



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2011-060

Stonehaven Productions Inc.

*Decision made  
Friday, March 16, 2012*

*Decision issued  
Friday, March 16, 2012*

*Reasons issued  
Friday, March 23, 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**

**STONEHAVEN PRODUCTIONS INC.**

**AGAINST**

**THE CANADIAN AIR TRANSPORT SECURITY AUTHORITY**

**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 Michaele Saroli  
Pasquale Michaele 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 for the provision of video production services (Solicitation No. PJM.CSO10-3837) by the Canadian Air Transport Security Authority (CATSA).<sup>3</sup>

3. Stonehaven Productions Inc. (Stonehaven) alleged that its proposal was improperly evaluated.

4. 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.”

5. Subsection 6(2) of the *Regulations*, in turn, 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.”

6. 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. If 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.

7. Stonehaven alleged that, in a telephone conversation on October 20, 2011, with a CATSA procurement official, it raised certain issues concerning the solicitation, with particular reference to the instructions pertaining to the completion of the equipment-pricing table (Table 2.1.4.2). In this regard, Stonehaven claimed that the required pricing format for Table 2.1.4.2 “. . . did not align with common practices in our industry”<sup>4</sup> and, specifically, that “[i]n video production there are no hourly or half-day rates for equipment rentals . . . .”<sup>5</sup>

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

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

3. The Tribunal notes that Stonehaven did not establish whether procurements conducted by CATSA are reviewable by the Tribunal. The Tribunal did not consider it necessary to delve into this matter, given that the complaint was found, in any event, to have been filed outside the prescribed time limit.

4. *Procurement Complaint Form* at 5.

5. *Ibid.* at 6.

8. That Stonehaven asked CATSA to delete the requirement of hourly and half-day rates in Table 2.1.4.2 is confirmed by the indication in the complaint that Addendum 4 to the solicitation, which was subsequently issued, “. . . did not delete the hourly or half-day rates as we had recommended.”<sup>6</sup> Addendum 4, which was provided with the complaint, is not dated. The Tribunal determined however that it must have been issued sometime between October 20, 2011, the date of the telephone conversation between Stonehaven and CATSA, and the bid filing deadline, indicated in the complaint as November 2, 2011.

9. In the Tribunal’s view, Stonehaven made its objections known to CATSA in their telephone conversation of October 20, 2011. The Tribunal also finds that the failure of Addendum 4 to the solicitation to address Stonehaven’s objections regarding the hourly or half-day rates required in Table 2.1.4.1 constituted a denial of relief within the meaning of subsection 6(2) of the *Regulations*. Because the precise date of the issuance of Addendum 4 is unknown, the Tribunal accepted November 2, 2011 (i.e. the bid closing date), as the last possible date on which that document could have been issued. Accordingly, Stonehaven would have known, at the latest on November 2, 2011, that its objection in respect of the pricing format of Table 2.1.4.1 had been denied, given that Addendum 4 did not address this particular aspect of its concerns. Consequently, and pursuant to subsection 6(2), Stonehaven had 10 working days from November 2, 2011, or until November 17, 2011, to file a complaint with the Tribunal.<sup>7</sup> The complaint was not filed until March 12, 2012. The Tribunal therefore finds that Stonehaven’s complaint is time-barred by operation of law.

10. By letter dated February 17, 2012, CATSA advised Stonehaven that it had completed the selection process under the Request for a Standing Offer and that Stonehaven’s offer was not among those selected. According to the complaint, the Vice-President of Stonehaven subsequently telephoned a CATSA official to discuss the matter and request a debriefing. In a follow-up to that conversation, the CATSA official, by correspondence dated February 20, 2012, advised Stonehaven as follows: “Further to your voice message, I would like to explain that your firm was not selected because your financial bid is deemed incomplete. *You failed to provide us with the hourly and half-day rates in Table 2.1.4.2.* If you would nevertheless like to have a debriefing with the evaluation team, I could schedule a conference call for next week” [emphasis added, translation].<sup>8</sup>

11. The Federal Court of Appeal in *IBM Canada Ltd. v. Hewlett-Packard (Canada) Ltd.* stated that potential suppliers “. . . are expected to keep a constant vigil and to react as soon as they become aware or reasonably should have become aware of a flaw in the process.”<sup>9</sup> In this regard, it is the Tribunal’s view that, where there has been a clear denial of relief in respect of an objection made by a complainant, it is not open to the complainant to keep the issue alive and delay final disposition of the matter through successive reiterations of essentially the same concerns. However, even if, *arguendo*, one were to consider the correspondence of February 20, 2012, from CATSA to the Vice-President of Stonehaven as the relevant denial of relief for purposes of subsection 6(2) of the *Regulations*, the complaint would still be time-barred, as it would have had to have been filed by March 3, 2012.

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6. *Ibid.*

7. Friday, November 11, 2011, Remembrance Day, is not counted as a working day.

8. *Procurement Complaint Form* at 6.

9. 2002 FCA 284 (Can LII) at para. 20.

**DECISION**

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

Pasquale Michael Saroli

Pasquale Michael Saroli

Presiding Member