



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2021-014

Bio-Detection K9 Incorporated

*Decision made
Thursday, June 3, 2021*

*Decision and reasons issued
Wednesday, June 9, 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

BIO-DETECTION K9 INCORPORATED

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.

Serge Fréchette

Serge Fréchette
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 a Standing Offer (RFSO) issued by the Department of Public Works and Government Services (PWGSC) on behalf of the Public Health Agency of Canada, Health Canada and the National Microbiology Laboratory for the provision of COVID-19 Rapid Tests (Solicitation No. 6D063-204744/A).

[3] The RFSO was issued on March 16, 2021, with a bid closing date of December 23, 2021. The Tribunal acknowledged receipt of Bio-Detection K9 Incorporated's complaint as filed on June 3, 2021.

[4] Subsection 6(1) of the *Regulations* provides that a potential supplier may file a complaint with the Tribunal, provided that it “do so not later than 10 working days after the day on which the basis of the complaint became known . . .” Subsection 6(2) provides that a potential supplier may also file a complaint following an objection made to the relevant government institution, when relief is *denied* by that government institution. In this case, the complaint must be filed 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.”

[5] Bio-Detection K9 Incorporated obtained a copy of the solicitation on May 28, 2021, and it objected to PWGSC that same day. However, when Bio-Detection K9 Incorporated filed its complaint, it had not yet received a response from PWGSC, much less a denial of relief.

[6] In the Tribunal's view, given that Bio-Detection K9 Incorporated filed its complaint before having received a denial of relief from PWGSC, the complaint is premature. The Tribunal takes note of Bio-Detection K9 Incorporated's vigilance to the short timelines applicable to procurement complaints; however, it cannot consider that the complaint, as drafted, meets the requirements of the *Regulations* at this time. For those reasons, the Tribunal will not conduct an inquiry into the complaint.

[7] Once Bio-Detection K9 Incorporated 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.

[8] Alternatively, if PWGSC does not provide a response within a reasonable delay, Bio-Detection K9 Incorporated may also file a new complaint with the Tribunal. The Tribunal would consider a reasonable delay to be 20 days from the issuance of these reasons, after which time Bio-Detection K9 Incorporated may construe the lack of response to be a denial of relief.

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

² SOR/93-602 [*Regulations*].

Bio-Detection K9 Incorporated would then have 10 working days to file a new complaint with the Tribunal. In either case, if Bio-Detection K9 Incorporated decides to file a new complaint, it may request that documents already filed with this complaint be joined to the new complaint.

DECISION

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

Serge Fréchette

Serge Fréchette
Presiding Member