



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2019-008

Ottawa Metro Towing/Metro Tow
Trucks

*Decision made
Tuesday, April 30, 2019*

*Decision issued
Thursday, May 2, 2019*

*Reasons issued
Friday, May 10, 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

OTTAWA METRO TOWING/METRO TOW TRUCKS

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

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 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 Ottawa Metro Towing/Metro Tow Trucks (Metro) concerns a request for proposal (RFP) (Solicitation No. W8476-185745/C) issued by the Department of Public Works and Government Services (PWGSC)³ on behalf of the Department of National Defence (DND) for the provision of car carrier trucks and wrecker trucks.

3. On April 16, 2019, PWGSC advised Metro that its bid was not compliant and that a contract had been awarded to Equipment Twin Inc. as the lowest compliant bidder. On April 17, 2019, Metro sent a letter to PWGSC stating that it believed there was some confusion in the way its drawings had been interpreted by PWGSC, and that it would be happy to provide documentation that validates a structural rating that exceeds PWGSC's minimum requirements.

4. On the same day, PWGSC asked Metro to advise where the information proving compliance could be found in its proposal. Metro pointed PWGSC to a disclaimer in its brochure submitted as part of its proposal, which states as follows:

Notes:

- Some optional equipment may be shown.
- All ratings are based on structural and design factors only. Vehicle chassis capacity and capabilities can vary significantly, affecting the overall performance and rating of the unit. All chassis specifications are minimums, heavier specifications may be required depending on chassis and equipment weights. Please contact your nearest distributor for additional information.

...

NOTE: Axle configuration is subject to local laws and regulations. All information in this document is for references only. Optional configuration might be shown.

5. PWGSC replied that the RFP was clear that technical information must be supplied for the vehicles offered and that Metro's brochure did not provide substantial information that the vehicle proposed meets DND's requirements.

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 Canada will be changed to Public Services and Procurement Canada.

6. Metro filed a complaint with the Tribunal on April 29, 2019.⁴ Metro submits that its bid is compliant and lower-priced than that of the winning bidder.

ANALYSIS

7. On April 30, 2019, pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal decided not to conduct an inquiry into the complaint.

8. 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.

9. In this case, the Tribunal finds that the fourth condition has not been met. Metro's complaint does not disclose a reasonable indication that the applicable trade agreement, the *Canadian Free Trade Agreement*,⁵ was breached.

10. The *CFTA* requires government institutions to clearly state the criteria for evaluating proposals in a procurement process and to evaluate these proposals in accordance with the criteria set forth.⁶ It is well established that a procuring entity will comply with these obligations if it conducts an evaluation that is *reasonable*. As a result, the Tribunal will only interfere with an evaluation that is unreasonable⁷ and will substitute its judgment for that of evaluators only when the evaluators have not applied themselves in evaluating a bidder's proposal, have ignored vital information provided in a bid, have wrongly interpreted the scope of a requirement, have based their evaluation on undisclosed criteria or have otherwise not conducted the evaluation in a procedurally fair way.⁸

11. Article 515(4) of the *CFTA* also requires that, "[t]o be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the tender notices and tender documentation and be from a supplier that satisfies the conditions for participation."

4. Metro initially filed a deficient complaint on April 24, 2019. On April 25, 26 and 29, 2019, Metro filed additional information further to a request made by the Tribunal on April 25, 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 April 29, 2019.

5. *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) [*CFTA*].

6. See Articles 507(3) and 515(5) of the *CFTA*.

7. *Joint Venture of BMT Fleet Technology Ltd. and NOTRA Inc. v. Department of Public Works and Government Services* (5 November 2008), PR-2008-023 (CITT) at para. 25.

8. *Excel Human Resources Inc. v. Department of the Environment* (2 March 2012), PR-2011-043 (CITT) [*Excel*] at para. 33.

12. The relevant provisions of the RFP are set out below:

4.1.1.1 Mandatory Technical Evaluation Criteria

- a) Bidders must demonstrate their compliance with all technical evaluation criteria detailed in Appendix 1 – Technical Information Questionnaire, by providing substantial information describing completely and in detail how each requirement is met or addressed. Simply repeating the statement contained in the bid solicitation is not sufficient.

...

4.2. Basis of Selection

A bid must comply with the requirements of the bid solicitation and meet all mandatory technical and financial evaluation criteria to be declared responsive. The responsive bid with the lowest evaluated aggregate price will be recommended for award of a contract.

...

Purchase Description

Class 7 Mid-Range Diesel Trucks

Recovery Systems

...

3.21.2 Wrecker system

...

(f) **Hydraulic Boom**

...

- ii The hydraulic boom **must** have a structural rating of at least 18,144 kg (40,000 lbs) when fully retracted;

...

(j) **Hydraulic Under Wheel Lift**

...

- ii The hydraulic under wheel lift **must** have a lifting capacity of at least 5,443 kg (12,000 lbs) fully retracted, and a lifting capacity of at least 4,536 kg (10,000 lbs) fully extended;

...

13. In addition, Annex 1 – Technical Information Questionnaire, which was to be filled out by bidders to indicate where in their bid the relevant information could be found for each technical criterion, provided as follows:

This questionnaire covers technical information, which **must** be supplied for evaluation of the configurations of the vehicle offered.

Where the purchase description paragraphs below indicate “**Substantial Information**”, the “**Substantial Information**” **must** be supplied for each performance requirement/specification.

Bidders should indicate the document name/title and page number where the **Substantial Information** can be found.

14. As stated in *Tektronix*, “[i]t is a bidder’s responsibility to ensure that its proposal is compliant with all essential elements of a solicitation. Accordingly, it is incumbent upon a bidder to exercise due diligence in the preparation of its proposal to make sure it is compliant with all essential elements of a solicitation.”⁹ Here, the RFP requires bidders to provide information which substantiates the proposed truck’s compliance with the technical requirements of the RFP. Metro failed to do so.

15. Metro’s proposal provided no indication that the proposed truck met the hydraulic boom and hydraulic under wheel lift requirements. The brochure submitted as part of its bid stated a boom retracted capacity of 35,200 lbs, below the required 40,000 lbs, and an underlift extended capacity of 8,500 lbs, below the required 10,000 lbs. The brochure disclaimer cited by Metro in response to PWGSC’s clarification request does not meet the RFP requirement to provide “substantial information describing completely and in detail how each requirement is met or addressed”.

16. Through reference to the *Standard Instructions*, the RFP provides that, “[u]nless specified otherwise in the bid solicitation, Canada will evaluate only the documentation provided with a bidder’s bid. Canada will not evaluate information such as . . . technical manuals or brochures not submitted with the bid.”¹⁰ As such, the matter of Metro’s brochure disclaimer falls within the scope of this provision, and PWGSC could not ask for information other than what had been submitted by Metro in its bid.

17. Metro submits that it previously fulfilled a similar contract, and that the trucks had then been deemed compliant with the requirements. As has often been affirmed by the Tribunal, bidders must treat each solicitation independently, and the onus is on bidders to demonstrate that they meet the criteria in any given solicitation.¹¹ The existence of a previous contract for similar equipment is not relevant to the RFP in question.

18. In light of the above, the Tribunal finds that the complaint filed by Metro does not disclose a reasonable indication that PWGSC did not conduct the procurement in accordance with the *CFTA*.

DECISION

19. 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

9. *Tektronix Canada Inc.* (20 November 2015), PR-2015-041 (CITT) at para. 16.

10. Public Works and Government Services Canada, *Standard Acquisition Clauses and Conditions (SACC) Manual*, 2003 (2018-05-22) Standard Instructions – Goods or Services – Competitive Requirements [*Standard Instructions*], incorporated by reference in the RFP at Section 2.1, Standard Instructions, Clauses and Conditions.

11. *The Spallumcheen Band* (26 April 2001), PR-2000-042 (CITT); *Excel* at para. 34; *Integrated Procurement Technologies, Inc.* (14 April 2008), PR-2008-007 (CITT) at para. 13.