



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File PR-2022-052

Nitsom Promotional Manufacturing
Corp.

*Decision made
Wednesday, November 9, 2022*

*Decision and reasons issued
Thursday, November 17, 2022*

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

BY

NITSOM PROMOTIONAL MANUFACTURING CORP.

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.

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

[1] The complaint relates to a request for a standing offer (RFSO) (solicitation 51019-220926/B) issued on August 19, 2022, by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of Veterans Affairs (VAC). The RFSO invited proposals for the provision of Canada Remembers lapel pins and cards, to be delivered to VAC in Charlottetown, Prince Edward Island.

[2] At issue in this complaint is whether the winning bid satisfied the requirements of the RFSO. Nitsom Promotional Manufacturing Corp.'s (Nitsom) complaint is based on the allegation that the bid of the winning bidder, Trimtag Trading Inc. (Trimtag), did not meet all the RFSO's mandatory criteria. In particular, Nitsom alleges that Trimtag's individual lapel pins do not weigh 1 gram (± 5 percent) as required by the RFSO. Nitsom requested the termination of the awarded contract and the re-tender of the solicitation. Nitsom also requested reimbursement of its bid preparation costs and a postponement of the contract award.³

[3] On November 9, 2022, the Tribunal decided not to conduct an inquiry into the complaint. The reasons for the decision are set out below.

BACKGROUND

[4] Nitsom submitted a bid in response to the RFSO before bid closing time, which was evaluated by PWGSC. On October 19, 2022, PWGSC issued an award notice on canadabuys.canada.ca informing that the contract had been awarded to Trimtag.⁴

[5] On October 21, 2022, PWGSC contacted Nitsom to indicate that it would not be awarded the contract because its bid was found to be non-compliant with several mandatory requirements of the solicitation, specifically that its pins did not respect the specified dimensions, weight, and colours and its support cards did not meet the dimensions requested.⁵ Nitsom does not contest the evaluation, and rejection, of its own bid.

¹ R.S.C., 1985, c. 47 (4th Supp.).

² SOR/93-602.

³ Exhibit PR-2022-052-01 at 5.

⁴ See on [canadabuys.canada.ca](https://canadabuys.canada.ca/en/tender-opportunities/award-notice/51019-220926001mct), online: <<https://canadabuys.canada.ca/en/tender-opportunities/award-notice/51019-220926001mct>>.

⁵ Exhibit PR-2022-052-01.A at 86.

[6] Between October 21 and 26, 2022, Nitsom and PWGSC exchanged several emails in which Nitsom sought to get information on the characteristics of the winning bidder's lapel pins.⁶

[7] On October 26, 2022, PWGSC informed Nitsom that this information was confidential and that it could not share details on the evaluations of specific bids.⁷ PWGSC also confirmed that the winning bid met all the requirements of the RFSO.⁸

[8] On October 31 and November 2, 2022, Nitsom filed a complaint with the Tribunal.

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;⁹
- (ii) the complainant is a potential supplier;¹⁰
- (iii) the complaint is in respect of a designated contract;¹¹ and
- (iv) the information provided discloses a reasonable indication that the procurement has not been conducted in accordance with the applicable trade agreements.¹²

[10] With respect to the fourth condition, pursuant to paragraph 7(1)(c) of the Regulations, the Tribunal must determine whether the information provided by the complainant, and any other information examined by the Tribunal, discloses a reasonable indication that the procurement was not conducted in accordance with any of the applicable trade agreements set out in that paragraph. The Tribunal has previously described the threshold as follows:

In procurement complaints, the party alleging that a procurement has not been conducted in accordance with the applicable trade agreements must provide some proof to support that claim. This is not to say that the complainant in a procurement dispute under one of the agreements has the burden of proving all necessary facts as a plaintiff generally does in a civil case ... However, the complainant must provide sufficient facts or arguments to demonstrate a reasonable indication that a breach of one of the trade agreements has taken place.¹³

[11] In this case, the Tribunal has decided not to conduct an inquiry into Nitsom's complaint, as the information provided does not disclose a reasonable indication that the procurement has not been

⁶ *Ibid.* at 83–89.

⁷ *Ibid.* at 86.

⁸ *Ibid.* at 85.

⁹ Section 6 of the Regulations.

¹⁰ Paragraph 7(1)(a) of the Regulations.

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

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

¹³ *Paul Pollack Personnel Ltd. o/a The Pollack Group Canada* (24 September 2013), PR-2013-016 (CITT) at para. 27, citing *K-Lor Contractors Services Ltd.* (23 November 2000), PR-2000-023 (CITT) [*K-Lor*] at 6.

conducted in accordance with the applicable trade agreements, which, in this case, includes the Canadian Free Trade Agreement (CFTA).¹⁴

[12] In the present case, the evidence on the record suggests that PWGSC conducted the evaluation in accordance with the solicitation documents, as required by applicable trade agreements, and was satisfied that all the mandatory requirements of the solicitation were met by Trimtag's bid, including the requirement pertaining to the weight of the lapel pins. In the present case, the Tribunal finds that no evidence submitted by Nitsom suggests that the winning bidder's lapel pin's "weight was more than 1 Gram" and that the lapel pin did not meet the requirements of the RFSO.

[13] Indeed, Nitsom's complaint regarding the alleged acceptance by PWGSC of a non-compliant bid rests solely on an allegation unsupported by any evidence. Indeed, in its complaint, Nitsom does not present any factual evidence to support its allegation that Trimtag's lapel pins did not meet the weight requirement set out in the RFSO. Furthermore, nothing in the exchange between PWGSC and Nitsom suggests that Trimtag's lapel pin did not meet the requirement set out in the RFSO or that PWGSC had any reason to believe that it did not meet the requirement. Nitsom also argues that it is "impossible the weight of the lapel pin is 1 gram in this physical world".¹⁵ However, Nitsom provides no evidence to support its claim.

[14] While paragraph 7(1)(c) of the Regulations does not impose a high threshold, a party challenging a procurement must provide some evidence in support of its claim.¹⁶ Mere allegations are insufficient to establish a reasonable indication of a breach of the trade agreements.¹⁷ The Tribunal requires some factual evidence, beyond simple assertions by the complainant, demonstrating that PWGSC may have evaluated the winning bid inconsistently with the criteria of the RFSO.

[15] For the foregoing reasons, the Tribunal finds that the complaint discloses no reasonable indication that the procurement process was not conducted in accordance with the applicable trade agreements.

DECISION

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

Peter Burn
Peter Burn
Presiding Member

¹⁴ A list of the applicable trade agreements, which include the CFTA, is available on [Canadabuys.canada.ca](https://canadabuys.canada.ca/en/tender-opportunities/award-notice/51019-220926001mct), online: <<https://canadabuys.canada.ca/en/tender-opportunities/award-notice/51019-220926001mct>>.

¹⁵ Exhibit PR-2022-052-01.A at 84.

¹⁶ *K-Lor*.

¹⁷ *Smiths Detection Montreal Inc.* (14 August 2020), PR-2020-016 (CITT) at para. 25; *Talmack Industries Inc.* (20 November 2018), PR-2018-040 (CITT) at para. 13. See also *Manitex Lifting ULC* (19 March 2013), PR-2012-049 (CITT) at para. 22; *Vesseys Seeds Limited, doing business as Club Car Atlantic* (10 February 2010), PR-2009-079 (CITT) at para. 9; *Flag Connection Inc.* (25 January 2013), PR-2012-040 (CITT); *Tyco Electronics Canada ULC* (24 March 2014), PR-2013-048 (CITT) at para. 12.