



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2021-060

Beonbrand Inc.

*Decision made
Wednesday, December 22, 2021*

*Decision and reasons issued
Wednesday, December 29, 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

BEONBRAND 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 because it 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.

SUMMARY OF THE COMPLAINT

[2] This complaint relates to a solicitation issued by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of Health for the provision of videos concerning the prevention of youth vaping and the cessation of adult tobacco use (solicitation H1020-214653).

[3] In its complaint to the Tribunal, the complainant, Beonbrand Inc. (Beonbrand), alleges that the winning bidder had an unfair advantage because of its status as the incumbent supplier.³

BACKGROUND

[4] On November 17, 2021, PWGSC published the solicitation. The Tribunal was unable to locate this solicitation on Buyandsell.

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

[6] On December 15, 2021, PWGSC sent a regret letter to Beonbrand, advising that its bid did not meet all of the requirements.⁴ A contract was awarded to Banfield-Seguin Ltd in the amount of \$186,450.⁵

[7] On December 20, 2021, Beonbrand sent PWGSC an email asking for a formal debriefing.⁶

[8] On that same day, PWGSC replied to Beonbrand stating that this debriefing could take place in 2022 and that PWGSC would get back to Beonbrand.⁷

[9] On December 21, 2021, Beonbrand filed a complaint with the Tribunal.

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

² SOR/93-602 [Regulations].

³ Exhibit PR-2021-060-01 at 5.

⁴ Exhibit PR-2021-060-04.

⁵ Exhibit PR-2021-060-01 at 8.

⁶ Exhibit PR-2021-060-01.D at 1.

⁷ *Ibid.*

ANALYSIS

[10] 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:

- i. the complaint has been filed within the time limits prescribed by section 6 of the Regulations;⁸
- ii. the complainant is a potential supplier;⁹
- iii. the complaint is in respect of a designated contract;¹⁰ 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.¹¹

[11] For the following reasons, the Tribunal finds that the complaint is premature.

Prematurity

[12] 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.¹² 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.¹³

[13] The Tribunal finds that PWGSC has not yet denied relief to Beonbrand within the meaning of subsection 6(2) of the Regulations. PWGSC has confirmed to Beonbrand that a formal debriefing could take place in 2022.¹⁴ Accordingly, PWGSC's debriefing may be satisfactory to Beonbrand and may allow for the resolution of its concerns. If PWGSC's debriefing is unsatisfactory to Beonbrand, this will nonetheless allow Beonbrand 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

[14] The Tribunal's decision does not preclude Beonbrand from filing a new complaint within 10 working days of receiving a denial of relief from PWGSC, if it still feels aggrieved.

[15] Alternatively, if PWGSC fails to hold a debriefing by January 21, 2022, Beonbrand may consider this as a denial of relief.

⁸ Subsection 6(1) of the Regulations.

⁹ Paragraph 7(1)(a) of the Regulations.

¹⁰ Paragraph 7(1)(b) of the Regulations.

¹¹ Paragraph 7(1)(c) of the Regulations.

¹² Subsections 6(1) and (2) of the Regulations.

¹³ Subsection 6(2) of the Regulations.

¹⁴ Exhibit PR-2021-060-01.D at 1.

[16] Beonbrand would therefore have 10 working days from January 21, 2022, to file a new complaint with the Tribunal, should PWGSC fail to answer.

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

DECISION

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

Cheryl Beckett

Cheryl Beckett

Presiding Member