



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2019-005

BlackBerry Limited

*Decision made
Tuesday, April 30, 2019*

*Decision issued
Friday, May 3, 2019*

Reasons issued

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

BLACKBERRY LIMITED

AGAINST

TRANSPORT CANADA

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 (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 THE COMPLAINT

[2] The complaint relates to a procurement (Solicitation No. T8080-180316) by Transport Canada for the provision of consulting services to define requirements and analyze options for the development of a Vehicle-to-Everything (V2X) Security Credential Management System (SCMS) platform for Canada.

[3] The complainant, BlackBerry Limited (BlackBerry), alleged that it should have been awarded more points for certain rated criteria as Transport Canada failed to fully recognize BlackBerry's strengths in each of the specific areas related to these criteria. As a remedy, BlackBerry requested that it be allowed to submit a new proposal for consideration.³

BACKGROUND

[4] On October 18, 2018, Transport Canada tendered the above-mentioned consulting services by way of a Request for Proposal. The amended closing date was January 3, 2019. BlackBerry submitted its proposal on December 10, 2018.

[5] On February 13, 2019, Transport Canada sent a letter to BlackBerry informing it that a contract had been awarded to ESCRYPT (Canada). It noted that, while BlackBerry's proposal was found to be responsive to the mandatory requirements of the solicitation, it did not achieve the highest rank under the evaluation methodology described in the solicitation. Transport Canada's letter also provided a detailed summary of BlackBerry's scoring for each of the eight rated criteria.

[6] On April 11, 2019, BlackBerry sent a letter to the Hon. Bardish Chagger, member of Parliament for the riding of Waterloo, in which it stated its disappointment at not being awarded the contract and its disagreement with the scores it received from Transport Canada. It also stated its intention to contest the award.

[7] On April 12, 2019, BlackBerry filed a complaint with the Office of the Procurement Ombudsman (OPO).

[8] On April 15, 2019, BlackBerry sent an e-mail to the Tribunal purporting to file a formal complaint against the award of the contract to ESCRYPT (Canada). It noted that it had first contacted

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

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

3. BlackBerry acknowledged in its complaint that the contract is already being executed. However, it seeks a re-evaluation of its proposal to ensure that its expertise is fully recognized in future solicitations.

the OPO as that was the contact information provided by Transport Canada in its letter of February 13, 2019, but that it was then referred to the Tribunal.

[9] On April 16, 2019, the Tribunal, pursuant to subsection 30.12(2) of the *CITT Act*, notified BlackBerry that additional information was required before its complaint could be considered filed.

[10] On April 26, 2019, the Tribunal received the additional information requested from BlackBerry, and its complaint was therefore considered filed.⁴

ANALYSIS

[11] On April 30, 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 was not filed within the time limits prescribed by section 6 of the *Regulations*.

[12] Subsection 6(1) of the *Regulations* provides that a complaint shall be filed with the Tribunal “. . . not later than 10 working days after the day on which the basis of the complaint became known or reasonably should have become known to the potential supplier.” Subsection 6(2) 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] These provisions make it clear 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.

[14] In the present case, it is clear that the basis of the complaint became known to BlackBerry when it received Transport Canada’s letter of February 13, 2019. Although BlackBerry did not specify in its complaint when it actually received that letter, the Tribunal finds it reasonable to assume that, if it was sent by e-mail, it received it the same day and that, if it was sent by mail, it received it, at most, within a week (i.e. by February 20, 2019). Therefore, the Tribunal considers that BlackBerry had, at the latest, until March 6, 2019 (i.e. 10 working days from February 20, 2019) to either object to Transport Canada or file a complaint with the Tribunal. Manifestly, it did neither within this timeframe.

[15] In light of the foregoing, the Tribunal will not conduct an inquiry into the complaint and considers the matter closed.

DECISION

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

4. Subrule 96(1) of the *Canadian International Trade Tribunal Rules* (SOR/91-499) provides that, in the case of a complaint that does not comply with subsection 30.11(2) of the *CITT Act*, it will be considered filed “. . . on the day that the Tribunal receives the information that corrects the deficiencies”

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Presiding Member