



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2009-024

Cowater International Inc.

*Decision made
Wednesday, July 8, 2009*

*Decision and reasons issued
Wednesday, July 15, 2009*

IN THE MATTER OF a complaint filed under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47

BY

COWATER INTERNATIONAL INC

AGAINST

THE CANADIAN INTERNATIONAL DEVELOPMENT 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.

Ellen Fry
Ellen Fry
Presiding Member

Hélène Nadeau
Hélène Nadeau
Secretary

STATEMENT OF REASONS

1. Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,² a potential supplier may file a complaint with the Canadian International Trade Tribunal (the 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.

2. The complaint relates to a Request for a Standing Offer (RFSO) (Solicitation No. 2009-CC1015-GE) by the Canadian International Development Agency (CIDA) for the provision of gender equality (GE) specialists.

3. Cowater International Inc. (Cowater) submitted that CIDA should accept its offer as a compliant bid, because its proposed resource did not require an academic accreditation assessment per the terms of the solicitation document.

4. On December 8, 2008, CIDA issued the RFSO. Bids closed on February 13, 2009.

5. Clause 1.9 of the RFSO reads as follows:

This procurement is subject to the *Agreement on Internal trade* (AIT), to the *North American Free Trade Agreement* (NAFTA) and to the *World Trade Organization - Agreement on Government Procurement* (WTO-AGP).

6. Mandatory criterion M5 in the RFSO reads as follows:

M5. Education: The Firm MUST include a copy of a certificate for each of the proposed GE Specialists attesting that he or she has an Undergraduate Degree from a recognized University or College in any subject related to the work described in Appendix A - *Terms of Reference*.

For foreign GE Specialists, please request your academic credentials assessment by contacting the Canadian Information Centre for International Credentials

The Firm will need to provide proof of the request to assess the GE Specialist's credentials at the time of bidding and the credentials assessment prior to the awarding of the Standing Offer Arrangement. If the Firm does not provide the requested assessment, the Firm's proposal will be deemed non-compliant and will result in the immediate rejection of the proposal.

7. According to the complaint, on February 18, 2009, CIDA requested that Cowater indicate where in its proposal it could find the credential assessment for one of Cowater's proposed resources, who was designated as an American citizen, per mandatory criterion M5. On February 19, 2009, Cowater submitted documentation that indicated that the proposed resource had applied, on February 9, 2009, to have her diploma assessed.

8. CIDA advised Cowater that it was not accepting additional documentation and that the documentation submitted by Cowater would not be taken into consideration during the evaluation of the mandatory requirements. Cowater advised CIDA that it had not included the proof of request to assess its

1. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].

2. S.O.R./93-602 [*Regulations*].

resource with its bid as it did not consider the individual a “foreign” specialist since the procurement was covered by the *North American Free Trade Agreement*.³

9. On March 12, 2009, Cowater sent a letter to CIDA explaining that it had interpreted the term “foreign” to mean educational qualifications obtained outside of the countries eligible to bid pursuant to the RFSO. On June 18, 2009, in response to Cowater’s inquiry regarding the status of the procurement, CIDA advised Cowater that the procurement process was not yet terminated and that once the evaluation and approval processes were completed, Cowater would receive a letter from CIDA. On July 6, 2009, Cowater filed its complaint with the Tribunal.

10. Cowater has not yet received any notification of whether CIDA considers Cowater’s bid to be compliant with the mandatory criterion at issue. Consequently, the Tribunal finds that it is premature to file a complaint at this stage.

11. The Tribunal notes that, even if it had not found the complaint to be filed prematurely, it would not have considered that the complaint provided a reasonable indication of a breach of any of the trade agreements.

12. The RFSO stated clearly that proposed foreign specialists were required to request an assessment of their academic credentials and that bidders were to provide proof of that request with their proposals. It is clear from the complaint that Cowater did not include such proof in its proposal for one of its proposed specialists who is an American citizen.

13. According to Cowater’s letter of March 12, 2009, “[t]he RFP indicated NAFTA member citizens were eligible under this RFSO” The letter also stated: “. . . the use of the term ‘foreign’ related to educational background (4.6 of the RFP) did not specify ‘foreign to Canada’ therefore we interpreted it to mean educational qualifications obtained outside of the countries eligible under this RFP.”

14. The normal meaning of the word “foreign” is “outside one’s own country”.⁴ The Tribunal could not find any indication in the tender documents that “foreign” should be interpreted in any other way.

15. Consequently, even if the complaint had not been premature, the Tribunal would not have accepted it for inquiry.

16. In light of the foregoing, the Tribunal will not conduct an inquiry into the complaint and considers the matter closed.

DECISION

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

Ellen Fry
Ellen Fry
Presiding Member

3. *North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2 (entered into force 1 January 1994) [NAFTA].

4. *Gage Canadian Dictionary*, 1997, s.v. “foreign”.