohawk Resources, Ltd. reserves the right to modify lift design and change specifications without notice." In any event, the Tribunal is of the opinion that a previously published specification sheet should not restrict a supplier's ability to bid according to the requirements of the RFP. The Tribunal, therefore, finds that the complaint is not valid.

DETERMINATION OF THE TRIBUNAL

In light of the foregoing, the Tribunal determines, in consideration of the subject matter of the complaint, that the procurement was conducted in accordance with the applicable agreements and that, therefore, the complaint is not valid.

Raynald Guay
Member

4. Done at Ottawa, Ontario, on December 11 and 17, 1992, at Mexico, D.F., on December 14 and 17, 1992, and at Washington, D.C., on December 8 and 17, 1992 (in force for Canada on January 1, 1994).

5. As signed at Ottawa, Ontario, on July 18, 1994.