



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

---

## DECISION AND REASONS

File No. PR-2011-055

The Masha Krupp Translation  
Group Limited

*Decision made  
Friday, March 2, 2012*

*Decision issued  
Tuesday, March 6, 2012*

*Reasons issued  
Thursday, March 8, 2012*

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**

**THE MASHA KRUPP TRANSLATION GROUP LIMITED**

**AGAINST**

**THE PUBLIC HEALTH AGENCY OF CANADA**

**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.

Pasquale Michael Saroli  
Pasquale Michael Saroli  
Presiding Member

Dominique Laporte  
Dominique Laporte  
Secretary

The statement of reasons will be issued at a later date.

## 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. 1000117933) by the Public Health Agency of Canada (PHAC) for the provision of translation services from English to French and from French to English.

3. The Masha Krupp Translation Group Limited (MKTG) alleged that the PHAC failed to clearly define its requirements and to clearly set out the evaluation criteria and their weighting. It alleged that the evaluators ignored vital information contained in its offer in response to the Request for a Standing Offer (RFSO), based their evaluation on undisclosed criteria and failed to provide MKTG with sufficient justification for the evaluation of its proposal. It alleged that the procurement was procedurally unfair and non-compliant with various provisions of the *Agreement on Internal Trade*,<sup>3</sup> the *North American Free Trade Agreement*<sup>4</sup> and the *Agreement on Government Procurement*.<sup>5</sup>

4. On August 22, 2011, the RFSO was posted on MERX.<sup>6</sup> The deadline for the receipt of bids was September 20, 2011.

5. On February 8, 2012, the PHAC advised MKTG that it had not been selected for the standing offer.

6. On February 17, 2012, the PHAC held a debriefing with MKTG.

7. On February 20, 2012, MKTG requested the “Consensus Evaluation Report” of its proposal, which the PHAC provided on the same day.

8. On February 20, 2012, MKTG made various objections regarding the evaluation of its proposal in an e-mail to PHAC, the receipt of which was acknowledged by the latter on February 21, 2012. On February 22, 2012, MKTG inquired about the status of the matters that it had raised in its e-mail of February 20, 2012. On February 23, 2012, the PHAC responded as follows: “We are currently reviewing the information provided in [MKTG’s] e-mail dated February 20, 2012. We will communicate the results of the review with you once it has been completed.” The Tribunal notes that the documents provided by MKTG as part of its complaint do not indicate that it has received the results of the PHAC’s review of the objections that it made in its e-mail of February 20, 2012.

---

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

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

3. 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)> [*AIT*].

4. *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).

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. Canada’s electronic tendering system.

9. Subsection 6(1) of the *Regulations* provides that a complaint shall be filed with the Tribunal “. . . not later than 10 working days after the day on which the basis of the complaint became known or reasonably should have become known to the potential supplier.” Subsection 6(2) provides that a potential supplier that has made an objection to the relevant government institution, and is denied relief by that government institution, may file a complaint with the Tribunal “. . . within 10 working days after the day on which the potential supplier has actual or constructive knowledge of the denial of relief, if the objection was made within 10 working days after the day on which its basis became known or reasonably should have become known to the potential supplier.”

10. In other words, a complainant has 10 working days from the date on which it first becomes aware, or reasonably should have become aware, of its ground of complaint to either object to the government institution or file a complaint with the Tribunal. Where a complainant objects to the government institution within the designated time, the complainant may file a complaint with the Tribunal within 10 working days after it has actual or constructive knowledge of the denial of relief by the government institution.

11. The Tribunal finds that, because MKTG has not yet received a response from the PHAC, it has not yet received a denial of relief with respect to its alleged grounds of complaint, as contemplated by subsection 6(2) of the *Regulations*. The Tribunal therefore finds that MKTG’s complaint was filed prematurely.

12. The Tribunal’s decision does not, however, preclude MKTG from filing a new complaint when the PHAC responds to its objection or fails to do so within a reasonable amount of time. In the event that MKTG does file a new complaint, it must do so within the time limits specified in the *Regulations*.

## DECISION

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

Pasquale Michaele Saroli

Pasquale Michaele Saroli

Presiding Member