



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2011-020

R.G.T. Cloutier Construction Ltd.,
H&H Construction Inc. and 902474
Ontario Inc., d.b.a. Do-All
Construction

*Decision made
Monday, August 22, 2011*

*Decision and reasons issued
Tuesday, August 30, 2011*

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

**R. G. T. CLOUTIER CONSTRUCTION LTD., H&H CONSTRUCTION INC. AND
902474 ONTARIO INC., D.B.A. DO-ALL CONSTRUCTION**

AGAINST

THE CITY OF PEMBROKE

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.

Serge Fréchette
Serge Fréchette
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 contract, issued by the City of Pembroke, for the construction of an extension to Frank Nighbor Street in Pembroke, Ontario.
3. R. G. T. Cloutier Construction Ltd., H&H Construction Inc. and 902474 Ontario Inc., d.b.a. Do-All Construction, alleged that the City of Pembroke did not solicit bids for the work and improperly awarded the contract to a competitor, Eastway Contracting Inc.
4. Subsection 30.11(1) of the *CITT Act* limits the Tribunal's jurisdiction to "... complaint[s] ... concerning any aspect of the procurement process that relates to a designated contract ..."
5. Subsection 7(1) of the *Regulations* sets out three conditions which must be met for the Tribunal to decide to conduct an inquiry in respect of a complaint. One of the conditions is that the complaint be in respect of a designated contract.
6. Section 30.1 of the *CITT Act* defines "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" [emphasis added].
7. A designated contract, pursuant to section 30.1 of the *CITT Act*, is thus defined in part as a contract concerning the procurement of goods or services by a government institution. As will be explained below, the City of Pembroke is not a government institution within the meaning of the *CITT Act*.
8. Section 30.1 of the *CITT Act* defines "government institution" as "... any department or ministry of state of the Government of Canada, or any other body or office, that is designated by the regulations".
9. In this respect, subsection 3(2) of the *Regulations* designates as government institutions the federal government entities or government enterprises set out in the following parts of potentially applicable trade agreements: the Schedule of Canada in Annex 1001.1a-1 and Annex 1001.1a-2 of the *North American Free Trade Agreement*,³ Annex 502.1A of the *Agreement on Internal Trade*,⁴ under the heading "CANADA" in Annex 1 of the *Agreement on Government Procurement*,⁵ the Schedule of Canada in Annex Kbis-01.1-1

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>.

5. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm>.

and Annex *Kbis*-01.1-2 of Chapter *Kbis* of the *Canada-Chile Free Trade Agreement*,⁶ the Schedule of Canada in Annex 1401.1-1 and Annex 1401.1-2 of Chapter Fourteen of the *Canada-Peru Free Trade Agreement*,⁷ and Article 1401 of Chapter Fourteen of the *Canada-Colombia Free Trade Agreement*.⁸

10. As mentioned, the solicitation at issue concerns a contract for the procurement of construction services by the City of Pembroke. The Tribunal notes that the City of Pembroke is not listed in any of the relevant schedules or annexes of any of the trade agreements as a federal government entity or government enterprise. The Tribunal therefore finds that the City of Pembroke is not a “government institution” within the meaning of section 30.1 of the *CITT Act*.

11. For this reason, the Tribunal finds that the contract to which this procurement process relates is not a designated contract within the meaning of subsection 30.11(1) of the *CITT Act*. The Tribunal does not have jurisdiction to inquire into the complaint and considers the matter closed.

DECISION

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

Serge Fréchette
Serge Fréchette
Presiding Member

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.

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).

8. *Free Trade Agreement between Canada and the Republic of Colombia*, online: Department of Foreign Affairs and International Trade <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/colombia-colombie/anc-colombia-toc-tdm-can-colombie.aspx>> (entered into force 15 August 2011).