



# INFORMATION



## on procurement review

### ABOUT THE CANADIAN INTERNATIONAL TRADE TRIBUNAL

The Canadian International Trade Tribunal (the Tribunal) is an independent administrative tribunal operating within Canada's trade remedies system. It is a quasi-judicial body that reports to Parliament through the Minister of Finance.

One of the responsibilities of the Tribunal is to receive complaints regarding the federal government procurement process. The Tribunal determines whether the government institution responsible for the procurement under review has met the requirements of international and national trade agreements and Canadian legislation.

To assist potential suppliers who may wish to file complaints regarding the federal government procurement process, the Tribunal has prepared a publication entitled "Procurement Review Process: A Descriptive Guide."

### AGREEMENTS AND LEGISLATIVE BACKGROUND FOR PROCUREMENT REVIEW

The *North American Free Trade Agreement (NAFTA)*, the *Agreement on Internal Trade (the AIT)* and the *World Trade Organization Agreement on Government Procurement (the AGP)* all require the signatories to the agreements to provide open access to government procurement for certain goods and services. These agreements also require signatory governments to maintain an independent bid challenge (complaint) authority. The *Canadian International Trade Tribunal Act (the CITT Act)* establishes the Tribunal as the complaint authority for Canada.

The federal government has agreed to provide potential suppliers equal access to federal government procurement for contracts involving certain goods and services bought by approximately 100 government departments, agencies and Crown corporations.



## SCOPE AND COVERAGE OF THE AGREEMENTS

While there is considerable overlap in the scope and coverage of NAFTA, the AGP and the AIT, several areas have significant differences. The most notable differences between the three agreements are the goods and services that they include and the minimum monetary thresholds for goods, services and construction services contracts. These monetary thresholds are subject to periodic review.

### ***Starting the Process***

A potential supplier with an objection may initially try to resolve the issue with the government institution responsible for the procurement. However, when this process is not successful or a supplier wants to deal directly with the Tribunal, the supplier may do so by filing a written complaint. Generally, a complaint must be filed with the Tribunal no later than 10 working days after the potential supplier became aware of the basis of the complaint. No special form is required for filing a complaint. However, complaints must identify the complainant, the contract at issue, the government institution involved, the basis of the complaint and the form of relief requested. Complainants may retain counsel if desired.

## WHAT TYPES OF COMPLAINTS ARE ACCEPTABLE?

The Tribunal considers complaints against solicitations and awards or proposed awards on any designated contract. A complaint may relate to any aspect of the procurement process and concern one or more of the procedural requirements contained in NAFTA, the AIT or the AGP. For example, alleged restrictive specifications, omission of a required provision, unclear evaluation factors and inconsistent application of evaluation criteria are some of the matters that may form the basis of a complaint.

When the Tribunal receives a complaint, it reviews the submission. If information is missing, the complainant is given an opportunity to provide it. Once the complaint meets the

criteria for filing, the Tribunal determines whether to conduct an inquiry. This decision is based on, among other things, whether the complaint discloses that a breach of the requirements specified in the relevant agreement may have occurred. If the complaint is accepted for inquiry, the Tribunal sends a copy of the complaint to the government institution and formally notifies any other interested parties.

The Tribunal decides whether or not to conduct an inquiry within five working days after the complaint has been filed. Notices of inquiry are published in *Government Business Opportunities* and the *Canada Gazette*. If the contract has not been awarded, the Tribunal may order the government institution to postpone awarding any contract until the Tribunal has considered the complaint. If the government institution certifies that the procurement is urgent or that the delay would be against the public interest, the contract may be awarded.

Within 25 days after receiving notification that a potential supplier has filed a complaint with the Tribunal, the government institution responsible for the procurement must respond by filing a report with the Tribunal. The Tribunal sends a copy of the report to the complainant and any intervener. An intervener is a person who has a direct interest in the complaint.

Within seven days after being sent the report, the complainant and any intervener may provide comments to the Tribunal. The Tribunal then transmits these comments to all parties.

### ***Investigation***

During the same time that the above procedures are taking place, the Tribunal may conduct a staff investigation, including examination of files and documents. The Tribunal then prepares a staff investigation report, which is circulated to all parties for comment. The parties usually have five days to respond. Once this phase of the inquiry has been completed, the Tribunal reviews the information collected and decides whether a hearing should be held.

## ***Confidential Information***

Complainants should pay particular attention to identifying and properly organizing the public and confidential information that they submit to the Tribunal. If a party submits documents that contain information that the parties wish to keep confidential, the party must provide the Tribunal with a set of documents containing the confidential information and a set of documents from which the confidential information has been deleted. Only counsel who are acting on behalf of a party and who have filed a declaration and undertaking not to disclose confidential information have access to confidential information.

## ***Issuing a Determination***

If, at this stage, the Tribunal considers that there is sufficient information to decide the case, it will make a determination. The determination may consist of recommendations to the government institution (such as re-tendering, re-evaluating or providing compensation). The Tribunal may also award reasonable costs to a complainant to cover expenses for bid preparation and for the bid challenge. The Tribunal may also award costs incurred in participating in proceedings relating to a complaint. The government institution and all other parties are notified of the Tribunal's decision. Recommendations made by the Tribunal in its determination are to be implemented to the greatest extent possible.

If the information presented to the Tribunal is insufficient or disputed, the Tribunal may order a hearing which may include a pre-hearing conference. Parties may also request a hearing. A hearing should be requested as early as possible during the review process. All parties are informed of these decisions.

A pre-hearing conference is used to clarify issues and may help provide a better understanding of each party's position. A hearing involves more formal procedures, including witnesses and a transcript of the proceedings.

At any stage of the proceedings, the Tribunal may decide that the record is complete and make a determination on the complaint. A copy of the determination is sent to the complainant, the government institution and any interveners.

## **EXPRESS OPTION**

It may be important to have a complaint decided in less than the normal time limit of 90 days. Any party may request the use of the express option. This request must be made in writing and submitted to the Tribunal no later than 3 days after the filing of the complaint. The Tribunal will decide within 2 days after receiving the request whether the case is suitable for the express option. When this option is used, the normal time limits for submission of the various reports and comments and the issuance of the Tribunal's determination are cut approximately in half. The Tribunal's determination must be issued within 45 days after the filing of the complaint.

## **INTERACTING WITH THE TRIBUNAL**

This document is one of a series which describes the work of the Tribunal. Others in the series include:

- ▶ Introductory Guide on the Canadian International Trade Tribunal
- ▶ Information on Dumping and Subsidizing Inquiries and Reviews
- ▶ Information on Appeals from Customs, Excise and SIMA Decisions
- ▶ Information on Textile Tariff Investigations

These documents provide general information only. When interpreting and applying the law, readers should refer to

the CITT Act, its Regulations, the statutes that the Tribunal administers and the *Canadian International Trade Tribunal Rules*.

The Office of the Secretary of the Tribunal will provide more detailed information on the handling of individual cases. For more information, dial **(613) 993-3595**.

***Internet, Bulletin Board Service  
and Factsline  
24 hours a day, 7 days a week***

The Tribunal operates a Web site on the Internet. The site provides general information about the Tribunal, publications of the Tribunal, as well as notices, appeal decisions, advices, findings, orders, statements of reasons, procurement review determinations and textile recommendations. The Tribunal's Web site address is **www.citt.gc.ca**.

The Tribunal also operates an electronic bulletin board service (BBS) containing the following publications: notices, appeal decisions, advices, findings, orders, statements of reasons, procurement review determinations and textile recommendations. Dial either **(613) 990-7605** or **(613) 993-0722**.

The Tribunal's *Factsline* also makes available the publications listed above. This service can be accessed by dialing **(613) 956-7139** using a telecopier telephone and requesting document 1196, which is an index of the documents available.

## THE BULLETIN

In addition to the Web site, the BBS and the *Factsline*, the Tribunal publishes the *Bulletin*. This quarterly report provides brief descriptions of decisions issued, cases under consideration, appeal withdrawals, notice of hearings and other information about cases appealed or referred to the Tribunal. To be added to the mailing list, dial **(613) 993-3595**.

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# TYPICAL BID CHALLENGE

