



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File PR-2022-047

Archéoconsultant Inc.

*Decision made
Friday, October 21, 2022*

*Decision and reasons issued
Tuesday, October 25, 2022*

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

BY

ARCHÉOCONSULTANT INC.

AGAINST

THE PARKS CANADA AGENCY

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 because it is premature. Indeed, Archéoconsultant Inc. has not yet received a response to its objection raised with the Parks Canada Agency.

Archéoconsultant Inc. may file a new complaint in a timely manner, if necessary, as explained in the statement of reasons accompanying this decision.

Eric Wildhaber

Eric Wildhaber
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 must decide whether to conduct an inquiry into the complaint.

[2] The complaint, filed on October 14, 17 and 21, 2022, concerns a national individual standing offer issued by the Parks Canada Agency (Parks Canada) for terrestrial archeological services (solicitation 5P047-21-0266/A).

[3] Subsection 6(1) of the Regulations provides that a potential supplier must either raise an *objection* with the procuring government institution *or* file a *complaint* with the Tribunal no later than 10 working days after the day on which the basis of the complaint became known or reasonably should have become known to the potential supplier.

[4] In this case, on October 12, 2022, Archéoconsultant filed a detailed *objection* to the mandatory criteria (M1 and M3) on the ground that they disadvantage archeologists and businesses in Quebec.³ While explaining and illustrating the alleged discrimination, Archéoconsultant suggested that Parks Canada amend or correct the criteria “to be more inclusive and not to unfairly discriminate against business from Quebec and outside Canada that may participate in the call for tenders according to the trade agreements” [translation].⁴

[5] At the time of making this decision, the Tribunal record shows that Parks Canada has not yet responded to the objection filed by Archéoconsultant on October 12, 2022.⁵

[6] Therefore, the complaint is premature, and the Tribunal cannot consider conducting an inquiry at this time.

[7] When an objection is filed with a government institution (in this case, Parks Canada), the Tribunal cannot commence an inquiry until the government institution has had an opportunity to respond. It is only when the government institution “denies” the “relief” sought by the supplier (in its objection) that it becomes possible to file a complaint with the Tribunal. In this case, Archéoconsultant may file a complaint with the Tribunal upon meeting the conditions of subsection 6(2) of the Regulations, which reads as follows:

(2) A potential supplier who has made an objection regarding a procurement relating to a designated contract to the relevant government institution, and is denied relief by that government institution, may file a complaint with the Tribunal within 10 working days after the day on which the potential supplier has actual or constructive knowledge of the denial of

¹ R.S.C., 1985, c. 47 (4th Supp.).

² SOR/93-602.

³ Exhibit PR-2022-047-01.C (protected) at 1–2; Exhibit PR-2022-047-01.B at 5.

⁴ Exhibit PR-2022-047-01.B at 5.

⁵ *Ibid.* at 9.

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.

[8] However, if Parks Canada delays in responding to Archéoconsultant, then Archéoconsultant may also file a complaint with the Tribunal without waiting for a formal denial of relief.

[9] Consequently, Archéoconsultant may file a new complaint within 10 working days of receiving a denial of relief concerning the grounds of its complaint. If Archéoconsultant has not received a response by the bid closing date (currently scheduled for November 1, 2022), Archéoconsultant may then consider Parks Canada's silence as an implicit denial of relief and file a complaint with the Tribunal within 10 working days of November 1, 2022 (therefore, no later than November 16, 2022),⁶ regardless of whether the closing date for bids is extended.

[10] In either case, if Archéoconsultant decides to file a new complaint, it may request that documents already filed with this complaint be joined to the new complaint.

[11] The Tribunal takes note of the remark made by the representative of Archéoconsultant in his email dated October 21, 2022 (11:09 a.m.), stating that he is not a legal professional.⁷ The Tribunal wishes to reassure all intervenors that the Tribunal is intended to be as accessible and as informal as possible, in accordance with the law and procedural fairness. Many parties choose to appear before the Tribunal without being represented by counsel. The Tribunal does not provide legal advice to intervenors, regardless of whether they are represented. However, the Tribunal may inform intervenors on procedural matters. Thus, the Tribunal would like to respond to the question that Archéoconsultant posed in its email dated October 21, 2022 (11:09 a.m.), regarding whether it had to demonstrate, at the initial stage, that it had incurred costs. The answer is no; it is not necessary at this time. Evidence of the amount of any damages suffered may be made at a later stage if the Tribunal conducts an inquiry and finds that the complaint is valid and that it recommends compensation.

DECISION

[12] Pursuant to subsection 30.13(1) of the CITT Act, the Tribunal has decided not to conduct an inquiry into the complaint because it is premature. Indeed, Archéoconsultant has not yet received a response to its objection raised with Parks Canada.

Eric Wildhaber

Eric Wildhaber

Presiding Member

⁶ Friday, November 11, 2022, does not count as a working day in the deadline calculation, as it is a federal holiday (Remembrance Day).

⁷ Exhibit PR-2022-047-01.B at 13.