



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2020-060

Direct Roofing &
Waterproofing Ltd.

*Decision made
Thursday, November 19, 2020*

*Decision and reasons issued
Monday, November 23, 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

DIRECT ROOFING & WATERPROOFING 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.

Randolph W. Heggart

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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 Direct Roofing & Waterproofing Ltd. (DRW) on November 17, 2020, and relates to an invitation to tender (Solicitation No. K4A22-210296/A) issued by the Department of Public Works and Government Services (PWGSC) on behalf of Environment Canada for a roof replacement. The invitation was published on November 4, 2020, and is scheduled to close on December 3, 2020.

[4] DRW alleged that the solicitation includes a term that unfairly excludes bidders. Specifically, DRW claimed that paragraph 3 of section 1.14, which requires a 10-year guarantee from the Roofing Contractors Association of BC (RCABC), effectively excludes bidders that are not from British Columbia (BC), as only BC suppliers are eligible for membership in the RCABC.

[5] On November 10, 2020, DRW contacted PWGSC to raise this issue. That same day, PWGSC informed DRW that it would consider the matter and respond in due course.

[6] On November 13, 2020, DRW followed up with PWGSC.

[7] On November 16, 2020, PWGSC informed DRW that it was still working on the matter and would be in touch with any further information.

[8] There is no evidence that DRW has received a response from PWGSC since. As such, the record indicates that while DRW made an objection to PWGSC, it has not yet been denied relief. In the absence of a response, DRW’s objection remains pending with PWGSC.

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

[10] This decision does not preclude DRW from filing a new complaint *within 10 working days* of receiving a denial of relief from PWGSC. At that time, DRW may request that documents already filed with the Tribunal be joined to the new complaint.

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

² SOR/93-602 [*Regulations*].

[11] If DRW 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

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

Randolph W. Heggart

Randolph W. Heggart
Presiding Member