



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2009-023

IT/net Ottawa Inc.

*Decision made  
Monday, July 6, 2009*

*Decision and reasons issued  
Thursday, July 16, 2009*

IN THE MATTER OF a complaint filed under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47

**BY**

**IT/NET OTTAWA INC.**

**AGAINST**

**THE DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT**

**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.

Pasquale Michaele Saroli  
Pasquale Michaele Saroli  
Presiding Member

Hélène Nadeau  
Hélène Nadeau  
Secretary

## 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 (the 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.

2. The complaint relates to a procurement (Solicitation No. A1632-20-07-6027) by the Department of Indian Affairs and Northern Development (DIAND) for the provision of business intelligence, data warehouse and information management services. IT/net Ottawa Inc. (IT/net) alleges that DIAND improperly rejected its proposal.

3. Subsection 6(1) of the *Regulations* provides that a complaint shall be filed with the Tribunal “. . . not later than 10 working days after the day on which the basis of the complaint became known or reasonably should have become known to the potential supplier.” Subsection 6(2) provides that a potential supplier that has made an objection to the relevant government institution, and is denied relief by that government institution, may file a complaint with the Tribunal “. . . within 10 working days after the day on which the potential supplier has actual or constructive knowledge of the denial of relief, if the objection was made within 10 working days after the day on which its basis became known or reasonably should have become known to the potential supplier.”

4. In other words, a complainant has 10 working days from the date on which it first becomes aware or reasonably should have become aware of its ground of complaint to either object to the government institution or file a complaint with the Tribunal. If a complainant objects to the government institution within the designated time, the complainant may file a complaint with the Tribunal within 10 working days after it has actual or constructive knowledge of the denial of relief by the government institution.

5. The due date for the receipt of bids was November 27, 2008. According to the complaint, DIAND issued standing offers to seven successful bidders on May 5, 2009.

6. On May 22, 2009, IT/net, noting that its bid had been disqualified because the typewritten name on the Certificate of Acknowledgement of its named resource was not considered a proper signature, requested a meeting with DIAND. In this regard, IT/net wanted to be added to the list of successful bidders.

7. On June 1, 2009, DIAND advised IT/net that, in its view, a document with a typewritten name was not a signed document under any legal definition. Accordingly, IT/net’s proposal was disqualified for failure to comply with a mandatory requirement of the solicitation. That same day, IT/net wrote to DIAND, proposing that counsel from both sides talk to each other directly on the matter. DIAND and IT/net had a further exchange of e-mails in which both sides presented arguments, based on their respective dictionary definitions of what constituted a valid signature, with DIAND reiterating its position that a typewritten name was not adequate. IT/net’s final e-mail of that day included a quote from the fifth edition of *Black’s Law Dictionary*, which stated that “[a] signature may be written by hand, printed, stamped, **typewritten**, engraved, photographed . . . .”

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

2. S.O.R./93-602 [*Regulations*].

8. On June 15, 2009, DIAND responded to IT/net's final June 1, 2009, e-mail, advising it that the definition of "signature" contained in the current edition of *Black's Law Dictionary* no longer includes a reference to "typewritten". DIAND also cited the definition of "signature" in the *Dictionary of Canadian Law* which, it claimed, does not admit of a typewritten name. In this regard, DIAND reiterated its earlier position that, as the Certificate of Acknowledgement for the named resource, which formed part of IT/net's proposal, did not include the required proper signature, it had no choice but to disqualify the proposal.

9. On June 17, 2009, IT/net wrote back, providing yet another definition. Later that same day, DIAND responded by stating that, as had already been indicated, the final decision had been made.

10. The Tribunal notes that the complaint does not indicate when IT/net first became aware of its ground of complaint (i.e. when it became aware that its proposal had been declared non-compliant for want of a proper signature), as its e-mail of May 22, 2009, merely indicated that it had been "... told that [its] bid was non compl[ia]nt because of a type written signature from a resource" without specifying the date of that communication from the procurement authority, i.e. DIAND.

11. However, even if the Tribunal assumes that this May 22, 2009, objection was timely, it is clear to the Tribunal that IT/net had actual knowledge of the denial of relief, as contemplated by subsection 6(2) of the *Regulations*, on June 1, 2009, when DIAND unequivocally advised IT/net that, "[a]fter confirmation from Legal, a typewritten name is not a signed document under any legal definition and so must be disqualified." Subsequent correspondence, and in particular the June 17, 2009, e-mail from DIAND, served to confirm the final decision that had already been taken and communicated to IT/net on June 1, 2009. This is especially clear from the wording of the June 17, 2009, e-mail: "As per my last e-mail, the final decision has been made." The mere fact that IT/net continued to communicate with DIAND on the issue after having received a definitive denial of relief to its objection did not alleviate it of the onus to comply with the time limits prescribed by the *Regulations*.

12. In light of the above, the Tribunal considers that IT/net had 10 working days, from June 1, 2009, to file its complaint with the Tribunal. As the complaint was not filed until July 2, 2009, the Tribunal considers that it was filed outside the time frame prescribed by subsection 6(2) of the *Regulations*. It should be noted that, even if the date of June 15, 2009, were taken as the date of the denial of relief, the complaint, filed on July 2, 2009, would still have been filed outside the prescribed time limits.

13. Even if the complaint had been filed in a timely manner, the Tribunal does not believe that it discloses, as required by section 7 of the *Regulations*, a reasonable indication that DIAND did not follow the provisions of the applicable trade agreements when it disqualified IT/net's proposal.

14. In this regard, section 2.11 of the Selection and Evaluation Criteria explicitly stipulated the following:

Bidders proposing to provide services under Stream 1 - Level 2 **MUST** meet **ALL** Mandatory Requirements (M1-M3) for Stream 1 - Level 2 Suppliers, in order for the Proposal to be deemed compliant and considered for further evaluation. Failure on the part of the Bidder to meet any one (1) of the Mandatory Requirements for Stream 1 - Level 2 Suppliers will result in its Proposal being deemed non-compliant, with the Proposal being given no further consideration.

15. Mandatory criterion M1 required the following:

The Bidder **MUST**:

...

1.2 Provide *signed* Certificates of Acknowledgement for the named Resources, giving consent for his/her name and C.V. to be submitted as a Resource within the Bidder's Proposal for this requirement (see Annex B); **and**

...

[Emphasis added]

16. The Tribunal discerns, from a plain reading of the above mandatory criterion, that IT/net was obliged to have its resource actually *sign* the Certificate of Acknowledgement, with a typewritten name not being sufficient. In this regard, the ordinary meaning of "to sign", according to the *Canadian Oxford Dictionary*,<sup>3</sup> is to "write (one's name or initials etc.) on a document etc. to authorize or authenticate it" or to "mark (a document etc.) with one's name or autograph etc. to authorize or authenticate it." The fact that *Black's Law Dictionary*, in subsequent editions to the one relied on by IT/net, dropped the reference to "typewritten" as a form of signature, is consistent with the Tribunal's view that a typewritten name would not constitute a proper signature.

17. Finally, the Tribunal is of the view that the inadequacy of a typewritten name is also clear from a reading of the above mandatory criterion in the light of the purpose of the Certificate of Acknowledgement to which it relates. The purpose of the Certificate of Acknowledgement was to denote the consent of a named resource to have his/her name and CV submitted as part of the bidder's proposal. The suggestion that such consent could be indicated by means other than the actual signature of the individual concerned is not persuasive. Indeed, if a typewritten name were considered sufficient, an individual could be submitted as a resource even without his/her consent or knowledge.

18. In short, the Tribunal fails to find any evidence that DIAND did not follow its procurement solicitation document when it disqualified IT/net from the competition.

19. In light of the foregoing, the Tribunal will not conduct an inquiry into the complaint and considers the matter closed.

## DECISION

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

Pasquale Michaele Saroli  
Pasquale Michaele Saroli  
Presiding Member

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3. Second ed., s.v. "sign".