



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2018-062

ROCK Networks Inc.

*Decision made
Tuesday, February 12, 2019*

*Decision issued
Thursday, February 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

ROCK NETWORKS 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 response to its objection to the government institution, the complaint is premature.

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 (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.

SUMMARY OF COMPLAINT

[2] This complaint by ROCK Networks Inc. (ROCK) concerns a request for proposal (RFP) (Solicitation No. W0106-18W620/A) for the lease of portable VHF radio sets issued by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence on October 23, 2018.

[3] The RFP required that potential suppliers submit an hourly rate for two types of training sessions, which must take place within one month of the delivery of the radios, as well as the monthly per-unit rental rate for the radios, with a lease term of 24 months.

[4] On November 21, 2018, ROCK submitted its bid.

[5] On January 29, 2019, PWGSC contacted ROCK by email indicating that ROCK's bid was responsive with the lowest evaluated price. However, PWGSC stated that the allocation of the prices in ROCK's financial bid was problematic. Specifically, it stated that ROCK's proposed hourly training rate for the two types of training sessions was too high and would force Canada to pay the majority of the cost at the beginning of the 24-month lease.

[6] PWGSC requested that ROCK review the allocation of its prices "so that it reflects what should really be paid by category of service", without increasing the total amount of its bid. PWGSC stated that, should the parties not be able to come to an agreement on pricing, Canada would "review its rights" under the terms of the RFP. PWGSC gave ROCK until January 31, 2019, to reply.

[7] On January 29, 2019, ROCK requested that it be given until February 5, 2019, to reply to PWGSC. PWGSC granted this request the same day.

[8] On February 4, 2019, ROCK replied to PWGSC, stating that it would not change its pricing and requesting that PWGSC award it the contract based on the existing financial bid.

[9] On February 4, 2019, ROCK filed its complaint with the Tribunal. However, the complaint did not include all relevant information and documents that were in the complainant's possession, as required by subsection 30.11(2) of the *CITT Act*. On that same date, the Tribunal informed ROCK that its complaint was deficient and requested that additional information be provided to correct the deficiencies.

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

[10] On February 5 and 6, 2019, ROCK provided the Tribunal with additional information that substantially addressed the deficiencies in the complaint. It also filed additional materials on February 6, 2019. Accordingly, pursuant to paragraph 96(1)(b) of the *Canadian International Trade Tribunal Rules*, the complaint was considered to have been filed on February 6, 2019.

ANALYSIS

[11] On February 12, 2019, 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 the complaint is premature.

[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] The Tribunal finds that ROCK’s response to PWGSC on February 4, 2019, requesting that it be awarded the contract was an objection. However, since PWGSC has not yet replied to that request, ROCK has not yet received a denial of relief. Accordingly, ROCK’s complaint is premature.

[14] The Tribunal’s decision does not preclude ROCK from filing a new complaint within 10 working days of receiving a denial of relief from PWGSC. If ROCK files a new complaint, the Tribunal will decide whether to inquire into the complaint, having regard particularly to the regulatory conditions of the *Regulations*. Should it file a new complaint, ROCK may request that documents already filed with the Tribunal be joined to the new complaint.

DECISION

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

Cheryl Beckett

Cheryl Beckett

Presiding Member