



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

ORDER AND REASONS

File No. PR-2012-022

Offshore Systems Ltd.

v.

Department of Public Works and
Government Services

*Order and reasons issued
Wednesday, November 28, 2012*

TABLE OF CONTENTS

ORDER..... 1
STATEMENT OF REASONS 2
 COMPLAINT..... 2
 TRIBUNAL’S ANALYSIS..... 2
ORDER OF THE TRIBUNAL 3

IN THE MATTER OF a complaint filed by Offshore Systems Ltd. pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47;

AND FURTHER TO a decision to conduct an inquiry into the complaint pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*;

AND FURTHER TO an order issued pursuant to subsection 30.13(3) of the *Canadian International Trade Tribunal Act*;

AND FURTHER TO a motion filed by the Department of Public Works and Government Services on November 23, 2012, pursuant to rule 24 of the *Canadian International Trade Tribunal Rules*, requesting that the Canadian International Trade Tribunal cease its inquiry regarding the complaint;

AND FURTHER TO a letter filed by Offshore Systems Ltd. on November 26, 2012, advising that it did not oppose the motion by the Department of Public Works and Government Services of November 23, 2012.

BETWEEN

OFFSHORE SYSTEMS LTD.

Complainant

AND

THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT SERVICES

Government Institution

ORDER

Pursuant to subsection 30.13(5) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal hereby ceases its inquiry into the complaint and terminates all proceedings relating thereto.

Consequently, the order made on October 19, 2012, to postpone the award of any contract in relation to this procurement until the Canadian International Trade Tribunal determined the validity of the complaint is hereby rescinded.

Stephen A. Leach
Stephen A. Leach
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary

STATEMENT OF REASONS

COMPLAINT

1. On October 16, 2012, Offshore Systems Ltd. (Offshore) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ concerning a procurement (Solicitation No. F7054-120009/A) by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of Fisheries and Oceans/Canadian Coast Guard (DFO/CCG) for the supply and delivery of radar components and software to the Canadian Coast Guard.

2. Offshore alleged that it was unfairly precluded from participating in the procurement process because of the requirement for brand name products. As a remedy, Offshore requested that the current solicitation be terminated and that a new solicitation be issued that does not require brand name products, but describes objective performance requirements and specifications. In the alternative, Offshore requested that a new solicitation be issued identifying brand name products but expressly permitting equivalent substitute products.

3. On October 19, 2012, the Tribunal informed the parties that the complaint had been accepted for inquiry, as it met the requirements of subsection 30.11(2) of the *CITT Act* and the conditions set out in subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.² On the same day, the Tribunal issued an order to postpone the awarding of a contract, pursuant to subsection 30.13(3) of the *CITT Act*.

4. On November 23, 2012, PWGSC filed a letter advising the Tribunal that it had cancelled the solicitation at issue. PWGSC also advised that new and revised specifications for the required goods were being developed and would be included in a new solicitation. In this regard, PWGSC submitted that, since the procurement process at issue in the complaint has been terminated, the subject matter of the complaint no longer exists. PWGSC submitted that the Tribunal should cease its inquiry into the matter.

5. On November 26, 2012, Offshore filed a letter advising the Tribunal that it did not oppose the PWGSC's motion of November 23, 2012. Offshore specified that it strongly remains of the view that the new and revised specifications for the required goods being developed by PWGSC must be based on objective performance requirements instead of a particular brand name product. On the basis that the new specifications are being developed to ensure that a fair and open competition occurs in the future, Offshore did not claim costs for the filing of its complaint.

TRIBUNAL'S ANALYSIS

6. Pursuant to subsection 30.13(5) of the *CITT Act*, the Tribunal may, at any time, cease conducting an inquiry "... if it is of the opinion that the complaint is trivial ...". The ordinary meaning of "trivial" is "... concerned only with ... unimportant matters."³

7. The cancellation and planned re-tendering of the solicitation provide the essential remedy that Offshore requested, thereby effectively rendering the complaint moot and therefore unimportant or, in other

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

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

3. *Shorter Oxford English Dictionary*, 5th ed., s.v. "trivial".

words, trivial. Therefore, the Tribunal has decided, pursuant to subsection 30.13(5) of the *CITT Act*, to cease its inquiry into the complaint.

ORDER OF THE TRIBUNAL

8. Pursuant to subsection 30.13(5) of the *CITT Act*, the Tribunal hereby ceases its inquiry into the complaint and terminates all proceedings relating thereto.

9. Consequently, the order made on October 19, 2012, to postpone the award of any contract in relation to this procurement until the Tribunal determined the validity of the complaint is hereby rescinded.

Stephen A. Leach
Stephen A. Leach
Presiding Member