



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2009-067

Les Immeubles Monthey Cartier  
inc.

*Decision made  
Wednesday, December 23, 2009*

*Decision and reasons issued  
Wednesday, January 13, 2010*

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**

**LES IMMEUBLES MONTHÉY CARTIER INC.**

**AGAINST**

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

**DECISION**

Pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal has decided not to conduct an inquiry into the complaint.

Diane Vincent  
Diane Vincent  
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 filed by Les Immeubles Monthey Cartier inc. (IMC) concerns a procurement (Invitation to Tender No. 529373) by the Department of Public Works and Government Services (PWGSC) on behalf of the Parks Canada Agency for the leasing of premises in Québec, Québec.

3. IMC alleged that it should have been awarded the contract since its proposal was the lowest and met all the requirements of the invitation to tender.

4. Subsection 7(1) of the *Regulations* sets out the conditions which must be met before the Tribunal may conduct an inquiry in respect of a complaint. One of the conditions is that the complaint be in respect of a designated contract. Section 30.1 of the *CITT Act* defines a “designated contract” as “. . . a contract for the supply of goods or services that has been or is proposed to be awarded by a government institution and that is designated or of a class of contracts designated by the regulations.” The *Regulations* define a “designated contract” as any contract or class of contracts concerning a procurement of goods or services as described in Article 1001 of the *North American Free Trade Agreement*,<sup>3</sup> Article 502 of the *Agreement on Internal Trade*,<sup>4</sup> Article I of the *Agreement on Government Procurement*<sup>5</sup> or Annex Kbis-01.1-2 of Chapter K-bis of the *Canada-Chile Free Trade Agreement*<sup>6</sup> that has been or is proposed to be awarded by a government institution.

5. According to the information contained in the complaint, in a letter dated November 26, 2009, PWGSC informed IMC that it was terminating the invitation to tender and stated as follows:

. . . Since the offer that you submitted on June 3 of this year was higher than the last market study that we had on file, in the last few months, we have updated that study. Unfortunately, your offer is still higher than the current market value. Consequently, we regret to inform you that *your offer must be rejected and that we are terminating the current process.*

[Emphasis added, translation]

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

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

3. *North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2 (entered into force 1 January 1994).

4. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <[http://www.ait-aci.ca/index\\_en/ait.htm](http://www.ait-aci.ca/index_en/ait.htm)>.

5. 15 April 1994, online: World Trade Organization <[http://www.wto.org/english/docs\\_e/legal\\_e/final\\_e.htm](http://www.wto.org/english/docs_e/legal_e/final_e.htm)>.

6. *Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile*, 1997 Can. T.S. No. 50 (entered into force 5 July 1997). Chapter Kbis, entitled “Government Procurement”, came into effect on September 5, 2008.

6. The Tribunal notes that article 14 of the invitation to tender states as follows: “The tenant may . . . reject all Offers.” [translation] The Tribunal also notes that article 12v) allows for the reimbursement of the security deposits within 30 days following the “. . . termination of the invitation to tender . . .” [translation] On the basis of these two articles, the Tribunal notes that it is therefore possible for the government institution not to accept any offer, as provided in article 14, and to terminate the invitation to tender entirely, as provided in article 12v), as the case may be. Furthermore, there is no evidence on file to indicate that the government institution had committed to enter into a contract with IMC at the end of the tendering process, which could have resulted in a “designated contract”.

7. Since the invitation to tender in question has been cancelled, there no longer exists a contract “. . . that has been or is proposed to be awarded by a government institution . . .”, as provided in section 30.1 of the *CITT Act*. As a result, the complaint does not relate to a “designated contract”. Consequently, pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal determines that it does not have jurisdiction to inquire into the complaint and considers the matter closed.

## DECISION

8. Pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal has decided not to conduct an inquiry into the complaint.

Diane Vincent  
Diane Vincent  
Presiding Member