



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

---

## ORDER AND REASONS

File No. PR-2007-020

TPG Technology Consulting Ltd.

v.

Department of Public Works and  
Government Services

*Order and reasons issued  
Thursday, August 30, 2007*

TABLE OF CONTENTS

ORDER .....i

STATEMENT OF REASONS .....1

    COMPLAINT .....1

    TRIBUNAL’S ANALYSIS.....1

        Costs .....2

    TRIBUNAL’S ORDER .....3

IN THE MATTER OF a complaint filed by TPG Technology Consulting Ltd. under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47;

AND FURTHER TO a decision to conduct an inquiry into the complaint under subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

**BETWEEN**

**TPG TECHNOLOGY CONSULTING LTD.**

**Complainant**

**AND**

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

**Government  
Institution**

**ORDER**

Pursuant to subsection 30.13(5) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal hereby ceases to conduct its inquiry into the complaint.

Ellen Fry  
Ellen Fry  
Presiding Member

Pierre Gosselin  
Pierre Gosselin  
Member

James A. Ogilvy  
James A. Ogilvy  
Member

Hélène Nadeau  
Hélène Nadeau  
Secretary

Tribunal Members:	Ellen Fry, Presiding Member Pierre Gosselin, Member James A. Ogilvy, Member
Director:	Randolph W. Heggart
Senior Investigator:	Cathy Turner
Counsel for the Tribunal:	Alain Xatruch
Complainant:	TPG Technology Consulting Ltd.
Counsel for the Complainant:	Ronald D. Lunau Phuong T. V. Ngo
Interveners:	ADGA Group Consultants Inc. Ajilon Canada Inc.
Counsel for ADGA Group Consultants Inc.:	Richard A. Wagner
Counsel for Ajilon Canada Inc.:	R. Benjamin Mills
Government Institution:	Department of Public Works and Government Services
Counsel for the Government Institution:	Christianne M. Laizner Susan D. Clarke Ian McLeod

Please address all communications to:

The Secretary  
Canadian International Trade Tribunal  
Standard Life Centre  
333 Laurier Avenue West  
15th Floor  
Ottawa, Ontario  
K1A 0G7

Telephone: 613-993-3595  
Fax: 613-990-2439  
E-mail: [secretary@citt-tcce.gc.ca](mailto:secretary@citt-tcce.gc.ca)

## STATEMENT OF REASONS

### COMPLAINT

1. On May 18, 2007, TPG Technology Consulting Ltd. (TPG) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> concerning a procurement (Solicitation No. EN869-060882/A) by the Department of Public Works and Government Services (PWGSC) for the provision of product management services.

2. TPG alleged that there was an appearance of conflict of interest and/or a reasonable apprehension of bias arising from the existing financial relationship between the Director General of the Product Management Sector of the Information Technology Services Branch of PWGSC and a potential bidder in the solicitation. TPG requested, as a remedy, that the Tribunal recommend that PWGSC cancel the solicitation and issue a new solicitation specifying how it proposes to address the appearance of conflict of interest in its evaluation process. In the alternative, TPG requested that the Tribunal recommend that PWGSC compensate it for its lost profits or lost opportunity to profit. It also requested its reasonable costs incurred in preparing and proceeding with the complaint.

3. On May 28, 2007, 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*.<sup>2</sup> Also on May 28, 2007, pursuant to subsection 30.13(3) of the *CITT Act*, the Tribunal ordered PWGSC to postpone the award of a contract until the Tribunal determined the validity of the complaint.

4. On June 6, 2007, PWGSC certified to the Tribunal that the procurement at issue was urgent and that a delay in awarding contracts would be contrary to the public interest. On June 7, 2007, the Tribunal therefore rescinded its postponement of award order. That same day, the Tribunal granted intervener status to ADGA Group Consultants Inc. On June 15, 2007, the Tribunal granted intervener status to Ajilon Canada Inc. (Ajilon).

5. On July 4, 2007, PWGSC submitted a letter stating that the solicitation at issue had been cancelled and that, in its view, because there no longer was a procurement process for review by the Tribunal, the complaint should be dismissed. On July 10, 2007, TPG and Ajilon filed their comments on PWGSC's letter. On July 12, 2007, PWGSC filed its response.

### TRIBUNAL'S ANALYSIS

6. Pursuant to subsection 30.13(5) of the *CITT Act*, the Tribunal may, at any time, cease conducting an inquiry if it is of the opinion that the complaint is trivial.

7. PWGSC cancelled the solicitation on July 3, 2007. PWGSC submitted that, because there no longer was a procurement process for review by the Tribunal, the complaint should be dismissed. Ajilon was also of the view that, in light of the cancellation of the solicitation, it would be appropriate for the complaint to be dismissed.

---

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

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

8. In response, TPG submitted that the *CITT Act* does not permit the dismissal of the complaint on the grounds put forward by PWGSC and that acceding to PWGSC's request would frustrate the complaint process.

9. The Tribunal notes that TPG did not submit a bid in response to the solicitation and that, as a remedy, it requested that the Tribunal recommend that PWGSC cancel the solicitation and issue a new solicitation specifying how it proposes to address the appearance of conflict of interest in the evaluation process. As TPG did not incur any bid preparation costs and obtained the essential element of what it sought as a remedy, the Tribunal finds it difficult to conclude that the cancellation of the solicitation in this case frustrates the complaint process and TPG's right to an appropriate remedy.

10. While there is no evidence on the file as to why the solicitation was cancelled, the Tribunal notes that PWGSC's Request for Proposal incorporated by reference a clause that indicated it reserved the right to cancel the solicitation at any time.<sup>3</sup>

11. Taking into account the particular circumstances surrounding the procurement in question, as discussed above, and the fact that PWGSC's ultimate action provided the essential remedy that TPG suggested, the Tribunal finds that the complaint, in the time since its submission to the Tribunal, has become trivial. It is therefore the Tribunal's decision, pursuant to subsection 30.13(5) of the *CITT Act*, to cease conducting the present inquiry.

### Costs

12. TPG requested its complaint costs under section 30.16 of the *CITT Act*. TPG argued that it should receive a substantial award of costs because, among other things, it incurred significant costs in preparing and proceeding with the complaint; that PWGSC took inconsistent and contradictory positions by first certifying that the procurement was urgent and had to proceed in the public interest and then cancelling the solicitation; that PWGSC afforded TPG and the Tribunal no explanation as to why the solicitation was cancelled; and that PWGSC gave no indication of what measures would be implemented in the future solicitation to address the issues raised by TPG in its complaint. TPG therefore requested that the Tribunal depart from its usual tariff regarding complaint costs and award TPG costs in the amount of \$6,500 or, alternatively, costs on a substantial indemnity basis.

13. In response, PWGSC submitted that, where a procurement process has been cancelled and, as a result, the complaint has been dismissed, there is no basis for the Tribunal to award complaint costs to a party. However, PWGSC submitted that, should the Tribunal decide to award costs, such costs should be limited to the amount specified for the first level of complexity pursuant to the Tribunal's *Guideline for Fixing Costs in Procurement Complaint Proceedings* (the *Guideline*).

14. Given that the complaint process has been terminated at such an early stage without a determination, the Tribunal does not award costs to either party.

---

3. PWGSC's Standard Instructions and Conditions (2003, 2006-08-15) were incorporated by reference into and formed part of the bid solicitation. Part 09 reads as follows: "Canada reserves the right to: . . . (d) cancel the bid solicitation at any time . . . ."

**TRIBUNAL'S ORDER**

15. Pursuant to subsection 30.13(5) of the *CITT Act*, the Tribunal hereby ceases to conduct its inquiry into the complaint.

Ellen Fry  
Ellen Fry  
Presiding Member

Pierre Gosselin  
Pierre Gosselin  
Member

James A. Ogilvy  
James A. Ogilvy  
Member