



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File PR-2021-077

G Plus Industries

*Decision made  
Thursday, February 17, 2022*

*Decision and reasons issued  
Wednesday, February 23, 2022*

IN THE MATTER OF a complaint filed pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*.

**BY**

**G PLUS INDUSTRIES**

**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. Since G Plus Industries has not yet received a definitive response to its objection from the government institution, the complaint is premature.

Serge Fréchette

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Serge Fréchette

Presiding Member

## STATEMENT OF REASONS

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

[2] This complaint relates to a request for proposal (RFP) issued by the Department of Public Works and Government Services (PWGSC) made on behalf of the Department of National Defence for the provision of hotel accommodation services in the Temecula, California, area located in the United States (solicitation W6399-22CA53/A).

[3] G Plus Industries (GPI) disputes that the winning bidder did not meet all technical criteria listed in the RFP, as gym facilities of the hotel properties being used by the winning bidder did not meet the requirements set out in the Statement of Work (SOW) annex. According to GPI, PWGSC should have rendered the winning bidder's submission non-compliant.

[4] GPI further disputes that PWGSC did not perform thorough due diligence to ensure that the winning bid complied with the technical criteria and failed to treat all tenders under procedures that guarantee fairness and the impartiality of the procurement process.

[5] For the reasons below, the Tribunal is of the opinion that GPI's complaint is premature. As such, the Tribunal has decided not to conduct an inquiry at this time.

### BACKGROUND

[6] On December 29, 2021, PWGSC published the RFP in question on Buyandsell.gc.ca<sup>3</sup> as well as an amendment to the RFP on January 6, 2022. The solicitation closed on January 10, 2022, at 2:00 p.m. EST.

[7] GPI submitted a bid on or before the closing date.

[8] On January 17, 2022, GPI received a regret letter<sup>4</sup> from PWGSC advising that, while its bid had met the mandatory requirements, it had not achieved the highest ranking.

[9] On or about February 1, 2022, GPI would have received information through its hotel contact in Temecula, California, that the successful bidder was using the following hotel properties located in

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

<sup>2</sup> SOR/93-602.

<sup>3</sup> See the description on Buyandsell.gc.ca, online: <<https://buyandsell.gc.ca/procurement-data/tender-notice/PW-KIN-555-8548>>.

<sup>4</sup> Exhibit PR-2021-077-01C at 1.

that area, namely Holiday Inn Express Temecula and Fairfield Inn & Suites by Marriott.<sup>5</sup> However, these properties were not compliant with the technical requirements, as their gym facilities did not meet the deliverable requirements listed in the SOW annex of the RFP.

[10] On February 3, 2022, GPI advised PWGSC by email of the situation and further inquired about the technical requirements.<sup>6</sup> The same day, PWGSC responded to GPI that it had also recently become aware of this issue and was looking into it. PWGSC further stated in its response that “contractors are expected to meet all requirements listed in an RFP and subsequent contract regardless of whether they were [sic] included as mandatory technical evaluation criteria or listed in the statement of work.”<sup>7</sup>

[11] On February 3, 2022, GPI emailed PWGSC, inquiring about what the outcome would be if the conditions stated in the RFP were not met. On February 4, 2022, PWGSC replied that “[w]hat happens when a contractor does not or cannot fulfil the requirements of a contract is handled on a case-by-case basis” and further added in its response that it is “currently looking into this issue and [are] not able to provide any more specific information about it at this time.”<sup>8</sup>

[12] On February 7, 2022, GPI thanked PWGSC for the information and requested to be kept apprised if there was need to supply accommodations that meet the requirements for the remainder of the required contract.<sup>9</sup>

[13] On February 15, 2022, GPI submitted its complaint to the Tribunal.

[14] On February 16, 2022, the Tribunal requested additional information pursuant to subsection 30.12(2) of the CITT Act. On that same day, GPI filed the requested documents, and the complaint was considered complete and in compliance with subsection 30.11(2) of the CITT Act.

[15] On February 17, 2022, the Tribunal decided not to conduct an inquiry into the complaint at this time.

## ANALYSIS

[16] Pursuant to section 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 can conduct an inquiry:

- (i) the complaint has been filed within the time limits prescribed by section 6 of the Regulations;
- (ii) the complainant is a potential supplier;
- (iii) the complaint is in respect of a designated contract; and
- (iv) the information provided discloses a reasonable indication that the procurement has not been conducted in accordance with the relevant trade agreements.

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<sup>5</sup> Exhibit PR-2021-077-01 at 7.

<sup>6</sup> Exhibit PR-2021-077-01B (protected) at 10.

<sup>7</sup> *Ibid.* at 11.

<sup>8</sup> *Ibid.* at 11–12.

<sup>9</sup> *Ibid.* at 12.

[17] For the following reasons, the Tribunal finds that the complaint is premature. Therefore, the Tribunal will not conduct an inquiry at this time.

### **The complaint is premature**

[18] Section 6 of the Regulations provides that 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>10</sup>

[19] GPI made a timely objection to PWGSC within this window of 10 working days. Indeed, GPI was made aware of the basis of the complaint on or around February 1, 2022, when they found out about the irregularities regarding the hotel properties and their compliance with the RFP technical requirements. On or about February 3, 2022, GPI made an objection by email.

[20] Pursuant to subsection 6(2) of the Regulations, a potential supplier that 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.

[21] In the Tribunal's view, PWGSC has not yet responded to GPI and, therefore, GPI has not yet been denied the relief that it is seeking. PWGSC's reply dated February 4, 2022, states that it is "currently looking into this issue and [is] not able to provide any more specific information about [the matter] *at this time*"<sup>11</sup> [emphasis added].

[22] Given the circumstances at hand, GPI cannot be deemed as having actual or constructive knowledge of a denial of relief by PWGSC within the meaning of subsection 6(2) of the Regulations.

[23] The Tribunal therefore considers the complaint to be premature and will not conduct an inquiry at this time.

### **Timeframe for any future complaint**

[24] If and when PWGSC denies relief, GPI may file another complaint with the Tribunal within 10 working days from the date that PWGSC informs GPI that its request for relief has been denied.

[25] Alternatively, if PWGSC does not reply to GPI's objection within a reasonable timeframe, GPI may also file a new complaint with the Tribunal. In the circumstances, the Tribunal would consider a reasonable delay to be 30 days from the issuance of these reasons, after which time GPI may construe the lack of response to be a denial of relief. GPI would then have 10 working days (starting on March 25, 2022) to file a new complaint with the Tribunal.

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

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<sup>10</sup> Subsections 6(1) and 6(2) of the Regulations.

<sup>11</sup> Exhibit PR-2021-077-01B (protected) at 12.

**DECISION**

[27] 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.

Serge Fréchette  

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Serge Fréchette  
Presiding Member