



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File PR-2022-036

Mist Mobility Integrated Systems
Technology Inc.

*Decision made
Wednesday, August 17, 2022*

*Decision and reasons issued
Monday, August 22, 2022*

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

BY

MIST MOBILITY INTEGRATED SYSTEMS TECHNOLOGY INC.

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. Since the complainant has not yet received a definitive response to its objection from the government institution, the complaint is premature.

Peter Burn

Peter Burn
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[es] 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, subsection 6(2) of the Regulations provides that 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.”

ANALYSIS

[3] This complaint is filed by Mist Mobility Integrated Systems Technology Inc. (MMIST) and relates to a request for standing offer (RFSO) (solicitation W6399-22LI26/B), issued by the Department of Public Works and Government Services, also known as Public Services and Procurement Canada (PSPC),³ on behalf of the Department of National Defence (DND), for the provision of Guided Precision Aerial Delivery Systems.

[4] This complaint is the second of two complaints filed by MMIST with respect to the solicitation at issue.

[5] MMIST filed a first complaint (PR-2022-029) with the Tribunal on July 27, 2022. The Tribunal decided not to conduct an inquiry into this complaint, as it determined that it had been filed prematurely.⁴ MMIST had made an objection to PSPC, raising concerns with respect to the procurement process,⁵ and requested three distinct remedies, namely the cancellation of the solicitation, the completion of industry consultations and the review of technical requirements.⁶ The Tribunal ultimately found that MMIST had not yet been denied relief and that its objection remained

¹ R.S.C., 1985, c. 47 (4th Supp.).

² SOR/93-602.

³ See the Federal Identity Program registry of applied titles, online: <<https://www.tbs-sct.gc.ca/ap/fip-pcim/regeng.asp>>.

⁴ *Mist Mobility Integrated Systems Technology Inc.* (29 July 2022), PR-2022-029 (CITT).

⁵ Among various concerns that were raised by MMIST in its correspondence dated June 22, 2022, and further supplemented by way of correspondence dated August 5, 2022, MMIST more specifically had concerns with respect to mandatory technical criterion 1(b) provided under Annex E to the RFSO, also referred to as the “proven design” requirement; Exhibit PR-2022-036-01 at 20–21, 26–27; Exhibit PR-2022-036-05.

⁶ Exhibit PR-2022-036-01 at 6.

pending and under consideration by PSPC. The Tribunal highlighted the pressing nature of MMIST's objection, given that the solicitation was originally set to close on August 4, 2022.⁷

[6] The Tribunal notes that, since the Tribunal issued its decision, PSPC has extended, by way of amendment, the solicitation closing date to September 8, 2022.⁸

[7] MMIST filed the present complaint (PR-2022-036) on August 15, 2022. In this complaint, MMIST relies essentially on the same grounds of complaint and allegations that were advanced in the first complaint.⁹ Additionally, MMIST stresses, among other things, that PSPC has not yet cancelled the solicitation, that communications with PSPC have been ineffective to date and that PSPC has been reluctant to engage in meaningful discussion or consultation with MMIST.¹⁰ As a result, MMIST is of the view that its request for remedy has been denied by PSPC.¹¹

[8] Although the Tribunal appreciates MMIST's desire to seek a prompt resolution of its grievances raised before PSPC, the Tribunal is unable to conclude that MMIST is deemed to have actual or constructive knowledge of a denial of relief by PSPC within the meaning of subsection 6(2) of the Regulations.

[9] Rather, the evidence on record indicates that the objection or resolution process before PSPC is ongoing. PSPC is currently in the process of initiating an upcoming industry engagement¹² and has reiterated its commitment to engage in discussions with MMIST in the appropriate manner¹³. With respect to the other concerns or comments that were raised by MMIST, PSPC indicated, by way of correspondence, that it "will share [it] with [the] DND colleagues and provide a reply in the appropriate manner as soon as practicable."¹⁴ The Tribunal is therefore unable to find that PSPC conclusively denied relief to MMIST's objection at this time, the solicitation closing date having been extended since the issuance of the Tribunal's first decision.¹⁵

[10] Accordingly, the Tribunal finds that MMIST's complaint to the Tribunal is still premature. MMIST's objection remains pending and is still under consideration before PSPC.

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

[12] Having regard to the circumstances at hand, in the event that MMIST does not receive a response from PSPC that conclusively addresses its concerns or a denial of relief within 20 calendar days of the issuance of these reasons or by the solicitation closing date (whether it is extended or

⁷ See the Tribunal's decision in PR-2022-029.

⁸ Exhibit PR-2022-036-01 at 11–12, 33–34.

⁹ *Ibid.*

¹⁰ *Ibid.* at 8–9.

¹¹ *Ibid.* at 26.

¹² *Ibid.* at 28–29, 35; The Tribunal notes that the details of the said industry engagement, including its duration, remain unknown at the time of writing these reasons.

¹³ Exhibit PR-2022-036-01 at 29.

¹⁴ *Ibid.*

¹⁵ PSPC extended the solicitation closing date, by way of amendment, on the same day the Tribunal issued its decision in PR-2022-029, i.e. July 29, 2022.

not), whichever delay comes first, the Tribunal may construe PSPC's silence as a constructive denial of relief, subject to any facts or changed circumstances that may arise.

[13] If MMIST decides to file a new complaint, the Tribunal will then decide whether to inquire into the complaint, having regard to the conditions necessary to initiate an inquiry.

DECISION

[14] Pursuant to subsection 30.13(1) of the CITT Act, the Tribunal has decided not to conduct an inquiry into the complaint. Since the complainant has not yet received a definitive response to its objection from the government institution, the complaint is premature.

Peter Burn

Peter Burn
Presiding Member