



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## ORDER AND REASONS

File No. PR-2018-007

10647802 Canada Limited (o/a  
Outland-Carillion Services)

v.

Department of Public Works and  
Government Services

*Order and reasons issued  
Thursday, October 4, 2018*

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IN THE MATTER OF a complaint filed by 10647802 Canada Limited (o/a Outland-Carillion Services) pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C., 1985, c. 47 (4th Supp.);

AND FURTHER TO the Canadian International Trade Tribunal's preliminary indication of the level of complexity for the complaint case and its preliminary indication of the amount of the cost award.

**BETWEEN**

**10647802 CANADA LIMITED (O/A OUTLAND-CARILLION SERVICES)**

**Complainant**

**AND**

**THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT SERVICES**

**Government Institution**

**ORDER**

In its determination of August 27, 2018, the Canadian International Trade Tribunal, pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*, awarded the Department of Public Works and Government Services its reasonable costs incurred in responding to the complaint. The Canadian International Trade Tribunal's preliminary indication of the level of complexity for the complaint case was Level 1, and its preliminary indication of the amount of the cost award was \$1,150. Having considered the submissions of 10647802 Canada Limited (o/a Outland-Carillion Services) and the Department of Public Works and Government Services regarding the preliminary indication of the amount of the cost award, the Canadian International Trade Tribunal hereby confirms its preliminary indication by awarding the Department of Public Works and Government Services its costs in the amount of \$1,150 for responding to the complaint and directs 10647802 Canada Limited (o/a Outland-Carillion Services) to take appropriate action to ensure prompt payment.

Serge Fréchette

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Serge Fréchette

Presiding Member

## STATEMENT OF REASONS

### INTRODUCTION

[1] In its determination of August 27, 2018, the Canadian International Trade Tribunal (the Tribunal), pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*,<sup>1</sup> awarded the Department of Public Works and Government Services (PWGSC) its reasonable costs incurred in responding to the complaint.

[2] The Tribunal's preliminary indication of the level of complexity in this case was Level 1, and its preliminary indication of the amount of the cost award was \$1,150.<sup>2</sup>

[3] 10647802 Canada Limited (o/a Outland-Carillion Services) (Outland-Carillion) wrote to the Tribunal on August 30, 2018, contesting the preliminary indication of the amount of the cost award. Outland-Carillion submitted that it filed a complaint in search of an explanation for why it was not awarded any points for point-rated criterion 2. It also noted that it incurred costs in submitting a bid and that it was not seeking financial reimbursement as a remedy. Outland-Carillion asked the Tribunal to consider its submissions before determining the final amount of the cost award.

[4] Outland-Carillion served its submissions on PWGSC on September 4, 2018.

[5] In accordance with article 4.2 of the *Procurement Costs Guideline* (the Guideline), the Tribunal invited PWGSC to file a submission, if any, by September 11, 2018. PWGSC filed its submission on September 13, 2018. It submitted that not awarding costs to PWGSC in this case would be inconsistent with the decisions of the Federal Court of Appeal in *Canada (Attorney General) v. M.D. Charlton Co. Ltd.*,<sup>3</sup> *Canada (Attorney General) v. Georgian College of Applied Arts and Technology*<sup>4</sup> and *Canada (Attorney General) v. Georgian College of Applied Arts and Technology*.<sup>5</sup>

### ANALYSIS

[6] Pursuant to subsection 30.16 of the *CITT Act*, the Tribunal has discretionary power to award costs of, and incidental to, procurement proceedings.

[7] As indicated in the *Guideline*, the Tribunal applies the principle that, in general, costs should be awarded to the successful party, whether it be the complainant or the government institution.<sup>6</sup> The Tribunal may exercise its discretion to depart from this general principle on costs where the circumstances justify a departure.<sup>7</sup> The Tribunal also notes that an award of costs is not intended to

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1. R.S.C., 1985, c. 47 (4th Supp.) [*CITT Act*].  
2. *10647802 Canada Limited (o/a Outland-Carillion Services) v. Department of Public Works and Government Services* (27 August 2018), PR-2018-007 (CITT) [*Outland-Carillion*].  
3. 2017 FCA 179 (CanLII) [*M.D. Charlton*].  
4. 2003 FCA 199 (CanLII) [*Georgian College I*].  
5. 2004 FCA 285 (CanLII).  
6. *Guideline* at para. 2.1; see also *Georgian College I* at paras. 35-38.  
7. *M.D. Charlton* at paras. 3-4; *Mistral Security Inc. v. Department of Public Works and Government Services* (24 June 2013), PR-2012-035 (CITT) at para. 7.

be a source of profit for the successful party, nor is it imposed as punishment on the party who pays it.<sup>8</sup>

[8] The *Guideline* sets out a flat-rate system that is typically invoked for the purposes of fixing the amount of costs in procurement proceedings. Each case is classified into one of three levels of complexity according to three criteria: the complexity of the procurement, the complexity of the complaint and the complexity of the complaint proceedings.<sup>9</sup>

[9] As stated above, the Tribunal's preliminary indication of the level of complexity in this case was Level 1, which corresponds to a cost award in the amount of \$1,150—the lowest level of costs set out in the *Guideline*. The Tribunal provided the following reasons for its preliminary indications of complexity and the cost award amount:

The Tribunal's preliminary indication is that this complaint has a complexity level corresponding to the lowest level of complexity referred to in Annex A of the *Guideline* (Level 1). The complexity of the procurement was medium, as the RFP involved the provision of food catering services at a cadet training centre and included a number of mandatory and point-rated technical criteria. The Tribunal finds that the complexity of the complaint was low, as the issues were straightforward and dealt with whether PWGSC properly evaluated Outland-Carillion's proposal against one point-rated requirement of the RFP. Finally, the complexity of the proceedings was low, as the issues were resolved by the parties through documentary evidence and written representations, and a hearing was not necessary.<sup>10</sup>

[10] When making a final cost order, the Tribunal is not bound by its preliminary indication of the level of complexity of the procurement or the amount of the cost award set out in the determination. As stated in the *Guideline*, “[i]f one or more parties make submissions, the Tribunal will consider them, request additional information, if necessary, and then make whatever cost order it believes is warranted.”<sup>11</sup>

[11] Having considered the submissions filed by Outland-Carillion and PWGSC, the Tribunal sees no reason to depart from its preliminary cost award. Outland-Carillion's claim that it was only seeking an explanation from PWGSC, not financial reimbursement, does not, in this case, justify a departure from the general principle of awarding costs to the successful party. In addition, the Tribunal notes that, at the time of filing this complaint, Outland-Carillion was also asking the Tribunal to recommend that PWGSC re-evaluate the bids and to recommend that Outland-Carillion be awarded the contract.<sup>12</sup>

[12] Further, the *Guideline* indicates that an unsuccessful party should be prepared to be subject to an order for costs to the successful party. As such, Outland-Carillion was, or ought to have been, aware of the possibility that it may be subject to an order for costs when it filed its complaint.

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8. *Georgian College I* at para. 25.

9. *Guideline* at article 4.1.

10. *Outland-Carillion* at para. 56.

11. *Guideline* at article 4.2.5.

12. Exhibit PR-2018-007-01, Vol. 1 at 8.

[13] In light of the above, the Tribunal finds that no change is warranted with respect to its preliminary indications of the level of complexity of the complaint or the amount of the cost award, which is already the lowest level contemplated in the *Guideline*.

## CONCLUSION

[14] The Tribunal confirms its preliminary indication of the amount of the cost award by awarding PWGSC its costs in the amount of \$1,150 for responding to the complaint and directs Outland-Carillion to take appropriate action to ensure prompt payment.

Serge Fréchette  

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Serge Fréchette  
Presiding Member