



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2011-045

Marathon Watch Company Ltd.

*Decision made
Thursday, December 22, 2011*

*Decision issued
Friday, December 23, 2011*

*Reasons issued
Wednesday, January 11, 2012*

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

MARATHON WATCH COMPANY LTD.

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

Dominique Laporte
Dominique Laporte
Secretary

The statement of reasons will be issued at a later date.

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. W8485-127366/A) by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence for the supply of five promotional items.

3. Marathon Watch Company Ltd. (Marathon) alleged that it was denied the ability to submit a proposal because PWGSC improperly limited the solicitation to suppliers that were pre-qualified under PWGSC Supply Arrangement EN578-121124/B.

4. Pursuant to section 30.11 of the *CITT Act*, “. . . a potential supplier may file a complaint with the Tribunal concerning any aspect of the procurement process that relates to a designated contract . . .” Subsection 7(1) of the *Regulations* requires the Tribunal to determine, among other things, whether the complainant is a potential supplier. Section 30.1 of the *CITT Act* defines a potential supplier as a “. . . bidder or prospective bidder on a designated contract.”

5. Marathon submitted that the Solicitation should be opened to all suppliers, not just certain pre-qualified ones. Marathon submitted that it has supplied the Canadian federal, provincial and municipal governments with similar products and that it had bid on these items previously. The Tribunal notes that the Notice of Proposed Procurement published on MERX³ states, that “[o]nly pre-qualified Supplier have been invited to bid. . . Suppliers that do not already hold a Supply Arrangement for the supply of Promotional Items identified above with PWGSC cannot submit their bid.”

6. The Tribunal understands from the complaint that Marathon was not named on the pre-qualified supplier list of the required PWGSC Supply Arrangement. The Tribunal is of the opinion that, for Marathon to be considered a potential supplier regarding Solicitation No. W8485-127366/A, it had to have submitted a proposal against the noted Supply Arrangement to be put on the pre-qualified supplier list. The Tribunal notes that the Supply Arrangement was republished on MERX on December 7, 2011, with a closing date of November 30, 2016, and that it was published “. . . for suppliers that do not already have an arrangement with [PWGSC] for the provision of **PROMOTIONAL ITEMS**” and that, “[a]t any time, a supplier may order the solicitation documents, to have an opportunity to qualify for the Supply Arrangement.” Therefore, the Tribunal is of the view that, if Marathon’s products meet the required specifications, nothing prevents it from submitting a proposal in response to PWGSC’s Request for a Supply Arrangement and being added to the pre-qualified supplier list.

1. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].
2. S.O.R./93-602 [*Regulations*].
3. Canada’s electronic tendering service.

7. The Tribunal therefore finds that Marathon is not a potential supplier in respect of the designated contract that is the subject of this inquiry (i.e. Solicitation No. W8485-127366/A) and, therefore, that it does not have standing to file this complaint.

8. Moreover, 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 the applicable trade agreements. Even if Marathon were a potential supplier, Marathon's complaint merely states that it has previously supplied such items and does not explain what action by PWGSC was potentially a violation of any trade agreement.

9. Accordingly, the Tribunal has determined that the conditions for initiating an inquiry under section 7 of the *Regulations* have not been met. Therefore, the Tribunal will not conduct an inquiry into the complaint and considers the matter closed.

DECISION

10. 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