



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2010-075

1091847 Ontario Ltd.

*Decision made  
Wednesday, November 24, 2010*

*Decision and reasons issued  
Monday, December 6, 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**

**1091847 ONTARIO 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.

Stephen A. Leach  
Stephen A. Leach  
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. EN578-030742/E) by the Department of Public Works and Government Services (PWGSC) for the establishment of a National Master Standing Offer (NMSO) for the provision of networking equipment.

3. 1091847 Ontario Ltd. alleges that PWGSC is not acting in accordance with the terms of the solicitation document because PWGSC instructed standing offer holders to submit new published price lists (PPLs) for all categories of products that meet what PWGSC calls the “Technical Definition” of the categories. 1091847 Ontario Ltd. further alleges that this is tantamount to changing the terms and conditions of the NMSO and that PWGSC is using the “Technical Definition” method to avoid competition from suppliers that are not currently part of the NMSO. 1091847 Ontario Ltd. alleges that this action allows PWGSC to purchase products from a standing offer holder’s PPL even if those products do not meet the minimum mandatory technical specifications of the categories.

4. In its complaint, 1091847 Ontario Ltd. requested, pursuant to rule 6.1 of the *Canadian International Trade Tribunal Rules*,<sup>3</sup> that this complaint be added to the complaint in File No. PR-2010-071 filed on October 29, 2010.

5. Section 30.1 of the *CITT Act* defines a “potential supplier” as a “. . . bidder or prospective bidder on a designated contract.” As such, in order for the Tribunal to have jurisdiction to accept the complaint filed by 1091847 Ontario Ltd. with respect to the subject procurement, 1091847 Ontario Ltd. would have to demonstrate, in the present complaint, that it was an actual or prospective bidder on the subject procurement. The Tribunal notes that the present complaint does not include any evidence that 1091847 Ontario Ltd. is a potential supplier for the subject procurement.

6. Even if 1091847 Ontario Ltd. had demonstrated, in this complaint, that it was a potential supplier, the Tribunal finds the allegations to be entirely speculative because the information submitted with the complaint does not provide evidence that PWGSC has procured or attempted to procure products that fall outside the scope of the NMSO. The Tribunal notes that the Federal Court of Appeal stated in *Novell Canada Ltd. v. Canada (Minister of Public Works and Government Services)*<sup>4</sup> that “. . . there is no jurisdiction in the Tribunal under subsection 30.11(1) [of the *CITT Act*] to conduct an at-large inquiry into the procurement processes of the government.”

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

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

3. S.O.R./91-499.

4. 2000 CanLII 15324 (F.C.A.).

7. Finally, even if the allegations are more than speculation, the Tribunal finds that they appear to concern contract administration rather than a part of the procurement process. Specifically, modifying the PPLs, as alleged, is something that could be reasonably anticipated between PWGSC and the NMSO holders as a matter of contract administration and, thus, is beyond the scope of the Tribunal's inquiry process and jurisdiction.

## **DECISION**

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

Stephen A. Leach  
Stephen A. Leach  
Presiding Member