



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File PR-2021-055

Cache Computer Consulting Corp.

*Decision made  
Tuesday, December 7, 2021*

*Decision and reasons issued  
Tuesday, December 14, 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**

**CACHE COMPUTER CONSULTING CORP.**

**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.

Cheryl Beckett

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Cheryl Beckett

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.

[2] This complaint relates to a request for proposal (RFP) (Solicitation No. G9292-248331/A) issued by the Department of Public Works and Government Services (PWGSC) on behalf of Employment and Social Development Canada (ESDC). The RFP invited proposals for the provision of support services in support of the continuous improvement, stabilization and enhancement of ESDC's Task Based Informatics Professional Services myEMS (SAP) Solution system.

[3] The complaint relates to the inability of the complainant, Cache Computer Consulting Corp. (Cache), to submit its bid within the prescribed time limitation due to an alleged malfunction of the epost Connect system used by PWGSC.

[4] The RFP was issued on September 27, 2021, with an initial bid closing date of October 18. On October 19, a third amendment to the RFP was published, extending the bid closing date to November 10 at 2:00 p.m.<sup>3</sup>

[5] On November 17, 2021, PWGSC informed Cache that its bid submission would not be considered, as it was received after the closing date and time.<sup>4</sup> On the same day, Cache sent a notice objecting to PWGSC's decision. Cache alleged that it submitted its bid before the bid closing time but that an error in the epost Connect system prevented PWGSC from receiving its bid. Cache requested PWGSC to investigate and verify the epost Connect record.<sup>5</sup>

[6] On November 22, 2021, PWGSC informed Cache that it had reviewed the matter and found no issues with the epost Connect website.<sup>6</sup> PWGSC further informed Cache that it was not responsible for the alleged failure of the epost Connect system. On the same day, in a subsequent email, PWGSC informed Cache that it "may have [legal] recourse" if it was able to provide proof from the bid-receiving unit of the time that Cache submitted its bid.<sup>7</sup> Cache provided additional information on November 25.<sup>8</sup>

[7] On November 26 and 30, 2021, PWGSC informed Cache that it had received the information and was discussing it internally.<sup>9</sup>

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

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

<sup>3</sup> Exhibit PR-2021-055-01 at 332.

<sup>4</sup> *Ibid.* at 49.

<sup>5</sup> *Ibid.* at 51.

<sup>6</sup> *Ibid.* at 57–58.

<sup>7</sup> *Ibid.* at 68–69.

<sup>8</sup> *Ibid.* at 130–132.

<sup>9</sup> *Ibid.* at 171, 193.

[8] At the outset, the Tribunal notes that the complainant filed its complaint with the Tribunal on December 2, 2021, exactly one week after providing evidence supporting its claim to PWGSC. The Tribunal further acknowledged receipt of Cache's complaint as filed on December 6.

[9] 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". The 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 "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."

[10] When Cache filed its complaint, it had not yet received a response from PWGSC regarding the additional information submitted by Cache on November 25, 2021, much less a denial of relief.

[11] In the Tribunal's view, given that Cache filed its complaint before having received a final response from PWGSC, the complaint is premature. The Tribunal takes note of Cache's vigilance to the short timelines applicable to procurement complaints; however, it cannot consider that the complaint meets the requirements of the Regulations at this time. For those reasons, the Tribunal will not conduct an inquiry into the complaint.

[12] Once Cache 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.

[13] Alternatively, if PWGSC does not provide a response within a reasonable delay, Cache may also file a new complaint with the Tribunal. The Tribunal would consider a reasonable delay to be 30 days from the issuance of these reasons, after which time Cache may construe the lack of response to be a denial of relief. Cache would then have 10 working days to file a new complaint with the Tribunal. In either case, if Cache decides to file a new complaint, it may request that documents already filed with this complaint be joined to the new complaint.

## DECISION

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

Cheryl Beckett

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Cheryl Beckett

Presiding Member