



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2013-045

Scotia Crane Rentals Limited

*Decision made  
Friday, March 21, 2014*

*Decision issued  
Tuesday, March 25, 2014*

*Reasons issued  
Wednesday, April 2, 2014*

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

**BY**

**SCOTIA CRANE RENTALS LIMITED**

**AGAINST**

**MARINE ATLANTIC INC.**

**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.

Ann Penner  
Ann Penner  
Presiding Member

Dominique Laporte  
Dominique Laporte  
Secretary

The statement of reasons will be issued at a later date.

## STATEMENT OF REASONS

### COMPLAINT

1. Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,<sup>2</sup> 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. PR276297) by Marine Atlantic Inc. (Marine Atlantic) for the provision of crane-lifting services, boom truck services, and man-lift rentals.

3. Scotia Crane Rentals Limited (Scotia Crane) complained that the RFP was drafted so as to give an unfair competitive advantage to another bidder, and that there was a conflict of interest between Marine Atlantic and another bidder.

4. As a remedy, Scotia Crane asked the Tribunal to direct Marine Atlantic to remove the alleged competitive advantage by revising the RFP, and to determine whether any conflict of interest existed between Marine Atlantic and another bidder.

### BACKGROUND

5. The RFP was published on August 22, 2013, with a closing date of September 6, 2013.

6. Although Scotia Crane stated that it submitted a bid in response to the RFP, the exact date of its submission is unclear.

7. On October 31, 2013, Marine Atlantic advised Scotia Crane that the contract would be awarded to A.W. Leil Inc. (Leil). As a result, it ordered Scotia Crane to remove all of its equipment from the worksite.

8. On November 5, 2013, Scotia Crane made a written objection to Marine Atlantic.

9. On November 11, 2013, Marine Atlantic replied to Scotia Crane's objection, and explained that the contract had not yet been awarded.

10. On December 23, 2013, Scotia Crane wrote to Marine Atlantic once again, and stated that Leil should have been disqualified from the process due to a conflict of interest. Scotia Crane also indicated that it had learned that Leil was providing crane services at the worksite even though a contract had not yet been awarded. Scotia Crane insisted that Leil stop working at the site, and expressed its intention to pursue an injunction regarding the same.

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

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

11. On January 9, 2014, Marine Atlantic responded to Scotia Crane, and stated that an ethics commissioner had concluded that there was no conflict of interest. Marine Atlantic reiterated that the contract had not yet been awarded.

12. On February 3, 2014, Marine Atlantic wrote a further letter to Scotia Crane, and stated that Scotia Crane had ignored its request to return security passes for the worksite. With respect to the services being carried out on the worksite, Marine Atlantic informed Scotia Crane that it intended “to maintain the status quo with respect to crane services at [its] facility.”

13. On March 10, 2014, Marine Atlantic wrote to Scotia Crane to ascertain whether or not Scotia Crane intended to pursue an injunction as it had threatened to do in December.

14. On March 11, 2014, Scotia Crane filed its complaint with the Tribunal.

15. On March 17, 2014, the Tribunal received additional information from Scotia Crane, at which point the Tribunal considered Scotia Crane’s complaint to be complete.

## ANALYSIS

16. Subsection 30.11(1) of the *CITT Act* states that, “[s]ubject to the regulations, a potential supplier may file a complaint with 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 [emphasis added].”

17. Paragraph 7(1)(b) of the *Regulations* echoes that statement by making it a condition for inquiry that “the complaint [be] in respect of a designated contract.”

18. Section 30.1 of the *CITT Act* defines “designated contract” as “a contract for the supply of goods or services that has been or is proposed to be awarded by a *government institution* and that is designated or of a class of contracts designated by the regulations [emphasis added].”

19. Section 30.1 of the *CITT Act* defines “government institution” as “any department or ministry of state of the Government of Canada, or any other body or office, that is designated by the regulations.” Section 3 of the *Regulations* provides that the name of a given government institution must appear in one or another of the various schedules or annexes contained in a series of trade agreements in order to fall within the Tribunal’s jurisdiction.<sup>3</sup>

20. The Tribunal notes that Marine Atlantic does not appear in any schedules or annexes or trade agreements listed in section 3 of the *Regulations* (and specifically in paragraphs 3(2)(a) or (b)). While Marine Atlantic is covered by the separate regime provided for under Annex 502.3 of the *Agreement on Internal Trade*,<sup>4</sup> that regime does not, however, fall under the Tribunal’s jurisdiction with respect to “government institutions” within the meaning of section 30.1 of the *CITT Act* and subsection 3(2) of the *Regulations*.

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3. See paragraphs 3(2)(a) and (b) of the *Regulations*.

4. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <[http://www.ait-aci.ca/index\\_en/ait.htm](http://www.ait-aci.ca/index_en/ait.htm)>. See also “Procurement Rules for the Crowns (Annex 502.3)” and “Covered entities (Appendix A to Annex 502.3)”, online: <<http://www.marcan.net/en/chapter5.php>>.

21. Therefore, the Tribunal finds that the RFP in question is not a “designated contract” as envisaged by the *CITT Act* and the *Regulations*. Given that the procurement at issue does not relate to a designated contract, the Tribunal does not have jurisdiction to inquire into the complaint.

22. Even if the Tribunal did have jurisdiction, it still could not accept the complaint for inquiry because it was submitted late.

23. Subsection 6(2) of the *Regulations* 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 . . . .”

24. As noted above, Marine Atlantic responded to Scotia Crane’s objection on January 9, 2014, by insisting there was no conflict of interest despite Scotia Crane’s allegations. In the Tribunal’s view, Marine Atlantic’s reply contained an implicit denial of the relief sought by Scotia Crane.

25. Moreover, on February 9, 2014, Marine Atlantic wrote to request that Scotia Crane return all security passes for the worksite, and to inform Scotia Crane that it intended to “maintain the status quo with respect to crane services at [its] facility.” In effect, this letter rejected Scotia Crane’s demand that Leil must stop providing crane services at the worksite, and can therefore be taken as an explicit denial of relief for the purposes of this complaint.

26. In order for the Tribunal to find that Scotia Crane’s complaint was filed on time and in accordance with subsection 6(2) of the *Regulations*, the complaint would have had to have been filed with the Tribunal within 10 working days of the denial of relief from Marine Atlantic. In other words, Scotia Crane would have had to have filed its complaint within 10 working days of Marine Atlantic’s denial of relief on February 9, 2014, if not earlier given the implicit denial of relief on January 9, 2014.

27. As the complaint was filed with the Tribunal on March 17, 2014, the Tribunal finds that the complaint was not filed within the prescribed time limits set by subsection 6(2) of the *Regulations*.

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

## DECISION

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

Ann Penner

Ann Penner

Presiding Member