



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2009-103

Integrys Ltd.

*Decision made
Friday, March 5, 2010*

*Decision and reasons issued
Monday, March 15, 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

INTEGRYS LTD.

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.

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 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. M2989-097234/B) by the Department of Public Works and Government Services (PWGSC) on behalf of the Royal Canadian Mounted Police for the provision of an automated licence plate recognition system.

3. Integrys Ltd. (Integrys) alleges that PWGSC conducted an “[i]nappropriate evaluation process” and that the “[v]endor choice had been made before bids were submitted.” Integrys alleges that “[its] bid was rejected as non-compliant based on data not included in the bid, or clearly identified as being representative of the type and not specific to the proposed equipment.”

4. Subsection 30.11(1) of the *CITT Act* provides that “. . . a potential supplier may file a complaint with 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.” Section 30.1 of the *CITT Act* defines the term “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.”

5. Subsection 3(1) of the *Regulations* designates, for the purposes of the definition of “designated contract” in section 30.1 of the *CITT Act*, “. . . any contract or class of contract concerning a procurement of goods or services or any combination of goods or services, as described in Article 1001 of [the *North American Free Trade Agreement*],^[3] in Article 502 of the Agreement on Internal Trade,^[4] in Article I of the Agreement on Government Procurement,^[5] in Article *Kbis*-01 of Chapter *Kbis* of the [*Canada-Chile Free Trade Agreement*]^[6] or in Article 1401 of Chapter Fourteen of the [*Canada-Peru Free Trade Agreement*],^[7] that has been or is proposed to be awarded by a government institution” However, Article XXIII(1) of the *AGP*, Article 1018(1) of *NAFTA*, Article 1804 of the *AIT*, Article *Kbis*-16 of the *CCFTA* and Article 1402 of the *CPFTA* allow exceptions to the provisions of the respective trade agreements where national security is involved.

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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) [*NAFTA*].
 4. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <http://www.ait-aci.ca/index_en/ait.htm> [*AIT*].
 5. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm> [*AGP*].
 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 *Kbis*, entitled “Government Procurement”, came into effect on September 5, 2008.
 7. *Free Trade Agreement between Canada and the Republic of Peru*, online: Department of Foreign Affairs and International Trade <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/peru-perou/chapter-chapitre-14.aspx>> (entered into force 1 August 2009) [*CPFTA*].

6. The Tribunal finds that, as indicated in the solicitation documents, the procurement at issue is subject to a national security exception and is exempt from the provisions of the trade agreements. Given that none of the trade agreements apply, the Tribunal finds that the complaint does not relate to a “designated contract”, as required by subsection 30.11(1) of the *CITT Act*. Accordingly, the Tribunal does not have jurisdiction to conduct an inquiry into the complaint.

7. It should be noted that, even if the complaint had been in respect of a designated contract, it appears to have been filed late. Subsection 6(2) of the *Regulations* requires that an objection be made within 10 working days after the day on which the basis of the complaint became known or reasonably should have become known. On January 20, 2010, PWGSC advised Integrys, in writing, that its bid had been deemed non-responsive, as it did not meet certain mandatory criteria stated in the solicitation documents. In the complaint, Integrys states that it made an objection to PWGSC on January 27, 2010. However, there is no evidence in the complaint that explains how the objection was made or that gives the details of the objection. The complaint did include a copy of an e-mail dated February 17, 2010, in which Integrys implied that it had not responded to the rejection of its bid earlier. Thus, it appears that the objection was first made on February 17, 2010. Consequently, it was made beyond the 10 working days permitted by the *Regulations*.

DECISION

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

André F. Scott
André F. Scott
Presiding Member