



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2017-061

ADGA Group Consultants Inc.

*Decision made  
Monday, March 12, 2018*

*Decision and reasons issued  
Wednesday, March 14, 2018*

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**

**ADGA GROUP CONSULTANTS 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.

Serge Fréchette  
Serge Fréchette  
Presiding Member

## STATEMENT OF REASONS

1. Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,<sup>2</sup> 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.

2. The complaint filed by ADGA Group Consultants Inc. (AGCI) concerns a request for proposals (Solicitation No. B8926-170461/A) (hereafter the RFP) issued on July 21, 2017, by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of Citizenship and Immigration. The RFP was issued under a supply arrangement for task-based informatics professional services. The requested services were “applications development services on an ‘as-and-when-requested’ basis”.

3. In its complaint, AGCI alleges that PWGSC unreasonably evaluated its proposal against a point-rated technical criterion of the RFP and, therefore, unreasonably failed to award a contract to AGCI.

4. Pursuant to the *Regulations*, the Tribunal may initiate an inquiry into a complaint if certain prescribed conditions are met. One of the conditions is that the complaint be filed in accordance with the time limits set out in section 6 of the *Regulations*.

5. In particular, 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.”

6. The evidence filed with the complaint indicates that AGCI was notified on February 14, 2018, that it would not be awarded a contract pursuant to the RFP as it did not achieve the highest ranking under the applicable evaluation methodology.<sup>3</sup> AGCI objected on February 15, 2018, requesting a re-evaluation of its bid and that it be awarded the contract in accordance with this re-evaluation.<sup>4</sup>

7. On February 21, 2018, PWGSC confirmed receipt of AGCI’s objection and informed it that it would provide a response as soon as possible.<sup>5</sup> Following a second objection from AGCI on February 23, 2018, PWGSC indicated again on February 27, 2018, that it was in the process of reviewing AGCI’s objections and that it would respond in due course.<sup>6</sup>

8. AGCI initially filed its complaint with the Tribunal on March 1, 2018. However, on March 7, 2018, AGCI submitted additional information to the Tribunal consisting of further correspondence between the

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

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

3. Complaint, Schedule A, Supporting Materials at 90.

4. *Ibid.* at 105.

5. *Ibid.* at 108.

6. Complaint, Schedule A, Supporting Materials at 112 and 116.

parties. As a result, the Tribunal requested certain additional information and clarifications from AGCI as to its grounds of complaint.

9. On March 9, 2018, in response to the Tribunal's letter, AGCI indicated that it was in discussion with PWGSC and that certain matters relevant to its complaint remained to be confirmed by PWGSC. AGCI requested that the Tribunal hold this complaint in abeyance during such time.

10. On the basis of the information before it, the Tribunal finds that AGCI cannot be considered to have actual or constructive knowledge of a denial of relief from PWGSC within the meaning of subsection 6(2) of the *Regulations*. PWGSC appears to have partially addressed AGCI's objection but, as noted in AGCI's letter dated March 9, 2018, has yet to confirm certain relevant questions. As such, this complaint is premature. The Tribunal will not initiate an inquiry at this time.<sup>7</sup>

11. The Tribunal's decision does not preclude AGCI from filing a new complaint within 10 working days of receiving a denial of relief from PWGSC. The Tribunal will then decide whether to conduct an inquiry into the complaint. Upon filing a new complaint, AGCI may request that the documentation already filed with the Tribunal be joined to the new complaint.

## DECISION

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

Serge Fréchette  
Serge Fréchette  
Presiding Member

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7. The Tribunal cannot grant AGCI's request to hold the matter in abeyance. Pursuant to subsection 7(1) of the *Regulations*, the Tribunal must determine within five working days after the day on which a complaint is filed whether the conditions for inquiry are met. The Tribunal does not have jurisdiction to vary this deadline or to keep a matter in abeyance.