



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2018-030

Global Furniture Group

Decision made
Wednesday, October 10, 2018

Decision issued
Wednesday, October 10, 2018

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

GLOBAL FURNITURE GROUP

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.

Peter Burn

Peter Burn
Presiding Member

The statement of reasons will be issued at a later date.

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 Request for Standing Offer (RFSO) (Solicitation No. EP-803-183135/G) by the Department of Public Works and Government Services (PWGSC) for the supply of interconnected panels.

[3] Global Furniture Group (Global Furniture) alleges that the technical specifications in the RFSO were unduly restrictive. In particular, Global Furniture alleges that PWGSC's requirement that the panels be three inches thick was unnecessary and excluded a number of manufacturers. As a remedy Global Furniture asks that a new solicitation be issued.

BACKGROUND

[4] PWGSC issued the RFSO on August 27, 2018, with a closing date of September 7, 2018.

[5] On August 28, 2018, Global Furniture wrote to PWGSC noting the requirement for three-inch panels and asking whether panels with a thickness of 2 5/8 inches were acceptable alternatives. That same day PWGSC confirmed receipt of Global Furniture's question and indicated that a response would be provided in accordance with the RFSO.

[6] On August 29, 2018, Global Furniture followed up with PWGSC.

[7] On August 30, 2018, Global Furniture wrote to PWGSC asking for an extension to the closing date as no response to its question had yet been received.

[8] On August 31, 2018, PWGSC issued Amendment 002 to the RFSO. According to Global Furniture, PWGSC denied Global Furniture's request to provide 2 5/8-inch panels due to operational requirements. That same day Global Furniture wrote to PWGSC asking for clarification as to why three-inch panels were an operational requirement for this procurement. Global Furniture also stated: "[We] don't understand why a 2 5/8-inch panel would be rejected and we are escalating this further."

[9] On September 4, 2018, Global Furniture wrote to PWGSC asking for clarification regarding the requirement for three-inch panels.

[10] On September 7, 2018, Global Furniture again wrote to PWGSC stating that, "as a result of the lack of clarification and no response to our multiple email [sic] requesting clarification, we will be escalating this with the [Tribunal]."

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

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

[11] On September 10, 2018, PWGSC wrote to Global Furniture advising that the solicitation had closed and that all questions received had been addressed.

[12] On September 24, 2018, Global Furniture submitted a complaint to the Tribunal. On September 26, 2018, the Tribunal advised Global Furniture that additional information was required before its complaint could be considered filed, and requested that it file a copy of the solicitation and any related tender documents that were not filed with the complaint, a description of all telephone correspondence, and a copy of all email correspondence.

[13] On September 28 and October 2, 2018, a staff member from the Secretariat to the Canadian International Trade Tribunal, Administrative Tribunals Support Services of Canada, left messages with Global Furniture following up on the Tribunal's request for additional information.

[14] On October 4, 2018, the additional information was filed with the Tribunal and the complaint was considered filed as of that date.

[15] On October 10, 2018, the Tribunal decided not to conduct an inquiry into the complaint.

ANALYSIS

[16] The Tribunal may not conduct an inquiry unless all prescribed conditions in respect of the complaint are met. Among such conditions, the Tribunal must determine whether the complaint has been filed within the time limits prescribed by section 6 of the *Regulations*.

[17] Subsection 6(1) of the *Regulations* provides that 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. Subsection 6(2) provides that 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.

[18] A complaint is not properly filed until all of the information and documents required under section 30.11 of the *CITT Act* are filed with the Tribunal.³

[19] In this case, the Tribunal has determined for the reasons below that the complaint is late.

[20] Global Furniture's basis of complaint is that certain technical specifications in the RFSO were unduly restrictive. It is clear from the complaint that Global Furniture learned its basis of complaint on August 27, 2018, when the RFSO was issued. Global Furniture then filed a timely objection with PWGSC on August 28, 2018, when it questioned whether 2 5/8-inch panels were an acceptable substitute for the three-inch panels required by the RFSO.

[21] The issue is whether Global Furniture filed its complaint with the Tribunal within 10 working days after it learned of PWGSC's denial of relief.

3. Subsections 30.11(2) and 30.12(2) of the *CITT Act*; Rule 96 of the *Canadian International Trade Tribunal Rules*; *CORADIX Technology Consulting Ltd.* (21 February 2012), PR-2011-051 (CITT) at paras. 18-20.

[22] According to the complaint, on August 31, 2018, Global Furniture was advised by PWGSC, through the issuance of Amendment 002 to the RFSO, that 2 5/8-inch panels were not an acceptable substitute for the three-inch panels required by the RFSO due to operational requirements. The Tribunal finds that this amendment constituted a denial of relief by the government institution. According to Global Furniture, it was at this point that it learned that PWGSC was not willing to amend the RFSO to accept panels that were 2 5/8 inches thick. In particular the Tribunal notes Global Furniture's response to PWGSC on August 31, 2018, which included the statement: "[We] don't understand why a 2 5/8-inch panel would be rejected and we are escalating this further." This response suggests that Global Furniture understood PWGSC's position to be final.

[23] Having received PWGSC's denial of relief on August 31, 2018, Global Furniture had until September 17, 2018, to file its complaint with the Tribunal. Global Furniture did not bring its complaint to the Tribunal until September 24, 2018 – seven days after the 10-working-day deadline expired.

[24] The Tribunal acknowledges that Global Furniture sent two further emails to PWGSC after August 31, 2018, asking for clarification regarding the requirement for three-inch panels. However, absent any indication that the matter may be reconsidered by PWGSC, the fact that Global Furniture continued to communicate with PWGSC in no way affects the deadline imposed by subsection 6(2) of the *Regulations*.⁴

[25] What's more, the Tribunal informed Global Furniture by letter dated September 26, 2018, that its complaint could not be considered as filed until certain additional documents were provided. These documents were necessary for the Tribunal to understand the series of events, including the key dates noted above, that led Global Furniture to bring its complaint to the Tribunal, as well as to assess the timeliness of the complaint. Global Furniture did not provide the information requested in the Tribunal's letter until October 4, 2018, which is 17 days after the 10-working-day deadline expired.

[26] Therefore, as the complaint was filed outside the regulatory time limits prescribed by section 6 of the *Regulations*, the Tribunal cannot accept it for inquiry.

DECISION

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

Peter Burn

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4. *Aero Support Canada Inc.* (15 March 2016), PR-2015-065 (CITT) at para. 15; *Dataintro Software Limited* (1 December 2010), PR-2010-077 (CITT) at para. 32; *Groupe-conseil INTERALIA S.E.N.C.* (9 October 2009), PR-2009-052 (CITT) at para. 15; *IT/NET Ottawa Inc.* (6 July 2009), PR-2009-023 (CITT) at para. 11.

Presiding Member