



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2020-011

Newland Canada Corporation

*Decision made
Wednesday, August 5, 2020*

*Decision and reasons issued
Thursday, August 13, 2020*

*Corrigendum issued
Thursday, September 17, 2020*

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

BY

NEWLAND CANADA CORPORATION

AGAINST

THE DEPARTMENT OF NATIONAL DEFENCE

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.

Jean Bédard

Jean Bédard, Q.C.

Presiding Member

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

BY

NEWLAND CANADA CORPORATION

AGAINST

THE DEPARTMENT OF NATIONAL DEFENCE

CORRIGENDUM

The second sentence of paragraph 9 of the Statement of Reasons should read as follows:

Newland's complaint is considered to have been filed on August 4, 2020.

By order of the Tribunal,

Jean Bédard

Jean Bédard, Q.C.
Presiding Member

STATEMENT OF REASONS

[1] Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,² a potential supplier may file a complaint with the Canadian International Trade 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 RFPs AND COMPLAINT

[2] On or about December 3, 2019, the Department of National Defence (DND) issued a number of requests for proposals (the RFPs) for third-location decompression (TLD) hotel accommodations in Cologne, Germany. The RFPs at issue are Solicitations No. W6775-20-0048, W6775-20-0049 and W6775-20-0050. The bid closing date for the three solicitations was December 5, 2019.

[3] Each of the RFPs included three nights' accommodations for military personnel returning from missions abroad, as well as conference room rentals and parking. The solicitations were for stays during January 2020.

[4] Newland Canada Corporation (Newland) submitted bids in the solicitations at issue. It was awarded the contracts in Solicitations No. W6775-20-0048 and W6775-20-0050 on December 5, 2019, and the contract in Solicitation No. W6775-20-0049 on December 6, 2019.

[5] According to Newland, DND requested to change the number of rooms it had booked under each of the contracts. Newland relayed this request to the hotel, but the hotel refused to accept the changes. Newland has sought payment from DND as agreed upon under the contracts.

[6] Newland is seeking damages for value of the three contracts, amounting to €20,600 for W6775-20-0048, €50,975 for W6775-20-0049 and €27,965 for W6775-20-0050. Newland has admitted that it has received unspecified partial payments for the contracts under W6775-20-0048 and W6775-20-0049.

[7] Newland submitted documentation related to the complaint on June 30, 2020, describing its difficulties in collecting payment from DND.

[8] On July 3, 2020, the Tribunal replied to Newland in a letter stating that new complaints made by Newland would require a duly completed complaint form and all relevant documentation of the complaint in the possession of Newland.

[9] On August 4, 2020, the Tribunal received the requested complaint form and documentation. Newland's complaint is considered to have been filed on August 6, 2020.

ANALYSIS

[10] On August 5, 2020, pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal decided not to conduct an inquiry into the complaint for the reasons that follow.

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

² SOR/93-602 [*Regulations*].

[11] On its face, Newland's complaint relates to the administration of the contracts concluded between Newland and DND and not to the procurement process that preceded their conclusion. In the case of *Sunny Jaura o/a Jaura Enterprises*, a procurement for accommodation services in Sicily, Italy, the Tribunal stated the following:

The *CITT Act* and the *Regulations* allow a potential supplier to complain to the Tribunal about any aspect of a procurement process for a designated contract. When applying these provisions, the Tribunal has made an important distinction between the procurement process and contract administration. The procurement process begins after the government institution has decided on its procurement requirement and continues through to the awarding of the contract. Contract administration is a separate phase that takes place after the procurement process is completed. It deals with issues that arise as a contract is performed and managed. The Tribunal has been clear that matters of contract administration are beyond the scope of its jurisdiction.³

[Footnotes omitted]

[12] As the complaint concerns amounts allegedly owed to Newland for services rendered, this matter would be subject to the terms of the contract concluded between Newland and DND, rather than pertain to the procurement process that led to the award of the contract. As such, the matter does not fall under the jurisdiction of the Tribunal.

[13] The preceding point is dispositive and as such, the Tribunal will refrain from making determinations in regards to other criteria that would need to be met in order for the Tribunal to initiate an inquiry. However, the information on record suggests that Newland's complaint relates to contracts with a value below the threshold of \$101,100, for service contracts subject to the *Canadian Free Trade Agreement* (CFTA),⁴ and may also be time-barred having regard to the requirements under section 6 of the *Regulations*.

[14] By way of conclusion, the Tribunal notes that, provided that the applicable timeliness and other standing requirements are met, the Office of the Procurement Ombudsman (OPO) has jurisdiction regarding complaints related to procurement processes for certain contracts valued below the threshold of the CFTA, as well as in relation to issues of contract administration.⁵

DECISION

[15] Pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal has decided not to conduct an inquiry into the complaint.

Jean Bédard

Jean Bédard, Q.C.
Presiding Member

³ *Sunny Jaura o/a Jaura Enterprises v. Department of Public Works and Government Services* (21 February 2013), PR-2012-043 (CITT) at para. 10. See also *WW-ISS Solutions Canada v. Department of Foreign Affairs, Trade and Development* (16 December 2019), PR-2019-050 (CITT) at para. 15; *Vidéotron Ltée v. Shared Services Canada* (5 October 2018), PR-2018-006 (CITT) at para. 16.

⁴ *Contracting Policy Notice 2017-6 Trade Agreements: Thresholds Update*, Global Affairs Canada, 21 December 2017; *Newland Canada Corporation v. Department of National Defence* (29 April 2020), PR-2019-054 and PR-2019-055 (CITT), case concluded that TLD accommodation services for the military were excluded from Canada's international trade agreements, but not the CFTA.

⁵ Office of the Procurement Ombudsman, accessed: 31 July 2020.