



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2020-094

CTS Defence Inc.

*Decision made
Monday, March 15, 2021*

*Decision and reasons issued
Friday, March 19, 2021*

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

CTS DEFENCE INC.

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 as the complaint is premature.

Cheryl Beckett

Cheryl Beckett

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] This complaint relates to a Request for Proposal (RFP) issued by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence for the lease of aircrafts (Solicitation No. W8485-20SC07/A).

[3] CTS Defence Inc. (CTS Defence) claims that PWGSC failed to evaluate its bid in accordance with the terms of the solicitation. Specifically, CTS Defence challenges PWGSC's conclusion that its bid did not meet a mandatory technical criterion requiring that certain certifications be with the same company that is bidding.

[4] As a remedy, CTS Defence requests, *inter alia*, that the bids be re-evaluated and that the designated contract be awarded to the lowest bidder further to such re-evaluation.

[5] For the reasons that follow, the Tribunal is of the opinion that the complaint is premature. As such, the Tribunal has decided not to conduct an inquiry into the complaint.

BACKGROUND

[6] The RFP was issued on December 23, 2020, with a bid closing date of February 2, 2021. It was subject to one amendment on January 14, 2021.

[7] On February 26, 2021, PWGSC informed CTS Defence that its bid had been declared non-responsive as it had not demonstrated that it, as the bidder, held an Air Operator certificate and Approved Maintenance Organisation certification, as required by mandatory technical requirement M57.

[8] On March 1, 2021, CTS Defence wrote to PWGSC to raise its concerns about the procurement process. In particular, CTS Defence highlighted the reasons for which it believed its bid was compliant with the mandatory criterion at issue. CTS Defence requested that PWGSC either reverse its decision that it was not compliant with M57 and award the contract to the lowest-priced bid, or provide CTS Defence with an explanation of why the decision to award the contract to a higher-priced bid was justified.

[9] On March 2, 2021, PWGSC acknowledged receipt of CTS Defence's correspondence and informed CTS Defence of its intention to provide a response to its letter once it has an opportunity to review the file in detail.

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

² SOR/93-602 [*Regulations*].

[10] On March 11, 2021, CTS Defence filed its complaint with the Tribunal.³

[11] On March 12, 2021, the Tribunal wrote to CTS Defence to request that it confirm that there had been no subsequent correspondence with PWGSC and, if not, that it file any such correspondence. On the same day, CTS Defence confirmed that it had exchanged no further correspondence with PWGSC.⁴

[12] On March 15, 2021, the Tribunal decided not to conduct an inquiry into the complaint.

ANALYSIS

[13] 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*;⁵
- (ii) the complainant is a potential supplier;⁶
- (iii) the complaint is in respect of a designated contract;⁷ and
- (iv) the information provided discloses a reasonable indication that the procurement has not been conducted in accordance with the relevant trade agreements.⁸

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

The complaint is premature

[15] Pursuant to section 6 of the *Regulations*, a potential supplier must either raise an objection with the procuring government institution or file a complaint with the Tribunal no later than 10 working days after the day on which the basis of the complaint became known or reasonably should have become known to the supplier.⁹

[16] CTS Defence made a timely objection to PWGSC within this window of 10 working days. PWGSC informed CTS Defence that its bid was non-compliant on February 26, 2021, and CTS Defence objected on March 1, 2021 (i.e. one working day later).

³ On March 8, 2021, CTS Defence wrote to the Tribunal to inquire whether the Tribunal had received its complaint, which it stated had been filed electronically on March 4, 2021. The Tribunal found no record of a submission by CTS Defence on that date and it advised the complainant accordingly on March 11, 2021. The same day, CTS Defence resubmitted its complaint. See Exhibits PR-2020-094-04 and PR-2020-094-05.

⁴ See Exhibits PR-2020-094-02 and PR-2020-094-03.

⁵ Subsection 6(1) of the *Regulations*.

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

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

⁸ Paragraph 7(1)(c) of the *Regulations*.

⁹ Subsections 6(1) and (2) of the *Regulations*.

[17] A potential supplier who has made a timely objection to the procuring government institution and is denied relief 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.¹⁰

[18] In the Tribunal's view, it is clear that PWGSC has not yet denied relief to CTS Defence. On March 2, 2021, PWGSC informed CTS Defence of its intention to provide a response to the March 1 letter from CTS Defence once it has had an opportunity to review the file in detail.

[19] Given that the complaint was filed before the receipt of any such response, CTS Defence does not yet know whether PWGSC will provide the requested explanation and/or the relief it seeks. The Tribunal therefore considers the complaint to be premature and will not conduct an inquiry at this time.

Time frame for any future complaint

[20] Once CTS Defence has received a response from PWGSC, it may file another complaint with the Tribunal within 10 working days of this response, if it still considers itself to have been aggrieved.

[21] Alternatively, if PWGSC does not provide a response within a reasonable time frame, CTS Defence may also file a new complaint with the Tribunal. In these circumstances, the Tribunal would consider a reasonable delay to be 30 days from the issuance of these reasons, after which time CTS Defence may construe the lack of response to be a denial of relief. CTS Defence would then have 10 working days to file a new complaint with the Tribunal.

[22] In either case, if CTS Defence decides to file a new complaint, it may request that documents already filed with this complaint be joined to the new 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 as the complaint is premature.

Cheryl Beckett

Cheryl Beckett

Presiding Member

¹⁰ Subsection 6(2) of the *Regulations*.