



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File PR-2022-060

Newland Canada Corporation

*Decision made
Wednesday, January 25, 2023*

*Decision and reasons issued
Monday, February 6, 2023*

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

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.

Randolph W. Heggart

Randolph W. Heggart
Presiding Member

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 that the Tribunal 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 REQUEST FOR PROPOSAL AND COMPLAINT

[2] On September 28, 2022, the Department of National Defence (DND) issued a request for proposal for rental vehicles, without drivers, to be delivered to Kadena Air Base in Okinawa, Japan (solicitation W8484-230322). The bid closing date for the solicitation was October 4, 2022, at 2:00 p.m. ET.³

[3] The request for proposal was for the provision of 5 sedans, 3 trucks with tow hitches and 11 passenger vans from September 30, 2022, through November 7, 2022, to transport approximately 50 military personnel while conducting flying operations in Okinawa, Japan.⁴

[4] Newland Canada Corporation (Newland) submitted a bid in response to the solicitation at issue and was awarded the contract on the afternoon of October 6, 2022, in the amount of US\$80,893.00.⁵ To account for the delay in awarding the contract, the contracting authority (CA) amended the start date of the contract to October 7, 2022. However, as the contract was for the provision of vehicles in Japan, where it was already October 7, 2022, Newland was forced to move quickly to secure the vehicles required by the terms of the contract.⁶

[5] Between October 7 and October 11, 2022, Newland tried to reach the CA and the technical authority (TA) to arrange for the pickup of the vehicles in question; however, both were unresponsive.⁷

¹ R.S.C., 1985, c. 47 (4th Supp.).

² SOR/93-602.

³ Exhibit PR-2022-060-01.A at 7.

⁴ *Ibid.* at 22.

⁵ *Ibid.* at 31.

⁶ *Ibid.* at 24.

⁷ *Ibid.* at 44-73.

[6] On October 11, 2022, it was communicated that the CA was on leave and that the TA was unavailable. Another contact was given to coordinate the particulars of the contract.⁸

[7] On October 12, 2022, Newland received word that DND staff had picked up the vehicles from the rental agency on September 29, 2022, and had paid for the duration of the rental.⁹

[8] On October 13, 2022, the new TA assigned to the case confirmed that DND personnel had gone back to the rental agency to switch the vehicles they had rented for the ones under the contract concluded with Newland, but they had been told that the reservation and the contract had been cancelled.¹⁰

[9] Between October 13 and 15, 2022, Newland and DND tried to find a solution. The evidence on record indicates that DND had already rented the vehicles and was unable to come to a resolution about what to do with the vehicles rented under the contract with Newland,¹¹ as the rental agency concluded that it was not responsible for the mix-up and the ultimate reservation of two sets of vehicles.¹²

[10] On January 10, 2023, after almost three months of seeking answers from the CA and subsequently payment for the services contracted, DND responded that it would not be paying Newland any cancellation fee or invoice for services that were not rendered.¹³

[11] On January 17, 2023, Newland submitted its complaint to the Tribunal.

[12] On January 18, 2023, the Tribunal, pursuant to subsection 30.12(2) of the CITT Act, informed Newland 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.

[13] On January 19, 2023, Newland provided the Tribunal with the additional information requested, and its complaint was then considered to have been filed.

ANALYSIS

[14] On January 25, 2023, 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.

⁸ *Ibid.* at 74-102.

⁹ *Ibid.* at 103.

¹⁰ *Ibid.* at 113.

¹¹ *Ibid.* at 113-147.

¹² *Ibid.* at 148-149, 186-187 and 208.

¹³ *Ibid.* at 175.

[15] On its face, Newland's complaint relates to the administration of the contract concluded between Newland and DND and not to the procurement process that preceded the award. 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.¹⁴

[Footnotes omitted]

[16] 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.

[17] Because the Tribunal is without jurisdiction to inquire into Newland's complaint, it will refrain from making determinations about other criteria that would need to be met for an inquiry to be initiated. However, the Tribunal notes that, even if Newland's complaint pertained to the procurement process that led to the award of the contract, the information on the record suggests that the estimated value of the contract¹⁵ may have been below the monetary threshold of \$121,300¹⁶ required for service contracts to fall within the Tribunal's jurisdiction pursuant to the Canadian Free Trade Agreement.¹⁷

[18] Finally, the Tribunal notes that, provided that the applicable timeliness and other standing requirements are met, the Office of the Procurement Ombudsman or the Canadian Court System may have jurisdiction regarding issues of contract administration.¹⁸

¹⁴ *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.

¹⁵ Under section 5 of the Regulations and article 505 of the Canadian Free Trade Agreement, the estimated value of a contract is used to evaluate whether the applicable threshold is met.

¹⁶ The actual value of the contract was US\$80,893 or CA\$110,977.11 at the Bank of Canada exchange rate for October 6, 2022, the day the contract was issued and signed.

¹⁷ Contracting Policy Notice 2021-6 Trade Agreements: Thresholds Update, Global Affairs Canada, 20 December 2021; *Newland Canada Corporation v. Department of National Defence* (29 April 2020), PR-2019-054 and PR-2019-055 (CITT), this case concluded that third-country location decompression accommodation services for the military were excluded from Canada's international trade agreements, but not the Canadian Free Trade Agreement.

¹⁸ [Office of the Procurement Ombudsman](#), accessed on 31 January 2023.

DECISION

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

Randolph W. Heggart

Randolph W. Heggart

Presiding Member