



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2011-047

Systematix IT Solutions Inc.

*Decision made
Thursday, December 29, 2011*

*Decision issued
Friday, December 30, 2011*

*Reasons issued
Thursday, January 12, 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

SYSTEMATIX IT SOLUTIONS INC.

AGAINST

THE DEPARTMENT OF THE ENVIRONMENT

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

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. K4A41-11-0021) by the Department of the Environment (EC) for the provision of informatics professional services.

3. Systematix IT Solutions Inc. (Systematix) alleged that EC improperly declared its proposal non-compliant with a mandatory requirement of the solicitation. It alleged that it demonstrated that it exceeded the requirements using conventional Task-Based Informatics Professional Services (TBIPS) methods (i.e. project duration and description of work). It further alleged that EC did not provide direction to indicate that credentials should be otherwise presented.

4. On September 7, 2011, EC issued the Request for Proposal (RFP). It was published on MERX, Canada's electronic tendering service, on September 8, 2011.

5. The RFP was for the services of two technical analysts, one application software architect, and one database administrator. At issue in the present complaint is mandatory criterion M1, which was the same for all resources, and provides as follows:

Minimum of ten (10) years that demonstrates the company involvement in supplying resources for similar project (such as Oracle, ERP, implementation and support)

6. From September 8 to 28, 2011, EC responded to bidders' questions related to the RFP and resulting contract. Also during this period, EC issued an amended RFP. On September 30, 2011, the bidding period for the solicitation closed.

7. On December 10, 2011, EC informed Systematix, by e-mail, that its proposal submitted in response to the RFP was non-compliant, as it failed to meet the requirements of mandatory criterion M1. EC also informed Systematix that a contract had been awarded to Maplesoft Consulting Inc. This e-mail did not contain any details outlining why Systematix's proposal failed to meet the requirements of mandatory criterion M1.

8. In an e-mail dated December 13, 2011, Systematix objected to its bid being declared non-compliant. In response, EC advised Systematix that it would look into its objection and advised that it would arrange a debriefing. According to the information in the complaint, Systematix advised EC, by telephone, that a debriefing was not acceptable and that a "contract suspension" was being sought.

9. On December 20, 2011, Systematix followed up with EC about the status of its objection and was advised that EC was still looking into the matter.

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

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

10. On December 22, 2011, Systematix filed its complaint with the Tribunal.

11. Subsection 6(1) of the *Regulations* provides that a complaint shall be filed with the Tribunal “. . . not later than 10 working days after the day on which the basis of the complaint became known or reasonably should have become known to the potential supplier.” Subsection 6(2) states that “[a] potential supplier who has made an objection . . . to the relevant government institution, *and is denied relief by that government institution*, may file a complaint with the Tribunal within 10 working days after the day on which the potential supplier has *actual or constructive knowledge of the denial of relief*, if the objection was made within 10 working days after the day on which its basis became known or reasonably should have become known to the potential supplier” [emphasis added].

12. In other words, if a complainant objects to the government institution within the designated time, the complainant may file a complaint with the Tribunal within 10 working days after it has actual or constructive knowledge of the denial of relief by the government institution. By “actual knowledge of the denial of relief”, the *Regulations* contemplate explicit rejection of a complainant’s requested relief (for example in a written reply rejecting the complainant’s position). In past instances, the Tribunal has interpreted “constructive knowledge of the denial of relief” as other non-explicit situations, including where, after the passage of a reasonable period of time, the complainant’s position has yet to be addressed by the government institution.

13. The Tribunal finds that, as prescribed by subsection 6(2) of the *Regulations*, Systematix made an objection to EC within 10 working days from the date on which it became aware that its proposal had been declared non-compliant. However, as of the date on which the complaint was filed, Systematix’s objection of December 13, 2011, appeared to be pending before EC, as no “denial of relief” or copy of any response was provided to the Tribunal. Therefore, in this case, in the absence of denial of relief as prescribed by subsection 6(2), the Tribunal determines that the complaint is premature.

14. The Tribunal’s decision does not preclude any future complaint by Systematix once EC has responded to its objection or if it fails to do so within a reasonable amount of time. In the event that Systematix does file a new complaint, it must do so within the time limits prescribed by subsection 6(2) of the *Regulations* and comply with subsection 30.11(2) of the *CITT Act*.

DECISION

15. 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