



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2009-043

Tritan Electric and Controls Ltd.

*Decision made
Wednesday, September 16, 2009*

*Decision and reasons issued
Tuesday, September 22, 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

TRITAN ELECTRIC AND CONTROLS LTD.

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 an Invitation to Tender (ITT) (Solicitation No. EW038-101091/A) by the Department of Public Works and Government Services (PWGSC) for the installation of site lighting.

3. Tritan Electric and Controls Ltd. (Tritan) alleged that PWGSC improperly declared its proposal non-compliant.

4. Paragraph 7(1)(c) of the *Regulations* requires that the Tribunal determine whether the information provided by the complainant discloses a reasonable indication that the procurement has not been conducted in accordance with whichever of Chapter Ten of the *North American Free Trade Agreement*,³ Chapter Five of the *Agreement on Internal Trade*,⁴ the *Agreement on Government Procurement*⁵ or Chapter *Kbis* of the *Canada-Chile Free Trade Agreement*⁶ applies. In this case, only the *AIT* applies.

5. The ITT incorporates by reference the General Instructions to Bidders, clause R2710T (2008-12-12) of the Standard Acquisition Clauses and Conditions, which read as follows:

GI01 (2008-12-12) Completion of Bid

1) The bid shall be

(a) submitted on the Bid and Acceptance Form provided through the Government Electronic Tendering Service (GETS) or on a clear and legible reproduced copy of such Bid and Acceptance Form that must be identical in content and format to the Bid and Acceptance Form provided through GETS;

...

3) Unless otherwise noted elsewhere in the Bid Documents, facsimile copies of bids are not acceptable.

...

GI08 (2008-12-12) Bid Security Requirements

...

2) A bid bond shall be in an approved form, properly completed, with original signature(s)

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

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

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).

4. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <http://www.ait-aci.ca/index_en/ait.htm> [*AIT*].

5. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm>.

6. *Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile*, 1997 Can. T.S. No. 50 (entered into force 5 July 1997). Chapter *Kbis*, entitled “Government Procurement”, came into effect on September 5, 2008.

6. The ITT indicates that the “[s]ubmission of a bid constitutes acknowledgement that the Bidder has read and agrees to be bound by these documents.”

7. The bid security clause, BA09, of the Bid and Acceptance Form,⁷ reads as follows:

- 1) The Bidder shall enclose bid security with its bid in accordance with GI08 BID SECURITY REQUIREMENTS.
- 2) If the security furnished does not comply fully with the requirements referred to in paragraph 1) herein, the bid shall be disqualified.

8. According to the complaint, PWGSC advised Tritan by telephone that its proposal was not accepted, as its bid bond was submitted via facsimile rather than as an original document and that Tritan’s proposal was not submitted on the proper form. Tritan acknowledged these facts. However, it submitted that PWGSC should have asked it for the original copy of the bid bond and that PWGSC could have copied its quote onto the Bid and Acceptance Form immediately upon opening the bid.

9. Article 506(6) of the *AIT* provides as follows:

... The tender documents shall clearly identify the requirements of the procurement, the criteria that will be used in the evaluation of bids and the methods of weighting and evaluating the criteria.

10. The Tribunal finds that the tender documents clearly indicated the requirements for the submission of bids and bid bonds. The Tribunal is of the view that it is the bidder’s responsibility to ensure that its proposal is compliant with all essential elements of a solicitation and that PWGSC does not have the discretion to alter such a requirement after the deadline for the submission of bids has passed or the discretion to modify the proposal as received from a bidder.

11. The Tribunal finds that there is no evidence to indicate that PWGSC did not properly apply the terms of the tender documents. Consequently, the Tribunal finds that the complaint does not disclose a reasonable indication that the procurement was not conducted in accordance with the provisions of the *AIT*.

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

DECISION

13. 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

7. ITT at 7.