



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2019-050

WW-ISS Solutions Canada

*Decision made
Monday, December 16, 2019*

*Decision and reasons issued
Monday, December 23, 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

WW-ISS SOLUTIONS CANADA

AGAINST

THE DEPARTMENT OF FOREIGN AFFAIRS, TRADE AND DEVELOPMENT

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.

Jean Bédard

Jean Bédard, Q.C.

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.

SUMMARY OF THE COMPLAINT

[2] The complaint relates to a request for proposal (RFP) (Solicitation No. 19-154326) issued by the Department of Foreign Affairs, Trade and Development (DFATD) for the provision of a shuttle service.

[3] The complainant, WW-ISS Solutions Canada (WW-ISS), alleged that the winning bidder, Millennium Limousine Service (MLS), did not meet the mandatory requirements of the RFP when it submitted its bid, and is not currently performing the service in accordance with those mandatory requirements. As a remedy, WW-ISS requested that the designated contract be terminated and a new solicitation be issued; or that the bids be re-evaluated; or that the complainant be awarded compensation; or some other unspecified remedy. WW-ISS also requested reimbursement of its complaint and bid preparation costs.

BACKGROUND

[4] The RFP was issued on May 31, 2019, with a bid closing date of July 12, 2019. WW-ISS, who was the incumbent supplier, submitted its bid on July 11, 2019.

[5] On July 24, 2019, DFATD informed WW-ISS that it had not been awarded the contract and that the contract would be awarded to MLS. WW-ISS was provided with MLS's total overall score on its bid, which was one point higher than WW-ISS's overall score, but was not provided with a breakdown of the allocation of the points between the technical and financial bids, or any other information regarding MLS's bid.

[6] On July 25, 2019, WW-ISS contacted DFATD to request a debriefing meeting. An in-person debriefing was held the same day. On July 31, 2019, WW-ISS sent a written follow-up to DFATD outlining the concerns it had raised in the meeting, which all related to the winning bidder's ability to perform the contract as required by the terms of the RFP as well as by what WW-ISS assumed were the terms of MLS's bid.

[7] The RFP provided, in relevant part, as follows:

Mandatory Criteria

M2 Shuttle Vehicle requirements

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

² SOR/93-602 [*Regulations*].

The Bidder must provide a minimum of 6 vehicles each with a minimum seating capacity of 4 excluding the driver.

All proposed vehicles must be listed under the Plug-in Hybrid Vehicles (PHEV) category or the All-Electric Vehicles (EV) category of the following website: <https://www.fueleconomy.gov/feg/findacar.shtml>

...

Requirements	Points allocation
R1 – Vehicle category: PHEV or EV Bidder will be evaluated based on the category of its proposed vehicles (PHEV or EV)	<p>None of the proposed vehicles are fully electric (EV) = 0 points</p> <p>3 or more of proposed vehicles are fully electric (EV) = 20 points</p> <p>4 or more of proposed vehicles are fully electric (EV) = 30 points</p> <p>5 or more of proposed vehicles are fully electric (EV) = 40 points</p> <p>6 or more of proposed vehicles are fully electric (EV) = 50 points</p>

...

ANNEX “A”

STATEMENT OF WORK

7. VEHICLE REQUIREMENTS

DFATD requires either Plug in Electric Hybrids Vehicles (PHEV) or Fully Electric Vehicles (EV) that will allow for the comfortable transport of at minimum 4 passengers at a time, excluding the driver. For example, proposed vehicles could be, but are not limited to: Chevrolet Bolt, Chrysler Pacifica PHEV, Hyundai Kona Electric, etc.)

[8] WW-ISS assumed that the winning bidder must have bid six all-electric vehicles in order to achieve maximum points under R1 and achieve the overall score that it did, and raised concerns regarding the quality of the vehicles that MLS may have bid to fulfill this requirement. WW-ISS also expressed concern that there were no provisions in the contract explicitly requiring that any replacement vehicles be plug-in electric hybrids or fully electric vehicles. WW-ISS reiterated its request from the debriefing meeting that the RFP be retendered.

[9] On August 1, 2019, DFATD replied that the RFP would not be retendered, and that the contract with MLS reflected the full extent of the requirements of the RFP.

[10] On November 1, 2019, MLS began providing the shuttle service under its contract.

[11] On December 13, 2019, WW-ISS filed a complaint with the Tribunal. In its complaint, WW-ISS alleged that MLS is using gas-powered vehicles to perform the shuttle service, and not plug-in hybrid or fully electric vehicles as required by the RFP and the resulting contract. WW-ISS

submitted photos of gas-powered vans that it alleged were being used to provide the shuttle service on November 27, 2019. WW-ISS also submitted that the fact that MLS is (allegedly) not using the required vehicles calls into question whether MLS is complying with the other terms of the RFP, such as the requirement for security personnel at the storage facility and the requirement to secure the proper insurance for a shuttle service. WW-ISS also questioned whether DFATD verified whether MLS was actually capable of providing the service as set out in its bid.

ANALYSIS

[12] On December 16, 2019, pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal decided not to conduct an inquiry into the complaint for the reasons that follow.

[13] Firstly, the Tribunal finds that any ground of complaint that WW-ISS may have had regarding the manner in which MLS's bid was evaluated is time-barred. 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."

[14] WW-ISS raised its concerns regarding MLS's bid with DFATD on July 25, 2019, which was within 10 days of its becoming aware that MLS was the winning supplier. However, the Tribunal finds that WW-ISS received a denial of relief on August 1, 2019, when DFATD refused to retender the solicitation. Accordingly, WW-ISS did not file its complaint regarding the evaluation of MLS's bid within 10 days of the receipt of its denial of relief, and the Tribunal cannot conduct an inquiry into this aspect of the complaint.

[15] Secondly, the Tribunal cannot inquire into whether MLS is currently performing the contract it agreed to with DFATD according to its terms. The *CITT Act* and the *Regulations* allow a potential supplier to complain to the Tribunal about any aspect of a procurement process for a designated contract. When applying these provisions, however, the Tribunal has made an important distinction between the procurement process and contract administration. The procurement process begins after the government institution has decided on its procurement requirement and continues through to the awarding of the contract. Contract administration is a separate phase that takes place after the procurement process is completed. It deals with issues that arise as a contract is performed and managed. The Tribunal has been clear that matters of contract administration are beyond the scope of its jurisdiction.³

[16] WW-ISS's has asserted that the winning bidder is using gas-powered vehicles and is therefore not performing the contract according to its terms. Whether or not MLS is in fact in breach of its contract with DFATD is a matter of contract administration. This aspect of the complaint is therefore outside of the Tribunal's jurisdiction.

³ *Vidéotron Ltée v. Shared Services Canada* (5 October 2018), PR-2018-006 (CITT) at para. 16; *Softsim Technologies Inc.* (19 December 2018), PR-2018-032 at para. 41; *Valcom Consulting Group Inc. v. Department of National Defence* (14 June 2017), PR-2016-056 at para. 32; *HDP Group Inc.* (28 December 2016), PR-2016-047 (CITT) at para. 10; *ML Wilson Management v. Parks Canada Agency* (6 June 2013), PR-2012-047 (CITT) at para. 36.

DECISION

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

Jean Bédard

Jean Bédard, Q.C.
Presiding Member