



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2021-029

Watson MacEwen Teramura  
Architects

*Decision made  
Thursday, August 12, 2021*

*Decision issued  
Friday, August 13, 2021*

*Reasons issued  
Friday, August 27, 2021*

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**

**WATSON MACEWEN TERAMURA ARCHITECTS**

**AGAINST**

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

**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.

Serge Fréchette

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Serge Fréchette

Presiding Member

The statement of reasons will be issued at a later date.

## STATEMENT OF REASONS

[1] Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,<sup>2</sup> 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 COMPLAINT

[2] The complainant, Watson MacEwen Teramura Architect (WMTA), received, in 2018, a standing offer (SO), number EN269-180949-003-FE, further to a request for standing offer (RFSO), Solicitation EN269-180949/A, that had been issued by the Department of Public Works and Government Services (PWGSC), for general architectural services. In 2021, this standing offer was set aside by PWGSC following the retirement of a partner at WMTA.

[3] The complainant alleges that PWGSC improperly set aside its SO and, as a remedy, requests to have it maintained.

[4] For the reasons set out below, the Tribunal has decided not to conduct an inquiry into the complaint.

## BACKGROUND

[5] On October 13, 2017, PWGSC published the RFSO for the above-mentioned services.

[6] On February 8, 2018, PWGSC awarded six SOs, including one to WMTA.

[7] In January 2021, one of the three partners at WMTA decided to retire.

[8] On June 8, 2021, PWGSC advised WMTA that it believed that the retirement may constitute a transfer of the SO to another party, which is not permitted under the rules.

[9] On June 28, 2021, WMTA emailed PWGSC and mentioned their disagreement with respect to the retirement of a partner being a reassignment of the contract.

[10] On July 20, 2021, PWGSC confirmed by email that the change in the partnership constitutes an assignment or transfer, which is prohibited under SP1 of the SO.

[11] On July 21, 2021, WMTA emailed a copy of its partnership agreement to PWGSC and advised that if PWGSC still disagreed with WMTA's interpretation, WMTA would refer the matter to the Office of the Procurement Ombudsman (OPO).

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

<sup>2</sup> SOR/93-602 [*Regulations*].

[12] On July 28, 2021, after having received a copy of WMTA's partnership Agreement, PWGSC emailed WMTA, asking to confirm that the retiring partner would be jointly and severally liable for the services under any call ups during the term of the SO.

[13] On July 28, 2021, WMTA replied to PWGSC, advising that it would refer the matter to the OPO.

[14] On July 30, 2021, WMTA filed a complaint with the Tribunal.

[15] On August 3, 2021, the Tribunal, pursuant to subsection 30.12(2) of the *CITT Act*, informed WMTA that its complaint did not meet the requirements set out in subsection 30.11(2), and that additional information was required before its complaint could be considered to have been filed.

[16] On August 6, 2021, WMTA provided the Tribunal with the additional information requested, and its complaint was then considered to have been filed.

## ANALYSIS

[17] For the reasons that follow, the Tribunal finds that the complainant's allegations relate to a matter of contract administration falling outside the Tribunal's procurement review jurisdiction.

[18] Subsection 30.11(1) of the *CITT Act* states that the Tribunal's jurisdiction is limited to "a complaint . . . concerning any aspect of the procurement process that relates to a designated contract."

[19] Therefore, the Tribunal's jurisdiction is limited to challenges related to the procurement process, which begins after an entity has decided on its procurement requirement and continues through the contract award.<sup>3</sup> 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 consistently held that matters of contract administration are beyond the scope of its jurisdiction.<sup>4</sup>

[20] The complainant takes issue with PWGSC's position that the change in WMTA's partnership would constitute an assignment or transfer of the SO, which is prohibited under SP1 of the SO. WMTA disagreed with PWGSC's interpretation. PWGSC offered to continue issuing call ups to WMTA under the SO if the three partner corporations remain jointly and severally liable for the services under those new call ups issued during the remaining term of the SO, which is approximately 18 months. This suggestion did not seem acceptable for WMTA.

[21] In the Tribunal's view, this issue falls under the rules set out in the SO itself, which were agreed between the parties. Whether the facts justify the application of these rules in the manner suggested by PWGSC is one that falls to the interpretation of the offer itself. It is no longer one that falls under the procurement process.

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<sup>3</sup> *Sunny Jaura o/a Jaura Enterprises v. Department of Public Works and Government Services* (21 February 2013), PR-2012-043 (CITT) at para. 10.

<sup>4</sup> *Custom Power Generation* (13 February 2021), PR-2020-087 (CITT) at para. 8; *Newland Canada Corporation* (13 August 2020), PR-2020-011 (CITT) at para. 11; *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.

[22] Given the above, the Tribunal finds that it has no jurisdiction to inquire into WMTA's complaint. Therefore, the Tribunal dismisses WMTA's complaint.

## **DECISION**

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

Serge Fréchette

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Serge Fréchette  
Presiding Member