



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2018-044

163904 Canada Inc. d.b.a.
The Delphi Group

*Decision made
Wednesday, November 27, 2018*

*Decision and reasons issued
Wednesday, December 12, 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

163904 CANADA INC. d.b.a. THE DELPHI 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. Since the complainant has not yet received a definitive response to its objection to the government institution, the complaint is premature.

Ann Penner

Ann Penner

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 concerns a Request for Proposals (RFP) issued by the Department of Public Works and Government Services (PWGSC)³ on June 6, 2018, for consulting services for the development of a roadmap to move to low carbon government operations for the National Capital Area.

[3] In its complaint, 163904 Canada Inc. d.b.a. The Delphi Group (Delphi) submits that the evaluators did not fully understand the technical approach and the credentials submitted by Delphi in its proposal, and that they deviated from the evaluation criteria outlined in the RFP.

[4] On November 9, 2018, Delphi was informed that its bid was unsuccessful, and that the winning bidder was Sustainability Solutions Group Workers Cooperative. The information on file indicates that on November 21, 2018, Delphi held a call with PWGSC to discuss its intent to submit a complaint regarding the outcome of the RFP. The same day, following its conversation with PWGSC, Delphi provided PWGSC with a memo sent by email outlining its concerns with its evaluation, and requested a re-evaluation of its proposal. It appears from Delphi's submissions that it has yet to receive a response from PWGSC.

[5] 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."

[6] In the present case, the information on file indicates that, while Delphi has made an objection to PWGSC, it has not yet been denied relief, as its objection has yet to be answered by PWGSC. Given the circumstances at hand, Delphi cannot be deemed as having actual or constructive knowledge of a denial of relief by PWGSC within the meaning of subsection 6(2) of the *Regulations*. Its complaint is therefore premature.

[7] The Tribunal's decision does not preclude Delphi from filing a new complaint within 10 working days of receiving a denial of relief from PWGSC. Furthermore, if PWGSC fails to respond to Delphi's objection within 30 days of the issuance of these reasons, the Tribunal could construe PWGSC's silence as a constructive denial of relief. In that case, Delphi would then be able to file a

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

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

3. On November 4, 2015, the Government of Canada gave notice that the name of the Department of Public Works and Government Services Canada will be changed to Public Services and Procurement Canada.

new complaint with the Tribunal within 10 working days of that date. In either case, Delphi may request that documents already filed with the Tribunal be joined to the new complaint.

[8] If Delphi files a new complaint, the Tribunal will decide whether to inquire into the complaint, having regard particularly to the regulatory conditions of the *Regulations*.

DECISION

[9] 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