



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2016-046

Marine International Dragage Inc.

*Decision made  
Monday, December 12, 2016*

*Decision and reasons issued  
Wednesday, December 14, 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**

**MARINE INTERNATIONAL DRAGAGE INC.**

**AGAINST**

**THE PARKS CANADA 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.

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

Jason W. Downey  
Presiding Member

## 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. Marine International Dragage Inc. (MID) filed a complaint with the Tribunal on December 9, 2016, concerning an Invitation to Tender (Solicitation No. 5P300-16-5590) for the excavation of the shoals in the Iroquois River sector–Chambly Canal NHS by the Parks Canada Agency (Parks Canada). In short, MID alleges that the invitation to tender unfairly excludes firms specializing in dredging rather than in excavation.

3. The Tribunal has decided not to inquire into the complaint for the reasons that follow.

4. Pursuant to section 6 and 7 of the *Regulations*, the Tribunal may conduct an inquiry if the following four conditions are met:

- the complaint has been filed within the time limits prescribed by section 6;
- the complainant is a potential supplier;
- the complaint is in respect of a designated contract; and
- the information provided discloses a reasonable indication that the procurement process was not conducted in accordance with the applicable trade agreements.

5. In the case at hand, the Tribunal has determined that it cannot inquire into the complaint, as it does not meet the first condition.

6. More specifically, 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 . . . .”

7. In the present case, the information provided in the complaint discloses that MID made an objection to Parks Canada on December 2, 2016, and that Parks Canada has not yet replied to MID’s objection.

8. Therefore, at the time of the filing of the complaint, MID had not yet been denied relief by Parks Canada. Given that MID filed its complaint before being denied relief by Parks Canada, the complaint does not meet the regulatory condition provided in subsection 6(2) of the *Regulations*, and the Tribunal cannot inquire into the complaint as it was filed.

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

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

9. The Tribunal notes that MID took swift action in asserting its rights and addressing the grievances it finds legitimate in this case. Nonetheless, given the circumstances, the Tribunal must give Parks Canada the opportunity to reply to the objection made by the complainant.

10. However, the Tribunal's decision does not preclude MID from filing a new complaint within 10 working days of receiving, as the case may be, a denial of relief from Parks Canada.

11. Alternatively, if Parks Canada fails to respond to MID's concerns within seven days of the issuance of these reasons, that is, at the latest on Friday, December 23, 2016, the Tribunal will construe Parks Canada's silence as a constructive denial of relief. In that case, MID would then be able to file a new complaint with the Tribunal within 10 working days of that date. Upon filing a new complaint, MID could request that documents already filed with the Tribunal be joined to the new complaint in order to avoid duplication of submissions.

12. If MID files a new complaint, the Tribunal will decide anew whether to inquire into the complaint, having regard particularly to the aforementioned regulatory conditions. Finally—and without prejudging the issue of whether it would inquire or not into such a new complaint—the Tribunal notes that it may be in the public interest and in the interest of a prudent use of public resources that the contract award in this invitation to tender be postponed until Parks Canada provides a final answer to MID's objection and/or until the Tribunal makes a final decision concerning such a potential future complaint.

## **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