



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2013-022

Antian Professional Services

*Decision made  
Wednesday, November 20, 2013*

*Decision and reasons issued  
Monday, November 25, 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, c. 47 (4th Supp.).

**BY**

**ANTIAN PROFESSIONAL SERVICES**

**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.

Ann Penner  
Ann Penner  
Presiding Member

Dominique Laporte  
Dominique Laporte  
Secretary

## STATEMENT OF REASONS

1. Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,<sup>2</sup> 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 filed by Antian Professional Services (Antian) concerns a Request for a Standing Offer (RFSO), Solicitation No. W8160-130009/B, and the re-tendering of the RFSO, Solicitation No. W8160-130009/C, by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence for the provision of events planning and management services as part of the educational mandate of the Canadian Forces College.

3. Antian alleged that PWGSC did not provide detailed reasons for setting aside Solicitation No. W8160-130009/B other than stating that a flaw in the solicitation document created ambiguity which could result in unintended interpretations of the evaluation criteria. Antian further submitted that the set-aside was neither warranted nor justified.

4. As a remedy, Antian, the standing offer holder under the Solicitation No. W8160-130009/B, requested its lost revenue, as a result of the cancelling of Standing Offer Solicitation No. W8160-130009/001/CX, and its complaint costs.

## PROCUREMENT PROCESS

5. On July 18, 2013, PWGSC issued Solicitation No. W8160-130009/B with a closing date of August 2, 2013.

6. On August 20, 2013, Antian wrote to PWGSC seeking clarifications on a few administrative matters.

7. On August 21, 2013, PWGSC informed Antian that it was the successful bidder for Solicitation No. W8160-130009/B and provided clarifications on the points that Antian raised on August 20, 2013.

8. On September 4, 2013, PWGSC advised Antian that it was setting aside Solicitation No. W8160-130009/B because there was an ambiguity in the evaluation criteria. PWGSC informed Antian that the requirement would be re-tendered. Over the next two days, Antian wrote to PWGSC to ask about the nature of the ambiguity and object to PWGSC's decision.

9. On September 9, 2013, PWGSC explained that a flaw in its solicitation document created an ambiguity, which, in its view, compromised the integrity of the evaluation framework.

10. On September 9, 2013, Antian requested a meeting with PWGSC to clarify the exact nature of the ambiguity. In response, PWGSC reiterated the reasons that it had given Antian earlier that day. PWGSC also submitted that, in order to preserve fairness for all parties involved, it was taking corrective action by

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

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

re-soliciting the requirement. Furthermore, it explained that further information could not be provided without compromising the integrity of the procurement process.

11. On September 25, 2013, PWGSC issued Solicitation No. W8160-130009/C with a revised bid closing date of October 16, 2013.

12. Antian submitted a proposal in response to the new solicitation, but learned on November 4, 2013, that the standing offer was being awarded to another supplier.<sup>3</sup>

13. On November 19, 2013, Antian filed its complaint with the Tribunal.

### TRIBUNAL ANALYSIS

14. 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.”

15. Subsection 6(2) of the *Regulations* states that “[a] potential supplier who 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.”

16. 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. If 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.

17. Potential suppliers are therefore expected to keep a constant vigil and to react as soon as they become aware or reasonably should have become aware of a flaw in the procurement process.<sup>4</sup> The process is meant to be expeditious; adopting a wait-and-see attitude is precisely what the process and the *Regulations* seek to discourage.<sup>5</sup>

18. Antian had actual knowledge of the denial of relief on September 25, 2013, when the new solicitation was issued. Ten working days after that date was October 9, 2013. The complaint was filed on November 19, 2013. The Tribunal therefore finds that the complaint was not filed within the time limit prescribed by subsection 6(2) of the *Regulations*.

19. In light of the above, the Tribunal will not conduct an inquiry into the complaint and considers the matter closed.

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3. The Tribunal notes that there is no document in the complaint confirming this information other than the statement from Antian in its detailed statement of arguments and facts at section 5F.

4. *IBM Canada v. Hewlett-Packard (Canada) and the Minister of Public Works and Government Services* [2002] F.C.J. No. 1008 (C.A.) online: QL (FCJ) at 10.

5. *IBM Canada v. Hewlett-Packard (Canada)* at 13; *Primex Project Management Ltd.* (22 August 2002), PR-2002-001 (CITT) at 10.

**DECISION**

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

Ann Penner

Ann Penner

Presiding Member