



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

---

## DECISION AND REASONS

File No. PR-2016-032

MasterBedroom Inc.

*Decision made  
Wednesday, September 14, 2016*

*Decision issued  
Wednesday, September 14, 2016*

*Reasons issued  
Tuesday, September 27, 2016*

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**

**MASTERBEDROOM INC.**

**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.

Jason W. Downey \_\_\_\_\_

Jason W. Downey  
Presiding Member

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

## STATEMENT OF REASONS

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. MasterBedroom Inc. (MasterBedroom) filed a complaint with the Tribunal on September 7, 2016. The Tribunal has determined that it does not have jurisdiction to inquire into the complaint for the same reasons that it rejected a prior complaint filed by MasterBedroom concerning the same solicitation.

3. The complaint relates to a Request for a Standing Offer (RFSO) (Solicitation No. B3275-150511/A), issued by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of Citizenship and Immigration (CIC), for the provision of basic household furniture to individuals or families in Toronto, Hamilton, Kitchener, London, Windsor and Ottawa, Ontario.

4. This is the sixth complaint filed by MasterBedroom in relation to the RFSO.<sup>3</sup> Following the Tribunal's decisions not to inquire into the first three complaints, the fourth complaint was accepted for inquiry. On May 26, 2016, the Tribunal determined that the fourth complaint was valid.<sup>4</sup> As a remedy, the Tribunal recommended that PWGSC terminate the standing offer awarded to the successful bidder for the Toronto area and award it to MasterBedroom. The Tribunal also recommended that MasterBedroom be compensated by an amount equal to the profit that it would have earned from the date of the award of the standing offer to the successful bidder to the date of the subsequent award to MasterBedroom.

5. On July 28, 2016, MasterBedroom notified the Tribunal that it had reached an agreement with PWGSC on the amount of compensation for past lost profit payable to it, in accordance with the remedy recommended by the Tribunal. In addition, PWGSC awarded the standing offer for the Toronto area to MasterBedroom for the period from July 7 to 31, 2016, and granted MasterBedroom an extension of the standing offer from August 1, 2016, to July 31, 2017, as per the terms of the RFSO.

6. MasterBedroom filed a fifth complaint with the Tribunal on August 19, 2016. It alleged that, since July 7, 2016, PWGSC and/or CIC were attempting to by-pass the remedy recommended by the Tribunal by making direct payments to eligible individuals or families in lieu of issuing call-ups under the standing offer. It also alleged that it was being treated unfairly because such direct payments appeared not to have been taking place other than in Toronto.

---

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

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

3. *MasterBedroom Inc. v. Department of Public Works and Government Services* (26 May 2016), PR-2015-064 (CITT) [*MasterBedroom IV*] at paras. 7-13; *MasterBedroom Inc.* (25 August 2016), PR-2016-028 (CITT) [*MasterBedroom V*] at paras. 4-6.

4. *MasterBedroom IV*.

7. On August 25, 2016, the Tribunal determined that it did not have jurisdiction to inquire into the fifth complaint, as it was not in respect of a “designated contract” as required by subsection 7(1) of the *Regulations* and in accordance with the definition of that term under section 30.1 of the *CITT Act*.<sup>5</sup>

8. In its current complaint, MasterBedroom reiterated the allegations made in its fifth complaint. Although MasterBedroom provided additional documentation that had not been included in the fifth complaint, such as its recent correspondence with PWGSC, the Tribunal finds that the documentation provided neither changes its lack of jurisdiction over the previous complaint nor gives rise to a new ground of complaint. Given that the Tribunal has already issued a final decision in respect of the fifth complaint, and given that MasterBedroom has not raised any new allegations in the current complaint, the Tribunal is unable to reconsider MasterBedroom’s arguments.

9. Accordingly, for the reasons indicated in *MasterBedroom V*, the Tribunal does not have jurisdiction to inquire into the complaint.

10. The Tribunal wishes to comment, however, that the limited call-ups issued to MasterBedroom from July 7, 2016, to the present, representing only a small fraction of the estimated value indicated in the standing offer, raises concerns regarding PWGSC’s conduct in these matters related to the procurement process itself.

11. On the one hand, given that PWGSC chose to exercise the option to extend the standing offer for Toronto, it appears to have technically complied with the Tribunal’s recommendation by, *inter alia*, granting MasterBedroom the extension, as per the terms of the RFSO.<sup>6</sup> On the other hand, PWGSC’s recent actions do not appear to be in keeping with the spirit of the Tribunal’s recommendation, which included giving MasterBedroom the opportunity to benefit from the extension of the standing offer. The establishment of a procurement process implies legitimate requirements which should flow through this process. It is disconcerting that PWGSC now appears to be dispensing funds in an alternate way for the Toronto area only.

12. The Tribunal cannot extend its jurisdiction beyond what lies within a certain designated scope. It has already disposed of the complaint in a way that is consonant with this jurisdiction. Should MasterBedroom wish to pursue this matter further, it should consult its own legal advisors to ascertain what contractual rights, if any, may be pursued, in another more appropriate forum.

## DECISION

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

Jason W. Downey  
Jason W. Downey  
Presiding Member

---

5. *MasterBedroom V* at paras. 10, 12.

6. *MasterBedroom V* at para. 13.