



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File PR-2022-012

Everyday Canadian Moving

*Decision made
Friday, May 27, 2022*

*Decision and reasons issued
Monday, June 13, 2022*

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

BY

EVERYDAY CANADIAN MOVING

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.

Georges Bujold

Georges Bujold

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.

SUMMARY OF THE COMPLAINT

[2] The complaint relates to a request for standing offer (RFSO) (solicitation ET959-221405/A) issued on December 10, 2021, by the Department of Public Works and Government Services (PWGSC). The RFSO invited suppliers to submit bids for the provision of moving services consisting of pickup, delivery and installation of office furnishings on an “as required” basis in the vicinity of Winnipeg, Manitoba.

[3] The complainant, Everyday Canadian Moving (Canadian Moving), alleges that it submitted the lowest-priced tender in response to the solicitation and should have been awarded the contract by PWGSC. Canadian Moving claims that it submitted a responsive bid to the solicitation and that PWGSC erred in finding its bid non-responsive and in issuing a standing offer to another bidder.

[4] For the reasons set out below, the Tribunal has decided not to conduct an inquiry into the complaint.

BACKGROUND

[5] The RFSO was issued on December 16, 2021, with a bid closing date of January 18, 2022.³

[6] On January 5, 2022, Canadian Moving sent a bid proposal by email directly to PWGSC’s standing offer authority. On the same day, PWGSC informed Canadian Moving that it could not accept bids emailed directly to it and that, in any case, it would be unable to view any bids until after the bid closing date.⁴ PWGSC directed Canadian Moving to a hyperlink to the solicitation in question on Buyandsell.gc.ca⁵ and invited Canadian Moving to read through the solicitation documents.⁶

[7] On May 10, 2022, PWGSC informed Canadian Moving that its bid was deemed non-responsive and that a standing offer had been issued to another bidder, Shortline Moving Services.⁷ PWGSC explained that Canadian Moving’s bid was non-responsive because it was

¹ R.S.C., 1985, c. 47 (4th Supp.).

² SOR/93-602.

³ PR-2022-012-01.H at 1.

⁴ PR-2022-012-01.B at 1.

⁵ At the time of publication, the Buyandsell.gc.ca site had been replaced by CanadaBuys, online: <<https://canadabuys.canada.ca/en>>.

⁶ *Ibid.*

⁷ PR-2022-012-01.A at 3.

missing necessary elements related to pricing. Specifically, PWGSC had not received the required Annex B pertaining to the “Basis of Payment”.⁸

[8] Canadian Moving filed various documents with the Tribunal between May 12 and 24, 2022. Pursuant to paragraph 96(1)(b) of the *Canadian International Trade Tribunal Rules*, its complaint was considered properly filed on that date.⁹

ANALYSIS

[9] Pursuant to sections 6 and 7 of the Regulations, after receiving a complaint that complies with subsection 30.11(2) of the CITT Act, the Tribunal must determine whether the following four conditions are met before it launches an inquiry:

- (i) the complaint has been filed within the prescribed time limits;¹⁰
- (ii) the complainant is a potential supplier;¹¹
- (iii) the complaint is in respect of a designated contract;¹² and
- (iv) the information provided discloses a reasonable indication that the procurement has not been conducted in accordance with the applicable trade agreements.¹³

[10] The complaint was considered to have been filed on May 24, 2022, within 10 working days of receipt of the email from PWGSC dated May 10, 2022, informing Canadian Moving of the outcome of the solicitation. The complaint is therefore timely, as it was filed within the time limits required under subsection 6(1) of the Regulations.

[11] However, the Tribunal has determined that another condition for the initiation of an inquiry was not met in this case. Specifically, for the reasons that follow, the Tribunal has decided not to conduct an inquiry into Canadian Moving’s complaint, as the information provided does not disclose a reasonable indication that the procurement was not conducted in accordance with the applicable trade agreements, which, in this case, includes the Canadian Free Trade Agreement.¹⁴

⁸ *Ibid.* at 3–4.

⁹ Canadian Moving filed documents with the Tribunal on May 12, 13, 16, 17, 19, 20, and 24, 2022. The complaint was deemed complete and, thus, compliant with subsection 30.11(2) of the CITT Act on May 24, 2022. See PR-2022-012-03 at 1.

¹⁰ Section 6 of the Regulations.

¹¹ Paragraph 7(1)(a) of the Regulations.

¹² Paragraph 7(1)(b) of the Regulations.

¹³ Paragraph 7(1)(c) of the Regulations.

¹⁴ The tender notice on Buyandsell.gc.ca indicates that the procurement is subject to several of Canada’s trade agreements applicable to this procurement, including, *inter alia*, the Canadian Free Trade Agreement. See the description on Buyandsell.gc.ca, online: <<https://canadabuys.canada.ca/en/tender-opportunities/tender-notice/pw-wpg-006-11294>>, available at the time of publication on CanadaBuys, online: <https://canadabuys.canada.ca/en/tender-opportunities/tender-notice/pw-wpg-006-11294>.

Canadian Moving failed to comply with the offer preparation instructions

[12] Part 3 of the RFSO provided clear instructions that were to be followed by a potential bidder. Specifically, Part 3.1 provided the following:¹⁵

3.1 Offer Preparation Instructions

...

Prices must appear in the financial bid only. No prices must be indicated in any other section of the bid.

...

Section II: Financial Bid

Offerors must submit their financial bid in accordance with the Basis of Payment at Annex B, Basis of Payment.

[13] The evidence on the record shows that Canadian Moving failed to provide a completed Annex B with its bid submission. It therefore failed to provide information relating to the basis of payment information requested in the RFSO.¹⁶ On this basis alone, Canadian Moving's bid was non-responsive, and its complaint therefore has no valid basis.

[14] Canadian Moving explained that it did not complete Annex B, as it misunderstood the instructions of the RFSO. Canadian Moving had understood that the budget of the solicitation was \$100,000.00 and, therefore, that it did not have to provide details on its pricing through Annex B. It came to that conclusion by reasoning that, because section 7.9, "Limitation of Call-ups", indicated that "[i]ndividual call-ups against the Standing Offer must not exceed \$100,000.00 (Applicable Taxes included)",¹⁷ it was sufficient for it to rely on the \$100,000.00 amount specified in the table in Annex E titled "STANDING OFFER USAGE REPORT (EXAMPLE)". By so doing, in Canadian Moving's mind, it had effectively indicated that its bid price would be \$100,000.00.¹⁸

[15] The Tribunal notes that Annex E is not related to the basis of payment pricing but instead provides only an example of a standing offer usage report that may be used by an eventual winning bidder to "implement a system for tracking call-ups against this standing offer in order to provide usage reports and ensure that the financial limitation is not exceeded."¹⁹ As such, it is important to stress that Annex E was entirely unrelated to the basis of payment information requested via Annex B.

[16] While the mistake that Canadian Moving committed is unfortunate, it cannot be excused given the unambiguous terms of the RFSO, which must be strictly adhered to and given effect by PWGSC. Section 3.1 of the RFSO clearly stated that "[p]rices must appear in the financial bid only.

¹⁵ PR-2022-012-01.H at 10–11.

¹⁶ *Ibid.* at 25.

¹⁷ PR-2022-012-01.F at 6, 8; PR-2022-012-01.H at 17, 33.

¹⁸ PR-2022-012-01.F at 8; PR-2022-012-01.H at 33.

¹⁹ PR-2022-012-01.H at 33.

No prices must be indicated in any other section of the bid.”²⁰ In this case, the only information related to prices included in Canadian Moving’s proposal appeared in another section of the bid.

[17] While not included in the main RFSO document, Annex B was nevertheless provided along with other solicitation documents on Buyandsell.gc.ca as an obvious attachment to the RFSO to be downloaded, reviewed and completed by potential suppliers.²¹ It was incumbent on Canadian Moving to download this document. If any instructions were unclear to Canadian Moving, it ought to have contacted PWGSC prior to the bid closing date to seek clarification.²²

[18] Ultimately, it is the responsibility of bidders to ensure compliance with all the terms of the solicitation. Canadian Moving ought to have read through the solicitation documents to ensure that it had downloaded and completed all relevant materials pertaining to the RFSO. Despite being encouraged to do so and provided with a link to the solicitation by PWGSC,²³ Canadian Moving failed to provide any document indicating the basis of payment information requested in Annex B of the RFSO. Without Annex B, its bid was not complete and properly deemed as such.

[19] The Tribunal concludes that PWGSC committed no reviewable error and, therefore, that the complaint discloses no reasonable indication that the procurement process was not conducted in accordance with the applicable trade agreements.

DECISION

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

Georges Bujold

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Presiding Member

²⁰ *Ibid.* at 10.

²¹ See on Buyandsell.gc.ca, online: <<https://buyandsell.gc.ca/procurement-data/tender-notice/PW-WPG-006-11294>> available at the time of publication on CanadaBuys, online: <<https://canadabuys.canada.ca/en/tender-opportunities/tender-notice/pw-wpg-006-11294>>.

²² In fact, section 2.4 of the RFSO indicated that all inquiries by potential suppliers had to be submitted in writing to the Standing Offer Authority before the RFSO’s closing date.

²³ PR-2022-012-01.B at 1.