



Ottawa, Thursday, March 2, 2000

File No.: PR-99-038

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

AND IN THE MATTER OF a motion by the Department of Public Works and Government Services under rule 24 of the *Canadian International Trade Tribunal Rules* for an order dismissing the complaint on the basis that the Tribunal does not have the jurisdiction to conduct an inquiry into the procurement at issue because the procurement does not relate to a “designated contract” within the meaning of subsection 30.11(1) of the *Canadian International Trade Tribunal Act* and as defined in subsection 3(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.

ORDER

The Canadian International Trade Tribunal has determined that the procurement does not relate to a designated contract as required by subsection 30.11(1) of the *Canadian International Trade Tribunal Act*. The estimated value of the procurement that is the subject of the complaint is less than the minimum value established by Article 502(1)(b) of the *Agreement on Internal Trade*. The Tribunal has determined that the procurement is not covered by either the *North American Free Trade Agreement* or the *Agreement on Government Procurement*. Therefore, the Tribunal grants the motion and dismisses the complaint.

Patricia M. Close

Patricia M. Close

Presiding Member

Michel P. Granger

Michel P. Granger

Secretary

Date of Decision: March 2, 2000

Tribunal Member: Patricia M. Close

Investigation Manager: Randolph W. Heggart

Investigation Officer: Paule Couët

Counsel for the Tribunal: John Dodsworth

Complainant: Checker Movers

Government Institution: Department of Public Works and Government Services

Counsel for the Government Institution: Christianne M. Laizner

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STATEMENT OF REASONS

INTRODUCTION

On December 23, 1999, Checker Movers (Checker) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ concerning the procurement (Solicitation No. M0500-0-9-0911/A) by the Department of Public Works and Government Services (the Department) on behalf of the Royal Canadian Mounted Police (RCMP). The solicitation is for a Regional Individual Standing Offer (RISO) for the provision of moving services, on an “as and when requested” basis.

Checker alleged that the Department and the RCMP had improperly set aside the solicitation at issue and, instead, retained the services of the incumbent contractor, Ability Moving and Storage, to continue to provide the required moving services. Checker requested, as a remedy, that it be awarded the standing offer that should have resulted from this solicitation.

On January 6, 2000, the Tribunal informed the parties that the complaint had been accepted for inquiry, as it met the conditions set out in section 7 of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.²

On January 31, 2000, the Department brought before the Tribunal a motion, pursuant to rule 24 of the *Canadian International Trade Tribunal Rules*, requesting that the Tribunal dismiss the complaint because the procurement at issue does not relate to a “designated contract”, as required by subsection 30.11(1) of the

1. R.S.C. 1985 (4th Supp.), c. 47 [hereinafter CITT Act].
2. SOR/93-602 [hereinafter Regulations].

CITT Act and as defined in subsection 3(1) of the Regulations and Article 502(1)(b) of the *Agreement on Internal Trade*.³

The Department submitted that the moving services at issue are excluded services under Section B of Annex 1001.1b-2 of the *North American Free Trade Agreement*.⁴ Similarly, the Department submitted that such services are also excluded from coverage under the *Agreement on Government Procurement*,⁵ which does not include a reference in Canada's offer of covered services to "Relocation Services", "moving services" or "Packing /Crating Services".

The Department submitted that, although moving services are not excluded services under the AIT, Article 502(1)(b) of the AIT provides that Chapter Five (on procurement) applies only to service contracts where the procurement value is \$100,000 or greater. "Procurement value" is defined in Article 518 of the AIT as follows:

procurement value means the estimated total financial commitment resulting from a procurement, not taking into account optional renewals when the compulsory part of the contract is of at least one year's duration.

In addition, Article 505(1) of the AIT and section 5 of the Regulations establish the value to be used in determining whether a contract is a designated contract as the value estimated by an entity at the time of the publication of a Notice of Proposed Procurement (NPP).

The Department submitted that the Request for Standing Offer which is the subject of this complaint was for a RISO of one year's duration, with two one-year optional renewals, with an estimated procurement value of \$50,000, as per an RCMP requisition dated August 23, 1999. This estimated value, the Department submitted, was reflected in the NPP posted on Canada's Electronic Tendering Service (MERX) on October 5, 1999, which indicated that no trade agreement applied. The Department also submitted that the estimated value of the proposed RISO is consistent with past experience.

In its comments of February 11, 2000, on the Department's motion, Checker submitted that it feels "certain that this procurement would have been greater than \$100,000 as per AIT Article 502(1)(b)". Checker submitted that the figures being reported to the Department by the RCMP do not encompass the termination of the then existing standing offer and the amounts both requisitioned and paid directly by the RCMP.

In its response of February 17, 2000, to Checker's comments on the motion, the Department submitted, with evidence in support, that the figures reported in the Government Institution Report accurately set out the amounts paid in the last two years.

3. As signed at Ottawa, Ontario, on July 18, 1994 [hereinafter AIT].

4. 32 I.L.M. 289 (entered into force 1 January 1994) [hereinafter NAFTA].

5. As signed at Marrakesh on April 15, 1994 (in force for Canada on January 1, 1996).

TRIBUNAL'S DECISION

Subsection 30.11(1) of the CITT Act reads:

Subject to the regulations, a potential supplier may file a complaint with 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.

The CITT Act defines 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”.

Subsection 3(1) of the Regulations reads, in part:

For the purposes of the definition “designated contract” in section 30.1 of the [CITT Act], any contract or class of contract concerning a procurement of goods or services or any combination of goods or services, as described . . . in Article 502 of the Agreement on Internal Trade . . . is a designated contract.

Article 502(1) of the AIT reads, in part:

This Chapter applies to measures adopted or maintained by a Party relating to procurement within Canada by any of its entities listed in Annex 502.1A, where the procurement value is:

- (b) \$100,000 or greater, in cases where the largest portion of the procurement is for services, except those services excluded by Annex 502.1B

As previously stated, the value referred to in Article 502(1)(b) of the AIT is the value estimated by the RCMP in the requisition of August 23, 1999. This value does not take into account optional renewals where the compulsory part of the contract is of at least one year's duration.

The Tribunal accepted the complaint for inquiry on the basis of an estimate created using Checker's bid. At the time of its decision on January 5, 2000, the Tribunal did not have before it the \$50,000 estimated value for the procurement, as established by the requisition sent to the Department by the RCMP at the time of the publication of the NPP.

In light of the evidence presented by the Department concerning the value of the procurement (specifically, the requisition dated August 23, 1999), the Tribunal finds that the estimated value for this procurement at the time of the publication of the NPP was \$50,000. For the purposes of establishing whether the AIT threshold has been met, optional renewals are not taken into account, since this estimate was for at least one year. As such, the Tribunal is of the view that this procurement does not relate to a designated contract. Therefore, the Tribunal does not have the jurisdiction to conduct an inquiry into this complaint, and the complaint is dismissed.

Patricia M. Close

Patricia M. Close

Presiding Member