



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2013-024

National Motor Coach Systems
Ltd.

*Decision made
Tuesday, November 26, 2013*

*Decision and reasons issued
Tuesday, December 3, 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

NATIONAL MOTOR COACH SYSTEMS LTD.

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*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. W0127-12P030/A) by the Department of Public Works and Government Services (PWGSC), on behalf of the Department of National Defence (DND), for the provision of all labour, transportation, materials, tools, equipment and supervision necessary to provide passenger motor coaches/highway cruisers (40 passengers and more) of various sizes, with operators on an “as and when requested” basis for the DND Edmonton Garrison in Edmonton, Alberta.

3. National Motor Coach Systems Ltd. (National) alleged that it was the sole bidder for the solicitation and that PWGSC improperly cancelled the Request For a Standing Offer (RFSO) after receiving additional insurance information from National.

4. As a remedy, National requested that it be awarded the standing offer.

BACKGROUND

5. The RFSO was issued on July 10, 2013, with a bid closing date of August 6, 2013.

6. On August 6, 2013, National submitted its proposal.

7. On August 28, 2013, PWGSC requested additional insurance information from National. In the complaint, National alleged that PWGSC required the additional information before it could award National the standing offer. National alleged that it submitted the information as requested, but that it was subsequently informed by PWGSC that the RFSO had been cancelled.

8. On October 22, 2013, National made an objection to PWGSC regarding the alleged cancellation of the RFSO. PWGSC responded that same day and informed National that it could file a complaint with the Tribunal.³

9. On November 25, 2013, National filed its complaint with the Tribunal.

ANALYSIS

10. Upon receipt of a complaint which complies with subsection 30.11(2) of the *CITT Act*, the Tribunal must decide whether it meets certain conditions before conducting an inquiry. The first condition is that the complaint be filed within the time limits prescribed by section 6 of the *Regulations*.

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

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

3. See complaint at sections 4F and 5F.

11. 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.”

12. Subsection 6(2) of the *Regulations* 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 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.

14. In order to determine whether the complaint was filed in a timely manner, the Tribunal must first determine whether National made an objection with respect to its ground of complaint. As noted above, National made an objection by way of a telephone call to PWGSC on October 22, 2013. The Tribunal is satisfied that National’s objection to PWGSC dated October 22, 2013, constitutes an objection for the purpose of subsection 6(2) of the *Regulations*.

15. In order for the Tribunal to find that National’s complaint was filed in accordance with subsection 6(2) of the *Regulations*, the complaint must have been filed with the Tribunal within 10 working days of when National was denied relief by PWGSC. According to the complaint, National was denied relief on October 22, 2013; PWGSC not only denied relief but also informed National that it could file a complaint with the Tribunal.⁴

16. As National received the denial of relief from PWGSC on October 22, 2013, and the complaint was filed with the Tribunal on November 25, 2013, the Tribunal therefore finds that the complaint was not filed within the prescribed 10 working days.

17. Having found that National’s complaint is time-barred by application of section 6 of the *Regulations*, the Tribunal does not need to examine the other conditions applicable when deciding whether to conduct an inquiry into a complaint filed with the Tribunal.

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

DECISION

19. 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

4. *Ibid.*