



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

Files PR-2021-073, PR-2021-074
and PR-2021-075

Steeple Incorporated

*Decision made
Monday, February 14, 2022*

*Decision and reasons issued
Monday, February 21, 2022*

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

BY

STEEPLE INCORPORATED

AGAINST

THE DEPARTMENT OF NATIONAL DEFENCE

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 complaints.

Cheryl Beckett

Cheryl Beckett
Presiding Member

STATEMENT OF REASONS

[1] Subsection 30.11(1) of the *Canadian International Trade Tribunal Act* (CITT Act) provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (Regulations), 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] Steeple Incorporated (Steeple) filed three complaints with the Tribunal (PR-2021-073, PR-2021-074 and PR-2021-075), concerning three Requests for Proposal (RFPs) issued by the Department of National Defence (DND). The first RFP, solicitation W8486-206508/A, was for the provision of various heater parts; the second RFP, solicitation W8486-217576/A, was for the provision of field water heater parts; and the third RFP, solicitation W8486-228281/A, was for the provision of wheel sealing O-rings.

[3] For the reasons that follow, the Tribunal has decided not to conduct an inquiry into the complaints.

BACKGROUND

Complaint PR-2021-073

[4] On December 21, 2021, DND published solicitation W8486-206508/A on Buyandsell.gc.ca,¹ with a closing date of February 25, 2022.

[5] On January 5, 2022, Steeple advised DND that drawings were required for some of the RFP items and requested that DND make them available to the bidders. On January 24, 2022, DND replied to Steeple that it would not be providing the drawings as part of the solicitation process.

[6] On February 8, 2022, Steeple filed a complaint with the Tribunal.

[7] On February 10, 2022, the Tribunal became aware that the procurement at issue was cancelled.

Complaint PR-2021-074

[8] On November 16, 2021, DND published solicitation W8486-217576/A on Buyandsell.gc.ca,² with a closing date of February 14, 2022.

¹ Online: <<https://buyandsell.gc.ca/procurement-data/tender-notice/PW-21-00979531>>.

² Online: <<https://buyandsell.gc.ca/procurement-data/tender-notice/PW-21-00974765>>.

[9] On January 29, 2022, Steeple advised DND that drawings were required for some of the RFP items and requested that DND make them available to the bidders. On February 2, 2022, DND replied that they were doing an internal review and would get back to Steeple once it was complete.

[10] On February 8, 2022, not having received a response from DND, Steeple filed a complaint with the Tribunal.

[11] On February 10, 2022, the Tribunal became aware that the procurement at issue was cancelled.

Complaint PR-2021-075

[12] On December 6, 2021, DND published solicitation W8486-228281/A on Buyandsell.gc.ca,³ with a closing date of January 11, 2022.

[13] On January 25, 2022, DND sent Steeple a regret letter, advising that it was not the winning bidder. On that same day, Steeple asked for clarification and, after being told its bid was found to be non-compliant, Steeple objected to DND's reasoning on January 27, 2022, asking that DND provide it additional information. On January 28, 2022, DND indicated that an internal review would take place.

[14] On February 9, 2022, DND awarded the contract to JHT Defense Inc.

[15] On February 10, 2022, Steeple filed a complaint with the Tribunal. On that same day, the Tribunal became aware that the procurement at issue and the awarded contract, W8486-228281/001/SV, were cancelled.

[16] On February 10 and 11, 2022, the Tribunal asked Steeple, DND and the Department of Public Works and Government Services (PWGSC) to provide comments concerning the cancellation of the above solicitations.

[17] On February 11, 2022, PWGSC answered that solicitations W8486-206508/A and W8486-217576/A were cancelled in order to allow DND to request the drawings and re-tender at a later date. On February 14, 2022, PWGSC answered that solicitation W8486-228281/A and the awarded contract, W8486-228281/001/SV, were cancelled after it was concluded that the RFP did not provide a thorough description of the requirements and that DND intended to re-tender at a later date.

ANALYSIS

Complaint PR-2021-073 is time-barred

[18] Pursuant to subsections 6(1) and (2) 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. Further, a potential supplier that has made a timely objection to the procuring government institution and is denied relief may file a complaint with the

³ Online: <<https://buyandsell.gc.ca/procurement-data/tender-notice/PW-21-00977417>>.

Tribunal within 10 working days after the day on which the potential supplier has actual or constructive knowledge of the denial of relief.

[19] As mentioned above, Steeple made an objection to DND concerning solicitation W8486-206508/A on January 5, 2022, and was denied relief on January 24, 2022.

[20] According to the Regulations, the deadline for Steeple to submit a complaint to the Tribunal after it had been denied relief by DND was on February 7, 2022, or 10 working days after having been denied relief. However, Steeple only submitted a complaint to the Tribunal on February 8, 2022.

[21] In light of the above, the Tribunal finds that Steeple's complaint relating to solicitation W8486-206508/A was filed beyond the deadline set out in the Regulations and, therefore, cannot be further considered by the Tribunal.

Cancellation of the solicitations

[22] Subsection 30.11(1) of the CITT Act and paragraph 7(1)(b) of the Regulations provide that, in order to accept a complaint for inquiry, the Tribunal has to be satisfied that it relates to a designated contract. The question of whether a designated contract exists is considered at the time the complaint is filed.⁴

[23] In this case, Steeple filed its complaints PR-2021-074 and PR-2021-075 with the Tribunal before DND cancelled the solicitations, which means that a designated contract existed at the time of filing the complaints.

[24] The Tribunal is of view that the Steeple raised legitimate questions in its complaints. However, the cancellation of the solicitation moots the need for any discussion of the issues. In this instance, the cancellation of the solicitation is an occasion to begin a replacement procurement process under new terms and circumstances.

[25] Nevertheless, the Tribunal expects government institutions to communicate with potential suppliers in a timely, transparent, and responsive matter. The failure to do so with Steeple has resulted in its need to file three complaints with the Tribunal, which might have been avoided if DND had informed Steeple that it intended to cancel the solicitations in response to its objections.

[26] This lack of communication and transparency from DND does not build confidence in DND's procurement process and forces potential suppliers to enforce their rights before the Tribunal. This may undermine relations between the supplier community and government institutions. In addition, situations like this unnecessarily mobilize the Tribunal's resources.

[27] In future cases, the Tribunal may consider awarding costs to complainants if proceedings like these can be avoided by government officials being more responsive in their communications with potential suppliers.

⁴ *Agence Gravel Inc. v. Department of Public Works and Government Services* (26 January 2017), PR-2016-035 (CITT) at para. 13. See also *R.P.M. Tech Inc. v. Department of Public Works and Government Services* (24 February 2014), PR-2013-028 (CITT) at para. 8.

DECISION

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

Cheryl Beckett

Cheryl Beckett
Presiding Member