



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File PR-2022-001

Terra Services Inc.

*Decision made
Wednesday, April 6, 2022*

*Decision and reasons issued
Thursday, April 7, 2022*

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

BY

TERRA SERVICES INC.

AGAINST

THE DEPARTMENT OF FISHERIES AND OCEANS

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, which is premature at this time because a response to Terra Services Inc.'s objection filed with the Department of Fisheries and Oceans on March 28, 2022, has not been received at the time of consideration of the documents on the record.

Frédéric Seppey

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Presiding Member

STATEMENT OF REASONS

[1] Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ (CITT Act) provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*² (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.

[2] 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 with the Tribunal 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.”

[3] On March 28, 2022, Terra Services Inc. (Terra Services) made an objection to the Department of Fisheries and Oceans (DFO), pursuant to subsection 6(2) of the Regulations, concerning the request for proposal in issue, within 10 working days of being notified of the results of the procurement process and a subsequent debriefing telephone conversation. When Terra Services filed its complaint, DFO had not yet responded to Terra Services’ objection.

[4] In the Tribunal’s view, the complaint is premature because Terra Services filed its complaint before having received an answer from DFO. The Tribunal takes note of Terra Services’ vigilance to the short timelines applicable to procurement complaints. It cannot, however, consider the complaint until after DFO has had the opportunity to answer Terra Services. For those reasons, the Tribunal will not conduct an inquiry into the complaint at this time.

[5] If this matter is not resolved between the parties and Terra Services wishes to pursue its grievance further to a response from DFO, Terra Services can file a new complaint with the Tribunal within 10 working days of receiving an answer from DFO.

[6] If Terra Services does not receive a response from DFO by April 22, 2022, then Terra Services will be able to consider that it has received “constructive knowledge of the denial of relief”, as envisaged by subsection 6(2) of the Regulations. In such an instance, Terra Services will have 10 working days from April 22, 2022, i.e. until May 6, 2022, to file a new complaint with the Tribunal.

[7] If it files a new complaint, Terra Services can request that the documentation already filed with the Tribunal be joined to the new complaint. The Tribunal will then consider the merits of the new complaint.

¹ R.S.C., 1985, c. 47 (4th Supp.).

² SOR/93-602.

DECISION

[8] Pursuant to subsection 30.13(1) of the CITT Act, the Tribunal has decided not to conduct an inquiry into the complaint, which is premature at this time because a response to Terra Services' objection filed with DFO on March 28, 2022, has not been received at the time of consideration of the documents on the record.

Frédéric Seppey

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Presiding Member