



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2011-014

AdVenture Marketing Solutions Inc.

*Decision made
Thursday, July 14, 2011*

*Decision and reasons issued
Tuesday, July 26, 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

ADVENTURE MARKETING SOLUTIONS INC.

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.

Serge Fréchette
Serge Fréchette
Presiding Member

Gillian Burnett
Gillian Burnett
Acting 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. W8561-120001/A) by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence for the supply of 19 promotional items.
3. AdVenture Marketing Solutions Inc. (AdVenture) alleged that it was denied the ability to submit a proposal because (1) PWGSC issued the Request for Proposal (RFP) with numerous inconsistencies and missing elements, (2) PWGSC did not provide answers to critical questions in a timely manner, and (3) PWGSC did not extend the bid closing date.
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 or Chapter 14 of the *Canada-Peru Free Trade Agreement*⁷ applies. In this case, all the trade agreements apply.
5. On June 23, 2011, PWGSC sent the RFP to the Supply Arrangement (SA) holders.⁸ The bid closing date was set for June 30, 2011. On June 24, 2011, AdVenture requested an extension to the bid closing date and asked PWGSC questions regarding the RFP.

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).

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>.

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). 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).

8. SAs were issued to qualified suppliers for the provision of a full range of promotional items to support federal departments and agencies in their communications projects on an "as and when requested" basis. Bids would be solicited for specific requirements from those suppliers holding an SA.

6. On June 27, 2011, AdVenture asked PWGSC a question pertaining to one of the requested products. PWGSC issued amendment No. 001, which provided answers to bidders' questions but did not extend the bid closing date. AdVenture once again asked PWGSC if the bid closing date could be extended.

7. On June 28, 2011, PWGSC issued amendment No. 002, which provided answers to bidders' questions and also advised bidders that the bid closing date would not be extended. AdVenture asked a number of questions regarding the products and the RFP in general.

8. On June 29, 2011, AdVenture asked further questions regarding certain products and quantities. PWGSC issued amendment No. 003, which provided answers to bidders' questions but did not extend the bid closing date. On June 30, 2011, bids closed.

9. On July 7, 2011, AdVenture submitted its complaint to the Tribunal. However, the complaint was deemed incomplete, since it did not comply with subsection 30.11(2) of the *CITT Act*. On July 11, 2011, the Tribunal sent a letter to inform AdVenture that the complaint did not comply with the requirements of subsection 31.11(2) and to request additional information. Later that day, AdVenture provided additional information. In accordance with subrule 96(1) of the *Canadian International Trade Tribunal Rules*,⁹ the complaint was therefore considered to have been filed on July 11, 2011.¹⁰

10. Article 506(6) of the *AIT* provides 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." The other trade agreements have similar wording.

11. Regarding the allegation that PWGSC issued the RFP with numerous inconsistencies and missing elements, the Tribunal notes that, for each of the 19 promotional items, the solicitation document provides for different bidding options, for example, bidding a product with a stock keeping unit (SKU) number, bidding a product with an equivalent SKU number or bidding a product with no equivalent SKU number. In the case of equivalent items, the RFP provided the essential elements for evaluation of the item. As such, the Tribunal is of the view that the requirements were clear and, therefore, finds that, for this ground of complaint, there is no reasonable indication that the procurement was not carried out in accordance with the trade agreements.

12. With respect to AdVenture's allegation that PWGSC did not provide answers to critical questions in a timely manner, the Tribunal notes that PWGSC provided answers to all of AdVenture's questions through the three solicitation amendments. The Tribunal also notes that all of AdVenture's questions were answered within one working day. Therefore, the Tribunal is of the view that, for this ground of complaint, there is no reasonable indication that the procurement was not carried out in accordance with the trade agreements.

13. Regarding the allegation that PWGSC did not extend the bid closing date, the Tribunal notes that the SA reads as follows:

2. Bid Solicitation Process

2.1 Bids will be solicited for specific requirements within the scope of the Supply Arrangement (SA) from suppliers who have been issued [an] SA.

...

9. S.O.R./91-499 [Rules].

10. Subrule 96(1) of the *Rules* reads as follows: "A complaint shall be considered to have been filed (a) on the day it was received by the Tribunal; or (b) in the case of a complaint that does not comply with subsection 30.11(2) of the Act, on the day that the Tribunal receives the information that corrects the deficiencies in order that the complaint comply with that subsection."

- 2.3 Suppliers will normally have five (5) business days to respond to a solicitation (Weekends and holidays are not included in this countdown) but urgent requirements may have a shorter response time.

14. The RFP was issued on June 23, 2011, and the bid closing date was June 30, 2011. The RFP clearly indicated that the mandatory delivery date was August 12, 2011.

15. The Tribunal notes that the timing for the RFP process was consistent with the terms of the SA and that, as previously stated, the requirements were clearly defined and provided for alternatives. Therefore, the Tribunal finds that, for this ground of complaint, there is no reasonable indication that the procurement was not carried out in accordance with the trade agreements.

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

DECISION

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

Serge Fréchette
Serge Fréchette
Presiding Member