



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2020-025

Goodkey, Weedmark & Associates

Decision made
Thursday, August 13, 2020

Decision issued
Wednesday, August 19, 2020

Reasons issued
Friday, August 28, 2020

Corrigendum issued
Wednesday, September 16, 2020

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

GOODKEY, WEEDMARK AND ASSOCIATES LTD.

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.

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

GOODKEY, WEEDMARK AND ASSOCIATES LTD.

AGAINST

THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT SERVICES

CORRIGENDUM

Paragraph 11 should read as follows:

On August 11, 2020, Goodkey filed the present complaint with the Tribunal.

By order of the Tribunal,

Serge Fréchette

Serge Fréchette
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.

SUMMARY OF THE COMPLAINT

[2] This complaint was filed by Goodkey, Weedmark and Associates Ltd. (Goodkey) on August 11, 2020, regarding a Request for Standing Offer (solicitation No. EP168-201503/A) issued by the Department of Public Works and Government Services (PWGSC) for mechanical and electrical engineering services (the RFSO).

[3] Goodkey alleged that PWGSC did not evaluate its bid properly and that PWGSC's evaluation of bids was unfair. As remedy, Goodkey sought re-evaluation of its bid or award of the contract.

BACKGROUND

[4] The RFSO was published on October 23, 2019, and, after several amendments, closed on December 11, 2019. Goodkey submitted a bid in response to the procurement.

[5] On April 2, 2020, Goodkey received a regret letter from PWGSC. While Goodkey's bid had been found responsive to the mandatory requirements, PWGSC determined that it did not achieve the required minimum technical rating.

[6] On April 13, 2020, Goodkey objected to PWGSC's evaluation and requested that PWGSC cancel the solicitation and issue a new tender. Goodkey also requested a debriefing.

[7] On May 15, 2020, PWGSC responded to Goodkey to schedule the debriefing. PWGSC also stated that the outcome of the solicitation would remain unchanged and that the solicitation would not be cancelled or retendered.

[8] After additional back and forth to finalize the debriefing, Goodkey and PWGSC held the debriefing on May 21, 2020. At the debriefing, Goodkey requested the evaluation notes for its bid, including a breakdown of ratings for each criterion. From May 22 to June 5, 2020, Goodkey and PWGSC exchanged several emails on issues raised during the debriefing with respect to PWGSC's evaluation of Goodkey's bid.

[9] On July 8, 2020, PWGSC provided Goodkey with the evaluation notes and ratings breakdown it had requested.

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

² SOR/93-602 [*Regulations*].

[10] On July 28, 2020, Goodkey responded to PWGSC with detailed comments on the evaluation notes and requested a re-evaluation of its bid. These comments also formed part of the basis of Goodkey's complaint to the Tribunal.

[11] On August 7, 2020, Goodkey filed the present complaint with the Tribunal.

ANALYSIS

[12] Pursuant to sections 6 and 7 of the *Regulations*, after receiving a complaint that complies with subsection 30.11(2) of the *CITT Act*, the Tribunal must determine whether the following four conditions are met before it launches an inquiry:

- (i) the complaint has been filed within the time limits prescribed by section 6 of the *Regulations*;³
- (ii) the complainant is a potential supplier;⁴
- (iii) the complainant is in respect of a designated contract;⁵ and
- (iv) the information provided discloses a reasonable indication that the procurement has not been conducted in accordance with the relevant trade agreements.⁶

[13] For the following reasons, the Tribunal finds that complaint was not filed within the time limits prescribed by section 6 of the *Regulations*.

The complaint is late

[14] Pursuant to section 6 of the *Regulations*, a complainant has 10 working days from the date on which it first becomes aware, or reasonably should have become aware, of its ground of complaint to either object to the government institution or file a complaint with the Tribunal. Where a complainant objects to the government institution within the designated time, pursuant to subsection 6(2) it may file a complaint with the Tribunal within 10 working days after it has actual or constructive knowledge of the denial of relief by the government institution.

[15] In this case, Goodkey became aware of the basis of its complaint when it received the regret letter on April 2, 2020. It then raised an objection to PWGSC within 10 working days of that date.

[16] In its objection, Goodkey contended that PWGSC's evaluation was unfair due to a significant disconnect between the evaluators' understanding of the terms of the solicitation and that of the bidders, as evidenced by the fact that 75 percent of bids failed to achieve the minimum technical rating. Goodkey requested that the solicitation be cancelled and re-issued with amended rated requirements.

[17] In response on May 15, 2020, PWGSC advised Goodkey that the evaluation had been conducted properly and that cancellation or re-issuance of the solicitation would not be appropriate. PWGSC stated that the outcome of the solicitation would therefore remain unchanged. In addressing Goodkey's request for a debriefing, PWGSC also noted that the objective of the debriefing was to discuss the strengths and weaknesses of Goodkey's bid.

³ Subsection 6(1) of the *Regulations*.

⁴ Paragraph 7(1)(a) of the *Regulations*.

⁵ Paragraph 7(1)(b) of the *Regulations*.

⁶ Paragraph 7(1)(c) of the *Regulations*.

[18] The Tribunal has previously considered that where the response to an objection is an unambiguous denial of relief, the time limit for filing a complaint is calculated from the date of that response.⁷ In addition, the Tribunal has also held that in the absence of any indication that the matter may be reconsidered by PWGSC, the mere fact that the parties continued to communicate does not suspend the prescribed deadlines.⁸

[19] In the Tribunal's view, PWGSC's response constitutes a clear denial of relief. PWGSC rejected Goodkey's claims and declined to provide the remedies requested. Though PWGSC and Goodkey were also in the process of scheduling a debriefing, the Tribunal finds that PWGSC's response in this regard did not indicate that PWGSC would continue to consider Goodkey's objection, nor did PWGSC's additional correspondence make any such indication.

[20] For these reasons, the Tribunal finds that Goodkey received denial of relief to its objection on May 15, 2020. Goodkey was therefore required to file the present complaint within 10 working days of that date, i.e. June 1, 2020, but did not do so until August 7, 2020. The Tribunal therefore finds that the complaint was not filed in accordance with section 6 of the *Regulations* and cannot be accepted for inquiry.

[21] In addition to the above allegation of unfairness, Goodkey's complaint before the Tribunal also raised specific allegations regarding PWGSC's evaluation of its bid. Namely, Goodkey claimed that PWGSC failed to properly consider the information in its bid; improperly used evaluators' comments to deduct points; applied undisclosed criteria; applied unreasonable interpretation of criteria; misunderstood or misinterpreted information in the bid; and failed to consider the impact of the page limit for bids.

[22] These claims are based on PWGSC's evaluation notes, which Goodkey received on July 8, 2020. To the extent that Goodkey only became aware of these grounds of complaint on that date, Goodkey did not raise its objection to PWGSC within 10 working days. Goodkey only provided its detailed comments objecting to PWGSC's evaluation notes on July 28, 2020, i.e. the 14th working day after July 8, 2020, which is outside the time limits set out in subsection 6(2) of the *Regulations*.

DECISION

[23] 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

⁷ *Dataintro Software Limited* (1 December 2010), PR-2010-077 (CITT) at para. 32.

⁸ *Aero Support Canada Inc.* (14 December 2016), PR-2015-065 (CITT) at para. 15. See also *Groupe-conseil INTERALIA S.E.N.C.* (9 October 2009), PR-2009-052 (CITT) at para. 15; *IT/NET Ottawa Inc.* (6 July 2009), PR-2009-023 (CITT) at para. 11.