



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File PR-2021-070

Steeple Incorporated

*Decision made  
Monday, February 7, 2022*

*Decision and reasons issued  
Wednesday, February 16, 2022*

IN THE MATTER OF a complaint 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 complaint.

Peter Burn

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Peter Burn

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] This complaint relates to a solicitation issued by the Department of National Defence (DND) for the provision of various vehicular equipment components and parts (solicitation W8486-228424/A).

[3] In its complaint to the Tribunal, the complainant, Steeple Incorporated (Steeple), alleges that DND unfairly evaluated its alternatives to parts 9 and 10, which it claims to have the “form, fit and function equal . . . to an industry specification . . . as opposed to the specified part number” in DND’s Request for Proposal (RFP), which is not a standard part and stems from a private company.<sup>1</sup>

### BACKGROUND

[4] On November 26, 2021, DND published the solicitation, with a closing date of December 21, 2021.

[5] The solicitation allowed for many bidders to supply different parts out of a total of 27 items.

[6] Steeple submitted a bid for items 9 to 17 on or before the closing date.

[7] On January 21, 2022, DND sent Steeple a regret letter, advising that its bid had not achieved “the lowest evaluated price . . . under the Basis of Selection methodology described in the solicitation.”<sup>2</sup> The contract was awarded to Unisource Technology Inc., \$31,569.00; Simex Defence Inc., \$825.00; and JHT Defense Inc., \$2,436.00, for a total amount of \$34,830.00.<sup>3</sup>

[8] On January 24, 2022, Steeple inquired as to whether the alternative parts that it provided for the quoted items were “technically acceptable” or if its bid was too expensive.<sup>4</sup>

[9] On January 25, 2022, DND told Steeple that its proposed substitutes for items 9, 10, 14 and 15 were deemed non-compliant, whereas the other items it proposed were more expensive than those

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<sup>1</sup> Exhibit PR-2021-070-01 at 6.

<sup>2</sup> *Ibid.* at 18.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.* at 17.

of other bidders.<sup>5</sup> This prompted Steeple to ask DND to clarify why items 9 and 10 had been deemed non-compliant by the Technical Authority.<sup>6</sup>

[10] Later that same day, DND indicated that the Technical Authority is in charge of evaluating the substitutes and that, given the experience of the people in place as technical authorities, DND would not “question their decision”.<sup>7</sup>

[11] Steeple emailed DND back, indicating that it needed the information in order to understand which criteria were used in order to reject its alternatives for items 9 and 10.<sup>8</sup>

[12] On January 26, 2022, DND forwarded its Technical Authority’s answer to Steeple, which reads as follows: “[a]s per, [sic] DGMSSC/DISCO directive your supplier didn’t meet the standard DWG for Assign NATO Stock Number.”<sup>9</sup>

[13] On February 1, 2022, Steeple filed a complaint with the Tribunal.

## ANALYSIS

[14] 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;<sup>10</sup>
- (ii) the complainant is a potential supplier;<sup>11</sup>
- (iii) the complaint is in respect of a designated contract;<sup>12</sup> 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.<sup>13</sup>

[15] Paragraph 7(1)(b) requires that the complaint be made “in respect of a designated contract”.

[16] Section 30.1 of the CITT Act defines “designated contract” as follows:

*designated contract* means a contract for the supply of goods or services that has been or is proposed to be awarded by a government institution and that is designated or of a class of contracts designated by the regulations; (*contrat spécifique*)

[17] Subsection 3(1) of the Regulations provides the following:

**3(1)** For the purposes of the definition *designated contract* in section 30.1 of the Act, any contract or class of contract concerning a procurement of goods or services or any

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

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.* at 16.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.* at 15.

<sup>10</sup> Subsection 6(1) of the Regulations.

<sup>11</sup> Paragraph 7(1)(a) of the Regulations.

<sup>12</sup> Paragraph 7(1)(b) of the Regulations.

<sup>13</sup> Paragraph 7(1)(c) of the Regulations.

combination of goods or services, as described in Article II of the Agreement on Government Procurement, in Article *Kbis*-01 of Chapter *Kbis* of the CCFTA, in Article 1401 of Chapter Fourteen of the CPFTA, in Article 1401 of Chapter Fourteen of the CCOFTA, in Article 16.02 of Chapter Sixteen of the CPAFTA, in Article 17.2 of Chapter Seventeen of the CHFTA, in Article 14.3 of Chapter Fourteen of the CKFTA, in Article 19.2 of Chapter Nineteen of CETA, in Article 504 of Chapter Five of the CFTA, in Article 10.2 of Chapter Ten of CUFTA or in Article 15.2 of Chapter Fifteen of the TPP, that has been or is proposed to be awarded by a government institution, is a designated contract.

[18] For the following reasons, the Tribunal finds that the complaint has not been made in respect of a designated contract.

### **Complaint not made in respect of a designated contract**

[19] Steeple alleges that the substitute parts that it provided DND for items 9 and 10 have unfairly been deemed non-compliant and that the specified part numbers in DND's RFP refer to those used by a private company instead of referring to standard part numbers used in the industry.<sup>14</sup>

[20] The trade agreement provisions referred to in subsection 3(1) of the Regulations impose monetary thresholds which must be met for a procurement to be covered under their respective chapters.<sup>15</sup> The thresholds in effect for each trade agreement, for the period of January 1, 2022, through December 31, 2023, are published by the Treasury Board of Canada Secretariat in Contracting Policy Notice 2021-6 Trade Agreements: Thresholds Update.<sup>16</sup>

[21] The complaint and solicitation clearly indicate that the procurement in issue was for the provision of goods, namely spare vehicle parts. Additionally, the solicitation indicates that only the Canadian Free Trade Agreement (CFTA) is applicable.<sup>17</sup>

[22] Accordingly, the Tribunal finds that the monetary threshold for goods in the CFTA is applicable in determining whether the procurement is covered under the CFTA. Given that DND is a federal department, the threshold for federal entities applies to this analysis.

[23] The monetary threshold under the CFTA for goods procured by a federal entity is \$30,300.00.

[24] In its email to the Tribunal dated February 1, 2022, Steeple indicated that the value of the procured items at issue in the present file, i.e. items 9 and 10, is \$384.<sup>18</sup>

[25] The Tribunal therefore finds that, even though the procurement process as a whole could relate to a designated contract, as it has a total value of \$34,380, the value of the procured goods at issue (\$384) is well below the CFTA threshold for this type of procurement.

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<sup>14</sup> Exhibit PR-2021-070-01 at 6.

<sup>15</sup> See articles 504(3) and (4) of the Canadian Free Trade Agreement.

<sup>16</sup> Online: <https://www.canada.ca/en/treasury-board-secretariat/services/policy-notice/contracting-policy-notice-2021-6.html>.

<sup>17</sup> Exhibit PR-2021-070-01.C at 12.

<sup>18</sup> *Ibid.* at 43.

[26] The Tribunal therefore finds that the procurement process in question does not relate to a designated contract as defined in section 30.1 of the CITT Act and subsection 3(1) of the Regulations.<sup>19</sup>

[27] Given that the value of the goods in issue is lower than the CFTA threshold, it is possible that the Office of the Procurement Ombudsman (OPO) may have jurisdiction. Steeple should note that it may still be possible to access the recourse mechanism under the OPO process, as OPO's deadlines are longer than those of the Tribunal.

## **DECISION**

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

Peter Burn

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Peter Burn

Presiding Member

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<sup>19</sup> See, for example, *Providence Group v. Department of Foreign Affairs, Trade and Development* (1 April 2021), PR-2020-100 (CITT).