



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2011-002

Tyco International of Canada o/a
SimplexGrinnell

*Decision made
Thursday, April 14, 2011*

*Decision and reasons issued
Tuesday, May 3, 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

TYCO INTERNATIONAL OF CANADA O/A SIMPLEXGRINNELL

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.

Diane Vincent
Diane Vincent
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 procurement (Solicitation No. W0105-11E004/A) by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence for the provision of inspection and maintenance services for the foam fire suppression systems at Canadian Forces Base (CFB) Galetown.
3. On the basis of the Tribunal's understanding of the complaint, Tyco International of Canada o/a SimplexGrinnell (SimplexGrinnell) appears to allege that PWGSC improperly declared its tender non-responsive to the mandatory criteria outlined in the Invitation to Tender (ITT) and that it awarded a contract to a bidder that does not have any technical people in Atlantic Canada who hold the certifications required by the ITT.³
4. Paragraph 7(1)(c) of the *Regulations* requires that the Tribunal determine whether the information provided by the complainant discloses a reasonable indication that the procurement has not been conducted in accordance with whichever of Chapter Ten of the *North American Free Trade Agreement*,⁴ Chapter Five of the *Agreement on Internal Trade*,⁵ the *Agreement on Government Procurement*,⁶ Chapter Kbis of the *Canada-Chile Free Trade Agreement*⁷ or Chapter Fourteen of the *Canada-Peru Free Trade Agreement*⁸ applies. In this case, at a minimum, the *AIT* applies.⁹

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

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

3. In its complaint, SimplexGrinnell states that it understands that its tender was the lowest priced and that it was fully compliant with the terms of the ITT. It also states that it knows that the winning bidder does not have any technical people in Atlantic Canada who hold the proper certifications.

4. *North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2 (entered into force 1 January 1994) [*NAFTA*].

5. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <http://www.ait-aci.ca/index_en/ait.htm> [*AIT*].

6. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm> [*AGP*].

7. *Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile*, 1997 Can. T.S. No. 50 (entered into force 5 July 1997) [*CCFTA*]. Chapter Kbis, entitled "Government Procurement", came into effect on September 5, 2008.

8. *Free Trade Agreement between Canada and the Republic of Peru*, online: Department of Foreign Affairs and International Trade <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/peru-perou/chapter-chapitre-14.aspx>> (entered into force 1 August 2009) [*CPFTA*].

9. The Tribunal notes that both the Notice of Proposed Procurement and the ITT provide that the procurement is subject only to the provisions of the *AIT*. However, depending on the precise characterization of the procured services (i.e. whether considered "services" or "construction services"), *NAFTA*, the *AGP*, the *CCFTA* and the *CPFTA* may also apply.

5. On February 7, 2011, PWGSC issued an ITT for the provision of inspection and maintenance services for the foam fire suppression systems at CFB Gagetown. PWGSC issued amendment Nos. 001 and 002 on February 15 and 22, 2011, respectively.

6. Article 1 of Annex “A”, “EVALUATION CRITERIA AND BASIS OF SELECTION”, of the ITT, as amended by amendment No. 001, reads as follows:

1. Mandatory Criteria

...

7. Within 10 days and prior to award of Service Contract, the bidder shall be required to provide proof that he has a minimum of five years experience with foam fire suppression systems and he has a proven record of proper installation and maintenance of foam fire suppression systems.

8. Within 10 days and prior to award of Service Contract, the bidder shall be required to provide proof that all technical people assigned to work on the maintenance and repair of the system shall have documentation to show they are trained in the operation of foam fire suppression systems. This documentation shall consist of a certificate from the foam manufacturer ANSUL.

7. SimplexGrinnell submitted a bid in response to the ITT. On March 7, 2011, bids closed.

8. In a letter dated March 8, 2011, PWGSC requested that SimplexGrinnell provide additional information in accordance with Annex “A” of the ITT. This information included, among other things, the documentation required in items 7 and 8 of article 1 of Annex “A”. The letter also advised that the failure to provide the information by March 18, 2011, could result in SimplexGrinnell’s tender being deemed non-responsive.

9. On March 18, 2011, SimplexGrinnell provided additional information to PWGSC.

10. On March 24, 2011, PWGSC advised SimplexGrinnell that the additional information that it had provided had been reviewed and that it had concluded that a number of mandatory criteria of article 1 of Annex “A” of the ITT, including items 7 and 8, had not been met. PWGSC requested that SimplexGrinnell provide it, by March 28, 2011, with additional information to show that it met these mandatory criteria.

11. In a letter dated March 25, 2011, but apparently sent on March 28, 2011, SimplexGrinnell provided additional information to PWGSC.

12. On March 30, 2011, PWGSC advised SimplexGrinnell that its tender did not meet the requirements of items 7 and 8 of article 1 of Annex “A” of the ITT and that its tender was therefore deemed non-responsive.

13. On April 8, 2011, SimplexGrinnell submitted a complaint electronically to the Tribunal and stated that physical copies of the complaint were being couriered to the Tribunal. However, that complaint did not contain any of the referenced supporting documentation. On April 11, 2011, the complaint was considered filed when the Tribunal received physical copies of the complaint, which included the referenced supporting documentation.

14. With respect to SimplexGrinnell’s allegation that PWGSC improperly declared its tender non-responsive to the mandatory criteria outlined in the ITT, the Tribunal finds that the information provided in the complaint does not allow it to conclude that there is a reasonable indication that the

procurement was not conducted in accordance with the applicable trade agreements. Upon review of the complaint, the Tribunal is unable to find, in the documentation, any explanation or argument to support SimplexGrinnell's allegation that PWGSC improperly declared its tender non-responsive. As the Tribunal has stated in the past, unsupported allegations do not constitute sufficient evidence for the Tribunal to proceed with an inquiry.¹⁰

15. In fact, the Tribunal notes that, while the information submitted with the complaint appears to indicate that SimplexGrinnell did provide PWGSC with evidence that it had been an authorized distributor for the foam manufacturer "ANSUL" for more than five years, there is no indication that it had "... a proven record of proper installation and maintenance of foam fire suppression systems", as required by item 7 of article 1 of Annex "A" of the ITT. Moreover, the information submitted with the complaint appears to indicate that, although SimplexGrinnell did provide PWGSC with a certificate from the foam manufacturer "ANSUL" for an employee located in Winnipeg, Manitoba, it did not provide such certificates for all the technical people who would be assigned to work on the fire suppression systems, as required by item 8 of article 1 of Annex "A" of the ITT.

16. With respect to SimplexGrinnell's allegation that PWGSC awarded a contract to a bidder that does not have any technical people in Atlantic Canada with the certifications required by the ITT, the Tribunal also finds that the information provided in the complaint does not allow it to conclude that there is a reasonable indication that the procurement has not been conducted in accordance with the applicable trade agreements. While SimplexGrinnell included, in its complaint, a purported list of technicians in Canada that are certified by the foam manufacturer "ANSUL", it did not provide any explanation as to how this list demonstrates that PWGSC failed to award the contract in accordance with the requirements of the ITT. In this respect, the Tribunal notes that item 8 of article 1 of Annex "A" of the ITT did not include a requirement that technical people assigned to work on the fire suppression systems be located in Atlantic Canada.

17. Therefore, the Tribunal finds that the complaint, in respect of both grounds of complaint, does not disclose a reasonable indication that the procurement has not been conducted in accordance with the applicable trade agreements.

18. In light of the above, the Tribunal will not conduct an inquiry into the complaint and considers the matter closed.

DECISION

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

Diane Vincent
Diane Vincent
Presiding Member

10. *Re Complaint Filed by Veseys Seeds Limited, Doing Business as Club Car Atlantic* (10 February 2010), PR-2009-079 (CITT) at para. 9.