



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2020-037

Forte Fitness Equipment

*Decision made
Thursday, September 24, 2020*

*Decision and reasons issued
Friday, October 2, 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

FORTE FITNESS EQUIPMENT

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.

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.

SUMMARY OF RFP AND COMPLAINT

[2] On April 21, 2020, the Department of Public Works and Government Services (PWGSC) published a Notice of Proposed Procurement (NPP) (Solicitation No. M5000-203943/A) on Buyandsell.gc.ca for the purchase of fitness equipment for RCMP detachments throughout Alberta. The bid closing date for the solicitation was June 9, 2020. The NPP was broken down into three categories (Categories “A”, “B” and “C”) of fitness equipment, with contracts awarded to the winning bidder in each.

[3] The procurement was cancelled and reissued on July 2, 2020 (Solicitation No. M5000-203943/B), with a bid closing date of July 21, 2020.

[4] Forte Fitness Ltd. (Forte) submitted a bid on or before the bid closing date of July 21, 2020.

[5] On or about August 20, 2020, Forte was awarded the contract for Category “C” of the NPP, with Apple Fitness winning Categories “A” and “B.”

[6] On August 26, 2020, Forte was provided with a regret letter from PWGSC, providing details on Forte’s and Apple Fitness’s bids for Categories “A” and “B.”

[7] The same day, Forte replied to PWGSC expressing concern that the products being offered by Apple Fitness may not meet the requirements set out in the solicitation documents, particularly the 2:1 ratio with a 220-lb stack that was required for some of the weight machines in Category “B”.

[8] PWGSC responded on August 27 and 28, 2020, stating that it took Forte’s concerns under advisement and suggested that if Forte disagreed with the contract award that it should approach the Tribunal or the Office of the Procurement Ombudsman.

[9] On September 8, 2020, Forte submitted its complaint to the Tribunal, outlining the reasons why it believed Apple Fitness’s bid should have been disqualified.

[10] On September 9, 2020, and in a follow-up letter on September 17, 2020, the Tribunal requested that Forte submit additional information.

[11] On September 18, 2020, the Tribunal received from Forte this additional information. The complaint was considered filed on September 18, 2020.

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

² SOR/93-602 [*Regulations*].

ANALYSIS

[12] On September 24, 2020, pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal decided not to conduct an inquiry into the complaint for the reasons that follow.

Timeliness

[13] Pursuant to sections 6 and 7 of the *Regulations*, a complaint must be filed within the prescribed time limits. In this respect, subsection 6(1) of the *Regulations* provides that a potential supplier has 10 working days “after the day on which the basis of the complaint became known or reasonably should have become known to the potential supplier” to file a complaint with the Tribunal.

[14] 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.”

[15] In other words, a complainant has 10 working days from the date on which it first becomes aware, or reasonably should have become aware, of a ground of complaint, to either object to the government institution or file a complaint with the Tribunal. If a complainant objects to the government institution within the designated time, the complainant will have 10 working days to file a complaint with the Tribunal after it has actual or constructive knowledge of the denial of relief by the government institution.

[16] Based on the information provided by Forte, constructive knowledge of the denial of relief from PWGSC was provided on August 28, 2020, the last day for which the Tribunal had evidence of correspondence between PWGSC and Forte. From this day, the 10-working-day deadline for Forte to file its complaint with the Tribunal was September 14, 2020.

[17] As Forte has not provided the Tribunal evidence to the contrary, the Tribunal considers Forte’s complaint as filed on September 18, 2020, four days late.

No reasonable indication of a breach

[18] In addition to the question of timeliness, Forte’s complaint remains highly speculative. Forte provided little information as to why it believed the winning bid by Apple Fitness was non-compliant. For the Tribunal to inquire into a procurement complaint there must be a reasonable indication that a procuring entity has violated one of Canada’s trade agreements.³

In procurement complaints, the party alleging that a procurement has not been conducted in accordance with the applicable trade agreements must provide some proof to support that claim. This is not to say that the complainant in a procurement dispute under one of the agreements has the burden of proving all necessary facts as a plaintiff generally does in a

³ *Regulations*, s. 7(c).

civil case. . . . However, the complainant must provide sufficient facts or arguments to demonstrate a reasonable indication that a breach of one of the trade agreements has taken place.⁴

[19] The Tribunal has consistently held that mere allegations of a violation of the trade agreements are insufficient to substantiate a claim.⁵ Forte's principal suggested that he had worked for eight years as a sales manager for Apple Fitness and suggested that he had knowledge of the product lines that were sold. Forte believed that some of the fitness products that PWGSC had requested would not have been sold by Apple Fitness or would have commanded a "premium" price.

[20] While Forte provided links to some of the product lines Apple Fitness sold, it did not provide any additional evidence or argument on the significance of this information or why it had reason to believe that these were the products Apple Fitness submitted in its bid.

[21] Accordingly, the Tribunal finds that Forte's allegations fail to disclose a reasonable indication that the procurement violated the relevant trade agreements.

[22] In light of the above, the Tribunal has decided not to conduct an inquiry into the complaint.

DECISION

[23] 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

⁴ *Paul Pollack Personnel Ltd. o/a The Pollack Group Canada v. Department of Foreign Affairs, Trade and Development* (24 September 2013), PR-2013-016 (CITT) at para. 26; *Terrapure Environmental v. Department of Public Works and Government Services* (22 June 2020), PR-2020-008 (CITT).

⁵ *Veseys Seeds Limited, doing business as Club Car Atlantic v. Department of Public Works and Government Services* (10 February 2010), PR-2009-079 (CITT) at para. 9; *Flag Connection Inc. v. Department of Public Works and Government Services* (25 January 2013), PR-2012-040 (CITT) at para. 35; *Manitex Lifting ULC v. Department of Public Works and Government Services* (19 March 2013), PR-2012-049 (CITT) at para. 22.