



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File PR-2022-054

Hakson Safety Wears Inc.

*Decision made
Tuesday, November 22, 2022*

*Decision and reasons issued
Friday, November 25, 2022*

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

BY

HAKSON SAFETY WEARS 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.

SUMMARY OF THE COMPLAINT

[2] This complaint was filed by Hakson Safety Wears Inc. (Hakson) on November 17, 2022, and concerns a request for proposal (RFP) (solicitation M7594-225087/A) issued by the Department of Public Works and Government Services (PWGSC) on behalf of the Royal Canadian Mounted Police (RCMP) for the provision of 4,000 pairs of unisex, slash-resistant gloves. The contract related to this procurement has not yet been awarded.

[3] As part of the bidding process, potential suppliers had to send a pre-award package of glove samples ranging from a size XXS to a size XXL to the RCMP warehouse.

[4] On November 4, 2022, PWGSC advised Hakson that a sample size M was missing from its package and that its bid would be declared non-responsive if the sample was not received at the RCMP warehouse within three business days (i.e. by November 9, 2022).³

[5] On November 7, 2022, Hakson informed PWGSC that the requested sample size would only reach the RCMP warehouse on November 15, 2022, given that it was being shipped from Pakistan, and inquired whether it could have more time to submit the sample.⁴ PWGSC indicated that it would pass the information on to the RCMP and that it would get back to Hakson.⁵

[6] On November 9, 2022, having not yet received a response on this matter, Hakson followed up with PWGSC.⁶ PWGSC simply reiterated that the sample had to be received by November 9, 2022, without which the bid would be deemed non-responsive, as per requirement 4.1.1.1 of the RFP.⁷

¹ R.S.C., 1985, c. 47 (4th Supp.).

² SOR/93-602.

³ Exhibit PR-2022-054-01A at 14.

⁴ *Ibid.* at 18.

⁵ *Ibid.* at 14.

⁶ *Ibid.* at 27.

⁷ *Ibid.* at 26. The text of requirement 4.1.1.1 reads as follows: “All bids received will be evaluated for completeness. If any Mandatory Technical Criteria is missing from a bid, the Contracting Authority will inform the Bidder in writing and provide the Bidder with three (3) working days from the request to submit the missing samples or supporting documentation. Failure to provide the Mandatory Technical Criteria within the timeframe will result in the bid being declared non-responsive.” See Exhibit PR-2022-054-01 at 28 for the full text.

[7] On the same day, Hakson objected to PWGSC's response and alleged that its sample had been lost at the RCMP warehouse because Hakson's initial package included all sample sizes.⁸ Hakson also indicated that it would send another sample for the RCMP's benefit but that it should be considered as an additional sample, rather than a missing one.⁹ Hakson finally sent several emails inquiring whether the RCMP had found the size M gloves upon reviewing the content of its samples package.¹⁰ PWGSC did not address whether the sample could have been lost nor whether anyone at the RCMP warehouse had reviewed the content of Hakson's package.

[8] The sample was received at the RCMP warehouse on November 10, 2022,¹¹ and PWGSC emailed Hakson and reiterated that its sample was required by November 9, 2022.¹²

[9] On November 14 and 17, 2022, Hakson submitted a complaint to the Tribunal. It alleged that its initial samples package contained all required sample sizes and that the size M gloves had been lost at the RCMP warehouse as a result of having been mishandled.¹³ As a result, Hakson claims that it was unfair that requirement 4.1.1.1 of the RFP was applied and that it should have been given more time to submit the size M gloves.¹⁴ Hakson also submits that its bid has unfairly been deemed non-responsive even though it submitted the sample on the morning of November 10, 2022.¹⁵

[10] For the reasons below, the Tribunal finds that Hakson's complaint is premature. As such, the Tribunal has decided not to conduct an inquiry at this time.

ANALYSIS

[11] 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 such a case, 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."

[12] Based on the record, the Tribunal finds that the complaint is premature because Hakson filed its complaint before having received an answer from PWGSC regarding whether the missing sample had been lost at the RCMP warehouse.

[13] Having reviewed all the documents on the record, the Tribunal observes that PWGSC has not provided a response to Hakson's query as to whether the RCMP had mishandled Hakson's package and lost the size M gloves. Indeed, PWGSC has avoided answering the question and simply maintained that the missing sample was due by November 9, 2022. Moreover, although PWGSC indicated that the responsiveness of Hakson's bid was conditional on the sample being shipped to the

⁸ Exhibit PR-2022-054-01A at 26.

⁹ *Ibid.*

¹⁰ *Ibid.* at 30, 34, 38, 42.

¹¹ *Ibid.* at 58.

¹² *Ibid.* at 52.

¹³ *Ibid.* at 2, 6.

¹⁴ Exhibit PR-2022-054-01 at 6.

¹⁵ *Ibid.* at 2.

RCMP warehouse by November 9, 2022, PWGSC has not yet indicated that Hakson's proposal has in fact been rejected. Overall, the Tribunal finds that PWGSC has not yet definitively denied relief to Hakson's objection.

[14] The Tribunal takes note of Hakson's vigilance in respecting the short timelines applicable to procurement complaints. However, in view of the statutory scheme setting out the Tribunal's bid challenge mechanism, the Tribunal cannot consider the merits of the complaint until after PWGSC has had the opportunity to respond to Hakson's grievance outlined in its objection. For those reasons, the Tribunal will not conduct an inquiry into the complaint at this time.

[15] The Tribunal's decision does not preclude Hakson from filing a new complaint. Should the matter not be resolved between the parties and should Hakson wish to pursue its grievance, it may file another complaint with the Tribunal within 10 working days from the date that PWGSC informs Hakson that its request for relief has been denied.

[16] Alternatively, if PWGSC does not reply to Hakson's objection within a reasonable timeframe, Hakson may also file a new complaint with the Tribunal. In the circumstances, the Tribunal would consider a reasonable delay to be 30 calendar days from the issuance of these reasons, after which time Hakson may construe the lack of response to be a denial of relief. In such a case, Hakson would have 10 working days (starting on December 25, 2022) to file a new complaint with the Tribunal. Upon filing a new complaint, Hakson 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 at this time. The complaint is premature because a response to Hakson's objection filed with PWGSC on November 9, 2022, was not received at the time of consideration of the documents on the record.

Peter Burn
Peter Burn
Presiding Member