



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2015-037

Poulin Électrique Inc.

*Decision made
Wednesday, November 4, 2015*

*Decision and reasons issued
Friday, November 6, 2015*

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

POULIN ÉLECTRIQUE INC.

AGAINST

CANADIAN SPACE 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.

Daniel Petit
Daniel Petit
Presiding Member

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 Proposals (solicitation No. 9F030-20150391), hereinafter RFP, issued by the Canadian Space Agency (CSA) for the provision of various electrical services at the CSA in Saint-Hubert.
3. Poulin Électrique Inc. claimed that the CSA incorrectly declared its proposal non-compliant with certain terms and conditions of the RFP. It further claimed that it did not have access to all the information relevant to the RFP and that the current supplier was favoured in the procurement process.
4. Subsection 30.11(1) of the *CITT Act* limits the Tribunal's jurisdiction to "... a complaint ... concerning any aspect of the procurement process that relates to a *designated contract* ... » [emphasis added]. In addition, subsection 7(1) of the *Regulations*, which sets out the conditions that must be met in order for the Tribunal to inquire into a complaint, stipulates *inter alia* that the complaint must be in respect of a "designated contract".
5. Furthermore, section 30.1 of the *CITT Act* defines a "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".
6. Pursuant to section 30.1 of the *CITT Act*, a designated contract is therefore defined in part as a contract for the supply of goods or services that was awarded by a *government institution*. Section 30.1 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".
7. In this regard, subsection 3(2) of the *Regulations* designates as government institutions the federal government entities or the government enterprises set out in the following sections of the potentially applicable trade agreements: the Schedule of Canada in Annex 1001.1a-1 and Annex 1001.1a-2 of the *North American Free Trade Agreement*,³ under the heading "CANADA in Annex 1 and Annex 3 of the *Agreement on Government Procurement*",⁴ the Schedule of Canada in Annex *Kbis*-01.1-1 and Annex *Kbis*-01.1-2 of Chapter *Kbis* of the *Canada-Chile Free Trade Agreement*,⁵ the Schedule of Canada in

1. R.S.C., 1985, c. 47 (4th Supp.) [*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, online: Department of Foreign Affairs, Trade and Development <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/text-texte/toc-tdm.aspx?lang=eng>> (entered into force 1 January 1994).

4. *Revised Agreement on Government Procurement*, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.htm> (entered into force 6 April 2014).

5. *Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile*, 1997 Can. T.S. No. 50, online: Department of Foreign Affairs, Trade and Development <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/chile-chili/menu.aspx?lang=en>> (entered into force 5 July 1997). Chapter *Kbis*, entitled "Government Procurement", came into effect on September 5, 2008.

Annex 1401.1-1 and Annex 1401.1-2 of Chapter Fourteen of the *Canada-Peru Free Trade Agreement*,⁶ the Schedule of Canada in Annex 1401.1-1 and Annex 1401.1-2 of Chapter Fourteen of the *Canada-Colombia Free Trade Agreement*,⁷ the Schedule of Canada in Annex 14-A of Chapter Fourteen of the *Canada-Korea Free Trade Agreement*,⁸ the Schedule of Canada in Annex 17.1 and Annex 17.2 of Chapter Seventeen of the *Canada-Honduras Free Trade Agreement*,⁹ the Schedule of Canada in Annex 1 and Annex 2 of Chapter Sixteen of the *Canada-Panama Free Trade Agreement*¹⁰ and the federal government entities referred to in Chapter 5 of the *Agreement on Internal Trade*.¹¹

8. The RFP at issue relates to a contract for the procurement of services by the CSA. However, the CSA is not listed in any of the relevant schedules or annexes of the trade agreements. In addition, the CSA is specifically excluded from the scope of Chapter 5 of the *AIT* pursuant to Annex 502.2A of the *AIT*.

9. The Tribunal therefore concludes that the CSA is not a federal government entity or a government enterprise covered by the agreements and, as such, it is not a “government institution” within the meaning of section 30.1 of the *CITT Act*.

10. On this basis, the Tribunal concludes that the contract that relates to this procurement process is not a designated contract.

11. Given that the subject procurement does not relate to a designated contract, the Tribunal does not have jurisdiction to inquire into the complaint.

DECISION

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

Daniel Petit
Daniel Petit
Presiding Member

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6. *Free Trade Agreement between Canada and the Republic of Peru*, online: Department of Foreign Affairs, Trade and Development <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/peru-perou/peru-toc-perou-tdm.aspx?lang=eng>> (entered into force 1 August 2009).
 7. *Free Trade Agreement between Canada and the Republic of Colombia*, online: Department of Foreign Affairs, Trade and Development <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/colombia-colombie/can-colombia-toc-tdm-can-colombie.aspx?lang=eng>> (entered into force 15 August 2011).
 8. *Free Trade Agreement between Canada and the Republic of Korea*, online: Department of Foreign Affairs, Trade and Development <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/korea-coree/toc-tdm.aspx?lang=eng>> (entered into force 1 January 2015).
 9. *Free Trade Agreement between Canada and the Republic of Honduras*, online: Department of Foreign Affairs, Trade and Development <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/honduras/toc-tdm.aspx>> (entered into force 1 October 2014).
 10. *Free Trade Agreement between Canada and the Republic of Panama*, online: Department of Foreign Affairs, Trade and Development <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/panama/panama-toc-panama-tdm.aspx>> (entered into force 1 April 2013).
 11. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<http://www.ait-aci.ca/agreement-on-internal-trade/>> [*AIT*].