



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2018-056

8146292 Canada Inc.

*Decision made
Wednesday, January 9, 2019*

*Decision and reasons issued
Monday, January 14, 2019*

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

8146292 CANADA INC.

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

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] This complaint concerns a Request for Proposals (RFP) issued by the Department National Defence (DND) on September 12, 2018, for the provision of a cleaning compound.

[3] In its complaint, 8146292 Canada Inc. submits that its bid should not have been deemed non-compliant with one particular mandatory technical criterion, namely, the required container size. The RFP required that container sizes for the cleaning compound be of 25 litres and DND evaluated that the bid submitted by 8146292 Canada Inc. was for 20-litre containers.

[4] On January 2, 2019, 8146292 Canada Inc. was informed that its bid was unsuccessful, and that the winning bidder was Ashcon International Inc. The information on file indicates that on January 2, 2019, 8146292 Canada Inc. sent an email to DND challenging the decision. It appears from 8146292 Canada Inc.'s submissions that it has yet to receive a response from DND.

[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 8146292 Canada Inc. has made an objection to DND, it has not yet been denied relief, as its objection has yet to be answered by DND. Given the circumstances at hand, 8146292 Canada Inc. cannot be deemed as having actual or constructive knowledge of a denial of relief by DND within the meaning of subsection 6(2) of the *Regulations*. Its complaint is therefore premature.

[7] The Tribunal's decision does not preclude 8146292 Canada Inc. from filing a new complaint within 10 working days of receiving a denial of relief from DND. Furthermore, if DND fails to respond to 8146292 Canada Inc.'s objection within 30 days of the issuance of these reasons, the Tribunal could construe DND's silence as a constructive denial of relief. In that case, 8146292 Canada Inc. would then be able to file a new complaint with the Tribunal within 10 working days of that date. In either case, 8146292 Canada Inc. may request that documents already filed with the Tribunal be joined to the new complaint.

1. R.S.C., 1985, c. 47 (4th Supp.) [*CITT Act*].
2. S.O.R./93-602 [*Regulations*].

[8] If 8146292 Canada Inc. 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