



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

ORDER AND REASONS

File No. PR-2016-027R

M.D. Charlton Co. Ltd.

v.

Department of Public Works and
Government Services

*Order and reasons issued
Wednesday, February 14, 2018*

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IN THE MATTER OF a complaint filed by M.D. Charlton Co. Ltd. in PR-2016-027, pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C., 1985, c. 47 (4th Supp.), and the remand of the costs portion of the decision by the Federal Court of Appeal, dated September 5, 2017;

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

M.D. CHARLTON CO. LTD.

Complainant

AND

**THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT
SERVICES**

**Government
Institution**

ORDER

In a letter to parties dated January 12, 2018, the Canadian International Trade Tribunal indicated its intention to award the Department of Public Works and Government Services its reasonable costs incurred in responding to the complaint in PR-2016-027, pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*.

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. Noting that there have been no submissions contesting the preliminary indication of the level of complexity or the preliminary indication of the amount of the cost award, the Canadian International Trade Tribunal hereby confirms its preliminary indications by awarding the Department of Public Works and Government Services its costs in the amount of \$1,150 for responding to the complaint and directs M.D. Charlton Co. Ltd. to take appropriate action to ensure prompt payment.

Jean Bédard

Jean Bédard

Presiding Member

STATEMENT OF REASONS

1. On December 16, 2016, the Canadian International Trade Tribunal (the Tribunal) rendered a decision in PR-2016-027 wherein it found the complaint filed by M.D. Charlton Co. Ltd. (MD Charlton) against the Department of Public Works and Government Services (PWGSC) was not valid.
2. The Attorney General of Canada applied to the Federal Court of Appeal for judicial review, alleging that the Tribunal erred in deciding that each party would bear its own costs.
3. On September 5, 2017, the Federal Court of Appeal allowed the application for judicial review and set aside the Tribunal's decision on costs, holding that the Tribunal failed to provide any reason for departing from its *Procurement Costs Guideline*.
4. The cost order having been set aside, the Tribunal wrote to MD Charlton and PWGSC on January 12, 2018, for the purpose of requesting submissions on costs. In that letter, the Tribunal, having given due consideration to the *Procurement Costs Guideline*, provided a preliminary indication that costs should be awarded to PWGSC for responding to the complaint. In particular, the Tribunal's preliminary indication of the level of complexity for the complaint was Level 1, and its preliminary indication of the amount of the cost award was \$1,150.
5. The Tribunal is of the view that this cost award is appropriate given PWGSC's success on the merits, and the straightforward nature of both the complaint and the inquiry process. Specifically, the procurement itself involved a simply defined item, namely, vest-style body armour carriers containing ballistic soft armour inserts. There was only a single ground of complaint, having to do with the specification chosen by PWGSC, and it was not overly technical or difficult to assess. Furthermore, there were no motions and no interveners. Although the inquiry was extended to the 135-day time frame, an oral hearing was not necessary.
6. The Tribunal did not receive any submissions on costs from MD Charlton or from PWGSC.
7. Accordingly, the Tribunal hereby confirms its preliminary indication by awarding PWGSC its costs in the amount of \$1,150 for responding to the complaint and directs MD Charlton to take appropriate action to ensure prompt payment.

Jean Bédard

Jean Bédard
Presiding Member