



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2016-047

HDP Group Inc.

*Decision made  
Wednesday, December 28, 2016*

*Decision issued  
Wednesday, December 28, 2016*

*Reasons issued  
Wednesday, January 11, 2017*

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**

**HDP GROUP 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.

Jean Bédard  
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Jean Bédard  
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. HDP Group Inc. (HDP) filed a complaint with the Tribunal on December 19, 2016, in respect of a call-up against a standing offer (Solicitation No. E60ZN-13TSSO/113/ZN) by the Department of Public Works and Government Services (PWGSC)<sup>3</sup> for the provision of real property project management services. In short, HDP alleges that PWGSC wrongfully terminated the contract for default.

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

4. Pursuant to sections 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 an actual or 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.<sup>4</sup>

5. HDP alleged that PWGSC had terminated the contract for default without cause or due process and was in violation of the *Values and Ethics Code for the Public Service*, PWGSC's *Supply Manual* and the *Treasury Board Policy on Payment Requisitioning and Payment on Due Date*. In addition, HDP claimed that there were significant delays in its consultants being paid by PWGSC.

6. HDP claimed that PWGSC terminated the contract illegally; however, it did not allege that PWGSC, in doing so, breached any particular trade agreement.

7. As a remedy, HDP requested the following: (i) that PWGSC immediately purge all records that reference HDP having been in default on the contract and that PWGSC e-mail all users and potential users of the Automated Buyer Environment confirming that any reference to HDP being in default on this contract was made in error; (ii) that PWGSC pay HDP \$1,000 for each calendar day that PWGSC deemed HDP to have been in default; (iii) that PWGSC offer two HDP consultants that were allegedly pressured to work on another project the opportunity to return to HDP and issue call-ups as required to allow them to

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

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

3. On November 4, 2015, the Government of Canada gave notice that the name of the Department of Public Works and Government Services Canada will be changed to Public Services and Procurement Canada.

4. In this case, all the trade agreements listed in section 11 of the *Regulations* are applicable, including the *Agreement on Internal Trade [AIT]*, the *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 [NAFTA]* and the World Trade Organization's *Agreement on Government Procurement*.

continue their PWGSC work through HDP; and, (iv) that PWGSC compensate HDP for lost profits on this contract and for future lost profits on three other contracts HDP would have performed had this contract not been terminated without cause.

## ANALYSIS

8. As noted above, subsection 30.11(1) of the *CITT Act* provides that 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. The terms “potential supplier”, “designated contract” and “complaint” are defined in the *CITT Act*. In order to understand the meaning of the term “procurement process”, one must look to the trade agreements.

9. Article 518 of the *AIT* defines “procurement procedures” as follows: “the processes by which suppliers are invited to submit a tender, a proposal, qualification information, or a response to a request for information and includes the ways in which those tenders, proposals or information submissions are treated.” Both Article 514(2)(a) of the *AIT* and Article 1017(1)(a) of *NAFTA* describe the procurement process as “. . . begin[ning] after an entity has decided on its procurement requirement and continu[ing] through the contract award.”

10. In interpreting these provisions of the trade agreements, the Tribunal is of the view that the beginning of the procurement process is the moment in time when the contracting authority has decided on its procurement requirements and that the procurement process only comes to an end once the contract has been attributed in a definitive way.<sup>5</sup> Contract administration is a separate phase that takes place after the procurement process is completed. It deals with issues that arise as a contract is performed and managed. The Tribunal has been clear that matters of contract administration are beyond the scope of its jurisdiction.<sup>6</sup>

11. Since HDP’s complaint centers on the termination of the contract after it was awarded, and not on issues related to the procurement process itself, the complaint clearly falls within the ambit of contract administration. As such, the Tribunal finds that the complaint fails to disclose a reasonable indication that the procurement has not been carried out in accordance with the applicable trade agreements.

## DECISION

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

Jean Bédard

Jean Bédard

Presiding Member

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5. *ML Wilson Management v. Parks Canada Agency* (6 June 2013), PR-2012-047 (CITT) at paras. 34-36; *Siva & Associates Inc.* (30 March 2009), PR-2008-060 (CITT) at para. 8; *Novell Canada Ltd.* (17 August 2000), PR-98-047R (CITT) at 6-7.

6. *Auto Light Atlantic Limited* (20 January 2010), PR-2009-073 (CITT) at para. 17; *Solartech Inc.* (16 October 2007), PR-2007-058 (CITT).