



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## ORDER AND REASONS

File No. PR-2016-051

Marine International Dragage Inc.

v.

Canadian Coast Guard

*Order and reasons issued  
Monday, March 13, 2017*

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IN THE MATTER OF a complaint filed by Marine International Dragage Inc. 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 of the Canadian International Trade Tribunal to inquire into the complaint pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*;

AND FURTHER TO a motion filed by the Canadian Coast Guard on February 2, 2017, pursuant to rule 24 of the *Canadian International Trade Tribunal Rules*, requesting an order that the Canadian International Trade Tribunal cease to conduct the inquiry on the basis that it does not have jurisdiction to accept the complaint for inquiry since the complaint was not filed within the time limits prescribed by section 6 of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.

**BETWEEN**

**MARINE INTERNATIONAL DRAGAGE INC.**

**Complainant**

**AND**

**THE CANADIAN COAST GUARD**

**Government  
Institution**

**ORDER**

The Canadian International Trade Tribunal grants the motion filed by the Canadian Coast Guard and hereby ceases its inquiry pursuant to paragraph 10(b) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.

Jean Bédard, Q.C.

Jean Bédard, Q.C.

Presiding Member

## STATEMENT OF REASONS

### INTRODUCTION

1. On January 20, 2017, Marine International Dragage Inc. (MID) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> (*CITT Act*) concerning a contract between the Canadian Coast Guard (CCG) and Excavation René St-Pierre inc. (St-Pierre) to build an embankment around the vessel *Kathryn Spirit* moored in Beauharnois, Quebec. MID alleged that the CCG incorrectly entered into a contract without initiating a competitive process.

2. On January 25, 2017, the Tribunal informed the parties that the complaint had been accepted for inquiry, as it met the requirements of subsection 30.11(2) of the *CITT Act* and the conditions set out in subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*<sup>2</sup> (*Regulations*).

3. On February 2, 2017, the CCG filed a motion pursuant to rule 24 of the *Canadian International Trade Tribunal Rules*<sup>3</sup> for an order dismissing the complaint on the basis that it was not filed within the time limits set out in section 6 of the *Regulations*.

4. On February 14, 2017, MID filed its comments on the motion. On February 22, 2017, the CCG filed its response.

### POSITIONS OF PARTIES

#### CCG

5. The CCG submits that MID's complaint was filed late. According to the CCG, MID became aware, or reasonably should have become aware, of its ground of complaint on November 14, 2016, date on which MID also objected in writing to the CCG. The CCG also submits that it replied to MID's objection during a telephone conversation on November 16, 2016, and that it is therefore on that date that MID had actual or constructive knowledge of the denial of relief from the CCG.

6. According to the CCG, MID filed its complaint on January 20, 2017, more than two months after November 16, 2016, and therefore outside the 10-working-day time limit required by section 6 of the *Regulations*. Consequently, the CCG considers that the complaint was filed late and should be dismissed.

#### MID

7. Even though MID recognizes that it became aware of the contract awarded to St-Pierre at the latest on November 14, 2016, it disputes CCG's argument concerning the date on which it became aware, or reasonably should have become aware, of its ground of complaint. In its November 14, 2016, email, MID submitted an access to information request relating to assessments, plans and specifications in connection with the contract awarded to St-Pierre. MID alleges it never received the requested documents.

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1. R.S.C., 1985, c. 47 (4th Supp.).  
2. S.O.R./93-602.  
3. S.O.R./91-499.

8. MID submits that, since work began in January 2017 and that it is not until January 16, 2017, when it visited the construction site, that it discovered the extent of the work done under the contract awarded to St-Pierre, it is on that date that it became aware of its ground of complaint. MID therefore justifies the filing of its complaint within 10 working days of January 16, 2017, on this basis and argues that it is timely as a result.

### TRIBUNAL'S ANALYSIS

9. When considering whether to accept a complaint for inquiry, the Tribunal must determine, *inter alia*, whether the complaint was filed in a timely manner. To that end, the Tribunal must assess whether the complaint was filed not later than 10 working days after the day on which the basis of the complaint became known or *reasonably should have become known* to the potential supplier<sup>4</sup> or within 10 working days after the day on which the potential supplier had actual or constructive knowledge of the denial of relief by the government institution after it made an objection.<sup>5</sup>

10. As noted above, MID states that it first learned, at the latest on November 14, 2016, that a contract by mutual agreement had been signed between the CCG and St-Pierre for the building of an embankment around the vessel *Kathryn Spirit*. MID also states that it objected to the award of the contract in its November 14, 2016, email by expressing “politely [its] disappointment for not having been contacted for negotiations”<sup>6</sup> [translation] and requested certain documents with the intention of making an offer to the CCG. MID acknowledges receiving a response from the CCG to its objection during the telephone conversation of November 16, 2016, but states that it never received the requested documents.

11. The Tribunal is of the view that the November 14, 2016, email and the telephone conversation which took place two days later do not constitute an objection with respect to the awarding of a contract to St-Pierre without issuing an invitation to tender. Indeed, for this to be considered an objection pursuant to section 6 of the *Regulations*, MID would have had to, at the very least, object to something, set out the grounds of its objection, even summarily, and demand a form of relief. The simple expression of a “disappointment for not having been contacted” cannot be considered an objection.

12. Therefore, since MID did not file its complaint with the Tribunal within 10 working days after November 14, 2016, the Tribunal does not have jurisdiction to conduct an inquiry. The fact that MID did not visually discover the extent of the work done before January 2017 changes nothing to the fact that it became aware, or reasonably should have become aware, of its ground of complaint on November 14, 2016, that is, the award of a contract without the CCG having first initiated a competitive process.

13. Even if the Tribunal were of the view that MID did make an objection to the CCG, MID, by its own admission, recognizes having received a response to its November 14, 2016, email during the telephone conversation of November 16, 2016. Thus, since more than 10 working days elapsed between CCG's response to MID's objection and the filing of the complaint, the Tribunal notes that the complaint would have been time-barred even if the email were considered an objection.

14. The Tribunal adopts the following comments of Justice Rip in *Kolmar v. The Queen*: “While, in cases of doubt, it is preferable to have a dispute between a taxpayer and the Crown decided on its merits, rather than the Crown succeeding due to a taxpayer missing a time limit, one cannot ignore the clear words

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4. *Regulations*, para. 6(1).

5. *Regulations*, para. 6(2).

6. Complaint form at 5.

of the statute.”<sup>7</sup> Similarly, in the present case, the wording of the *Regulations* regarding the prescribed time limits is clear and the Tribunal cannot overcome MID’s failure to file its complaint within the time limits.

15. This being said, the Tribunal nevertheless points out that MID’s complaint raises several issues that will remain unanswered. For example, it would have been relevant to look into the “emergency situation” [translation] that motivated CCG’s actions or at least obtain CCG’s version of the facts regarding this situation.

16. In light of the foregoing, the Tribunal finds that MID’s complaint was not filed within the prescribed time limits and therefore grants CCG’s motion for an order dismissing the complaint.

## **ORDER**

17. The Tribunal hereby grants CCG’s motion and ceases its inquiry pursuant to subsection 10(b) of the *Regulations*.

Jean Bédard, Q.C.

Jean Bédard, Q.C.

Presiding Member

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7. *Kolmar v. The Queen*, 2003 TCC 829 (CanLII), para. 21.