



Ottawa, Thursday, April 10, 2003

**File No. PR-2002-065**

IN THE MATTER OF a complaint filed by 1252198 Ontario Inc./Elite Painting under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47;

AND FURTHER TO a decision to conduct an inquiry into the complaint under subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

### **ORDER OF THE TRIBUNAL**

The Canadian International Trade Tribunal, pursuant to paragraph 10(b) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*, dismisses the complaint.

Pierre Gosselin  
\_\_\_\_\_  
Pierre Gosselin  
Presiding Member

Michel P. Granger  
\_\_\_\_\_  
Michel P. Granger  
Secretary

Date of Order and Reasons: April 10, 2003

Tribunal Member: Pierre Gosselin, Presiding Member

Senior Investigation Officer: Peter Rakowski

Counsel for the Tribunal: Roger Nassrallah

Complainant: 1252198 Ontario Inc./Elite Painting



Ottawa, Thursday, April 10, 2003

File No. PR-2002-065

IN THE MATTER OF a complaint filed by 1252198 Ontario Inc./Elite Painting under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47;

AND FURTHER TO a decision to conduct an inquiry into the complaint under subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

## STATEMENT OF REASONS

### INTRODUCTION

On February 19, 2003, 1252198 Ontario Inc./Elite Painting (Elite) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of *Canadian International Trade Tribunal Act*<sup>1</sup> concerning a Request for a Standing Offer by the Self-Help Housing Organization (SHHO) (Solicitation No. SHHO-240298-003) for the provision of interior painting services.

Elite alleged that its bid was improperly disqualified. Elite requested, as a remedy, that the Tribunal recommend that the solicitation be retendered or that the contract be awarded to Elite based on its low bid.

On March 7, 2003, the Tribunal accepted the complaint for inquiry on the basis that the SHHO was part of the Department of National Defence (DND), which is a listed “government institution” for the purposes of section 30.1 of the *CITT Act* and subsection 3(2) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.<sup>2</sup> On March 7, 2003, the Tribunal requested comments from DND with respect to the SHHO’s status and affiliation with DND. In this context, the Tribunal’s jurisdiction is limited to investigating complaints with respect to procurement by entities that are listed in the trade agreements and, in the case of DND, for the procurement of products and services that are prescribed in those same agreements.

On March 11, 2003, DND submitted that the contract in question was not a “designated contract” within the meaning of the *CITT Act*, as it was not a contract to be awarded by a “government institution”. According to DND, the SHHO is a non-public property organization and is not part of DND. DND further stated that all non-public property organizations are administrative constructs of the Chief of the Defence Staff and Base Commanders and are created to fulfil their trust-like responsibilities. DND further stated that non-public property organizations do not fall within the meaning of “government institution” under the *CITT Act*, as they are not part of DND. Furthermore, non-public property organizations are independent of DND, and their employees are employed by the “Staff of the Non-Public Funds, Canadian Forces”, a separate employer under the *Public Service Staff Relations Act*.<sup>3</sup>

On March 14, 2003, Elite was provided the opportunity to comment on DND’s submission, but no comments were received.

1. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].
2. S.O.R./93-602 [*Regulations*].
3. R.S.C. 1985, c. P-35.

## TRIBUNAL'S DECISION

Pursuant to subsection 30.11(1) of the *CITT Act*, a potential supplier may file a complaint with the Tribunal concerning any aspect of the procurement process that relates to a “designated contract”. Section 30.1 of the *CITT Act* defines a “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”. A “government institution” is defined under the same section as “any department or ministry of state of the Government of Canada, or any other body or office, that is designated by the regulations”. Subsection 3(2) of the *Regulations* reads, in part, as follows:

For the purposes of the definition “government institution” in section 30.1 of the Act, the following are designated as government institutions:

- (a) the federal government entities set out in the Schedule of Canada in Annex 1001.1a-1 of NAFTA, under the heading “CANADA” in Annex 502.1A of the Agreement on Internal Trade or under the heading “CANADA” in Annex 1 of the Agreement on Government Procurement;
- (b) the government enterprises set out in the Schedule of Canada in Annex 1001.1a-2 of NAFTA or under the heading “CANADA” in Annex 3 of the Agreement on Government Procurement.

The Tribunal notes that the SHHO does not appear in any of the schedules or annexes prescribed in subsection 3(2) of the *Regulations*. In its letter of March 11, 2003, DND clearly stated that the SHHO was not part of DND, and this evidence was not contradicted by Elite. In this context, the Tribunal was persuaded by DND’s submission and is satisfied that the SHHO is not part of DND. The Tribunal, therefore, determines that the evidence does not disclose that the SHHO is a “government institution”, as prescribed by the *CITT Act* and the *Regulations*. Therefore, the contract in question is not a “designated contract”.

Accordingly, the Tribunal determines that it lacks the jurisdiction to continue this inquiry and, therefore, dismisses this complaint.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member