



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2020-040

Tangle Ridge Custom Crushing
Ltd.

*Decision made
Wednesday, September 16, 2020*

*Decision and reasons issued
Thursday, September 17, 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

TANGLE RIDGE CUSTOM CRUSHING 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 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 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 Tangle Ridge Custom Crushing Ltd. (Tangle Ridge) on September 11, 2020, and relates to a Request for Proposal (RFP) issued by the Department of Public Works and Government Services (PWGSC) for the remediation of contaminated soil along the Alaska Highway in British Columbia.

[4] Tangle Ridge’s complaint alleges that the procurement process administered by PWGSC was not open, transparent and competitive, and that PWGSC’s decision that Tangle Ridge’s bid was non-compliant with the mandatory requirements of the RFP was unfair.

[5] On August 31, 2020, Tangle Ridge received an email from PWGSC stating that Tangle Ridge’s bid was not responsive to the mandatory requirements of the RFP because Tangle Ridge listed another bidder as a subcontractor as part of its bid and, contrary to the terms of the RFP, was unable to demonstrate that it had obtained written permission from that subcontractor to do so prior to bid closing.

[6] Subsequently, on September 2, 2020, Tangle Ridge sent a letter dated September 1, 2020, to PWGSC requesting reconsideration of PWGSC’s decision of non-compliance on the grounds that it was not clear to Tangle Ridge that written permission from the subcontractor named in its bid needed to be provided prior to bid closing. The Tribunal finds that this email constitutes an objection.

[7] There is no evidence that Tangle Ridge has received a response from PWGSC in relation to the letter mentioned above. As such, the record indicates that, while Tangle Ridge 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 Tangle Ridge’s objection remains pending.

[8] Accordingly, in these circumstances, the Tribunal is unable to find that Tangle Ridge 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*. Tangle Ridge’s complaint is therefore premature.

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

² SOR/93-602 [*Regulations*].

[9] The Tribunal's decision does not preclude Tangle Ridge from filing a new complaint *within 10 working days* of receiving a denial of relief from PWGSC. Furthermore, if PWGSC fails to respond to Tangle Ridge's objection within 30 days of these reasons, i.e. by October 17, 2020, Tangle Ridge may consider PWGSC's silence as a constructive denial of relief. In that case, Tangle Ridge would then be able to file a new complaint with the Tribunal within 10 working days of that date. At that time, Tangle Ridge may request that documents already filed with the Tribunal be joined to the new complaint.

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

DECISION

[11] 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