



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

ORDER AND REASONS

File No. PR-2020-056

Canadian Maritime
Engineering Ltd.

v.

Department Public Works and
Government Services

*Order issued
Tuesday, November 3, 2020*

*Reasons issued
Tuesday, November 17, 2020*

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IN THE MATTER OF a complaint filed by Canadian Maritime Engineering Ltd. pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C., 1985, c. 47 (4th Supp.);

AND FURTHER TO a decision to conduct an inquiry into the complaint pursuant to subsection 30.13(1) of the *Canadian International Tribunal Act*;

AND FURTHER TO a motion filed by Marine Recycling Corporation on October 29, 2020, pursuant to rule 24 of the *Canadian International Trade Tribunal Rules* (SOR/91-499), for the Canadian International Trade Tribunal to cease its inquiry on the grounds that the complaint was not filed within the time limits prescribed by section 6 of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (SOR/93-602).

BETWEEN

CANADIAN MARITIME ENGINEERING LTD.

Complainant

AND

**THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT
SERVICES**

**Government
Institution**

ORDER

The Canadian International Trade Tribunal has determined that the complaint by Canadian Maritime Engineering Ltd. was filed within the time limits prescribed by section 6 of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*. On the basis of the forgoing, the Tribunal hereby dismisses the motion by Marine Recycling Corporation.

Cheryl Beckett

Cheryl Beckett

Presiding Member

The statement of reasons will be issued at a later date.

STATEMENT OF REASONS

[1] Canadian Maritime Engineering Ltd. (CME) filed a complaint with the Canadian International Trade Tribunal on October 21, 2020, with respect to a procurement made by the Department of Public Works and Government Services (PWGSC), on behalf of the Department of Fisheries and Oceans, for the disposal of the former CCGS *W.E. Ricker* (Solicitation No. F7044-200238/A).

[2] This is the second complaint made by CME and the third complaint before the Tribunal related to Solicitation No. F7044-200238/A.¹ This complaint concerns allegations that PWGSC failed to evaluate CME's bid in accordance with the published evaluation criteria, applying undisclosed evaluation criteria and ignoring vital information contained in CME's bid.

[3] On October 26, 2020, the Tribunal accepted CME's complaint for inquiry, having determined that the complaint requirements contained at subsection 30.13(1) of the *Canadian International Tribunal Act*² and subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*³ had been met.

[4] On October 29, 2020, MRC filed a motion, under Rule 24 of the *Canadian International Trade Tribunal Rules*,⁴ requesting the Tribunal cease its inquiry into the matter, on the basis that CME's complaint was filed outside of the time limits prescribed under section 6 of the *Regulations*. MRC argued that the basis of CME's complaint should have reasonably become known to it on September 23, 2020, when it received the public version of MRC's complaint in PR-2020-038. CME replied to the motion on October 30, 2020.

[5] For the reasons that follow, the Tribunal is of the view that MRC's motion should be dismissed.

BACKGROUND

[6] MRC's complaint in PR-2020-038 was filed on September 9, 2020, and was accepted for inquiry on September 14, 2020.⁵

[7] On September 23, 2020, following confirmation from PWGSC that CME had been awarded the contract, the Tribunal notified CME regarding the inquiry for PR-2020-038,⁶ and provided CME a copy of the public version of MRC's complaint.

[8] On September 28, 2020, CME requested leave to intervene in PR-2020-038.

[9] In response to a request from MRC on September 30, 2020, to consolidate the Tribunal's proceedings for PR-2020-038 and PR-2020-044, the Tribunal requested submissions from the parties

¹ The other two complaints are procurement complaints No. PR-2020-038, filed by Marine Recycling Corporation (MRC) on September 9, 2020, and No. PR-2020-044, filed by CME on September 17, 2020.

² R.S.C., 1985, c. 47 (4th Supp.) [Act].

³ SOR/93-602 [Regulations].

⁴ SOR/91-499 [Rules].

⁵ Exhibit PR-2020-038-04 at 1.

⁶ Exhibit PR-2020-038-08 at 1.

on October 1, 2020. CME requested on October 2, 2020, access to the confidential version of MRC's complaint in PR-2020-038 to consider its position on the consolidation of the cases.⁷ CME submitted that it did not possess enough information to make an informed assessment of MRC's request with only the public version of MRC's complaint, which contained numerous and substantive redactions.

[10] On October 6, 2020, the Tribunal granted CME intervener status in PR-2020-038.⁸ On October 7, 2020, CME's counsel received access to MRC's confidential complaint.

[11] On October 8, 2020, CME requested from PWGSC its technical score breakdown. On October 13, 2020, PWGSC provided CME with its technical evaluation consensus results.⁹

ANALYSIS

[12] MRC submitted that its public complaint in PR-2020-038 provided CME with all of the information necessary for it to understand the issues that MRC claimed impacted their bid evaluation; only evaluation scores and verbatim quotations were redacted.¹⁰ CME was accordingly required pursuant to the *Regulations* to file its complaint no later than October 7, 2020, which is 10 days following the day on which CME received a copy of MRC's complaint.

[13] CME submitted MRC's motion should be dismissed. It argued that it could not have known its basis of complaint until it had access to the confidential version of MRC's complaint in PR-2020-038 as the public version of the complaint "did not disclose any information with which CME could assess the reasonableness and/or credibility of the matters complained about therein. Any and all meaningful information was entirely redacted from the public version"¹¹ Additionally, CME noted that its complaint (in PR-2020-056) concerned the evaluative errors made by PWGSC in respect of its own bid.

[14] Pursuant to sections 6 and 7 of the *Regulations*, a complaint must be filed within the prescribed time limits. In this respect, subsection 6(1) of the *Regulations* provides that a potential supplier has 10 working days "after the day on which the basis of the complaint became known or reasonably should have become known to the potential supplier" to file a complaint with the Tribunal. Subsection 6(2) of the *Regulations* provides that a potential supplier that has made an objection to the relevant government institution, and is denied relief by that government institution, 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, 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."

[15] In other words, a complainant has 10 working days from the date on which it first becomes aware, or reasonably should have become aware, of a ground of complaint, to either object to the government institution or file a complaint with the Tribunal.

⁷ Exhibit PR-2020-038-15.

⁸ Exhibit PR-2020-038-18 at 1.

⁹ Exhibit PR-2020-056-01 at 23-24.

¹⁰ Exhibit PR-2020-056-08 at 1-2.

¹¹ Exhibit PR-2020-056-09 at 1.

[16] As noted above, CME's complaint raises allegations concerning the manner in which its bid was evaluated, issues that were only revealed to it when PWGSC provided the consensus evaluation results. Accordingly, in the Tribunal's view, the basis of CME's complaint could not have become known before October 13, 2020. CME's basis of complaint was not formed when it became knowledgeable of the allegations made in MRC's complaint.

[17] The Tribunal is not persuaded that CME should have requested its bid evaluation information sooner. Insofar as CME sought access to the confidential version of the complaint, this was for the purposes of responding to the Tribunal's request for submissions regarding the appropriateness of consolidating the two complaints relating to the solicitation at issue. The Tribunal accepts that it was upon considering the entirety of MRC's complaint that CME felt compelled, despite that it was the winning bidder in the solicitation process, to determine whether there was a possibility that its bid may have been evaluated in a manner that contravened the applicable trade agreements.

[18] In any event, for the reasons above, CME could have only gained knowledge of its basis of complaint upon considering PWGSC's evaluation notes pertaining to its own bid.

[19] Accordingly, as CME filed its complaint within six working days after receiving its bid evaluation notes from PWGSC, the Tribunal finds that CME met the time limits prescribed under section 6 of *Regulations*.

Conclusion

[20] On the basis of the forgoing, the Tribunal hereby dismisses the motion by MRC.

Cheryl Beckett

Cheryl Beckett
Presiding Member