



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

ORDER AND REASONS

File No. PR-2017-019

GBCA-MTBA (Joint Venture)

v.

Parks Canada Agency

*Order and reasons issued
Thursday, November 9, 2017*

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IN THE MATTER OF a complaint filed by GBCA-MTBA (Joint Venture) pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C., 1985, c. 47 (4th Supp.);

AND FURTHER TO the Canadian International Trade Tribunal's preliminary indication of the level of complexity for the complaint case and its preliminary indication of the amount of the cost award.

BETWEEN

GBCA-MTBA (JOINT VENTURE)

Complainant

AND

THE PARKS CANADA AGENCY

**Government
Institution**

ORDER

In its determination of October 10, 2017, the Canadian International Trade Tribunal, pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*, awarded the Parks Canada Agency its reasonable costs incurred in responding to the complaint. The Canadian International Trade Tribunal's preliminary indication of the level of complexity for the complaint case was Level 1, and its preliminary indication of the amount of the cost award was \$1,150. Having considered the submission of GBCA-MTBA (Joint Venture) regarding the preliminary indication of the amount of the cost award, the Canadian International Trade Tribunal hereby confirms its preliminary indication by awarding the Parks Canada Agency its costs in the amount of \$1,150 for responding to the complaint and directs GBCA-MTBA (Joint Venture) to take appropriate action to ensure prompt payment.

Rose Ritcey
Rose Ritcey
Presiding Member

STATEMENT OF REASONS

INTRODUCTION

1. In its determination of October 10, 2017, the Canadian International Trade Tribunal (the Tribunal), pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*,¹ awarded the Parks Canada Agency (Parks Canada) its reasonable costs incurred in responding to the complaint.
2. The Tribunal's preliminary indication of the level of complexity in this case was Level 1, and its preliminary indication of the amount of the cost award was \$1,150.
3. Having considered the submission of GBCA-MTBA (Joint Venture) (GBCA-MTBA) regarding the preliminary indication of the amount of the cost award, the Tribunal has decided to confirm its preliminary indication of the cost award and awards Parks Canada its costs in the amount of \$1,150.
4. The reasons for the Tribunal's decision on the final amount of the cost award are provided below.

ANALYSIS

5. Pursuant to section 30.16 of the *CITT Act*, the Tribunal has discretionary power to award costs of proceedings.
6. As indicated in the *Procurement Costs Guideline* (the *Guideline*), the Tribunal may exercise its discretion to award costs to a successful party, whether it be the complainant or the government institution.²
7. The *Guideline* sets out a flat rate system that is typically invoked for the purposes of fixing the amount of litigation costs incidental to procurement proceedings on the basis of the level of complexity according to three criteria: the complexity of the procurement, the complexity of the complaint and the complexity of the complaint proceedings.³
8. As stated above, the Tribunal's preliminary indication of the level of complexity in this case was Level 1, which corresponds to a cost award in the amount of \$1,150, the lowest level of costs set out in the *Guideline*. The Tribunal provided the following reasons for its preliminary indications of complexity and the cost award amount:

50. The Tribunal's preliminary indication is that this complaint case has a complexity level corresponding to the lowest level of complexity referred to in Annex A of the *Guideline* (Level 1). The complexity of the procurement was medium, as it involved the provision of heritage architecture services involving a range of activities in relation to project work on Parks Canada historic sites and heritage buildings in Ontario. The Tribunal finds that the complexity of the complaint was low, as the issues were straightforward and dealt with whether Parks Canada properly evaluated GBCA-MTBA's proposal against one mandatory requirement of the RFSO. Finally, the complexity of the proceedings was low, as the issues were resolved by the parties through documentary evidence and written representations, and a hearing was not necessary.

51. Accordingly, as contemplated by the *Guideline*, the Tribunal's preliminary indication of the amount of the cost award is \$1,150.

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1. R.S.C., 1985, c. 47 (4th Supp.) [*CITT Act*].
 2. *Guideline* at para. 2.1. The *Guideline* is on the Tribunal's webpage at http://www.citt-tcce.gc.ca/en/Procurement_costs_guidelines_e. See also *Canada (Attorney General) v. Georgian College of Applied Arts and Technology*, [2003] 4 FCR 525 [*Georgian College*] at paras. 35-38.
 3. *Guideline* at para. 4.1.

9. GBCA-MTBA wrote to the Tribunal on October 19, 2017, contesting the preliminary indication of the amount of the cost award. GBCA-MTBA submitted that, as “a very small company”, it “is a hardship for us to have to pay [costs]” and asked if there was any way to reduce the amount of the cost award.

10. In accordance with article 4.2 of the *Guideline*, the Tribunal invited Parks Canada, on October 23, 2017, to file its reply submissions, if any, by October 30, 2017. Parks Canada did not provide a response.

11. When making a final cost order, the Tribunal is not bound by its preliminary indication of the level of complexity of the complaint case or the amount of the cost award set out in the determination. As stated in the *Guideline*, “[i]f one or more parties make submissions, the Tribunal will consider them, request additional information, if necessary, and then make whatever cost order it believes is warranted.”⁴

12. Having considered the submission filed by GBCA-MTBA, the Tribunal did not consider it necessary to request additional information from the parties before making its final cost order. Even if GBCA-MTBA had provided evidence that demonstrated its alleged financial hardship, which it did not, the financial situation or ability to pay of the unsuccessful party is not a relevant consideration for the Tribunal in assessing the amount of a cost award.⁵ An award of costs is not intended to be a source of profit for the successful party, nor is it imposed as punishment on the party who pays it.⁶

13. Given its determination that the complaint was not valid and that Parks Canada was entitled to its reasonable costs incurred in responding to the complaint, the Tribunal sees no basis on which to reduce the amount of the cost award in this case from what is already the lowest level contemplated in the *Guideline*. As indicated in the *Guideline*, an unsuccessful party should be prepared to be subject to an order for costs to the successful party. In the Tribunal’s view, GBCA-MTBA was or ought to have been aware of this possibility when it filed its complaint.

14. In light of the above, the Tribunal finds that no change is warranted with respect to its preliminary indications of the level of complexity of the complaint or the amount of the cost award.

CONCLUSION

15. The Tribunal confirms its preliminary indication of the amount of the cost award by awarding Parks Canada its costs in the amount of \$1,150 for responding to the complaint and directs GBCA-MTBA to take appropriate action to ensure prompt payment.⁷

Rose Ritcey

Rose Ritcey

Presiding Member

4. *Guideline* at para. 4.2.5.

5. Similarly, it is well established that the Federal Courts do not consider economic or financial hardship when assessing costs pursuant to rule 400(1) of the *Federal Court Rules*, SOR/98-106. See, for example, *Kassam v. Canada (Attorney General)*, 2005 FCA 169 (CanLII) at para. 4; *Chiu v. Canada (National Parole Board)*, 2007 FC 1353 (CanLII) at para. 7; *Latham v. Canada*, 2007 FCA 179 (CanLII) at para. 8.

6. *Georgian College* at para. 25.

7. The Tribunal notes that GBCA-MTBA has asked, in its submission on costs, how costs are to be paid to Parks Canada. This is a matter to be resolved between the parties and, therefore, GBCA-MTBA should contact Parks Canada directly to make the appropriate payment arrangements.