



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2020-033

MediQuest Technologies Inc.

*Decision made
Wednesday, August 26, 2020*

*Decision and reasons issued
Thursday, August 27, 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

MEDIQUEST TECHNOLOGIES INC.

AGAINST

PUBLIC WORKS AND GOVERNMENT SERVICES CANADA

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 because it is premature given that the complainant has not yet received a response to its objection from the government institution.

Peter Burn

Peter Burn

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 (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] 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.”

[3] This complaint was submitted by MediQuest Technologies Inc. (MediQuest) on August 21, 2020, and relates to a Request for Proposal (RFP) issued by Public Works and Government Services Canada (PWGSC) on behalf of Indigenous Services Canada for the provision of Non-Invasion Mechanical CPR devices.

[4] MediQuest’s complaint alleges that PWGSC did not comply with the terms of the RFP because the successful bid did not comply with the mandatory requirements of the RFP.

[5] On August 5, 2020, MediQuest received a letter from PWGSC stating that although MediQuest’s bid was responsive to the mandatory requirements of the solicitation, it was not the lowest evaluated price under the evaluation method described in the solicitation and would therefore not be awarded the contract for Non-Invasion Mechanical CPR devices.

[6] Subsequently, on August 6, 2020, MediQuest sent a letter to PWGSC requesting reconsideration of MediQuest’s bid on the grounds that the successful bid did not comply with the mandatory requirements of the RFP. The Tribunal finds that this email constitutes an objection.

[7] There is no evidence that MediQuest has received a response from PWGSC in relation to the email mentioned above. As such, the record indicates that, while MediQuest has made an objection to PWGSC, it has not yet been denied relief by PWGSC. In the absence of a response, the Tribunal finds that MediQuest’s objection remains pending.

[8] Accordingly, in these circumstances, the Tribunal is unable to find that MediQuest has, or is deemed to have, actual or constructive knowledge of a denial of relief by PWGSC within the meaning of subsection 6(2) of the *Regulations*. MediQuest’s complaint is therefore premature.

[9] The Tribunal’s decision does not preclude MediQuest from filing a new complaint *within 10 working days* of receiving a denial of relief from PWGSC. Furthermore, if PWGSC fails to respond to MediQuest’s objection within 30 days of these reasons, i.e., by September 28, 2020,

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

² S.O.R./93-602 [*Regulations*].

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

[10] If MediQuest files a new complaint, the Tribunal will then decide whether to inquire into the complaint, having particular regard to the conditions of the *Regulations*.

[11] In addition, the Tribunal notes that the solicitation refers to the national security exception provided for in the relevant trade agreements as having been invoked. This being the case, in the event that a new complaint is filed by MediQuest, the Tribunal would request that PWGSC provide evidence of properly documented invocation of this exception.

DECISION

[12] In consideration of the foregoing, and pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal has decided not to conduct an inquiry into the complaint.

Peter Burn

Peter Burn
Presiding Member