



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2018-046

Sunny Jaura d.b.a. Jaura
Enterprises

*Decision made
Thursday, December 6, 2018*

*Decision issued
Friday, December 7, 2018*

*Reasons issued
Friday, December 21, 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

SUNNY JAURA d.b.a. JAURA ENTERPRISES

AGAINST

THE DEPARTMENT OF NATIONAL DEFENCE

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.

Cheryl Beckett

Cheryl Beckett

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 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.

SUMMARY OF THE COMPLAINT

[2] The complaint relates to a Request for Proposal (RFP) (Solicitation No. W8484-19-9330) issued on October 24, 2018, by the Department of National Defence (DND) for the supply of hotel accommodation services for the Canadian Armed Forces.

[3] The complainant, Sunny Jaura d.b.a Jaura Enterprises (Jaura), alleges that DND improperly evaluated the content of the bid of the winning bidder, 73719 Newfoundland & Labrador Inc. (N&L), as the latter may not have complied with the RFP technical requirements.

BACKGROUND

[4] On November 16, 2018, Jaura was advised by DND that its proposal had not been retained. Specifically, DND's regret letter indicated that although Jaura's proposal was compliant, it did not offer the lowest overall cost. The contract was awarded to N&L, the bidder with the lowest overall cost. Although the letter signalled the possibility of requesting a debriefing with DND or inquiring about the evaluation, Jaura did not initiate any of those processes.

[5] On November 29, 2018, Jaura filed its complaint with the Tribunal, with additional information filed the following day. Pursuant to paragraph 96(1)(b) of the *Canadian International Trade Tribunal Rules*, the complaint was considered to have been filed on November 30, 2018.

ANALYSIS

[6] On December 6, 2018, pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal decided not to conduct an inquiry into the complaint. The Tribunal determined that there is no reasonable indication of a breach of the trade agreements. The reasons for that decision are as follows.

[7] Pursuant to sections 6 and 7 of the *Regulations*, upon receipt of a complaint which complies with subsection 30.11(2) of the *CITT Act*, the Tribunal must decide whether the four following conditions have been met before being able to conduct an inquiry:

- i. whether the complaint has been filed within the time limits prescribed by section 6 of the *Regulations*;
- ii. whether the complainant is a potential supplier;

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

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

- iii. whether the complaint is in respect of a designated contract; and
- iv. whether the information provided by the complainant discloses a reasonable indication that the procurement has not been conducted in accordance with the applicable trade agreements.

[8] In its complaint, Jaura argues that DND may have failed to properly evaluate the technical portion of N&L's bid, in accordance with the *Canadian Free Trade Agreement*,³ and that DND deemed N&L's bid to be compliant whereas it may not be. Jaura also seems to argue that DND was unable to evaluate its own proposal fairly. The Tribunal notes in this regard that DND did, in fact, declare Jaura's proposal compliant but did not award the contract to Jaura as its proposal did not offer the lowest price.

[9] Jaura's allegation is solely based on two prior (from 2017) and separate bid solicitations, Solicitation No. W0102-18068B/A and Solicitation No. W0138-170952/B, which both related to accommodation services. Jaura asserts that it obtained information relating to these solicitations through a request pursuant to the *Access to Information Act* and included certain extracts from N&L's proposals as exhibits to its complaint. Jaura alleges that in these prior procurements, DND incorrectly deemed N&L's bids compliant, as they purportedly failed to demonstrate compliance in sufficient detail.

[10] In the present case, Jaura's allegation exclusively arises from how N&L's bids were allegedly evaluated in previous solicitations. Jaura has provided no other documentation or other evidence to support its allegation that a non-compliant bid was accepted in the solicitation process in issue.

[11] The basis of the complaint is, thus, entirely speculative. As such, this complaint fails to meet the threshold of a reasonable indication of a breach of the applicable trade agreements and, therefore, does not meet the fourth condition for inquiry pursuant to section 7 of the *Regulations*.

DECISION

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

Cheryl Beckett
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Presiding Member

3. The RFP, however, indicated that the solicitation was not subject to any trade agreement.