



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2009-062

Integrated Learning International
Inc.

*Decision made
Friday, November 27, 2009*

*Decision and reasons issued
Friday, December 4, 2009*

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

BY

INTEGRATED LEARNING INTERNATIONAL 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 decides not to conduct an inquiry into the complaint.

André F. Scott

André F. Scott
Presiding Member

Dominique Laporte

Dominique Laporte
Secretary

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 that the Tribunal 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.

2. The complaint relates to a procurement (Solicitation No. EP006-101104/A) by the Department of Public Works and Government Services (PWGSC) for the provision of the services of a senior instructor to deliver a Construction Contract Administration Training course.

3. Integrated Learning International Inc. (ILI Inc.) alleged that PWGSC used an unfairly restrictive tendering approach that purposely excluded ILI Inc. from being able to submit a bid.

4. Subsection 6(1) of the *Regulations* provides that a complaint shall be filed with the Tribunal "... not later than 10 working days after the day on which the basis of the complaint became known or reasonably should have become known to the potential supplier." Subsection 6(2) states that a potential supplier that has made an objection to the relevant government institution, and is denied relief by that government institution, may file a complaint with the Tribunal "... within 10 working days after the day on which the potential supplier has actual or constructive knowledge of the denial of relief, if the objection was made within 10 working days after the day on which its basis became known or reasonably should have become known to the potential supplier."

5. In other words, a complainant has 10 working days from the date on which it first becomes aware, or reasonably should have become aware, of its ground of complaint to either object to the government institution or file a complaint with the Tribunal. If a complainant objects to the government institution within the designated time, the complainant may file a complaint with the Tribunal within 10 working days after it has actual or constructive knowledge of the denial of relief by the government institution.

6. On October 9, 2009, a Notice of Proposed Procurement was published on MERX,³ which stated that the subject solicitation was "... open only to PWGSC Learning Services SA [Supply Arrangement] Suppliers." On October 30, 2009, ILI Inc. made an objection, by telephone, to PWGSC and requested that the competition be opened to In-Service Support Supply Arrangement (ISS SA) suppliers. According to the complaint, during that telephone conversation, PWGSC advised ILI Inc. that it had no obligation to open the competition. ILI Inc. advised that, on November 17, 2009, after its principals had returned from vacation, it checked MERX and noted that no changes had been made regarding its request to open the competition to ISS SA suppliers. On November 19, 2009, ILI Inc. made another objection to PWGSC, again requesting that the solicitation process be modified to include ISS SA suppliers. On the same day, PWGSC advised ILI Inc. that the Learning Services SA met its client's needs and was the most suitable method of supply for that particular requirement.

7. On November 22, 2009, ILI Inc. submitted its complaint to the Tribunal.

1. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].
2. S.O.R./93-602 [*Regulations*].
3. Canada's electronic tendering service.

8. The Tribunal notes that, during the telephone conversation between ILI Inc. and PWGSC on October 30, 2009, ILI Inc. objected to the manner in which the procurement was being conducted when it requested that PWGSC expand the potential supplier list to include ISS SA holders. The Tribunal also notes that, during that same telephone conversation, PWGSC advised ILI Inc. that it had no obligation to open the competition and that, therefore, ILI Inc. was, at that moment, denied the relief that it had requested, as contemplated by subsection 6(2) of the *Regulations*. Accordingly, in order for the complaint to have been properly filed with the Tribunal, it should have been filed within 10 working days of the denial of relief communicated on October 30, 2009, or by November 13, 2009. As ILI Inc. did not file its complaint until November 23, 2009, the Tribunal considers that the complaint was not filed within the time limit set out in section 6 of the *Regulations*. Consequently, it will not conduct an inquiry into the complaint.

DECISION

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

André F. Scott

André F. Scott
Presiding Member