



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2012-027

Star Group International

*Decision made
Friday, November 16, 2012*

*Decision and reasons issued
Monday, November 19, 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

STAR GROUP INTERNATIONAL

AGAINST

DEFENCE CONSTRUCTION CANADA

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.

Jason W. Downey

Jason W. Downey
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 request for pre-qualification (Solicitation No. OR12FM01) by Defence Construction Canada (DCC) for the provision of facilities maintenance services for buildings located in Toronto, London and North Bay, Ontario.
3. Star Group International (SGI) alleged that DCC improperly evaluated its proposal. As a remedy, SGI requested that DCC re-evaluate its proposal and assign a proper score.
4. On June 22, 2012, the solicitation was posted on MERX.³ The deadline for the receipt of bids was August 8, 2012.
5. On August 8, 2012, SGI submitted a proposal in response to the solicitation. On September 14, 2012, DCC advised SGI that, since its proposal did not obtain the minimum technical score of 66 percent against the rated evaluation criteria, it would not receive further consideration.
6. On September 14, 2012, SGI wrote to DCC requesting a breakdown of its evaluation, in view of the fact that DCC's letter did not provide details on the result of the evaluation and any explanation justifying the technical score that its proposal received.
7. On October 2, 2012, having not heard from DCC, SGI wrote again to DCC requesting a response to its e-mail of September 14, 2012. On October 22, 2012, as it still had not received a response from DCC, SGI wrote again to DCC asking to speak to someone else at DCC to resolve the issue.
8. On November 2, 2012, DCC sent SGI a debriefing of its evaluation results, indicating the criteria against which its proposal lost points.
9. On the same day, SGI made a formal objection to DCC regarding the results of the evaluation of its proposal and sought clarification from DCC. In particular, it alleged that errors were made in the evaluation of its proposal and requested that DCC review its grievances.
10. On November 13, 2012, SGI filed its complaint with the Tribunal. The Tribunal notes that the documents provided by SGI as part of its complaint indicate that, as of November 12, 2012, DCC had not responded to its request for clarification and objection to the evaluation of its proposal.
11. On November 15, 2012, the Tribunal's Assistant Secretary called SGI to inquire as to whether it had received a response from DCC. SGI replied that it had not, as of that date, received a response from DCC to its November 2, 2012, objection letter.

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

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

3. Canada's electronic tendering service.

12. 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.”

13. In other words, a complainant has 10 working days from the date on which it first becomes aware, or reasonably should have become aware, of its ground of complaint to either object to the government institution or file a complaint with the Tribunal.

14. Where 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.

15. The Tribunal finds that, because SGI has not yet received a final response from DCC, it has not yet received a denial of relief with respect to its alleged ground of complaint, as contemplated by subsection 6(2) of the *Regulations*. The Tribunal therefore finds that SGI’s complaint was filed prematurely.

16. The Tribunal’s decision does not however preclude SGI from filing a new complaint when DCC responds to its objection or fails to do so within a reasonable amount of time. In the event that SGI does file a new complaint, it must do so within the time limits specified in the *Regulations*.

DECISION

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

Jason W. Downey
Jason W. Downey
Presiding Member