



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

ORDER AND REASONS

File No. PR-2016-005

Blue White Translations Ltd.

v.

Canadian Immigration Museum at
Pier 21

*Order and reasons issued
Thursday, July 21, 2016*

TABLE OF CONTENTS

ORDER i

STATEMENT OF REASONS 1

 INTRODUCTION 1

 COMPLAINT 1

 PROCEDURAL BACKGROUND 1

 ANALYSIS 1

 ORDER 3

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

AND FURTHER TO a decision to conduct an inquiry into the complaint pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*;

AND IN THE MATTER OF submissions filed by the Canadian Immigration Museum at Pier 21 in relation to the jurisdiction of the Canadian International Trade Tribunal to conduct an inquiry into the complaint.

BETWEEN

BLUE WHITE TRANSLATIONS LTD.

Complainant

AND

THE CANADIAN IMMIGRATION MUSEUM AT PIER 21

**Government
Institution**

ORDER

Pursuant to paragraph 10(b) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*, the Canadian International Trade Tribunal hereby ceases its inquiry and dismisses the complaint.

Jason W. Downey
Jason W. Downey
Presiding Member

STATEMENT OF REASONS

INTRODUCTION

1. This inquiry concerns a complaint filed with the Canadian International Trade Tribunal (the Tribunal) in relation to a procurement by the Canadian Immigration Museum at Pier 21 (the Museum) for the provision of translation services. The complaint filed by Blue White Translations Ltd. (Blue White) was accepted for inquiry pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.¹ However, the Tribunal has determined that it does not have jurisdiction to conduct an inquiry into the complaint for the reasons provided below. As a result, the complaint is dismissed.

COMPLAINT

2. Blue White alleged that its bid was unfairly disqualified because the Museum did not receive its technical evaluation within the required time frame. Blue White claimed that, according to the terms of the Request for Proposal (RFP), the timeliness of its submission via e-mail should have been based on when it was sent and not when it was received by the Museum. Furthermore, Blue White alleged that it should have been awarded the contract because it had a lower price than the successful bidder. As a remedy, it asked the Tribunal to recommend that the contract be awarded, in whole or in part, to Blue White.

PROCEDURAL BACKGROUND

3. On May 6 and 7, 2016, Blue White filed the complaint with the Tribunal pursuant to subsection 30.11(1) of the *CITT Act*.

4. On May 13, 2016, the Tribunal notified the parties that it had decided to conduct an inquiry into the complaint, pursuant to subsection 30.13(1) of the *CITT Act* and subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.²

5. On June 3, 2016, the Museum filed the Government Institution Report (GIR) in response to the complaint. On June 13, 2016, Blue White filed comments on the GIR.

6. On June 17, 2016, the Tribunal requested submissions from Blue White and the Museum on the specific issue of whether the Museum is a “government institution”, as defined in section 30.1 of the *CITT Act* and set out in any of the trade agreements designated by subsection 3(2) of the *Regulations*.

7. On June 27, 2016, the Museum filed a submission indicating that the Museum is not listed as a government institution under or any of the applicable trade agreements.

8. Blue White did not respond to the Tribunal’s June 17, 2016, request for submissions or the Tribunal’s invitation, on July 11, 2016, to file a reply to the Museum’s submission.

ANALYSIS

9. Before it can determine whether the grounds of the complaint are valid, the Tribunal must be satisfied that the complaint is in respect of a “designated contract”.

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

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

10. 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".

11. 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 contract designated by the regulations".

12. 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".

13. A designated contract, according to section 3 of the *Regulations*, is defined in part as a contract concerning a procurement of goods or services by a government institution. In this regard, subsection 3(2) designates as government institutions the federal government entities or the government enterprises that are set out in the applicable trade agreements, which, in this case, is only the *Agreement on Internal Trade*.³

14. Pursuant to paragraph 10(b) of the *Regulations*, the Tribunal may, at any time, order the dismissal of a complaint on the grounds that it is not in respect of a procurement by a government institution.

15. The Notice of Proposed Procurement for the RFP indicated that the procurement was covered by the *AIT*. However, the Museum is not listed as a government institution under the *AIT*. Specifically, the Museum is not included in Annex 502.1A, which lists the federal government entities that are covered by the procurement obligations set out in Chapter Five of the *AIT*. Although the other trade agreements do not apply in this case, the Tribunal notes that none of them cover the Museum either.

16. In response to the Tribunal's request on the matter of jurisdiction, the Museum submitted that it is not a "government institution" as defined under the *CITT Act* and the *Regulations*, notwithstanding what was initially stated in the RFP.⁴ This submission was not disputed by Blue White.

17. In light of the above, the Tribunal finds that the Museum is not a federal government entity covered by the *AIT* and, as such, it is not a "government institution" within the meaning of section 30.1 of the *CITT Act*. As a result, the procurement cannot be considered to be in respect of a "designated contract" as defined by the *CITT Act* and section 3 of the *Regulations*.⁵

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

3. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<http://www.ait-aci.ca/agreement-on-internal-trade/>> [*AIT*], Annex 502.1A under the heading "CANADA". The Tribunal notes that the *AIT* is the only trade agreement listed in section 3 of the *Regulations* that covers translation services.

4. Letter from McInnes Cooper LLP to the Tribunal dated June 27, 2016.

5. Moreover, there was no allegation or evidence before the Tribunal suggesting that the Museum was acting on behalf of any of the government entities listed in Annex 502.1 of the *AIT*.

ORDER

19. Pursuant to paragraph 10(b) of the *Regulations*, the Tribunal hereby ceases its inquiry and dismisses the complaint.

Jason W. Downey

Jason W. Downey
Presiding Member