



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2013-021

Flag Connection Inc.

*Decision made
Friday, November 8, 2013*

*Decision and reasons issued
Friday, November 15, 2013*

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

FLAG CONNECTION INC.

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.

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.

COMPLAINT

2. The complaint relates to a request for proposal (RFP) (Solicitation No. B8817-120110/A) by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of Citizenship and Immigration for the provision of Canadian flags for promotional use.

3. Flag Connection Inc. (Flag) alleged that PWGSC improperly evaluated its proposal. Flag contended that its proposal was fully compliant with the requirements of the RFP, but that PWGSC nonetheless failed to award the contract to Flag. Flag also claimed that, despite its request to PWGSC, PWGSC has failed to provide Flag with a proper debriefing explaining why Flag's proposal was found to be non-compliant with the requirements of the RFP.

4. As a remedy, Flag requested the full monetary value of the contract as well as its complaint costs.

PROCUREMENT PROCESS

5. On February 27, 2013, the solicitation was published on MERX³ and was revised on April 8, 2013. The bid closing date was April 17, 2013.

6. According to the complaint, Flag submitted a proposal in response to the solicitation.

7. Between August 12 and September 25, 2013, PWGSC requested several extensions of Flag's bid expiry date in order to allow it additional time to complete the technical evaluation process.

8. On October 31, 2013, PWGSC emailed Flag to inform it that no contract would be issued as there were no compliant bids for the RFP. In the same email PWGSC also informed Flag that the solicitation would be retendered in the near future.

9. On October 31, 2013, Flag made a formal objection to PWGSC and requested the following:

- The date on which PWGSC deemed that there were no compliant bids;
- The date on which Flag's proposal was evaluated and deemed non-compliant;
- Information regarding why PWGSC concluded that Flag's proposal did not meet the technical criteria or other evaluation criteria outlined in the RFP.

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

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

3. Canada's electronic tendering service.

10. Moreover, Flag requested that PWGSC provide Flag with a full debriefing outlining the reasons for which PWGSC deemed Flag's proposal non-compliant with the requirements of the RFP. It appears that PWGSC has to this day still not responded to Flag's request for a debriefing.

11. On November 7, 2013, Flag filed its complaint with the Tribunal.

ANALYSIS

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 became 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 of having actual or constructive knowledge of the denial of relief by the government institution.

15. The Tribunal finds that, since Flag has not yet received a reply from PWGSC in response to its objection of October 31, 2013, Flag has not yet received a formal 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 Flag's complaint was filed prematurely.

16. However, The Tribunal's decision does not preclude Flag from filing a new complaint within 10 working days of PWGSC providing a response to Flag's objection. Alternatively, if PWGSC fails to provide a response to Flag's objection within a reasonable period of time (i.e. by November 22, 2013), Flag will then have 10 working days to refile its complaint with the Tribunal. In either event, Flag may request that the documentation already filed with the Tribunal be joined to the new complaint.

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