



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File PR-2022-076

Chantier Davie Canada Inc. and
Wärtsilä Canada Inc.

*Decision made
Tuesday, March 21, 2023*

*Decision and reasons issued
Thursday, March 23, 2023*

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

BY

CHANTIER DAVIE CANADA INC. AND WÄRTSILÄ CANADA 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 because the complaint is premature.

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.

BACKGROUND

[2] This complaint relates to an invitation to tender (ITT) (solicitation F7049-200041/B) issued by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of Fisheries and Oceans (DFO). DFO requires work on the *CCGS Terry Fox*, including docking, inspection, repair, maintenance and alterations of the vessel, and work on certain of its major components, including its propulsion system.

[3] The complaint pertains to PWGSC's re-evaluation of the bid of the complainants, Chantier Davie Canada Inc. (Chantier Davie) and Wärtsilä Canada Inc. (Wärtsilä).³

[4] The ITT was issued on November 2, 2021. The bidding period closed on July 19, 2022.

[5] On July 19, 2022, at bid closing time, PWGSC had received three bids in response to the solicitation.

[6] On October 27, 2022, PWGSC awarded the contract to Heddle Marine Service Inc. (Heddle).

[7] On November 14, 2022, Chantier Davie and Wärtsilä filed a first complaint with the Tribunal.⁴

[8] On February 1, 2023, the Tribunal determined that the complaint was valid in part, and recommended that PWGSC re-evaluate the bids received in response to solicitation F7049-200041/B.⁵

[9] On February 21, 2023, PWGSC informed the complainants that it would implement the Tribunal's recommendation and re-evaluate the bids received.⁶

¹ R.S.C., 1985, c. 47 (4th Supp.).

² SOR/93-602.

³ For purposes of uniformity in the drafting of these reasons, the complainants are systematically referred to together.

⁴ *Chantier Davie Canada Inc. and Wärtsilä Canada Inc. v. Department of Public Works and Government Services* (1 February 2023), PR-2022-053 (CITT).

⁵ Exhibit PR-2022-076-01 at 3951.

⁶ *Ibid.* at 3952.

[10] On March 2, 2023, PWGSC advised the complainants that it had completed its re-evaluation and that, as a result, it was maintaining its decision to award the contract to Heddle.⁷

[11] On March 13, 2023, the complainants requested a written debriefing from PWGSC.⁸

[12] On March 15, 2023, PWGSC informed the complainants that it had received the request and that it would provide a response as soon as possible.⁹ PWGSC has not yet provided a response or none has been provided to the Tribunal at the time of writing these reasons.

[13] On March 16, 2023, Chantier Davie and Wärtsilä filed the present complaint with the Tribunal.

ANALYSIS

[14] Subsection 6(1) of the Regulations provides that a potential supplier may file a complaint with the Tribunal if 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, 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.”

[15] When Chantier Davie and Wärtsilä filed their complaint, they had not yet received a response from PWGSC regarding their request for a written debriefing.¹⁰

[16] In the Tribunal’s view, given that the complainants filed their complaint before having received a response from PWGSC, the complaint is premature. The Tribunal takes note of the complainants’ effort to respect the short timelines applicable to procurement complaints and to preserve their rights. However, the Tribunal cannot consider that the complaint meets the requirements of the Regulations at this time. For those reasons, the Tribunal will not conduct an inquiry into the complaint.

[17] If the complainants still consider themselves to have been aggrieved after having received a response from PWGSC, they may file a new complaint with the Tribunal within 10 working days of the response.

[18] Alternatively, if PWGSC does not provide a response within a reasonable delay, the complainants may also file a new complaint with the Tribunal. The Tribunal would consider a reasonable delay to be 30 days from the issuance of these reasons, after which time the complainants may construe the lack of response to be a denial of relief. The complainants would then have 10 working days to file a new complaint with the Tribunal. In either case, if the complainants decide to file a new complaint, they may request that documents already filed with this complaint be joined to the new complaint.

⁷ Exhibit PR-2022-076-01.A at 2399.

⁸ *Ibid.* at 2401-2403.

⁹ *Ibid.* at 2404.

¹⁰ Exhibit PR-2022-076-01 at 25.

DECISION

[19] 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.

Eric Wildhaber

Eric Wildhaber
Presiding Member