



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2012-026

Les Entreprises Prebbel  
Enterprises Inc.

*Decision made  
Monday, November 5, 2012*

*Decision issued  
Monday, November 5, 2012*

*Reasons issued  
Wednesday, November 7, 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**

**LES ENTREPRISES PREBBEL ENTERPRISES INC.**

**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.

Jason W. Downey

Jason W. Downey  
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. EJ196-130356/A) by the Department of Public Works and Government Services (PWGSC) for the provision of snow removal and landscape maintenance services.
3. Les Entreprises Prebbel Enterprises Inc. (Prebbel) alleged that mandatory criteria in sections 1.3.1.1 and 1.3.2.6 of the Request for Proposal (RFP) were unfairly restrictive.
4. PWGSC issued the RFP on September 7, 2012. On September 21, 2012, Prebbel asked PWGSC to explain the Mandatory Contractor's Experience and Past Performance criteria for sections 1.3.1.1 and 1.3.2.6. On October 16, 2012, PWGSC published on MERX amendment No. 002 to the RFP, which provided a response with regard to the said mandatory criteria.
5. Before bid closing, Prebbel submitted a proposal to PWGSC. On October 30, 2012, PWGSC informed Prebbel that its bid did not comply with the Mandatory Contractor's Experience and Past Performance criteria.
6. On November 2, 2012, Prebbel filed its complaint with the Tribunal.
7. 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."
8. Subsection 6(2) of the *Regulations* states that "[a] potential supplier who 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."
9. 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.

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

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

10. It is the Tribunal's view that Prebbel became aware of the basis of its complaint, at the latest, on October 16, 2012, when amendment No. 002 was published on MERX in response to the enquiry it had earlier made about those criteria. Prebbel had 10 working days from October 16, 2012, to either make an objection to PWGSC or to file a complaint with the Tribunal. Since Prebbel did not file an objection with PWGSC and filed its complaint with the Tribunal on November 2, 2012, the complaint was not filed within the required time limits established by subsection 6(1) of the *Regulations*. Therefore, the Tribunal cannot accept the complaint for inquiry.

11. In light of the above, the Tribunal will not conduct an inquiry 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.

Jason W. Downey  
Jason W. Downey  
Presiding Member