



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## ORDER AND REASONS

File No. PR-2021-016

1091847 Ontario Ltd.

v.

Shared Services Canada

*Order and reasons issued  
Friday, November 26, 2021*

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IN THE MATTER OF a complaint filed by 1091847 Ontario 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 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**

**1091847 ONTARIO LTD.**

**Complainant**

**AND**

**SHARED SERVICES CANADA**

**Government  
Institution**

**ORDER**

In its determination regarding the validity of 1091847 Ontario Ltd.'s complaint, the Canadian International Trade Tribunal, pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*, awarded Shared Services Canada its reasonable costs incurred in responding to the complaint. The 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. In light of the submissions by 1091847 Ontario Ltd. and Shared Services Canada, the Tribunal hereby confirms its preliminary indications by awarding Shared Services Canada its costs in the amount of \$1,150 for responding to the complaint and directs 1091847 Ontario Ltd. to take appropriate action to ensure prompt payment.

Randolph W. Heggart

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Randolph W. Heggart

Presiding Member

## STATEMENT OF REASONS

[1] In its reasons of October 22, 2021, the Tribunal awarded costs to Shared Services Canada (SSC) following the successful defence of the complaint brought by 1091847 Ontario Ltd. (Aurora) with respect to Solicitation No. BPM016620 for the provision of uninterruptible power supplies and power distribution units. In conformance with the Tribunal's *Procurement Costs Guidelines*, the Tribunal's preliminary indication of the complaint's complexity was at a Level 1 and its preliminary indication of the amount of the cost award was \$1,150.

[2] On November 2, 2021, Aurora requested that the Tribunal grant it an additional 10 days to make its submission with respect to costs. This extension was granted by the Tribunal on November 3, 2021.

[3] On November 12, 2021, Aurora filed its submission with respect to costs.

[4] On November 15, 2021, SSC filed its reply submissions.

## POSITIONS OF THE PARTIES

[5] In support of its assessment that the parties should bear their own costs, Aurora submits that the Department of Foreign Affairs, Trade and Development (DFATD), in conjunction with SSC, did not provide adequate disclosure of its testing process. According to Aurora, it was only after repeated requests for disclosure from Aurora and the Tribunal that SSC provided sufficient disclosure for Aurora to confirm that any testing took place with respect to its goods. Aurora further submits that it still does not believe that it has adequate information to be sure that the testing of its goods was completed in a manner that would allow for independent verification.

[6] With respect to costs, Aurora cites the Tribunal's decisions in *Francis H.V.A.C.*<sup>1</sup> and *Masha Krupp*<sup>2</sup> as laying out general rules that the Tribunal should decline the award of costs in cases where the winning party has withheld relevant information and/or unduly complicated the proceedings. In Aurora's view, as SSC and DFATD declined to provide adequate disclosure to it in a timely manner, it follows that SSC should not be entitled to its costs in the matter.

[7] SSC submitted that Aurora's arguments amount to a relitigation of the complaint before the Tribunal and that all of the issues brought forward by Aurora in its submissions were adequately addressed in the decision.

[8] As SSC was "entirely successful" in its defence of the complaint, SSC requests that it be awarded its costs, as determined by the Tribunal. SSC has made no additional comments with respect to the complexity or quantum of the costs order.

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<sup>1</sup> *Francis H.V.A.C. Services Ltd. v. Department of Public Works and Government Services* (2 September 2016), PR-2016-003 (CITT) at para. 57.

<sup>2</sup> *The Masha Krupp Translation Group Ltd. v. Canada Revenue Agency* (20 March 2017), PR-2016-041 (CITT) at para. 90.

## ANALYSIS

[9] The Tribunal's current framework on costs is informed by the Federal Court of Appeal decision in *Canada (Attorney General) v. M.D. Charlton Co. Ltd.*,<sup>3</sup> where the Court held that costs should generally be awarded to the successful party and that any departure from this general principle should be motivated by reasons.<sup>4</sup>

[10] In this case, the Tribunal sees no reason to depart from its original decision. The complainant knew the reasons its solution was unsuccessful and was fully able to present and defend its position before the Tribunal. The Tribunal would reiterate once more that "... disclosure obligations are typically met, as they were here, when a government institution shares results pertaining to the relevant portions of a supplier's bid where points were deducted or requirements were not met."<sup>5</sup>

[11] Accordingly, the Tribunal sees no reason why its preliminary determination of costs should be varied.

## ORDER

[12] Costs in the amount of \$1,150 shall be paid by Aurora to SSC.

Randolph W. Heggart

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Randolph W. Heggart  
Presiding Member

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<sup>3</sup> *Canada (Attorney General) v. M.D. Charlton Co. Ltd.*, 2017 FCA 179.

<sup>4</sup> *Ibid.* at paras. 3-4, citing *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708 at para. 12.

<sup>5</sup> *1091847 Ontario Ltd. v. Shared Services Canada* (22 October 2021), PR-2021-016 (CITT) at para. 44.