



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File PR-2022-050

Newland Canada Corporation

*Decision made
Monday, October 31, 2022*

*Decision and reasons issued
Thursday, November 10, 2022*

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

BY

NEWLAND CANADA CORPORATION

AGAINST

THE DEPARTMENT OF NATIONAL DEFENCE

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.

Cheryl Beckett

Cheryl Beckett
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 by Newland Canada Corporation (Newland) relates to a request for proposal (RFP) (solicitation W8484-23-0296/A) issued by the Department of National Defence (DND) for hotel accommodation services in Romania.

[3] This is the third complaint by Newland with respect to the procurement at issue. In the first complaint (PR-2022-027), the Tribunal concluded that the complaint did not disclose a reasonable indication of a breach of a trade agreement obligation.³ The Tribunal initiated an inquiry into Newland's second complaint (PR-2022-037), which is ongoing at the date of issuance of the present decision.

[4] In the present complaint, Newland claims that DND did not act in accordance with the terms of the RFP by:

- (i) making a 50 percent deposit payment to the contract awardee, as there was no mention in the RFP of the possibility for the winning bidder to be paid in advance; and
- (ii) selecting an establishment that failed to meet some of the mandatory requirements contained in the RFP.⁴

[5] On October 31, 2022, the Tribunal decided not to conduct an inquiry into the present complaint. The reasons for that decision follow.

ANALYSIS

[6] 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 can conduct an inquiry:

- (i) the complaint has been filed within the time limits prescribed by section 6 of the Regulations;

¹ R.S.C., 1985, c. 47 (4th Supp.).

² SOR/93-602.

³ See *Newland Canada Corporation* (4 August 2022), PR-2022-027 (CITT).

⁴ Exhibit PR-2022-050-01 at 1, 3.

- (ii) the complainant is a potential supplier;
- (iii) the complainant is in respect of a designated contract; and
- (iv) the information provided discloses a reasonable indication that the procurement has not been conducted in accordance with the relevant trade agreements.

[7] The Tribunal finds that the first condition is not met with regard to the first ground of complaint.

[8] Pursuant to subsections 6(1) and 6(2) of the Regulations, 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 (1) object to the government institution or (2) file a complaint with the Tribunal. If a complainant objects to the government institution within this time frame and is denied relief, then the complainant may file a complaint with the Tribunal within 10 working days of receiving actual or constructive knowledge of the denial of relief.

[9] With regard to Newland's first ground of complaint—knowledge that DND had made a 50 percent deposit payment to the contract awardee, G+ Industries—it became known to Newland on October 4, 2022, when it was served with the government institution report produced by DND in the context of file PR-2022-037.⁵ Accordingly, following subsection 6(1) of the Regulations, Newland would have had to file a complaint on this first ground with the Tribunal by October 19, 2022, at the latest.⁶

[10] Newland submitted the present complaint to the Tribunal on October 24, 2022, well outside of the time limits established in the Regulations. As such, the complaint on this first ground of complaint is late.

[11] In its second ground of complaint, Newland claims that DND wrongly evaluated G+ Industries' bid, given that Hotel Parc, the establishment it offered, did not comply with all the mandatory requirements of the RFP. Specifically, Newland submits that this establishment does not provide the appropriate facilities for self-catering and does not provide an appropriate conference space.⁷

[12] However, this issue is part of the grounds of complaint raised by Newland in its second complaint related to this RFP and accepted for inquiry by the Tribunal in file PR-2022-037. The Tribunal's inquiry in file PR-2022-037 is currently ongoing. As such, there is no basis for the Tribunal to initiate a new inquiry on this ground. The matters before the Tribunal in file PR-2022-037 will be disposed of in due course in the context of that proceeding.

⁵ Exhibit PR-2022-050-03 at para. 25.

⁶ There is no evidence before the Tribunal indicating that Newland first made an objection on this issue to DND. As such, subsection 6(2) of the Regulations is not relevant.

⁷ Exhibit PR-2022-050-01 at 3. See paras. 2.1.5, 2.7.1 of Annex "A" (Statement of Work) of the RFP.

DECISION

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

Cheryl Beckett

Cheryl Beckett
Presiding Member