



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2017-001

Edgar Inc.

*Decision made
Monday, April 10, 2017*

*Decision and reasons issued
Thursday, April 13, 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

EDGAR INC.

AGAINST

THE CANADA REVENUE 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.

Daniel Petit

Daniel Petit

Presiding Member

STATEMENT OF REASONS

1. Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,² 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.

SUMMARY OF COMPLAINT

2. On April 7, 2017, Edgar Inc. (Edgar) filed a complaint with the Tribunal regarding a Request for Proposal (RFP) (Solicitation No. 1000329852) issued by the Canada Revenue Agency (CRA) on May 19, 2016, for translation and editing services.

3. Edgar alleges that it should be compensated for lost opportunity in accordance with the Tribunal's determination on March 15, 2017, in *The Masha Krupp Translation Group Ltd. v. Canada Revenue Agency*,³ which pertains to the same RFP as the one in the present case.

4. In *Masha Krupp*, the Tribunal recommended that the CRA retender the procurement that is the subject of the present complaint and that it compensate the complainant, The Masha Krupp Translation Group Ltd. (MKTG), "for lost opportunity in the amount of the profit that it would reasonably have made during the time that CLS Lexi-Tech holds the current contract and until such time as the retendering is complete, divided by the number of bidders that were compliant with the [solicitation's] mandatory criteria."

5. Edgar also alleges that it would be aggrieved were MKTG to be compensated, because such compensation could "assist it directly in reducing its bid price in [the new] solicitation, which would constitute unfair competition towards Edgar if it did not benefit from the same advantage when the new solicitation is launched, given that it was aggrieved by the CRA's irregularities in the same way [MKTG] was" [translation]⁴.

BACKGROUND

6. On May 19, 2016, the CRA issued the RFP.

7. On June 28, 2016, Edgar submitted its bid in response to the RFP.

8. On September 27, 2016, the CRA informed Edgar that the contract had been awarded to CLS Lexi-Tech Ltd.

9. On October 31, 2016, MKTG filed its complaint with the Tribunal.

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

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

3. *The Masha Krupp Translation Group Ltd. v. Canada Revenue Agency* (15 March 2017), PR-2016-041 (CITT) [*Masha Krupp*].

4. Complaint at 7.

10. The Tribunal issued its determination concerning MKTG's complaint on March 15, 2017, and the reasons supporting its determination on March 20, 2017. Edgar alleges that it became aware of the Tribunal's determination on March 24, 2017, and of its reasons on April 3, 2017.

11. On March 28, 2017, Edgar requested direction from the CRA, by e-mail, regarding the procedure for obtaining the compensation to which it alleges it is entitled in accordance with the Tribunal's determination.⁵

12. On April 3, 2017, the CRA replied to Edgar's e-mail by indicating that the determination in *Masha Krupp* awarded a remedy only to the complainant in that case, namely MKTG. The CRA added that Edgar was not a party to the proceedings and that, consequently, it was not entitled to a remedy. The CRA also suggested to Edgar that it contact the Tribunal with regard to any questions pertaining to its decision in *Masha Krupp*.

13. On April 7, 2017, Edgar filed its complaint with the Tribunal.

ANALYSIS

14. Pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal decided not to conduct an inquiry into the complaint for the reasons that follow.

15. To initiate an inquiry, the Tribunal must be satisfied that (a) the complainant is a potential supplier, (b) the complaint is in respect of a designated contract and (c) the complaint discloses a reasonable indication that the procurement has not been carried out in accordance with the applicable trade agreement,⁶ which in this case is the *Agreement on Internal Trade*.⁷ The complaint must also be filed within the prescribed time limits.⁸

16. In this case, the complaint does not disclose a reasonable indication that the procurement process was not conducted in accordance with the *AIT*.

17. Edgar's understanding of the effect on it of the Tribunal's decision in *Masha Krupp* is incorrect. In that case, the Tribunal recommended that only MKTG be compensated. The fact that in calculating compensation to be awarded to MKTG the Tribunal mentioned that the amount be "divided by the *number of bidders that were compliant with the [solicitation's] mandatory criteria*" [emphasis added] does not grant any right to Edgar, who was not a party to those proceedings.

18. Concerning the second ground of complaint that Edgar would be aggrieved if it were not compensated whereas MKTG would be granted compensation, the Tribunal notes that this possibility cannot justify an inquiry under the *CITT Act* or the *Regulations*. In procurement complaint proceedings, the complainant bears the burden of establishing a reasonable indication of a breach of an applicable trade agreement. Edgar failed to discharge its burden in the case at hand.

5. E-mail from Edgar to the CRA dated March 28, 2017.

6. Subsection 7(1) of the *Regulations*.

7. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<http://www.ait-aci.ca/agreement-on-internal-trade/>> [*AIT*].

8. Section 6 of the *Regulations*.

DECISION

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

Daniel Petit _____
Daniel Petit
Presiding Member