

Ottawa, Friday, January 16, 1998

File No.: PR-97-028

IN THE MATTER OF a complaint filed by C.A. Ventin Architect Ltd. 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 paragraph 10(a) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*, the Canadian International Trade Tribunal dismisses the complaint. Each party will pay its costs.

Raynald Guay

Raynald Guay
Member

Michel P. Granger

Michel P. Granger
Secretary

Date of Determination: January 16, 1998

Tribunal Member: Raynald Guay

Investigation Manager: Randolph W. Heggart

Counsel for the Tribunal: Joël J. Robichaud

Complainant: C.A. Ventin Architect Ltd.

Counsel for the Complainant: Ronald C. Lefebvre

Government Institution: Department of Public Works and Government Services

Counsel for the Government Institution: Susan D. Clarke
Christianne M. Laizner

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FINDINGS OF THE TRIBUNAL

On October 24, 1997, C.A. Ventin Architect Ltd. (Ventin) 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) of architectural and engineering services for the conservation and rehabilitation of the Library of Parliament (Solicitation No. TPD ENPW1-7-4504/000/A).

Ventin alleged that the Department refused to consider its statement of qualifications submitted in a joint venture with Barton Myers Associates Inc. because it involved the participation of a non-Canadian firm. This refusal, Ventin alleged, is contrary to the terms of the invitation to submit statements of qualifications and is in breach of the provisions of the *Agreement on Internal Trade*,² specifically, Article 506(6).³

Ventin requested, as a remedy, that it be given the opportunity to submit a new statement of qualifications and the time to find a new joint venture partner or that it be given a position on the short list of firms that will be asked to respond to the second stage of the Request for Proposal, leaving it to Ventin to determine whether it needs a joint venture partner and, if so, to choose a Canadian firm. In the alternative, Ventin should be compensated for this lost opportunity.

On October 29, 1997, the Canadian International Trade Tribunal (the Tribunal) determined that the conditions for inquiry set forth in section 7 of *Canadian International Trade Tribunal Procurement Inquiry Regulations*⁴ had been met in respect of the complaint and decided to conduct an inquiry into the complaint. On October 30, 1997, the Tribunal, pursuant to subsection 30.13(3) of the CITT Act, issued an order postponing the award of any contract in relation to this procurement until it determined the validity of the complaint. On November 10, 1997, the Department, pursuant to subsection 30.13(4) of the CITT Act, wrote to the Tribunal certifying that a delay in awarding the contract would be contrary to the public interest. On November 13, 1997, the Tribunal issued an order rescinding its postponement of award order of

1. R.S.C. 1985, c. 47 (4th Supp.).

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

3. Article 506(6) reads, in part, as follows: "The tender documents shall clearly identify the requirements of the procurement, the criteria that will be used in the evaluation of bids and the methods of weighting and evaluating the criteria."

4. SOR/93-602, December 15, 1993, *Canada Gazette* Part II, Vol. 127, No. 26 at 4547, as amended.

October 30, 1997. On December 8, 1997, the Department sent a letter, instead of a Government Institution Report, to the Tribunal indicating that, after an extensive examination of the procurement, it had decided to continue the current procurement process and retain the list of pre-qualified bidders. However, the Department indicated that it would issue a second request for statements of qualifications to supplement the existing list with additional pre-qualified bidders. This, the Department submitted, should afford Ventin the opportunity to submit a new statement of qualifications and provide it with the first of the three alternative remedies that it sought.

On December 15, 1997, Ventin filed a response to the Department's letter in which it submitted that, while it was pleased to learn that the Department would afford it another opportunity to submit a statement of qualifications, it was disappointed to see that the Department failed to admit that the original request for statements of qualifications was flawed. Ventin added that "[i]t would also have been satisfying to read that a solution could and should have been found, earlier, that would not have necessitated C.A. Ventin's having to complain to the CITT to obtain justice and now require the firm to put together a second Statement of Qualifications." In this respect, Ventin submitted that the expenses surrounding the complaint and those relating to the formulation of a second statement of qualifications are the direct result of an error on the part of the Department. For that reason, Ventin indicated that it would want to be compensated for these expenses, some \$10,000, before it agrees to withdraw its complaint. The Department made additional submissions on December 19, 1997, and on January 5, 1998. Ventin made submissions on December 22, 1997.

Concerning the payment for additional expenses, the Department submitted, in part, that such costs were not requested as a remedy in the complaint. Moreover, the Department submitted that it had taken steps to specifically address Ventin's concerns and to provide it with the remedy sought without the necessity of proceeding with litigation and without Ventin having to incur further costs in the context of the Tribunal's conduct of an inquiry.

TRIBUNAL'S DECISION

The Tribunal is satisfied that, but for the issue of the additional expenses raised by Ventin, the Department's offer to grant Ventin a second opportunity to submit a statement of qualifications for this solicitation removes, in fact, Ventin's substantive grounds for complaint. Accordingly, there can be no valid basis for the complaint. The complaint is, therefore, dismissed.

For purposes of determining whether Ventin is entitled to be reimbursed certain litigation and response preparation costs, the Tribunal assumes that the Department acted as it did because it felt that it had some responsibility in the matter. The Tribunal is, nevertheless, satisfied that, in the circumstances, the Department acted in good faith and with celerity and, therefore, the Tribunal will not grant Ventin the expenses for which it requested reimbursement. It is true that Ventin incurred additional costs because of the matter arising, but so did the Department. The Department, acting within the precise context of the complaint as drafted by Ventin, has offered Ventin its preferred remedy. In the circumstances, in the Tribunal's opinion, the parties' additional expenditures are best characterized as expenditures arising out of the normal conduct of business and, therefore, each party will pay its costs.

Raynald Guay

Raynald Guay

Member