



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2019-040

997971 Ontario Ltd d.b.a. Simcoe
Office Products and Design

*Decision made
Tuesday, October 22, 2019*

*Decision issued
Wednesday, October 23, 2019*

*Reasons issued
Friday, November 1, 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

997971 ONTARIO LTD D.B.A. SIMCOE OFFICE PRODUCTS AND DESIGN

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.

Rose Ann Ritcey

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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 997971 Ontario Ltd doing business as Simcoe Office Products and Design (Simcoe) relates to a Request for Standing Offers (Solicitation No. E60PD-19OSFB/B) (RFSO) issued by the Department of Public Works and Government Services (PWGSC)³ for the supply of miscellaneous office and desk supplies.

[3] Simcoe claims that PWGSC erred in finding its bid non-compliant, and that it should be a recognised supplier for the RFSO.

[4] For the reasons provided below, the Tribunal has decided not to conduct an inquiry into the complaint.

BACKGROUND

[5] The RFSO was issued on June 14, 2019, with a closing date, as amended, of August 23, 2019.

[6] Simcoe submitted its bid on August 23, 2019.

[7] On September 27, 2019, PWGSC advised Simcoe that its bid was not compliant with the mandatory requirements of the RFSO and that it would not be issued a standing offer. Specifically, PWGSC indicated that Simcoe failed to properly complete the Electronic Financial Offer Template (EFOT) in Annex C of the RFSO by leaving many lines blank.

[8] On October 1, 2019, Simcoe emailed PWGSC to indicate its intent to file a complaint, noting that it had left some lines blank in the EFOT as it did not carry certain items and that leaving blanks “made more sense, given how the instructions were worded”.⁴ The next day, PWGSC reiterated that there was information missing in Simcoe’s EFOT and that it could not interpret offerors’ responses, such as where blank spaces are left for stock and SKU information.

[9] Simcoe filed the present complaint with the Tribunal on October 17, 2019.⁵

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

² SOR/93-602 [*Regulations*].

³ On November 4, 2015, the Government of Canada gave notice that the name of the Department of Public Works and Government Services will be changed to Public Services and Procurement Canada.

⁴ Exhibit PR-2019-040-01, Vol. 1 at 15,

⁵ Simcoe initially filed a deficient complaint on October 10, 2019. On October 17, 2019, Simcoe filed additional information further to a request made by the Tribunal on October 11, 2019, pursuant to subsection 30.12(2) of the *CITT Act*. Therefore, in accordance with rule 96(1)(b) of the *Canadian International Trade Tribunal Rules*, SOR/91-499, and subsection 30.11(2) of the *CITT Act*, the complaint is considered to have been filed on October 17, 2019.

ANALYSIS

[10] On October 22, 2019, pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal decided not to conduct an inquiry into the complaint.

[11] Pursuant to sections 6 and 7 of the *Regulations*, the Tribunal may conduct an inquiry if the following conditions are met:

- the complaint has been filed within the time limits prescribed by section 6;
- the complainant is an actual or potential supplier;
- the complaint is in respect of a designated contract; and
- the information provided discloses a reasonable indication that the government institution did not conduct the procurement in accordance with the applicable trade agreements.

[12] First, the Tribunal finds that the complaint is late. Pursuant to subsections 6(1) and (2) of the *Regulations*, 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. If a complainant objects to the government institution within the designated time, the complainant may file a complaint with the Tribunal within 10 working days after it has actual or constructive knowledge of the denial of relief by the government institution.

[13] In this case, the final version of the EFOT was published on August 16, 2019, as part of Amendment 007 to the RFSO.⁶ Simcoe should have known of its ground of complaint in relation to the EFOT at the latest at that time and should have filed its complaint in accordance with the timeline above, which it did not do.⁷

[14] A telephone conversation was held between Simcoe and the contracting authority on August 22, 2019. During that call, the parties discussed an issue with the unit of measurement used in the EFOT. Simcoe submits that it intended to raise additional issues with the EFOT, such as how to properly complete the spreadsheet where certain products are not offered. However, according to Simcoe, after discussing the unit of measurement issue, the contracting authority indicated that PWGSC was aware of the many issues with the EFOT, that Simcoe should not worry about these various issues, and that PWGSC would use common sense in evaluating the EFOT. As such, at no point during this conversation did Simcoe raise its concerns with how to fill out the EFOT in relation to products that it did not carry or could not find.

[15] The Tribunal notes that potential suppliers had many opportunities to ask questions and request amendments to the RFSO and EFOT; PWGSC issued eight amendments addressing various questions and concerns submitted by potential suppliers. Simcoe could have asked for the possibility to leave blank spaces or otherwise indicate items not offered, but did not do so.

[16] According to an email sent by the contracting authority on October 2, 2019, it seems that PWGSC indicated to Simcoe during their call that issues with the EFOT would be corrected through

⁶ One last modification was provided in Amendment 008 to two line items of the EFOT on August 20, 2019. These line items are not at issue here, and the EFOT otherwise remained unchanged.

⁷ *Shaw Industries Inc.* (11 August 2014), PR-2014-022 (CITT) at para. 32.

following solicitation amendments based on questions raised by the industry.⁸ However, even if Simcoe had legitimately been waiting for further amendments to the RFSO to be produced, it was incumbent on it to question the procuring entity before submitting its bid in order to ensure compliance with the mandatory requirements of the solicitation.⁹

[17] Considering the above, the Tribunal finds that Simcoe's time to file a complaint has run out. The Tribunal acknowledges the severity of the 10-working-day deadline on bidders. However, time is of the essence in procurements; the time frames fixed by the *Regulations*, including those for initiating and completing the challenge process before the Tribunal, reflect this fact.

[18] In any event, the Tribunal also finds that the complaint does not disclose a reasonable indication of a breach of the applicable trade agreements.¹⁰

[19] Article 4.1.1.1 Mandatory Technical Criteria provides as follows, in relevant parts:

- d. The Offeror must complete and submit the Electronic Financial Offer Template (EFOT) at Annex C in accordance with the instructions at Appendix 1 – Instructions for completing the Financial Offer Template.
- e. The Offeror must identify in column “Q” which items are Listed Items and which are Non-listed Items. Offerors must demonstrate that more than 50% of the items listed in the EFOT are Listed Items.
- f. The Offeror must complete all areas of the document where they are directed to provide information in “blanks” and “fill-ins”.

[20] Appendix 1 – Instructions for completing the Financial Offer Template provides as follows, in relevant parts:

3. Field Color

...

All light blue colored fields must be populated by the Offeror in compliance with the field specific instructions below. . . .

5. Field Descriptions and Input Instructions

...

o. Price

... The Offeror must enter a numerical value which represents its firm price for one unit of issue of the line item in dollars and cents separated by a period (23.12) without any spaces, dashes or special characters. . . .

p. Offerors Part Number (SKU)

... Offerors must populate this field by indicating the unique SKU for this line item. Note: Each line item must have a unique SKU.

q. Listed (Y/N)

... Offerors must populate this field by selecting “yes” from the drop down menu for regularly stocked items and selecting “no” for items not typically held in stock.

⁸ The Tribunal notes that amendment 008 to the RFSO indicated that there would not be a new EFOT version.

⁹ *Madsen Diesel & Turbine Inc.* (25 June 2014), PR-2014-018 (CITT) at para. 34.

¹⁰ Several trade agreements are applicable to this solicitation; since the Tribunal has not accepted the complaint for inquiry it is not necessary to list them here.

[21] The instructions in the RFSO are clear: no rows are to be left blank. Columns “O”, “P” and “Q” in the EFOT are colored light blue, and each had to be populated in accordance with the above.

[22] Simcoe left hundreds of items blank in these columns in its bid. As such, the Tribunal finds that PWGSC reasonably concluded that Simcoe’s bid was non-compliant with the mandatory criteria of the RFSO.¹¹

[23] In addition, it was not reasonable for Simcoe to rely on a general comment that common sense would be used in the evaluation; there was no discussion on Simcoe’s specific concerns regarding how to fill out the EFOT. Simcoe was provided no assurances that its method for filling out the EFOT would be accepted.

[24] In light of the clear directions in the RFSO, the Tribunal cannot accept Simcoe’s arguments, and therefore finds no breach of the trade agreements.

DECISION

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

Rose Ann Ritcey

Rose Ann Ritcey

Presiding Member

¹¹ *Horizon Maritime Services Ltd./Heiltsuk Horizon Maritime Services Ltd. v. Department of Public Works and Government Services* (2 January 2019), PR-2018-023 (CITT) at para. 45.