



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2009-065

A. S. Clark

*Decision made  
Wednesday, December 16, 2009*

*Decision and reasons issued  
Tuesday, December 22, 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**

**A. S. CLARK**

**AGAINST**

**THE DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT**

**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*<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.

2. The complaint relates to a procurement (Solicitation No. 20-08-6013) by the Department of Indian Affairs and Northern Development (DIAND) for the provision of research analysis, policy development and research support services.

3. Mr. A. S. Clark alleged that DIAND improperly declared his proposal non-compliant.

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) provides 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. According to the complaint, on September 9, 2009, Mr. Clark received an oral debriefing from DIAND officials regarding the evaluation of his proposal. According to an e-mail dated September 17, 2009, from Mr. Clark to DIAND, Mr. Clark was aware that his proposal did not achieve the minimum points required to be considered compliant. On September 21, 2009, Mr. Clark received a written evaluation of his proposal. On October 1, 2009, Mr. Clark made an objection to DIAND regarding the evaluation results. On November 25, 2009, DIAND advised Mr. Clark that his proposal was deemed non-compliant, as it did not achieve the minimum points required. On December 8, 2009, the Tribunal received part of Mr. Clark's complaint; the remainder was received on December 10, 2009.

7. The Tribunal finds that Mr. Clark knew, or reasonably should have known, the basis of his complaint on September 9, 2009, during the oral debriefing. Mr. Clark made his objection to DIAND on October 1, 2009, which was beyond the prescribed time limit for making the objection. Consequently, the Tribunal considers that the objection and, thus, the complaint were filed in an untimely manner.

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

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

8. Even if one were to consider that Mr. Clark only knew the basis of his complaint on September 21, 2009, the date on which he received the written evaluation of his proposal, his objection of October 1, 2009, would still have been timely. The Tribunal finds that Mr. Clark received the denial of relief to his objection on November 25, 2009, the date on which he received DIAND's letter that dealt with the objection in a final manner. While Mr. Clark wrote again to DIAND and received another reply, this exchange did not have the effect of changing the filing requirements with respect to the Tribunal. Part of Mr. Clark's complaint was received by the Tribunal on December 8, 2009, and did not meet the filing requirements of subsection 30.11(2) of the *CITT Act*. On December 10, 2009, the remainder of the complaint was received by the Tribunal. Therefore, in accordance with paragraph 96(1)(b) of the *Canadian International Trade Tribunal Rules*, December 10, 2009, is the date that the complaint is considered to have been filed. As such, the complaint was filed 11 working days after the day on which Mr. Clark had actual knowledge of the denial of relief received on November 25, 2009. Consequently, the Tribunal, in this circumstance, would also consider that the complaint was filed in an untimely manner.

9. In light of the above, the Tribunal will not conduct an inquiry into the complaint and considers the matter closed.

## **DECISION**

10. 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