



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File PR-2023-015

Military Travel Inc.

*Decision made
Tuesday, June 13, 2023*

*Decision issued
Thursday, June 15, 2023*

*Reasons issued
Monday, June 26, 2023*

IN THE MATTER OF a complaint filed pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*.

BY

MILITARY TRAVEL INC.

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 as it concerns a matter of contract administration.

Frédéric Seppey

Frédéric Seppey
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*¹ (CITT Act) provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*² (Regulations), 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 must decide whether to conduct an inquiry into the complaint.

SUMMARY OF THE COMPLAINT

[2] Military Travel Inc. (MTI) filed the present complaint with respect to a request for proposal (RFP) (solicitation F2311-200018/C) issued by the Department of Public Works and Government Services (PWGSC), on behalf of the Department of Fisheries and Oceans (DFO), for the supply of one utility trailer and two office trailers (the trailers).

[3] Specifically, MTI takes issue, in its complaint, with a contract termination notice that was issued by PWGSC and claims that the termination is invalid. MTI argues that all mandatory specifications identified in the contract termination notice were addressed upon delivery or in pre-delivery meetings.³ MTI also takes issue with PWGSC's failure to advise of any issues or concerns prior to having formally terminated the contract.⁴

[4] For the reasons set out below, the Tribunal has decided that it will not conduct an inquiry into the complaint, because it concerns a matter of contract administration outside of its jurisdiction.

BACKGROUND

[5] The solicitation was issued on or around February 24, 2022, with a bid closing date of March 17, 2022.⁵ MTI submitted a responsive bid on March 16, 2022.⁶

[6] On June 1, 2022, MTI was awarded the contract.⁷ According to the terms of the contract, the trailers were expected to be delivered to DFO by October 2022.⁸

[7] On December 2, 2022, PWGSC notified MTI by email that the trailers had not been delivered according to the delivery date specified in the contract. PWGSC also requested that MTI take corrective measures to fulfill its obligations, failing which PWGSC would move to terminate the contract for default.⁹

¹ R.S.C., 1985, c. 47 (4th Supp.).

² SOR/93-602.

³ Exhibit PR-2023-015-01 at 5.

⁴ *Ibid.* at 6.

⁵ *Ibid.* at 11–41.

⁶ *Ibid.* at 7.

⁷ Exhibit PR-2023-015-01 at 7. See also the notice of contract award posted on CanadaBuys.canada.ca on June 2, 2023, online: <<https://canadabuys.canada.ca/en/tender-opportunities/tender-notice/pw-kin-532-8624>>.

⁸ Exhibit PR-2023-015-01 at 22; Exhibit PR-2023-015-01.C at 20.

⁹ Exhibit PR-2023-015-01.C at 20.

[8] PWGSC subsequently agreed on December 23, 2022, to a delivery extension until March 31, 2023, and a contract amendment was issued accordingly.¹⁰ The manufacturing process has since begun, and MTI appears to have been in communication with PWGSC and DFO throughout.

[9] On or around March 31, 2023, MTI delivered the trailers to DFO.¹¹ On April 25, 2023, MTI claims to have submitted its invoice.¹²

[10] On May 25, 2023, MTI received by email a contract termination notice from PWGSC indicating that the contract would be terminated for default on the grounds that the trailers failed to meet certain mandatory specifications outlined in the solicitation. MTI was also put on notice, through PWGSC's email, that necessary arrangements had to be made by MTI to remove the trailers before June 15, 2023.¹³ On that same day, MTI responded to PWGSC and communicated its disagreement with the elements identified in the contract termination notice. MTI further requested a breakdown of the inspection notes, which were provided the next day by PWGSC.¹⁴

[11] On June 6, 2023, MTI submitted its complaint to the Tribunal.¹⁵ In its complaint, it requested, as a remedy, that the Tribunal “review the listed mandatory deficiencies and allow [it] the opportunity to address any ACTUAL deficiencies ... that are mandatory by *contract*” [emphasis added].¹⁶ MTI further requested that the Tribunal compel PWGSC not to remove or further handle the trailers until the Tribunal's inquiry is complete. As for compensation, MTI requested to be compensated for late payment of its invoice as well as compensation “at cost plus 15%”¹⁷ for any subsequent adjustments to the trailers. Finally, MTI requested immediate payment of all invoiced amounts.

ANALYSIS

The complaint concerns a matter of contract administration

[12] Subsection 30.11(1) of the CITT Act and the Regulations allow potential suppliers to file complaints with the Tribunal concerning an aspect of the *procurement process* that relates to a designated contract.

[13] In applying these provisions in previous complaint cases brought to the Tribunal, the Tribunal has made an important distinction between the procurement process itself and matters that relate to the administration of an awarded contract. The Tribunal has previously determined that the procurement process begins after the government institution has decided on its procurement requirements and continues through to the awarding of a contract related to those requirements. Contract administration, conversely, is a separate phase that takes place *after* the procurement process is completed and the designated contract is awarded. It deals with issues that arise as a contract is performed and managed.

¹⁰ *Ibid.* at 18–20, 33, 41–42.

¹¹ Exhibit PR-2023-015-01 at 7; Exhibit PR-2023-15-01.C at 33–41.

¹² *Ibid.* at 7.

¹³ *Ibid.* at 45–48.

¹⁴ *Ibid.* at 49–50; Exhibit PR-2023-015-01.C at 62–69.

¹⁵ Exhibit PR-2023-015-01.

¹⁶ *Ibid.* at 6.

¹⁷ *Ibid.*

As the Tribunal's jurisdiction is limited by the scope of subsection 30.11(1) of the CITT Act, matters of contract administration cannot be considered by the Tribunal.¹⁸

[14] In the present case, the issues raised in the complaint arose *after* the completion of the procurement process. MTI was awarded a contract following the procurement process, and now takes issue with the contract termination notice and the substance of the purported compliance deficiencies identified by PWGSC in the notice. These issues and events arose after contract award. On its face, the grounds of complaint raised by MTI, as well as the remedy that it now seeks, clearly consist of matters that relate to contract administration.

[15] The Tribunal therefore lacks jurisdiction to conduct an inquiry into the complaint. For the same reason, the Tribunal also lacks the jurisdiction to provide the remedy sought by MTI. The Tribunal notes that, provided that the applicable timelines and other standing requirements are met, the Office of the Procurement Ombudsman or the Canadian court system may have jurisdiction regarding issues related to contract administration.¹⁹

DECISION

[16] Pursuant to subsection 30.13(1) of the CITT Act, the Tribunal has decided not to conduct an inquiry into the complaint as it concerns a matter of contract administration and therefore falls outside the scope of the Tribunal's jurisdiction.

Frédéric Seppey

Frédéric Seppey

Presiding Member

¹⁸ See, for example, *Baja Construction Canada Inc* (19 July 2022), PR-2022-020 (CITT) at paras. 5-6; *9324-3566 Quebec Inc.* (19 May 2021), PR-2021-005 (CITT) at para. 16; *Newland Canada Corporation* (13 August 2020), PR-2020-011 (CITT) at para. 11, citing *Sunny Jaura o/a Jaura Enterprises v. Department of Public Works and Government Services* (21 February 2013), PR-2012-043 (CITT) at para. 10; *Custom Power Generation* (23 February 2021), PR-2020-087 (CITT) at para. 8.

¹⁹ Website of the Office of the Procurement Ombudsman, online: <<https://opo-boa.gc.ca/enquetes-investigations-eng.html>>.