



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

ORDER AND REASONS

File No. PR-2012-024

Gear Up Motors

v.

Department of Public Works and
Government Services

*Order and reasons issued
Monday, November 26, 2012*

TABLE OF CONTENTS

ORDER.....i
STATEMENT OF REASONS 1
 COMPLAINT..... 1
 ANALYSIS 2
 ORDER..... 2

IN THE MATTER OF a complaint filed by Gear Up Motors 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 a motion filed by the Department of Public Works and Government Services on November 9, 2012, pursuant to rule 24 of the *Canadian International Trade Tribunal Rules*, requesting an order that the Canadian International Trade Tribunal cease to conduct the inquiry.

BETWEEN

GEAR UP MOTORS

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. No costs shall be awarded to either party.

Stephen A. Leach
Stephen A. Leach
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary

Tribunal Member: Stephen A. Leach, Presiding Member

Counsel for the Tribunal: Alain Xatruch
Laura Little

Procurement Case Officer: Josée B. Leblanc

Complainant: Gear Up Motors

Government Institution: Department of Public Works and Government Services

Counsel for the Government Institution: Susan D. Clarke
Ian McLeod
Roy Chamoun

Please address all communications to:

The Secretary
Canadian International Trade Tribunal
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7

Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: secretary@citt-tcce.gc.ca

STATEMENT OF REASONS

COMPLAINT

1. On October 25, 2012, Gear Up Motors (GUM) 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. W8486-135176/A) by the Department of Public Works and Government Services (PWGSC), on behalf of the Department of National Defence (DND), for the provision of 2,000 hunting knives.² Additional documents were filed on October 27, 2012, and the Tribunal considered the complaint properly filed on October 29, 2012.

2. GUM alleged the following: (1) the specifications set out in the solicitation were not clear; (2) the evaluation of GUM's bid was flawed; and (3) PWGSC improperly awarded the contract to another bidder, Unisource Technologies Inc. (Unisource). In particular, GUM submitted that PWGSC, in evaluating its bid, applied zero tolerance to the product length dimensions specified in the solicitation (i.e. "blade 4.000 in. lg. clear of handle"), even though no tolerance requirements were provided. GUM alleged that if a zero tolerance was required, it should have been clearly specified in the solicitation for all product dimensions, not just the blade length, and applied to all bidders in the evaluation process.

3. GUM requested, as a remedy, the following: (1) verification by PWGSC that the blade length of the product being delivered by Unisource is 4.000 inches, subject to zero tolerance; (2) compensation for the difference between the value of GUM's bid and the winning bid; (3) GUM's designation by PWGSC as a pre-qualified supplier for future solicitations of the hunting knives; and (4) consideration of GUM for a standing offer agreement with PWGSC for the hunting knives.

4. On November 2, 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*.³

5. On November 9, 2012, PWGSC filed a motion requesting an order that the Tribunal cease its inquiry on the basis that the contract awarded as a result of the procurement process in question had been terminated, effective November 5, 2012. Furthermore, PWGSC advised that it would issue, "in the near future", a new solicitation on behalf of DND that contained new and revised specifications for the required goods. PWGSC submitted that, since the subject matter of the complaint no longer existed following the termination of the contract, the Tribunal ought to consider ceasing its inquiry.

6. On November 13, 2012, GUM filed its comments on PWGSC's motion, stating that the Tribunal ought to continue its inquiry to determine who was responsible at PWGSC and/or DND for the allegedly flawed evaluation of GUM's bid and the improper contract award to Unisource. GUM further alleged that the personnel involved likely had ulterior (possibly illegal) motives to disqualify GUM's bid and direct the contract award to Unisource. PWGSC did not file a response.

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

2. In the solicitation, the goods are described as "knife, hunting NSN 7340-21-844-5956 or equivalent product".

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

ANALYSIS

7. 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.”⁴

8. The Tribunal accepts PWGSC’s evidence that the contract awarded to Unisource was terminated⁵ on the basis of a review conducted into the procurement process followed with respect to the solicitation in question, in which PWGSC identified concerns regarding the specifications set out in the solicitation documents.

9. In the Tribunal’s view, the termination of the contract awarded to Unisource provides the essential remedy that GUM would have received had the Tribunal found in GUM’s favour, thereby effectively rendering the complaint moot and therefore unimportant or, in other words, trivial. Accordingly, the Tribunal has decided, pursuant to subsection 30.13(5) of the *CITT Act*, to cease conducting the present inquiry.

10. The Tribunal notes that, should GUM take issue with the procurement process relating to the new solicitation that, according to PWGSC, will be issued, nothing in the present order would prevent GUM from filing a new complaint with respect to that solicitation.

ORDER

11. 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. No costs shall be awarded to either party.

Stephen A. Leach
Stephen A. Leach
Presiding Member

4. *Shorter Oxford English Dictionary*, 5th ed., s.v. “trivial”.

5. PWGSC filed as evidence a contract termination notice, which specified November 5, 2012, as the date of termination of the contract.