



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2017-017

MasterBedroom Inc.

*Decision and reasons issued  
Wednesday, June 28, 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**

**MASTERBEDROOM 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.

Peter Burn \_\_\_\_\_  
Peter Burn  
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.

### SUMMARY OF COMPLAINT

2. This complaint filed by MasterBedroom Inc. (Master Bedroom) on June 22, 2017, involves a Request for Standing Offer (Solicitation No. B8710-160020/A) (the RFSO) issued by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of Citizenship and Immigration for the supply, delivery, assembly, set-up and disposal of packing material of household furniture on an as-needed basis for the Resettlement Assistance Program for government-assisted refugees being settled in various cities in British Columbia, Alberta, Manitoba, Ontario and Newfoundland.

3. Master Bedroom bid for the work in the Greater Toronto Area of Ontario, but was informed by PWGSC on June 13, 2017, that, while its bid was responsive to the mandatory requirements, the Standard Offer had been issued to Charley's Furniture because the latter had submitted a lower-priced bid. Master Bedroom seeks a new solicitation of the work, arguing that PWGSC has provided no explanation for why its evaluation for the Toronto, Hamilton, Kitchener, London, and Ottawa metropolitan areas, which Charley's Furniture won, took longer than its evaluation for the bids for the Windsor metropolitan area and the other provinces, which Charley's Furniture did not win. It also argues that Charley's Furniture could not have passed the mandatory criteria based on its alleged "delays" and "known bad service" demonstrated in its performance in Standard Offers issued under prior RFSOs of this work.

### ANALYSIS

4. In order for the Tribunal to commence an inquiry into a complaint, it must determine whether the complainant is a potential supplier, whether the complaint involves a "designated contract" (i.e., a good or service meeting a minimum monetary value as established by a trade agreement), and finally whether the complaint "discloses a reasonable indication that the procurement has not been conducted in accordance" with the applicable trade agreement.<sup>3</sup>

5. The Tribunal has decided not to conduct an inquiry into Master Bedroom's complaint because it fails to disclose a reasonable indication that the procurement was not conducted in accordance with the applicable trade agreement. The complaint has failed to meet this (modest) threshold, because the misconduct alleged is speculative and unsupported by the evidence submitted with the complaint.

6. Regarding the ground of undue delay, there is no evidence to support Master Bedroom's inference that the evaluation of the bids for the work in Ontario took longer because PWGSC was according Charley's Furniture special treatment. To the contrary, the evidence shows that the RFSO always contemplated the Ontario bids being evaluated last (because existing contracts for Ontario expired later).

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

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

3. Section 7 of the *Regulations*.

7. The RFSO closed on March 6, 2017. It expressly provided on page 3 in Section 1.2.1 (Summary) that the period of the resulting Standing Offers would be, exclusive of optional extensions, from the “date of issue to 31 March 2018 . . . with the exception of the Province of Ontario where the Standing Offers will be from 1 August 2017 to 31 March 2018 . . .” [emphasis added].

8. When asked by Interfusion Furniture & Supply (Interfusion) (the winning bidder for Windsor) on March 24, 2017, for an update on when the evaluation results would be released, PWGSC responded that “[s]ome of the area of performances are going to start April 1<sup>st</sup>, but the Ontario region will only begin as of August 1<sup>st</sup>. We are currently in the evaluation process but you will be hearing from us in the coming weeks”<sup>4</sup> [emphasis added]. On March 30, 2017, PWGSC confirmed that it had “issued some Standing Offers for some areas of performances based on priority with existing Standing Offers expiring”<sup>5</sup> [emphasis added]. Asked again by Interfusion on April 6, 2017, PWGSC confirmed that results had been posted for British Columbia, Manitoba and Alberta but that results for areas in Ontario would “be assessed in the coming weeks, with a Standing Offer start date of August 1<sup>st</sup>, 2017”<sup>6</sup> [emphasis added]. On April 19, 2017, Interfusion asked for an answer “by the end of April as Interfusion’s lease to the warehouse space and commitment to our employees are coming to an end”. PWGSC replied that “I will most likely have an answer for the Ontario region Standing Offers by mid-May at the latest. I will try by the end of April but I cannot guarantee as the division’s workload is quite heavy at the moment”<sup>7</sup> [emphasis added].

9. On May 2, 2017, Master Bedroom queried PWGSC by email when the awards for Ontario would be announced. PWGSC responded that the evaluations were ongoing and “will most likely be issued late June due to unforeseen circumstances”.<sup>8</sup> Interfusion asked the same question on May 11, 2017, and PWGSC reiterated that the evaluations were ongoing and that it “cannot confirm at which date we will be issuing the awards”.<sup>9</sup> On May 24, PWGSC confirmed the award to Interfusion of the work for Windsor, Ontario, and revised its estimate to mid-July for the bids for the rest of Ontario.<sup>10</sup>

10. All of this correspondence is consistent with the statement in the RFSO that Ontario Standing Offers would start later, from August 1, 2017. Further, to the extent the bids for Windsor were prioritized, there is no evidence this was done to benefit Charley’s Furniture, or, even if it were, how doing so would benefit Charley’s Furniture (which did not win the Standing Offer for Windsor). The Tribunal makes no finding on whether Windsor was prioritized (and if so whether properly or improperly), but the evidence that Master Bedroom has filed suggests that if Windsor was prioritized, it was following the request of Interfusion who expressed to PWGSC their need to know the results as soon as possible for business planning purposes. Accordingly, Master Bedroom’s inference of wrongdoing based on the timing of the release of the results is not supported, and it is also contradicted by the evidence it has itself filed.

11. Regarding its allegation that Charley’s Furniture could not have passed the mandatory criteria, this too is purely speculative. Master Bedroom’s allegation that Charley’s Furniture’s past work was marked by “delays” and “known bad service” is unsupported by any evidence. Further, it is irrelevant. Master Bedroom has not identified any specific mandatory requirement that Charley’s Furniture’s proposal failed. The mandatory requirements are identified in Annex A of the RFSO at Sections 3.1 to 3.14. None of these

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4. Complaint, Attachment 4.  
5. Complaint, Attachment 7.  
6. Complaint, Attachment 5.  
7. Complaint, Attachment 6.  
8. Complaint, Attachment 7.  
9. Complaint, Attachment 8.  
10. Complaint, Attachments 9 and 10.

require a bidder to demonstrate past performance experience – rather, they focus on the requirements to meet the Standing Offer call-ups going forward, e.g., the offeror must be available at all times during a business day (Section 3.1); the offeror must have sufficient inventory (Section 3.5) and resources (Section 3.6) to meet the delivery requirements; the offeror must supply new furniture only (Section 3.7); etc.

12. Master Bedroom also alleges that PWGSC has a purportedly suspect “special relationship” with Charley’s Furniture because in Master Bedroom’s prior complaint involving the earlier RFSO the Tribunal found that PWGSC should have determined that Charley’s Furniture’s bid was non-compliant when the latter had failed to tick a check mark next to the delivery area it was bidding on.<sup>11</sup> This represented a failure to follow tender instructions in a previous solicitation, and does not constitute evidence of a history of “delays” and “bad service”. Regardless, it is similarly irrelevant because, as explained above, the present RFSO is a new and independent tender that is forward-looking in terms of requirements. Moreover, the Tribunal has warned that suppliers should “abstain from invoking assumptions that call into question the good faith or integrity of others in the absence of tangible proof to this effect” because the Tribunal “presumes the good faith and honesty both of the bidders and of the public servants mandated to evaluate their bid.”<sup>12</sup> Here, Master Bedroom has produced no such tangible proof, and only speculation. Accordingly, the Tribunal finds that this ground is not supported by the evidence.

## DECISION

13. Based on the above, the Tribunal finds that the complaint does not disclose a reasonable indication of any misconduct constituting a breach of the trade agreements.

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

Peter Burn  
Peter Burn  
Presiding Member

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11. Complaint at 5. Master Bedroom filed six complaints regarding the predecessor RFSO for this work, the fourth of which the CITT determined was valid. See *MasterBedroom Inc.* (14 September 2016), PR-2016-032 (CITT) at para. 4.

12. *GESFORM International* (26 May 2014), PR-2014-012 (CITT) at paras. 15-16.