



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2009-035

Papp Plastics & Distributing Limited

*Decision made
Thursday, August 6, 2009*

*Decision and reasons issued
Wednesday, August 19, 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

PAPP PLASTICS & DISTRIBUTING LIMITED

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.

Stephen A. Leach
Stephen A. Leach
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 Proposal (RFP) (Solicitation No. M0077-08B108/A) by the Department of Public Works and Government Services (PWGSC) on behalf of the Royal Canadian Mounted Police (RCMP) for the provision of holders for extendable batons.

3. Papp Plastics & Distributing Limited (Papp) alleged that the evaluation process was not fair because the tender specifications were ambiguous and favoured other suppliers who had supplied the “mating baton part” for the baton holders being purchased.

4. Subsection 6(1) of the *Regulations* provides that a complaint shall be filed with the Tribunal “. . . not 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.” Subsection 6(2) provides that a potential supplier that has made an objection 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 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.”

5. In other words, 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 object to the government institution or file a complaint with the Tribunal. If a complainant objects to the government institution within the designated time, the complainant may file a complaint with the Tribunal within 10 working days after it has actual or constructive knowledge of the denial of relief by the government institution.

6. On October 21, 2008, PWGSC issued RFP Solicitation No. M0077-08B108/A. On February 12, 2009, the bidding period closed. On March 10, 2009, PWGSC requested pre-award samples and a certificate of compliance from Papp on or before May 11, 2009. On April 17, 2009, Papp requested a sample baton from PWGSC. On May 5, 2009, Papp requested an extension of time to submit the pre-award samples. On May 6, 2009, PWGSC denied Papp’s requests for sample batons and an extension of time. On July 17, 2009, Papp received notification from PWGSC that its samples were rejected and was given the reasons for their rejection. On July 24, 2009, Papp objected to the rejection of its pre-award samples stating that it was never given proper drawings or a sample baton in order to test the fit.

7. The Tribunal is of the opinion that Papp knew the grounds of its complaint at the latest on May 6, 2009, when it was denied a sample baton. It had already been provided with the specifications for the baton holder in the tender documents. Had Papp believed that it did not have enough information to properly complete and/or test its pre-award samples, it should have made an objection to PWGSC or filed a

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

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

complaint with the Tribunal within 10 working days from that date. In other words, an objection should have been made or a complaint filed by May 21, 2009, in order to meet the time limits prescribed in section 6 of the *Regulations*. Papp's objection was not made until July 24, 2009, and its complaint was not filed until July 30, 2009.

8. Consequently, the Tribunal is of the view that Papp failed to make its objection to PWGSC or file its complaint with the Tribunal within the prescribed time limits and considers that the complaint was therefore filed in an untimely manner.

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

DECISION

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

Stephen A. Leach
Stephen A. Leach
Presiding Member