



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2021-004

101199652 Saskatchewan Ltd.  
O/A Regina Dry Cleaners

*Decision made  
Thursday, April 22, 2021*

*Decision and reasons issued  
Monday, May 3, 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**

**101199652 SASKATCHEWAN LTD. O/A REGINA DRY CLEANERS**

**AGAINST**

**THE ROYAL CANADIAN MOUNTED POLICE**

**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

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Peter Burn

Presiding Member

## STATEMENT OF REASONS

[1] Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,<sup>2</sup> 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 COMPLAINT

[2] This complaint relates to an Invitation to Tender (ITT) by the Royal Canadian Mounted Police (RCMP) for the rental, laundering and delivery of staff uniforms (Solicitation No. M5000-20-6397/A).

[3] The complainant, 101199652 Saskatchewan Ltd. O/A Regina Dry Cleaners (Regina Dry Cleaners) challenges the RCMP's conclusion that its bid is non-responsive because it was received after the bid closing date. As a remedy, Regina Dry Cleaners asks that its bid be evaluated.

[4] Alternatively, Regina Dry Cleaners alleges that the ITT's bidder instructions, which provide that bids cannot be submitted by electronic means, are inequitable to all bidders. As a remedy, Regina Dry Cleaners asks that a new solicitation for the designated contract be issued which allows for bids to be submitted by electronic means.

## BACKGROUND

[5] The RFP was issued on March 16, 2021, with a bid closing date of March 30, 2021.

[6] On March 31, 2021, Regina Dry Cleaners, through a consulting firm representing it for the purposes of the solicitation, wrote to the RCMP to inform it that they had submitted their bid using the services of a private courier with a guaranteed delivery prior to the bid closing date. Regina Dry Cleaners explained that the delivery date was delayed due to COVID-related service disruptions and should be received by the RCMP later that day. They asked that their bid be considered for evaluation.

[7] On April 12, 2021, the RCMP advised Regina Dry Cleaners that its bid was deemed non-responsive because it was received on March 31, after the bid closing date. The RCMP referred to the bidder instructions contained in clause 2.2 of Part 2 of the solicitation documents which states that bids must be submitted by the date, time and place indicated on page 1 of the bid solicitation (i.e. March 30, 2021).

[8] On April 21, 2021, Regina Dry Cleaners filed its complaint with the Tribunal.

[9] On April 22, 2021, the Tribunal decided not to conduct an inquiry into the complaint.

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

<sup>2</sup> SOR/93-602 [*Regulations*].

## ANALYSIS

[10] 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*;<sup>3</sup>
- (ii) the complainant is a potential supplier;<sup>4</sup>
- (iii) the complaint is in respect of a designated contract;<sup>5</sup> and
- (iv) the information provided discloses a reasonable indication that the procurement has not been conducted in accordance with the relevant trade agreements.<sup>6</sup>

[11] For the following reasons, the Tribunal finds that the first ground of complaint does not disclose a reasonable indication that the procurement has not been conducted in accordance with the relevant trade agreements. The Tribunal also finds that the second ground of complaint was not filed within the time limits prescribed by section 6 of the *Regulations*.

### **The first ground of complaint does not raise a reasonable indication of a breach**

[12] Regina Dry Cleaners alleges that its bid should be accepted as timely by the RCMP. It relies on Section 4.85.1 of the Public Works and Government Services Canada's Standard Acquisition Clauses and Conditions (SACC) Manual, which governs late bids, offers and arrangements.

[13] Regina Dry Cleaners refers to Section 4.85.1 and 4.85.5 of the SACC Manual, which provide for delayed bids being accepted as timely under certain circumstances. This section is examined by the Tribunal below, but the Tribunal can immediately indicate that it is not applicable to the circumstances encountered by Regina Dry Cleaners.

[14] Regina Dry Cleaners provided a copy of a guaranteed proof of timely delivery engagement that the company had with a private courier service for the delivery of its bid. The private courier service did not honour its engagement.

[15] The Tribunal notes that the instructions to bidders in the solicitation documents provide that "[a]ll instructions, clauses and conditions identified in the bid solicitation by number, date and title are set out in the Standard Acquisition Clauses and Conditions Manual . . . issued by Public Works and Government Services Canada."<sup>7</sup>

[16] Further, such instructions provide that the Public Works and Government Services Canada 2003 Standard Instructions – Goods or Services – Competitive Requirements are incorporated by reference into and form part of the bid solicitation.<sup>8</sup>

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<sup>3</sup> Subsection 6(1) of the *Regulations*.

<sup>4</sup> Paragraph 7(1)(a) of the *Regulations*.

<sup>5</sup> Paragraph 7(1)(b) of the *Regulations*.

<sup>6</sup> Paragraph 7(1)(c) of the *Regulations*.

<sup>7</sup> Exhibit PR-2021-004- 01, Vol. 1 at 14.

<sup>8</sup> *Ibid.*

[17] Section 4.85.1<sup>9</sup> of the SACC Manual, which Regina Dry Cleaners relies on in support of its position, reads, in relevant part, as follows:

4.85.1. Late Bids, Offers and Arrangements

- a. *For all competitive solicitations, the solicitation closing date and time stipulated in the solicitation are firm. It is the responsibility of suppliers to ensure that the bid, offer or arrangement, as applicable, is delivered on time to the Bid Receiving Unit or to the contracting officer that is specified in the solicitation. The only acceptable evidence to show timely receipt of the bid, offer or arrangement, as applicable, is the receipt issued by the specified Bid Receiving Unit. . . .*
- b. *For all competitive solicitations, late bids, offers or arrangements, submitted using means other than the Canada Post Corporation's epost Connect service or other electronic delivery methods, are to be returned unless they qualify as delayed bids or offers or arrangements.*

[Emphasis added]

[18] Further, Section 4.85.5 of the SACC Manual which relates to delayed bids, offers and arrangements reads as follows:

4.85.5. Delayed Bids/Offer/Arrangements

Contracting officers should consult the applicable SACC Manual standard instructions for delayed bids/offers/arrangements.

[19] In this case, as provided for in clause 2.1 of the solicitation documents, the applicable standard instructions are the 2003 Standard Instructions – Goods or Services – Competitive Requirements (Standard Instructions). Sections 06 and 07 of the Standard Instructions,<sup>10</sup> which govern late bids and delayed bids, respectively, provide, in relevant part as follows:

06 (2018-05-22) Late bids

PWGSC will return or delete bids delivered after the stipulated solicitation closing date and time, unless they qualify as a delayed bid as described in section 07.

For late bids submitted using means other than the Canada Post Corporation's epost Connect service, the physical bid will be returned. . . .

07 (2018-05-22) Delayed bids

A bid delivered to the specified Bid Receiving Unit after the solicitation closing date and time but before the contract award date may be considered, provided the bidder can prove the delay is due solely to a delay in delivery that can be attributed to the Canada Post Corporation (CPC) (or national equivalent of a foreign country). *Private courier (Purolator Inc., Fedex Inc., etc.) is not considered to be part of CPC for the purposes of delayed bids.*

<sup>9</sup> Sections 4.85.1 and 4.85.5 of the SACC Manual are set out in Appendix 1 of these reasons.

<sup>10</sup> Sections 06 and 07 of the Standard Instructions are set out in Appendix 2 of these reasons.

- a. The only pieces of evidence relating to a delay in the CPC system that are acceptable to PWGSC are:
  - i. a CPC cancellation date stamp;
  - ii. a CPC Priority Courier bill of lading;
  - iii. a CPC Xpresspost label;

that clearly indicates that the bid was sent before the solicitation closing date.

...

*Misrouting, traffic volume, weather disturbances, labour disputes or any other causes for the late delivery of bids are not acceptable reasons for the bid to be accepted by PWGSC.*

[Emphasis added]

[20] Contrary to Regina Dry Cleaners' allegations, Section 07 of the Standard Instructions specifically provides that delayed bids may only be considered if the delays are attributed to the Canada Post Corporation (CPC) (or national equivalent of a foreign country), which does not include private courier. Regina Dry Cleaners did not use CPC to deliver its bid, but instead engaged a private courier. As such, it cannot rely on the delayed bids accommodation provisions of the solicitation.

[21] In addition, Section 07 of the Standard Instructions provides that misrouting, traffic volume, weather disturbances, labour disputes or any other causes for the late delivery of bids are not acceptable reasons for the bid to be accepted by the contracting entity. While service disruptions related to a pandemic are not specifically listed, the Tribunal notes that they can be considered other causes for late delivery.

[22] Therefore, Section 4.85.5 of the SACC Manual and Sections 06 and 07 of the Standard Instructions read together make it clear that bids delivered after the stipulated solicitation closing date and time submitted by private courier cannot be qualified as delayed bids, and accordingly, must be returned.

[23] Further, the bidder instructions contained in clause 2.2 of Part 2 of the solicitation documents indicate that bids must be submitted by the date, time and place indicated on page 1 of the solicitation documents (i.e. March 30, 2021).<sup>11</sup>

[24] Finally, the Tribunal notes that Article 515 of the Canadian Free Trade Agreement (CFTA), an applicable trade agreement, requires that the procuring entity treat all bids fairly and impartially during the procurement process<sup>12</sup> and award contracts in accordance with, and solely based upon, the criteria and essential requirements specified in the tender documentation.<sup>13</sup>

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<sup>11</sup> Exhibit PR-2021-004- 01, Vol. 1 at 15.

<sup>12</sup> Article 515(1) of the CFTA states the following: "A procuring entity shall receive, open, and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders."

<sup>13</sup> Article 515(5) of the CFTA states the following: "Unless a procuring entity determines that it is not in the public interest to award a contract, the procuring entity shall award the contract to the supplier that the procuring entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the tender notices and tender documentation, has submitted: (a) the most advantageous tender; or (b) where price is the sole criterion, the lowest price."

[25] In light of the above, in determining that Regina Dry Cleaners' bid was non-responsive, the RCMP applied the criteria specified in its tender documentation, which is consistent with its obligations under the applicable trade agreements.

[26] For this reason, the Tribunal finds that this ground of complaint fails to disclose a breach of the trade agreements.

### **The second ground of complaint is late**

[27] Regina Dry Cleaners also alleged that allowing only physical paper bid submissions is inequitable to all bidders.

[28] Pursuant to subsection 6(1) 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.<sup>14</sup>

[29] Subsection 6(2) of the *Regulations* states that a potential supplier who 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."

[30] When a ground of complaint concerns the terms of a solicitation, the Tribunal has previously held that, without evidence to the contrary, bidders are generally considered to have obtained a copy of the solicitation on the date of publication.<sup>15</sup>

[31] There is no evidence in the present complaint to warrant a departure from this reasoning. Accordingly, the Tribunal considers that Regina Dry Cleaners became aware of the basis of this ground of complaint as early as March 16, 2021.

[32] Therefore, in order to meet the prescribed time limits, Regina Dry Cleaners would have been required to file this ground of complaint with the Tribunal or object to the government institution within 10 working days of March 16, 2021, i.e. by March 30, 2021. However, Regina Dry Cleaners did not file the present complaint until April 21, 2021.

[33] The Tribunal also notes that, while Regina Dry Cleaners wrote to the procuring entity on March 30, 2021, to ask that its bid be considered, this did not constitute an objection for the purposes of subsection 6(2) of the *Regulations* in respect of the second ground of complaint. Regina Dry Cleaners did not, in its correspondence, take issue with the instructions for the submissions of bids.

[34] Even if the Tribunal were to take the most generous approach and consider that Regina Dry Cleaners became aware of the basis of the ground of complaint at the very last moment during the bidding period (i.e. on March 30, 2021), it still did not file this ground of complaint within the time

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<sup>14</sup> Subsections 6(1) and (2) of the *Regulations*.

<sup>15</sup> *Smiths Detection Montreal Inc.* (5 August 2020), PR-2020-016 (CITT) at para. 16. See also *Storeimage v. Canadian Museum of Nature* (18 January 2013), PR-2012-015 (CITT) at para. 23; *Temprano and Young Architects Inc.* (26 February 2019), PR-2018-036 (CITT) at para. 23.

limits of section 6 of the *Regulations*. Indeed, the deadline to file a complaint under that timeline would have been 10 working days after March 30, 2021, or April 16, 2021 (accounting for April 2, and 5, 2021, being holidays). Again, because the complaint was not filed until April 21, 2021, it remains filed beyond the timeframe to be considered for inquiry.

[35] Irrespective, absent any cogent reason supporting the purported unfairness of bids in paper format only, the Tribunal finds no reasonable indication of a breach of the trade agreements in regard to this allegation. While paragraph 7(1)(c) of the *Regulations* does not impose a high threshold, a party challenging a procurement must provide some evidence in support of its claim.<sup>16</sup> The Tribunal has consistently held that mere allegations are insufficient to establish a reasonable indication of a breach of the trade agreements.<sup>17</sup>

## DECISION

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

Peter Burn  
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Peter Burn  
Presiding Member

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<sup>16</sup> *Custom Power Generation* (23 February 2021), PR-2020-087 (CITT) at para. 9; *K-Lor Contractors Services Ltd.* (23 November 2000), PR-2000-023 (CITT).

<sup>17</sup> See, for example, *Nations Translation Group Inc.* (23 June 2020), PR-2019-071 (CITT) at para. 23; *Smiths Detection Montreal Inc.* (5 August 2020), PR-2020-016 (CITT) at para. 25; *Talmack Industries Inc.* (20 November 2018), PR-2018-040 (CITT) at para. 13.



## APPENDIX 1

### Standard Acquisition Clauses and Conditions (SACC) Manual

#### 4. Chapter 4 – Solicitation Process

##### 4.85.1 Late Bids, Offers and Arrangements

(2018-05-22)

- a. For all competitive solicitations, the solicitation closing date and time stipulated in the solicitation are firm. It is the responsibility of suppliers to ensure that the bid, offer or arrangement, as applicable, is delivered on time to the Bid Receiving Unit or to the contracting officer that is specified in the solicitation. The only acceptable evidence to show timely receipt of the bid, offer or arrangement, as applicable, is the receipt issued by the specified Bid Receiving Unit.
  - i. The only pieces of evidence relating to a delay in the Canada Post Corporation (CPC) system that are acceptable to PWGSC are:
    1. a CPC cancellation date stamp;
    2. a CPC Priority Courier bill of lading;
    3. a CPC Xpresspost label;

that clearly indicates that the bid, offer or arrangement was sent before the solicitation closing date.
  - ii. The only piece of evidence relating to a delay in the epost Connect service provided by the CPC system that is acceptable to PWGSC is a CPC epost Connect service date and time record indicated in the epost Connect conversation history that clearly indicates that the bid was sent before the solicitation closing date and time.
- b. For all competitive solicitations, late bids, offers or arrangements, submitted using means other than the Canada Post Corporation's epost Connect service or other electronic delivery methods, are to be returned unless they qualify as delayed bids or offers or arrangements.
- c. For all competitive solicitations, bids, offers or arrangements (as applicable) submitted using Canada Post Corporation's epost Connect service, epost conversations initiated by bid receiving units via the epost Connect service pertaining to a late bid, offer or arrangement (as applicable), will be deleted. Records will be kept documenting the transaction history of all late bids, offers, and arrangements submitted using epost Connect.
- d. Contracting officers should consult the Standard Acquisition Clauses and Conditions Manual's applicable standard instructions.

##### 4.85.5 Delayed Bids/Offer/Arrangements

(2010-08-16)

- a. Contracting officers should consult the applicable SACC Manual standard instructions for delayed bids/offers/arrangements.
- b. However, when dealing with bids submissions for construction contracts, contracting officers should refer to section 9.10.15 Construction Services.

## APPENDIX 2

### Standard Instructions – Goods or Services – Competitive Requirements

#### **06 (2018-05-22) Late bids**

PWGSC will return or delete bids delivered after the stipulated solicitation closing date and time, unless they qualify as a delayed bid as described in section 07.

For late bids submitted using means other than the Canada Post Corporation's epost Connect service, the physical bid will be returned.

For bids submitted electronically, the late bids will be deleted. As an example, bids submitted using Canada Post Corporation's epost Connect service, conversations initiated by the Bid Receiving Unit via the epost Connect service pertaining to a late bid, will be deleted. Records will be kept documenting the transaction history of all late bids submitted using epost Connect.

#### **07 (2018-05-22) Delayed bids**

1. A bid delivered to the specified Bid Receiving Unit after the solicitation closing date and time but before the contract award date may be considered, provided the bidder can prove the delay is due solely to a delay in delivery that can be attributed to the Canada Post Corporation (CPC) (or national equivalent of a foreign country). Private courier (Purolator Inc., Fedex Inc., etc.) is not considered to be part of CPC for the purposes of delayed bids.
  - a. The only pieces of evidence relating to a delay in the CPC system that are acceptable to PWGSC are:
    - i. a CPC cancellation date stamp;
    - ii. a CPC Priority Courier bill of lading;
    - iii. a CPC Xpresspost label;that clearly indicates that the bid was sent before the solicitation closing date.
  - b. The only piece of evidence relating to a delay in the epost Connect service provided by CPC system that is acceptable to PWGSC is a CPC epost Connect service date and time record indicated in the epost Connect conversation history that clearly indicates that the bid was sent before the solicitation closing date and time.
2. Misrouting, traffic volume, weather disturbances, labour disputes or any other causes for the late delivery of bids are not acceptable reasons for the bid to be accepted by PWGSC.
3. Postage meter imprints, whether imprinted by the Bidder, the CPC or the postal authority outside Canada, are not acceptable as proof of timely mailing.