



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2009-068

A-1 Cleaners

*Decision made
Tuesday, December 29, 2009*

*Decision and reasons issued
Tuesday, January 5, 2010*

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

BY

A-1 CLEANERS

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 has decided not to conduct an inquiry into the complaint.

Ellen Fry
Ellen Fry
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 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. W0213-06G320/A) by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence (DND) for the provision of cleaning and janitorial services.

3. A-1 Cleaners alleged that PWGSC improperly amended a contract to continue cleaning services with the current contractor rather than issue a competitive solicitation.

4. According to the complaint, the previous competitive contract expired November 30, 2009. A-1 Cleaners was expecting a competitive renewal process to be issued on MERX.³ According to PWGSC, due to changes in accommodations at the site, DND needed to re-evaluate the required services, which resulted in delays in issuing a solicitation. PWGSC stated that it anticipated that the new requirement for janitorial services would be advertised on MERX within weeks (of November 20, 2009), giving all contractors an equal opportunity to bid. PWGSC stated that, in the interim, it was not feasible to leave DND without janitorial services and that, for that reason, it continued with the current contractor. Based on the information supplied with the complaint, the estimated value of the amendment was \$59,800.

5. Subsection 7(1) of the *Regulations* sets out three conditions that must be satisfied before the Tribunal can conduct an inquiry in respect of a complaint. One of these conditions is that the complaint be in respect of a designated contract.

6. To be considered a designated contract, a contract for the supply of goods and services must meet the monetary thresholds prescribed by the trade agreements. The monetary thresholds for procurement of services are \$100,000 under the *Agreement on Internal Trade*,⁴ \$76,500 under the *North American Free Trade Agreement*⁵ and the *Canada-Chile Free Trade Agreement*⁶ and \$217,400 under the *Agreement on Government Procurement*.⁷

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

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

3. Canada's electronic tendering service.

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

5. *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) [*NAFTA*].

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) [*CCFTA*]. Chapter Kb1s, entitled "Government Procurement", came into effect on September 5, 2008.

7. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm> [*AGP*].

7. In this case, the Tribunal considers that the procurement value of the contract amendment (estimated at \$59,800 as indicated above) is below the monetary thresholds set by the *AIT*, *NAFTA*, the *CCFTA* and the *AGP*. Therefore, the complaint is not in respect of a designated contract.

8. In light of the above, the Tribunal does not have jurisdiction to accept the complaint for inquiry.

DECISION

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

Ellen Fry
Ellen Fry
Presiding Member