



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2018-050

Nova-BioRubber Green
Technologies Inc.

*Decision made
Friday, December 21, 2018*

*Decision and reasons issued
Friday, December 28, 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

NOVA-BIORUBBER GREEN 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 complainant has not yet received a definitive response to its objection to the government institution, the complaint is premature.

Georges Bujold
Georges Bujold
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 concerns a Call for Proposals (CFP) (Solicitation No. W7714-186568) issued by the Department of Public Works and Government Services (PWGSC)³ on behalf of the Department of National Defence (DND) on April 8, 2018, for the Innovation for Defence Excellence and Security (IDEaS) program, to provide the knowledge and technological advantages needed to address Canada's defence and security interests.

3. In its complaint, Nova-BioRubber Green Technologies Inc. (Nova) submits that PWGSC provided little comment in its evaluation of Nova's proposal, that only one person evaluated Nova's proposal, that the evaluator did not understand the meaning of "innovation", and that the evaluator ignored the information provided in the proposal.

4. On December 10, 2018, Nova was informed that its bid had been deemed non-compliant. The information on file indicates that on December 12, 2018, Nova wrote to PWGSC officials requesting that its proposal be reviewed by two or more evaluators. The same day, Nova spoke to a PWGSC official, who stated that another PWGSC official would be contacting Nova to respond to its request. The Tribunal finds that this request constitutes an objection to PWGSC.

5. On December 18, 2018, Nova sent a second e-mail to PWGSC to follow up on its request. At this time, Nova has received no further response from PWGSC.

6. 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."

7. In the present case, the information on file indicates that Nova has not yet been denied relief, as PWGSC has yet to follow up on its promise to contact Nova. Given the circumstances at hand, Nova cannot be deemed as having actual or constructive knowledge of a denial of relief by PWGSC within the meaning of subsection 6(2) of the *Regulations*. Its complaint is therefore premature.

8. The Tribunal's decision does not preclude Nova from filing a new complaint within 10 working days of receiving, as the case may be, a denial of relief from PWGSC. Furthermore, if PWGSC fails to respond to Nova's concerns within 45 days of the issuance of these reasons, the Tribunal could construe

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

2. S.O.R./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.

PWGSC's silence as a constructive denial of relief. In that case, Nova would then be able to file a new complaint with the Tribunal within 10 working days of that date. In any case, Nova may request that documents already filed with the Tribunal be joined to the new complaint.

9. If Nova files a new complaint, the Tribunal will decide anew whether to inquire into the complaint, having regard particularly to the regulatory conditions of the *Regulations*.

DECISION

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

Georges Bujold
Georges Bujold
Presiding Member