



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

ORDER AND REASONS

File No. PR-2016-055

Marine International Dragage Inc.

v.

Canadian Coast Guard

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

TABLE OF CONTENTS

ORDER i

STATEMENT OF REASONS 1

 INTRODUCTION 1

 POSITIONS OF PARTIES 1

 CCG 1

 MID 1

 TRIBUNAL’S ANALYSIS 2

 ORDER 3

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 16, 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 February 3 and 8, 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*¹ (*CITT Act*) concerning a contract between the Canadian Coast Guard (CCG) and Sauvetage Maritime Océan inc. (Sauvetage Maritime) for the installation of mooring lines for 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 February 9, 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*² (*Regulations*).
3. On February 16, 2017, the CCG filed a motion pursuant to Rule 24 of the *Canadian International Trade Tribunal Rules*³ 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 20, 2017, MID filed its comments on the motion. On March 2, 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 sometime in August 2016, when it heard a "rumour" [translation] that a contract had been awarded for the installation of mooring lines. The CCG also submits that, on October 11, 2016, MID sent an email to the Department of Public Works and Government Services stating that urgent work had been done to prevent the *Kathryn Spirit* from capsizing. The CCG submits that no objection was made.
6. According to the CCG, MID filed its complaint on February 8, 2017, several months after August 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 is in August 2016 that it heard a rumour that Sauvetage Maritime had been awarded a contract by mutual agreement for the installation of mooring lines to prevent the *Kathryn Spirit* from capsizing, it disputes CCG's argument concerning the date on which it became aware, or reasonably should have become aware, of its ground of complaint. Notwithstanding, MID acknowledges that it did not make an objection to the CCG.

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

8. According to MID, it is not until January 16, 2017, while preparing another complaint filed with the Tribunal (PR-2016-051), that it became aware or reasonably should have become aware of its ground of complaint. It is indeed on that date that it discovered the extent of the work done with regard to the installation of mooring lines. Moreover, MID submits that no information was made public concerning the contract awarded to Sauvetage Maritime until November 10, 2016, date on which the information was posted on Fisheries and Oceans Canada's website.

9. It is on this basis that MID argues that its complaint was filed in a timely manner.

TRIBUNAL'S ANALYSIS

10. 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,⁴ 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.⁵ In the matter at hand, the awarding of a contract to Sauvetage Maritime without issuing an invitation to tender constitutes *the basis of the complaint*. Thus, the prescribed time limit starts running on the date MID became aware or *reasonably should have become aware* of its ground of complaint.

11. In the present case, the parties agree, and the Tribunal concurs, that an objection was not made to the CCG following the award of the contract to Sauvetage Maritime. The Tribunal must therefore determine on what date the prescribed time limit started running.

12. In its February 8, 2017, letter containing additional information with regard to its complaint, MID admits having heard a rumour, sometime in August 2016, that Sauvetage Maritime had been awarded a contract by mutual agreement with the CCG. MID also admits having given several phone calls to the CCG between August and November 2016 to express its "disappointment for not having been contacted" [translation], but states that it never obtained confirmation of the name of the contract awardee.

13. In light of these admissions, the Tribunal finds that MID became aware, at the latest in August 2016, that a contract had been awarded by the CCG for the installation of mooring lines. The fact that MID did not obtain confirmation of the name of the contract awardee changes nothing to the date on which it became aware that a contract had been awarded by the CCG.

14. Thus, the Tribunal is of the opinion that MID became aware of its ground of complaint at the latest in August 2016. Therefore, since MID did not file its complaint with the Tribunal within 10 working days after that date, the Tribunal does not have jurisdiction to conduct an inquiry.

15. The fact that MID did not visually discover the extent of the work done before January 2017 changes nothing to the fact that, in August 2016, it became aware, or reasonably should have become aware, that a contract had been awarded without the CCG having first initiated a competitive process.

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

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

16. Even if the Tribunal were to find that MID did not become aware of its ground of complaint before January 16, 2017, the Tribunal would still not have jurisdiction to conduct an inquiry.⁶ Indeed, MID would have had until January 30, 2017, to file a complaint with the Tribunal, which it only did on February 3 and 8, 2017, on the grounds that it “prioritized the previous complaint in File No. PR-2016-051, believing that the amounts at stake were much more important than in the present complaint” [translation]. This explanation does not justify the failure to respect the prescribed time limits set out in the *Regulations*, and the Tribunal must conclude that the complaint was not filed in a timely manner.

17. 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.

18. 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

19. 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

6. In its complaint, MID had not indicated on what date it visited the construction site. Willing to give MID the benefit of the doubt as regards the date on which it became aware or reasonably should have become aware of its ground of complaint, the Tribunal had initially accepted the complaint for inquiry. In its comments on CCG’s motion, MID confirmed that it visited the construction site on January 16, 2017.