



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2011-062

Secure Computing LLC

*Decision made
Thursday, March 29, 2012*

*Decision and reasons issued
Tuesday, April 3, 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

SECURE COMPUTING LLC

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

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. W8474-126119/B) by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence (DND) for the provision of networking equipment.

3. Secure Computing LLC (Secure Computing) alleged that the contract was improperly awarded to a bidder that offered products that did not comply with the mandatory requirements of the solicitation. As a remedy, Secure Computing requested that PWGSC cancel the contract and award it to the next lowest compliant bidder.

4. On March 5, 2012, the solicitation was posted on MERX.³ The solicitation superseded a previous procurement (Solicitation No. W8474-126119/A) dated February 23, 2012, for the provision of the same equipment, which was cancelled. The deadline for the receipt of bids was March 15, 2012.

5. On March 14, 2012, Secure Technologies International Inc. submitted a proposal in response to the solicitation on behalf of Secure Computing. On March 22, 2012, PWGSC advised Secure Computing that its agent was not the winning bidder and that a contract had been awarded to another bidder, Conexsys Communications Ltd.

6. On March 26, 2012, Secure Computing made a formal objection regarding the results of the evaluation of the proposals in an e-mail to PWGSC. Secure Computing alleged that the solution proposed by the winning bidder did not meet the mandatory technical requirements of the solicitation and requested that a contract not be awarded until a full investigation into the matter was completed. This objection followed an earlier e-mail to PWGSC in which the same allegation was raised; this e-mail was purportedly sent on behalf of Secure Computing, on March 22, 2012, by a representative of McAfee Inc. (McAfee), a manufacturer of networking equipment. However, according to the documents provided by Secure Computing as part of its complaint, while PWGSC indicated that it would consider the questions that had been raised by McAfee in its March 22, 2012, e-mail, it could not respond to it because it had not been sent by Secure Computing's authorized representative.

7. The Tribunal notes that, in its March 26, 2012, e-mail to PWGSC, Secure Computing's authorized representative corrected this deficiency by reiterating the objection, inquiring about the status of the matter that was originally raised with PWGSC on March 22, 2012, and requesting an update as soon as possible. In this way, on March 26, 2012, Secure Computing properly made its objection and sought relief from PWGSC.

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

8. The Tribunal further notes that the documents provided by Secure Computing as part of its complaint do not indicate that it received the results of PWGSC's review of the objection that it made in its e-mail of March 26, 2012. Indeed, Secure Computing stated in its complaint that the only response that it had received thus far from PWGSC was that the latter was "looking into this matter".

9. 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."

10. 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. 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.

11. The Tribunal finds that, because Secure Computing has not yet received a final response from PWGSC, 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 Secure Computing's complaint was filed prematurely.

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

DECISION

13. 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