



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2011-030

PA Consulting Group

*Decision made
Tuesday, September 20, 2011*

*Decision and reasons issued
Wednesday, September 28, 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

PA CONSULTING GROUP

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. B8183-100154/D) by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of Citizenship and Immigration (CIC) for the provision of visa program advisory services.

3. PA Consulting Group (PA Consulting) alleged that PWGSC improperly rejected its proposal. Specifically, while PA Consulting acknowledges that its proposal was sent to the wrong address, it is of the view that it cooperated with the spirit of the process and requested that PWGSC reconsider its decision to reject PA Consulting's proposal.

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*,³ Chapter Five of the *Agreement on Internal Trade*,⁴ the *Agreement on Government Procurement*,⁵ Chapter Kbis of the *Canada-Chile Free Trade Agreement*,⁶ Chapter Fourteen of the *Canada-Peru Free Trade Agreement*⁷ or Chapter Fourteen of the *Canada-Colombia Free Trade Agreement*⁸ applies. In this case, the procurement is subject to *NAFTA*, the *AIT*, the *AGP*, the *CCFTA* and the *CPFTA*. The *CCOFTA* was not in effect when the solicitation was issued. PA Consulting is located in London, England, and has not provided any indication that it has a Canadian place of business. Therefore, it only has recourse under the *AGP*.

5. Paragraph XIII(4)(a) of the *AGP* provides as follows:

To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation . . .

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1. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].
 2. S.O.R./93-602 [*Regulations*].
 3. *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*].
 4. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <http://www.ait-aci.ca/index_en/ait.htm> [*AIT*].
 5. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm> [*AGP*].
 6. *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.
 7. *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*].
 8. *Free Trade Agreement between Canada and the Republic of Colombia*, online: Department of Foreign Affairs and International Trade <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/colombia-colombie/anc-colombia-toc-tdm-can-colombie.aspx>> (entered into force 15 August 2011) [*CCOFTA*].

6. On July 27, 2011, PWGSC issued the Request for Proposal (RFP) for the provision of visa program advisory services. The bid closing date was August 23, 2011. According to PA Consulting, its proposal was sent from London, England, on August 17, 2011, and was delivered to the CIC office on August 22, 2011.

7. Article 2, “**Submission of Bids**”, of Part 2 of the RFP reads as follows:

Bids must be submitted only to Public Works and Government Services Canada (PWGSC) Bid Receiving Unit by the date, time and place indicated on page 1 of the bid solicitation.

8. The cover page of the RFP specifies the following information:

RETURN BIDS TO:

...

Bid Receiving - PWGSC ...

11 Laurier St. ...

Place du Portage, Phase III

Core 0A1 ...

Gatineau, Québec K1A 0S5

Bid Fax: (819) 997-9776

9. The cover page of the RFP also provides the following information with regard to the services to be provided:

Destination - of Goods, Services, and Construction:

...

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

ATTN: ...

180 KENT STREET, OFFICE 7-89

OTTAWA

Ontario

K1A1L1

Canada

10. In its complaint, PA Consulting stated that, as a consequence of a clerical error, the proposal was delivered to the address of the recipient of the services, rather than to PWGSC’s address. PA contended that the layout of the RFP cover page makes such a mistake very easy to make. PA Consulting submitted that its courier received a signature to confirm receipt of the package, and it therefore had a reasonable expectation that it was being “acted upon”.

11. According to PA Consulting, on September 7, 2011, it became “. . . aware that the client had not received the proposal . . .” On September 8, 2011, according to PA Consulting, upon contacting PWGSC to discuss the issue, PWGSC made it clear that there was no flexibility in the rules and that, while PA Consulting could prove that its proposal arrived at CIC before the bid closing date, because it had been sent to the wrong department, it could not be considered.

12. The Tribunal finds that, even if the cover page of the RFP contains the address of the recipient of the services, in this case CIC, the RFP clearly specified that bids were to be returned to “**Bid Receiving - PWGSC**”, the unit specifically dedicated to taking delivery of bids, the full address of which was indicated on the cover page of the RFP. The Tribunal notes that PA Consulting acknowledges that it sent its proposal to the wrong address, to CIC rather than to PWGSC.

13. The responsibility for ensuring that a proposal is compliant with all essential elements of a solicitation, including its delivery to the appropriate receipt point, ultimately resides with the bidder. Accordingly, as the Tribunal has stated in the past, it is incumbent upon the bidder to exercise due diligence in the preparation and delivery of its proposal.⁹ For instance, in *GHK*, the Tribunal stated as follows: “. . . GHK had the sole responsibility for the timely receipt of its proposal by CIDA at a specific address and could not transfer the responsibility to the Government. . . .” The same responsibility was incumbent upon PA Consulting in this matter.

14. Therefore, the Tribunal finds that PWGSC did not err in rejecting PA Consulting’s proposal and that the complaint does not disclose a reasonable indication that the procurement was not carried out in accordance with the applicable trade agreement.

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

DECISION

16. 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

9. See, for example, *Re Complaint Filed by Cauffiel Technologies Corporation* (5 April 2011), PR-2010-094 (CITT); *Re Complaint Filed by Ex Libris (USA) Inc.* (27 July 2009), PR-2009-034 (CITT); *Re Complaint Filed by GHK Group* (4 September 2007), PR-2007-031 (CITT) [*GHK*]; *Re Complaint Filed by BRC Business Enterprises Ltd.* (27 September 2010), PR-2010-012 (CITT); *Re Complaint Filed by Trans-Sol Aviation Service Inc.* (1 May 2008), PR-2008-010 (CITT).