



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2013-015

PrintersPlus, a division of 1135379  
Ontario Ltd.

*Decision made  
Wednesday, September 18, 2013*

*Decision issued  
Friday, September 20, 2013*

*Reasons issued  
Tuesday, October 1, 2013*

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**

**PRINTERSPLUS, A DIVISION OF 1135379 ONTARIO LTD.**

**AGAINST**

**THE CANADA REVENUE AGENCY**

**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

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.

### SUMMARY OF THE COMPLAINT

2. The complaint relates to a procurement (Solicitation No. 1000310597) by the Canada Revenue Agency (CRA) for the supply and installation of photocopiers across Canada and the provision of related services.

3. PrintersPlus, a division of 1135379 Ontario Ltd. (PrintersPlus) alleged that the contract was improperly awarded to a bidder that offered products and services that did not comply with the mandatory requirements of the solicitation. As a remedy, PrintersPlus requested that the CRA provide clarification that it applied due diligence in evaluating the bids prior to awarding the contract to the successful bidder.

### BACKGROUND TO THE COMPLAINT

4. On March 8, 2013, the CRA issued a Request for Proposal (RFP) for the supply and installation of photocopiers across Canada and the provision of related services with a bid closing date of April 23, 2013.

5. On June 24, 2013, PrintersPlus, which had based its proposal on the supply of Ricoh products and services, sent an e-mail to the CRA, in which it stated the following:

I had potentially heard a rumor that Kyocera had won this RFP. When I told Ricoh . . . this rumor they had said that they had some serious concerns about Kyocera's compliance with the terms of the tender . . . I was wondering when we would have the opportunity to voice those concerns?

Can you shed some light on the rumor, as well [as on] my question.

6. On June 26, 2013, the CRA replied as follows:

The solicitation process has not been finalized. Debriefings will occur once the solicitation process has been finalized, as per section 2.12 of the RFP.

7. On August 22, 2013, PrintersPlus was informed by the CRA that a contract had been awarded to 4 Office Automation Ltd. (4 Office Automation). PrintersPlus asserted that 4 Office Automation had based its proposal on the supply of Kyocera products and services.

8. On August 27 2013, PrintersPlus e-mailed the CRA, requesting a face-to-face debriefing with regard to the process and contract award.

9. On September 10, 2013, PrintersPlus met with the CRA and raised its assertion regarding the inability of Kyocera products and services to comply with the requirements set out in the RFP. The CRA responded that it could not divulge the details of the winning bid. Further, PrintersPlus questioned the CRA with regard to the evaluation of the bids, to which the CRA replied that two bids—those of 4 Office

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

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

Automation and PrintersPlus—met the mandatory requirements of the RFP and that, as such, the winner was chosen on the basis of a lower financial bid.

10. On September 11, 2013, PrintersPlus filed its complaint with the Tribunal.

11. On September 12, 2013, the Tribunal requested additional information from PrintersPlus because the complaint was deemed deficient, as it did not comply with the requirements of subsection 30.11(2) of the *CITT Act*.

12. On September 13, 2013, PrintersPlus filed the requested information with the Tribunal. In accordance with subrule 96(1) of the *Canadian International Trade Tribunal Rules*,<sup>3</sup> the complaint was therefore considered to have been filed on September 13, 2013.<sup>4</sup>

## ANALYSIS

13. As a preliminary matter, the Tribunal notes that, where an objection is not made to the relevant government institution with regard to a ground of complaint, the time limit for filing a complaint with the Tribunal is fixed by subsection 6(1) of the *Regulations*.<sup>5</sup> Where an objection is made to the relevant government institution with regard to that ground of complaint, and the objection is denied, the time limit for filing a complaint is fixed by subsection 6(2).<sup>6</sup> Thus, the question of whether subsection 6(1) or (2) applies with regard to a complaint turns on the prior question of whether or not an objection was made to the relevant government institution.

14. PrintersPlus claimed that its e-mail dated August 27, 2013, constituted an objection to the contracting authority. However, the Tribunal is not convinced that PrintersPlus truly made an objection at all. It is necessary to address this issue since, depending on whether an objection is made with regard to a ground of complaint, the deadline for filing a complaint with the Tribunal with regard to that ground will differ.

15. In *Cougar Aviation Limited*,<sup>7</sup> the Tribunal examined the issue of how an objection relates to the prescribed time limits. The Tribunal found that the complainant in that case had failed to meet the time limits to make an objection, despite the fact that it had written a letter of objection to the procuring government department, since the issue forming the substance of the complaint was not raised in that letter. In upholding the Tribunal's finding upon judicial review, the Federal Court of Appeal in *Cougar Aviation Ltd. v. Canada (Minister of Public Works and Government Services)*<sup>8</sup> indicated that “[i]f the informal

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3. S.O.R./91-499 [*Rules*].

4. Subrule 96(1) of the *Rules* reads as follows: “A complaint shall be considered to have been filed (a) on the day it was received by the Tribunal; or (b) in the case of a complaint that does not comply with subsection 30.11(2) of the Act, on the day that the Tribunal receives the information that corrects the deficiencies in order that the complaint comply with that subsection” [emphasis added].

5. 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.”

6. Subsection 6(2) of the *Regulations* provides that “[a] potential supplier who has made an objection regarding a procurement relating to a designated contract 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.”

7. (7 June 1999), PR-98-040 (CITT).

8. 2000 CanLII 16572 (FCA) [*Cougar*].

procedure for settling complaints is to be effective, an objection must be described with sufficient specificity as to enable the Department to deal with it.”<sup>9</sup>

16. A similar line of reasoning was employed by the Tribunal in *Valcom Consulting Group Inc.*<sup>10</sup> Similar to the facts in this complaint, the complainant in that case had written to the procuring government department, requesting a full debriefing on the results of the solicitation. It later sought to characterize that communication as an objection. The Tribunal indicated that “[a]s a matter of law, a letter to a contracting authority can only be considered an objection to those aspects of the procurement process to which it expressly refers.”<sup>11</sup>

17. It is thus clear on the basis of jurisprudence that not every communication indicative of some form of dissatisfaction engages subsection 6(2) of the *Regulations* and constitutes an objection with regard to a complaint. For that subsection to be engaged for the purposes of a subsequently filed complaint, the communication must be sufficiently specific in identifying the matter at issue, and that matter must form the substance of the complaint subsequently filed with the Tribunal upon a denial of relief.

18. The Tribunal finds that the e-mail sent by PrintersPlus to the CRA on August 27, 2013, in which PrintersPlus requested a face-to-face debriefing, cannot be construed as an objection regarding the compliance of 4 Office Automation with the terms of the RFP, since that issue was not identified in the e-mail. The Tribunal stated as much in *Valcom*: “In this case, the e-mails of March 25 and April 2 demonstrate that [the complainant] merely requested a debriefing on the result of the bid solicitation process. Neither e-mail explicitly raises [the complainant’s] allegation about potential unfairness or irregularities in the evaluation process, or [the complainant’s] request that its proposal be re-evaluated. These issues were only raised in the complaint [that the complainant] filed with the Tribunal. In other words, [the complainant’s] complaint includes a ground of complaint that was not the subject of its e-mails to PWGSC.”<sup>12</sup>

19. Thus, the Tribunal finds that PrintersPlus’ e-mail of August 27, 2013, was a mere request for a debriefing.

20. The absence of an objection excludes subsection 6(2) of the *Regulations* and engages the prescribed time limit stipulated in subsection 6(1). The Tribunal is of the view that, since PrintersPlus was informed by the CRA of the award of the contract to 4 Office Automation on August 22, 2013, that is the day on which the basis of the complaint became known. In this regard, PrintersPlus confirmed in its September 13, 2013, e-mail to the Tribunal that it knew that 4 Office Automation quoted Kyocera products in its bid and that it therefore knew the basis of its complaint on August 22, 2013. Thus, the complaint filed with the Tribunal by PrintersPlus on September 13, 2013, by application of subrule 96(1) of the *Rules*, was filed on a date beyond the time limit stipulated in subsection 6(1) of the *Regulations*.<sup>13</sup>

21. The complaint would also be time-barred if the Tribunal were to determine that PrintersPlus made a verbal objection to the CRA with respect to its ground of complaint during the debriefing meeting which took place on September 10, 2013. Pursuant to subsection 6(2) of the *Regulations*, in order to be valid, an objection must be made within 10 working days after the day on which its basis became known or reasonably should have become known to the potential supplier. September 10, 2013, however, is 12 working days after August 22, 2013.

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9. *Cougar* at para 74.

10. (8 April 2013), PR-2013-001 (CITT) [*Valcom*].

11. *Valcom* at para.16.

12. *Valcom* at para.16.

13. It should be noted that the complaint would still be time-barred even if it were considered to have been filed on September 11, 2013, since that date is 13 working days after August 22, 2013.

22. It is noteworthy that the Tribunal cannot accept the e-mail sent by PrintersPlus to the CRA on June 24, 2013, in which PrintersPlus requests an opportunity to voice concerns about "... Kyocera's compliance with the terms of the tender . . ." as an objection of relevance to its complaint. This is due to the fact that the e-mail was premised on a rumour. In *TPG Technology Consulting Ltd. v. Canada (Public Works and Government Services Canada)*,<sup>14</sup> the Federal Court of Appeal had reason to consider the viability of a rumour as the basis for the starting point of the prescribed time limits stipulated in section 6 of the *Regulations*. The Federal Court of Appeal indicated that "[t]he Tribunal had the duty to ask itself, as a preliminary matter, if the type of information filed by the complainant indicated that an open and fair system, in the spirit of Chapter Ten of NAFTA . . . was unfolding. In the circumstances of this case, contrary to paragraph 30.11(2)(c) of the Act, the Tribunal had no factual grounds on which it could determine the starting point of the limitation period. . . . In the end it could only decline to handle the complaint, on the basis that it was premature given that there had been no communication by PWGSC."<sup>15</sup>

23. Thus, in order to uphold that over-arching principle of the procurement system which pertains to openness and fairness, the Tribunal cannot consider legislatively prescribed time limits to have commenced on the basis of rumours, speculations or second-hand reports. Further illustrative of the extent to which such an approach would be unfeasible, for the starting point of the prescribed time limit to be ascertained, the Tribunal would have to inquire into when PrintersPlus became aware of the rumour upon which its e-mail was based.

24. The Tribunal finds that a complaint based on the concern raised in the e-mail of June 2013 can only be declared premature, as it would be a complaint based on a rumour rather than on actual correspondence by the relevant government institution. The CRA's correspondence informing PrintersPlus of the contract award thus constitutes the only factual basis upon which PrintersPlus' complaint can be based.

25. In any event, should PrintersPlus' e-mail of June 2013 have been based on received fact instead of rumour, and should the Tribunal have received information sufficient to ground the conclusion that the fact became known or reasonably should have become known to PrintersPlus within 10 working days of that e-mail, the resulting complaint would remain time-barred. This is because the conclusion that must be drawn pursuant to subsection 6(2) of the *Regulations* would have been that the CRA's correspondence to PrintersPlus informing of the contract award constituted a denial of relief, and PrintersPlus filed its complaint with the Tribunal more than 10 working days after receiving that correspondence.

26. In light of the above, the Tribunal will not conduct an inquiry into the complaint.

## DECISION

27. 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

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14. 2007 FCA 291 (CanLII) [*TPG*].

15. *TPG* at paras. 39, 41.