



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## ORDER AND REASONS

File No. PR-2020-044

Canadian Maritime Engineering  
Ltd.

v.

Department of Public Works and  
Government Services

*Order and reasons issued  
Tuesday, October 6, 2020*

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

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

**BETWEEN**

**CANADIAN MARITIME ENGINEERING LTD.**

**Complainant**

**AND**

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

**Government Institution**

**ORDER**

WHEREAS the above-mentioned complaint was filed by Canadian Maritime Engineering Ltd. (CME) in respect of Solicitation No. F7044-200238/A issued by the Department of Public Works and Government Services (PWGSC) to satisfy the Department of Fisheries and Oceans' requirement for the dismantling and disposal of the former vessel *CCGS W.E. Ricker*;

AND WHEREAS CME requested that the Canadian International Trade Tribunal issue an order for interim relief under subsection 30.13(3) of *Canadian International Trade Tribunal Act (CITT Act)* should the complaint be accepted for inquiry;

AND WHEREAS the Tribunal decided, on September 22, 2020, to inquire into the complaint pursuant to subsection 30.13(1) of the *CITT Act* and subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* and not to grant the requested interim relief under subsection 30.13(3) of the *CITT Act*;

AND WHEREAS the Tribunal notified the parties of its decision on September 24, 2020;

AND WHEREAS the Tribunal wishes to provide reasons forthwith with respect to its decision not to grant the requested interim relief;

The Tribunal hereby confirms its decision previously communicated to the parties not to grant an order requiring PWGSC to postpone the re-tendering of the requirement concerning the former vessel *CCGS W.E. Ricker* or award of any new contract related thereto.

Jean Bédard

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Jean Bédard, Q.C.  
Presiding Member

## STATEMENT OF REASONS

[1] This inquiry concerns a complaint filed by Canadian Maritime Engineering Ltd. (CME) in relation to a Request for Proposal (RFP) (Solicitation No. F7044-200238/A) conducted by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of Fisheries and Oceans (DFO). The solicitation was to satisfy DFO's requirement for the dismantling and disposal of the former vessel, *CCGS W.E. Ricker*.

[2] Having determined that the conditions set out in subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*<sup>1</sup> had been met in respect of the complaint, the Tribunal decided, pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*,<sup>2</sup> to conduct an inquiry into the complaint.

[3] In accepting the complaint for inquiry, the Tribunal was required to consider CME's request for an interim remedy under subsection 30.13(3) of the *CITT Act*. Specifically, CME requested that the Tribunal require PWGSC to postpone its re-tendering of the solicitation for the requirement concerning the former vessel *CCGS W.E. Ricker* or the award of any new contract resulting from that process until the validity of the complaint is determined.<sup>3</sup> For the reasons below, the Tribunal decided not to grant such an order.

### Procedural background<sup>4</sup>

[4] PWGSC issued the RFP on April 21, 2020. The bid closing date was June 25, 2020.

[5] The contract was awarded to CME on August 4, 2020.<sup>5</sup>

[6] On August 28, 2020, PWGSC notified CME that it was terminating the contract with CME. PWGSC indicated that it had determined that there were issues with the RFP and that it intended to re-solicit the requirement with revised terms.<sup>6</sup> Later that same day, CME objected to the termination of the contract and requested a debrief. CME also inquired with respect to the contract amendment procedures that were available to PWGSC and raised concerns with respect to the publication of CME's bid price on PWGSC's Web site ([buyandsell.gc.ca](http://buyandsell.gc.ca)), as it related to CME's ability to participate in the re-solicitation process.<sup>7</sup>

[7] On September 2, 2020, PWGSC confirmed its intention to re-tender the requirement with revised terms.<sup>8</sup>

[8] The complaint was filed on September 17, 2020, and accepted for inquiry by the Tribunal on September 22, 2020. The Tribunal's decision in this regard was communicated to the parties on September 24, 2020.

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<sup>1</sup> SOR/93-602 [*Regulations*].

<sup>2</sup> R.S.C., 1985, c. 47 (4th Supp.) [*CITT Act*]

<sup>3</sup> Exhibit PR-2020-044-01, Vol. 1 at paras. 62, 63 at 19.

<sup>4</sup> The full details of the procedural background of the solicitation process will be contained in the statement of reasons issued at the conclusion of the inquiry.

<sup>5</sup> Exhibit PR-2020-044-01, Vol. 1 at 433.

<sup>6</sup> *Ibid.* at 436.

<sup>7</sup> *Ibid.* at 438.

<sup>8</sup> *Ibid.* at 440.

### Postponement of contract award

[9] The Tribunal determined that it had no authority to issue the order requested by CME under subsection 30.13(3) of the *CITT Act*, which states as follows:

**30.13(3)** Where the Tribunal decides to conduct an inquiry into *a complaint* that concerns a *designated contract proposed to be awarded* by a government institution, the Tribunal may order the government institution to postpone the awarding of *the contract* until the Tribunal determines the validity of the complaint.

[Emphasis added]

[10] CME is asking the Tribunal to order PWGSC to postpone the re-tendering of the requirement or the awarding of a new contract resulting from that process. This request is outside the scope of subsection 30.13(3) of the *CITT Act*.

[11] This provision applies only in respect of the designated contract that is the subject of the complaint and is proposed to be awarded by the government institution.<sup>9</sup> The evidence on the record indicates that the designated contract was awarded to CME on August 4, 2020, and subsequently terminated by PWGSC. As such, in this case, there is no proposed designated contract to be awarded by PWGSC for the purposes of subsection 30.13(3) of the *CITT Act*.

[12] Accordingly, the Tribunal had no jurisdiction to grant the interim remedy sought by CME.

Jean Bédard  
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Jean Bédard, Q.C.  
Presiding Member

<sup>9</sup> *Accipiter Technologies Inc.* (26 April 2019), PR-2018-049 (CITT) at para. 54; *Access Corporate Technologies Inc.* (14 November 2013), PR-2013-012 (CITT) at para. 14.