



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2018-040

Talmack Industries Inc.

*Decision made  
Tuesday, November 20, 2018*

*Decision issued  
Tuesday, November 20, 2018*

*Reasons issued  
Tuesday, December 4, 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**

**TALMACK INDUSTRIES 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.

Ann Penner  
Ann Penner  
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*<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. For the reasons that follow, the Tribunal has decided not to conduct an inquiry into the complaint.

### SUMMARY OF COMPLAINT

3. On November 16, 2018, Talmack Industries Inc. (Talmack) filed a complaint with the Tribunal regarding a procurement (Solicitation No. M7594-190299/A) issued on October 11, 2018, by the Department of Public Works and Government Services (PWGSC) on behalf of the Royal Canadian Mounted Police (RCMP) for the provision of long-sleeve and short-sleeve duty shirts.<sup>3</sup> The solicitation provided that PWGSC could award two contracts.<sup>4</sup>

4. Talmack alleged that PWGSC awarded contracts to suppliers whose proposed duty shirts did not meet the requirements of the solicitation. Talmack submitted that the bid price of the two winning bidders was too low for the shirts to be made in Canada in accordance with the requirements of the solicitation.

5. As a remedy, Talmack requested that the bids be re-evaluated. Talmack also requested that it be informed of the winning bidders' costs.

### BACKGROUND TO THE COMPLAINT

6. On November 7, 2018, Talmack was informed that its bid was unsuccessful and that contracts had been awarded to the two lowest compliant bidders, namely La Chemise Perfection Inc. and Chemise Empire Ltd.

7. The same day, Talmack made an objection to the RCMP, stating that the winning bids were priced too low, and that it was not possible to make the required duty shirts in Canada at those prices. Talmack submitted that the winning bidders had to have been importing the shirts from abroad, and then changing the labels to Canadian ones: conduct which was contrary to the requirements of the solicitation.

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

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

3. Talmack initially filed an incomplete complaint on November 14, 2018. On November 15 and 16, 2018, Talmack filed additional information further to a request made by the Tribunal on November 15, 2018, 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 [*Rules*], and subsection 30.11(2) of the *CITT Act*, the complaint is considered to have been filed on November 16, 2018.

4. Subsection 4.2, Basis of Selection, stated as follows: "Canada reserves the right to award two (2) contracts. The responsive bid with the lowest aggregate price will be recommended for the award of a contract for 60% of the quantities required. The responsive bid with the 2nd lowest aggregate price will be recommended for the award of a contract for 40% of the quantities required."

8. According to Talmack, the RCMP replied the same day that, as the solicitation was above the monetary thresholds for review, it could not respond to Talmack's objection.<sup>5</sup> Talmack, therefore, filed its complaint with the Tribunal.

## ANALYSIS

9. Pursuant to sections 6 and 7 of the *Regulations*, the Tribunal may conduct an inquiry into a complaint if *all* of 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.

10. In this case, the Tribunal finds that the fourth condition has not been met: Talmack's complaint does not disclose a reasonable indication that the applicable trade agreements were breached.<sup>6</sup>

11. The relevant criteria of the solicitation are set out below:

### 5.2.3.1 Canadian Content Certification

This procurement is limited to Canadian goods.

The Bidder certifies that:

( ) the good(s) offered are Canadian goods as defined in paragraph 1 of clause A3050T.

**5.2.3.1.1** *SACC Manual* clause A3050T (2014/11/27) Canadian Content Definition

#### **Rules of Origin - Apparel**

With reference to the Canadian Content Certification clause, apparel goods are considered to be Canadian goods according to the North American Free Trade Agreement Rules of Origin as follows:

Apparel goods classified in Chapters 61 and 62 of the Harmonized System that are both cut (or knit to shape) and sewn in Canada will be considered Canadian goods.

12. Talmack submitted that it was not possible for the winning bidders to comply with the Canadian Content requirement at the prices bid, and that the winning bidders were either offering the duty shirts at a loss or having them made outside of Canada. Talmack based its conclusion on the total prices that La Chemise Perfection Inc. and Chemise Empire Ltd included in their bids in comparison to the prices in its own bid. Talmack estimated what it considered to be the "true" costs of the winning bidders by adding the fixed costs (i.e. the price of fabric and badges purchased directly from the RCMP) to the sewing, shipping and wastage costs. Nevertheless, Talmack provided no evidence to substantiate its claims or estimations.

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5. Talmack stated that it sent its complaint through e-mail on a government complaint form. This may refer to the process followed for a complaint with the Office of the Procurement Ombudsman, rather than with the RCMP.

6. The applicable trade agreement in the solicitation at issue is the *Canadian Free Trade Agreement*, online: Internal Trade Secretariat <<https://www.cfta-alec.ca/wp-content/uploads/2017/06/CFTA-Consolidated-Text-Final-Print-Text-English.pdf>> (entered into force 1 July 2017).

Likewise, Talmack provided no evidence to support its claim that the winning bidders were supplying duty shirts from outside Canada.

13. As such, the Tribunal finds that Talmack's complaint is speculative at best and fails to meet the reasonable indication threshold for inquiry. To meet that threshold, a complaint needs to include "more than mere allegations" to substantiate its claims.<sup>7</sup> The Tribunal also notes that, in cases where a solicitation requires that a bidder provide a certification of compliance with a requirement, such as in section 5.2.3.1 of the solicitation at issue, the procuring authority is entitled to rely on that certification in accordance with the evaluation criteria of the solicitation.<sup>8</sup>

14. Consequently, the Tribunal cannot conduct an inquiry into the complaint.

## DECISION

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

Ann Penner

Ann Penner

Presiding Member

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7. *Manitex Lifting ULC* (19 March 2013), PR-2012-049 (CITT) at para. 22; see also *Veseys Seeds Limited, Doing Business as Club Car Atlantic* (10 February 2010), PR-2009-079 (CITT) at para. 9; *Flag Connection Inc.* (25 January 2013), PR-2012-040 (CITT); *Tyco Electronics Canada ULC* (4 April 2014), PR-2013-048 (CITT) at para. 12.

8. *Central Automotive Inspections Records & Standards Services (CAIRSS) Corp.* (31 October 2012), PR-2012-025 (CITT) at paras. 24-25; *Sanofi Pasteur Limited* (12 May 2011), PR-2011-006 (CITT) at paras. 22-23; *Airsolid Inc* (18 February 2010), PR-2009-089 (CITT) at para. 11.