



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2021-044

Pye & Richards - Temprano &
Young Architects Inc.

*Decision made
Thursday, September 23, 2021*

*Decision issued
Friday, September 24, 2021*

*Reasons issued
Tuesday, September 28, 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

PYE & RICHARDS - TEMPRANO & YOUNG ARCHITECTS INC.

AGAINST

THE DEPARTMENT OF FOREIGN AFFAIRS, TRADE AND DEVELOPMENT

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 because it is premature. In the Tribunal's view, the complainant has not yet received a definitive response to its objection from the government institution.

Peter Burn

Peter Burn

Presiding Member

The statement of reasons will be issued at a later date.

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 THE COMPLAINT

[2] This complaint relates to a solicitation issued by the Department of Foreign Affairs, Trade and Development (DFATD) for the provision of architectural and engineering professional and technical services for the updating of Canadian missions abroad (Solicitation No. 20-173640).

[3] The complainant, Pye & Richards - Temprano & Young Architects Inc. (PRTY), alleges that DFATD has not provided requested information regarding the winning bid, specifically the total evaluation score, evaluated price, and consensus score for each rated requirement. PRTY also alleges that DFATD demonstrated bias in evaluating the proposals.

BACKGROUND

[4] On January 14, 2021, the solicitation was published, with a closing date of February 26, 2021.

[5] PRTY submitted a bid on or before the closing date.³

[6] On May 6, 2021, DFATD sent a regret letter to PRTY, advising that its bid did not achieve the highest total scores in the Rated Requirements (SR5) or the Price Proposal (SR6). A contract was awarded to J.L. Richards & Associates Limited.⁴ The contract amount has not yet been disclosed but the total expenditure was not to exceed CAD \$1,700,000.00.

[7] On May 6, 2021, PRTY asked for a formal debrief.⁵

[8] On May 19, 2021, DFATD asked the complainant on which matters it would like to receive clarification.⁶ The same day, PRTY requested the following information: the points awarded for each section of the evaluation; the number of submissions; the ranking of its technical and financial scores relative to other proposals; and whether not having previously worked for DFATD was determinative in its not being awarded the contract.⁷

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

² SOR/93-602 [*Regulations*].

³ Exhibit PR-2021-044-01 at 11.

⁴ *Ibid.* at 84.

⁵ *Ibid.* at 67.

⁶ *Ibid.* at 68.

⁷ *Ibid.* at 69.

[9] On May 25, 2021, DFATD provided the complainant with its score on each of the three rated technical criteria, its overall technical and financial scores, and its overall ranking as the bidder with the second-highest overall score. The same day, PRTY responded, requesting the following additional information: (1) the overall score of the successful proponent; and (2) the reason why PRTY's proposal did not receive a higher score on two of the rated criteria, and whether this was because the firm "did not have DFATD or recent international experience."⁸

[10] On June 8, 2021, counsel for PRTY sent DFATD a letter requesting additional information regarding the bid evaluations, notably a further explanation of the scoring it had received as well as information regarding the successful bidder's scoring and price proposal.⁹

[11] On June 11, 2021, DFATD's counsel acknowledged PRTY's correspondence and indicated that a response would be forthcoming ("[GAC] will get back to you soon").¹⁰

[12] On June 28, 2021, DFATD sent a follow-up email to PRTY, apologizing for the delay and stating that DFATD was "working to get back to you as soon as possible regarding your client's letter of objection."¹¹

[13] On September 7, 2021, PRTY followed up with DFATD, requesting a response to its letter of June 8, 2021, by September 17, 2021.¹²

[14] On September 9, 2021, DFATD sent PRTY a letter containing additional information regarding the scoring of its bid,¹³ including the individual and consensus scoring sheets.

[15] On September 10, 2021, PRTY requested further information from DFATD, namely: (1) the top-level score awarded to the successful proponent; (2) the evaluated price of the procurement; (3) the successful proposal's consensus score for each rated requirement.¹⁴

[16] On September 13, 2021, DFATD's counsel answered PRTY saying they would get back to the complainant upon reviewing its request.¹⁵

[17] On September 17, 2021, PRTY filed a complaint with the Tribunal.¹⁶

ANALYSIS

[18] Pursuant to sections 6 and 7 of the *Regulations*, the Tribunal may conduct an inquiry into a complaint if all of the following conditions are met:

⁸ *Ibid.* at 71.

⁹ *Ibid.* at 74.

¹⁰ *Ibid.* at 75, 85-88.

¹¹ *Ibid.* at 77.

¹² *Ibid.* at 78.

¹³ *Ibid.* at 80.

¹⁴ *Ibid.* at 81-82.

¹⁵ *Ibid.* at 83.

¹⁶ *Ibid.* at 1.

- i. the complaint has been filed within the time limits prescribed by section 6 of the *Regulations*;¹⁷
- ii. the complainant is a potential supplier;¹⁸
- iii. the complaint is in respect of a designated contract;¹⁹ and
- iv. the information provided discloses a reasonable indication that the government institution did not conduct the procurement in accordance with the applicable trade agreements.²⁰

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

Timeliness

[20] 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.²¹ Further, 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.²²

[21] The Tribunal finds that DFATD has not yet denied relief to PRTY within the meaning of subsection 6(2) of the *Regulations*. There is no indication on file that DFATD has provided a response to PRTY's email of September 10, 2021, requesting additional information, aside from its email of September 13, 2021, in which it commits to get back to PRTY after reviewing the request. Accordingly, PRTY does not yet know whether DFATD will provide the requested information, which appears likely to inform PRTY's broader allegations. DFATD's eventual response may be satisfactory to PRTY and may allow for the resolution of its concerns. If its answer is unsatisfactory to PRTY, this will nonetheless allow it to formulate grounds of complaint and request a remedy to the Tribunal with greater clarity. For the time being, however, the complaint is premature.

Timeline for any future complaint

[22] The Tribunal's decision does not preclude PRTY from filing a new complaint within 10 working days of receiving a response from DFATD to its request for information of September 10, 2021, if it still considers itself to have been aggrieved.

[23] Alternatively, if DFATD fails to provide a response within a reasonable time frame, PRTY 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 PRTY may construe a lack of response to be a denial of relief. PRTY would therefore have 10 working days

¹⁷ Subsection 6(1) of the *Regulations*.

¹⁸ Paragraph 7(1)(a) of the *Regulations*.

¹⁹ Paragraph 7(1)(b) of the *Regulations*.

²⁰ Paragraph 7(1)(c) of the *Regulations*.

²¹ Subsections 6(1) and (2) of the *Regulations*.

²² Subsection 6(2) of the *Regulations*.

from the 30th day following the date of issuance of these reasons to file a new complaint with the Tribunal.

[24] In either case, if PRTY decides to file a new complaint, it may request that documents already filed with this complaint be joined to the new complaint.

DECISION

[25] 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