



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2011-057

Exocortex Technologies Inc.

*Decision made
Wednesday, March 7, 2012*

*Decision issued
Thursday, March 8, 2012*

*Reasons issued
Tuesday, March 13, 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

EXOCORTEX TECHNOLOGIES INC.

AGAINST

THE CANADIAN NUCLEAR SAFETY COMMISSION

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 Request for proposal (RFP) (Solicitation No. 87055-11-0433) by the Canadian Nuclear Safety Commission (CNSC) for the integration of visual interface for text analysis.

3. Exocortex Technologies Inc. (Exocortex) alleges that the CNSC failed to provide adequate clarification of its requirements and/or failed to indicate its final requirements in the RFP, crafted technical specifications that were not performance-based and formulated the RFP with help from the winning bidder, 4DM.

4. 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) provides that a potential supplier that 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.”

5. Exocortex claims that the CNSC failed to fully clarify its requirements on January 24, 2012. The RFP closed on January 27, 2012. Exocortex did not object about any lack of clarification or finalization of the requirements until February 21, 2012, and did not file its complaint to the Tribunal until March 2, 2012. Both dates are past the 10-working-day limits prescribed in the *Regulations*. In addition, Exocortex claims that it received the RFP on December 19, 2011, but it did not object to the technical specifications until February 21, 2012, much later than 10 working days after December 19, 2011. Therefore, these bases of complaint are late, and the Tribunal does not have jurisdiction to inquire into them.

6. With respect to the allegation that 4DM helped to formulate the RFP, the evidence suggests that Exocortex objected to the CNSC on February 21, 2012. It is unclear exactly when Exocortex made this objection, but, at this stage, the Tribunal is willing to give Exocortex the benefit of the doubt and assume that the objection was made within 10 working days after the day on which it knew or reasonably should have known that 4DM had helped to formulate the RFP. However, it seems that the CNSC has not yet responded to this objection. Therefore, it would be premature for the Tribunal to inquire into this allegation.

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

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

7. This decision does not preclude Exocortex from filing a new complaint on this basis when the CNSC responds or if the CNSC fails to respond within a reasonable amount of time. If Exocortex does file a new complaint, it must do so within the time limits prescribed by subsection 6(2) of the *Regulations* and it must comply with subsection 30.11(2) of the *CITT Act*.

DECISION

8. 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