



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2019-028

NORLEANS Technologies Inc.

*Decision made
Thursday, August 15, 2019*

*Decision and reasons issued
Wednesday, August 21, 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

NORLEANS TECHNOLOGIES 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 complaint is premature.

Cheryl Beckett
Cheryl Beckett
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 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 relates to a request for a standing offer (RFSO) (Solicitation No. W8486-184760/A) issued on October 11, 2018, by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence (DND). The RFSO was to establish a National Individual Standing Offer (NISO) for the procurement of three different sizes of non-pressurized and non-vacuumed reusable containers. The closing date of the solicitation was November 21, 2018, which was later extended to January 24, 2019.

3. At issue in the complaint is whether the winning bid satisfied the mandatory requirement and mandatory evaluation criterion in the RFSO that “[t]he reusable containers must be in-service with other Armed Forces or Air Force”.³ The complainant, Norleans Technologies Inc. (Norleans), seeks a re-evaluation of the winning bid on this basis, and compensation if it is determined that the winning bid did not meet this mandatory requirement.

4. The complainant submitted a bid and was informed by PWGSC on March 20, 2019, that although it satisfied the mandatory requirements, its offer was not the lowest-priced. The NISO was awarded to another bidder. In communications between the complainant and PWGSC following the March 20, 2019, regret letter, the complainant asked PWGSC to identify the container proposed in the winning bid. PWGSC replied that no additional information other than that contained in the regret letter could be made public to other bidders.

5. The complainant states that its president talked to a DND official on July 10, 2019, and that during this conversation, the DND official identified the type of container proposed in the winning bid. The DND official indicated that the proposed containers were variants of, or “new designs based on”, the Tricon container manufactured by Seabox. The complainant indicates that it then conducted research which led it to conclude that no Seabox container of the sizes specified in the RFSO is in use with other armed forces or air forces.

6. The complainant sent an email to PWGSC on July 22, 2019, reporting its phone call with the DND official and indicating that it could find no reference to Seabox containers matching the specified sizes being in use by an armed force or air force, as required in the RFSO. The complainant asked PWGSC to identify the container proposed in the winning bid and the armed force or air force using that container, so as to confirm or infirm its suspicions that the winning bid did not meet this mandatory requirement of the RFSO. PWGSC replied that it would provide an answer shortly. The complainant wrote back to PWGSC on

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

2. SOR/93-602 [*Regulations*].

3. Item 3 of Annex A (Statement of Work), and Annex C (Mandatory Technical Evaluation) of the RFSO, as amended by Amendments 004 and 005, respectively.

July 31, 2019, and asked for an answer by August 9, 2019. According to the complainant, it has not received a response from PWGSC.

7. 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.”

8. The complainant’s email to PWGSC of July 22, 2019, constitutes an objection to the relevant government institution. The objection was reiterated in the complainant’s July 31, 2019, email to PWGSC. Given that PWGSC has not yet responded to the complainant’s objection, and hence has not denied Norleans relief, the Tribunal considers that the complaint is premature. Consequently, the Tribunal will not, at this time, conduct an inquiry into Norleans’ complaint.

9. The Tribunal’s decision does not preclude Norleans from filing a new complaint within 10 working days of receiving a denial of relief from PWGSC. Furthermore, if PWGSC fails to respond to Norleans’ objection within 30 days of the issuance of these reasons, i.e. by September 20, 2019, the Tribunal may construe PWGSC’s silence as an implicit denial of relief. In that case, Norleans could file a new complaint with the Tribunal within 10 working days of that date. Should it file a new complaint, Norleans may request that documents already filed with the Tribunal be joined to the new complaint.

10. If Norleans files a new complaint, the Tribunal will then decide whether to inquire into the complaint, having particular regard to the regulatory conditions of the *Regulations*.

DECISION

11. Pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal has decided not to conduct an inquiry into the complaint since the complaint is premature.

Cheryl Beckett
Cheryl Beckett
Presiding Member