



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File PR-2022-016

GCPROC LTD.

*Decision made
Friday, June 10, 2022*

*Decision and reasons issued
Wednesday, June 15, 2022*

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

BY

GCPROC LTD.

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 because it is premature, as a response to GCPROC LTD.'s objection is still pending.

Frédéric Seppey

Frédéric Seppey
Presiding Member

STATEMENT OF REASONS

[1] GCPROC LTD. (GCPROC) responded to a notice of proposed procurement (NPP) issued by the Department of Public Works and Government Services (PWGSC), on behalf of the Department of Agriculture and Agri-Food (AAFC), for the supply of an insect rearing chamber capable of precise temperature and humidity control to raise laboratory colonies of live insects. GCPROC's submission was deemed not compliant with the following two mandatory requirements of the NPP:

- (1) the chamber must be designed for the following electrical requirement: 120 V, 15 Amp; and
- (2) the chamber must meet the following temperature ranges: +16°C to +50°C.

[2] GCPROC claims that its disqualification by PWGSC for failing to comply with these two mandatory requirements of the solicitation was unjustified. It submits that, with respect to the first requirement, its machine is designed to work with 120 V, as the unit plugs into a standard Canadian wall outlet. With respect to the second requirement, the offered product provides a wider range of temperatures, from 10°C to 50°C, which it submits also complies with the requested range of +16°C to +50°C. As a remedy, GCPROC asks that it be awarded the contract.

[3] 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. The Tribunal must first determine whether the complaint meets the conditions set out in the CITT Act and the Regulations. In the present case, the first relevant condition is whether the complaint was filed within the prescribed timelines.³

[4] For the reasons that follow, the Tribunal considers the complaint to be premature, and it will not initiate an inquiry at this time.

PROCEDURAL HISTORY

[5] The NPP was published on Buyandsell.gc.ca⁴ on March 3, 2022, with an initial closing date of April 6, 2022. Amendment 003 extended the closing date to April 20, 2022. A contract was awarded to Maple MultiTech Canada Inc. in the amount of \$44,716.00 on May 18, 2022 (contract 01804-220556/001/HAL).⁵

[6] On May 24, 2022, GCPROC received a regret email, informing it that its bid did not comply with two mandatory requirements with respect to the electrical requirement and the temperature range.⁶ The same day, GCPROC wrote to PWGSC to seek confirmation as to why its proposed

¹ R.S.C., 1985, c. 47 (4th Supp.).

² SOR/93-602.

³ Section 6 of the Regulations.

⁴ Online: <<https://buyandsell.gc.ca/procurement-data/tender-notice/PW-HAL-507-11492>>.

⁵ Online: <<https://buyandsell.gc.ca/procurement-data/award-notice/PW-HAL-507-11492-001>>.

⁶ Exhibit PR-2022-016-01 at 64-65.

product was deemed not compliant, pointing to elements in its proposal that demonstrated, in its view, compliance with these requirements.⁷

[7] PWGSC responded to GCPROC on May 25, 2022, maintaining its position with respect to non-compliance. It stated: “Your electrical specification of 115 V is not compliant with the required 120 V. Your temperature specification of +10°C to +50°C is outside the required window (+16°C is the minimum).”⁸ The same day, GCPROC replied that there is no difference in this voltage and that it could provide technical information from different manufacturers to prove the same. GCPROC said that the solicitation does not state a minimum or maximum of temperature but only the range that should be met. GCPROC further indicated that it would like to formally appeal the decision.⁹

[8] On the same day, GCPROC filed an objection with the appropriate team leader at PWGSC.¹⁰ On May 30, 2022, having not received an acknowledgement of its appeal, GCPROC followed up with PWGSC. PWGSC indicated that the appeal was still under review.¹¹

[9] On June 2, 2022, GCPROC followed up with PWGSC.¹² On June 3, 2022, PWGSC replied indicating that it was waiting for a response from AAFC (the client under the NPP) before it could respond to GCPROC.¹³

[10] On June 10, 2022, GCPROC filed the present complaint with the Tribunal.

ANALYSIS

GCPROC filed its objection without delay and in a timely fashion, hence suspending timelines for filing a complaint

[11] A complainant has 10 working days from the date on which it first becomes aware, or reasonably should have become aware, of its ground of complaint to either object to the government institution or file a complaint with the Tribunal.¹⁴ If it objects to the government institution within the designated time, it may file a complaint with the Tribunal within 10 working days after it has actual or constructive knowledge of the denial of relief by the government institution.¹⁵

[12] Filing an objection “pauses the clock” with respect to the time limits for filing a complaint with the Tribunal. GCPROC made a timely objection to PWGSC within 10 working days, as it became aware of the basis of the complaint when it received the regret email on May 24, 2022, stating that its bid was not compliant with all the mandatory requirements and made an objection the next day (May 25, 2022).

⁷ Exhibit PR-2022-016-01 at 62–63.

⁸ *Ibid.* at 61.

⁹ *Ibid.*

¹⁰ *Ibid.* at 57.

¹¹ *Ibid.* at 56–57.

¹² *Ibid.* at 55–56.

¹³ *Ibid.* at 55.

¹⁴ Subsection 6(1) of the Regulations.

¹⁵ Subsection 6(2) of the Regulations.

GCPROC has yet to be denied relief from PWGSC; the complaint is therefore premature

[13] When GCPROC filed its complaint with the Tribunal on June 10, 2022, it had not yet received a response from PWGSC regarding its objection, much less a denial of relief. In fact, PWGSC replied, on May 30, 2022, that it was apologetic for that delay and was waiting for a response from AAFC. PWGSC further replied that it would contact GCPROC once it received a response. PWGSC reiterated this point in a subsequent email exchange on June 3, 2022.

[14] Given that PWGSC has yet to reply to GCPROC, the Tribunal considers that GCPROC's objection remains pending with PWGSC. As such, the record indicates that GCPROC has not yet received actual or constructive denial of relief within the meaning of the Regulations. The Tribunal therefore considers the complaint to be premature and will not conduct an inquiry at this time.

GCPROC preserves its right to re-submit a complaint should it receive denial of relief

[15] The Tribunal's decision does not preclude GCPROC from filing a new complaint within 10 working days of receiving denial of relief from PWGSC.

[16] Alternatively, if PWGSC fails to respond to GCPROC's objection within 20 calendar days of the issuance of these reasons (that is, by July 5, 2022), GCPROC may consider the lack of response as denial of relief and would then have 10 working days to file a new complaint with the Tribunal. Upon filing a new complaint, GCPROC may request that the documentation already filed with the Tribunal be joined to the new complaint.

DECISION

[17] 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, as a response to GCPROC's objection is still pending.

Frédéric Seppey

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Presiding Member