

Overview of Canadian Government Procurement Law

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Government procurement is big business in Canada. It has been estimated that all levels of government in Canada purchase approximately C\$100 billion (all figures in this article are expressed in Canadian dollars) per year of goods, services and construction.

Of that, the Canadian federal government spends approximately C\$14 billion for goods and services for 85 departments, Crown corporations and agencies. The balance is spent by the 10 provincial governments, three territorial governments, and what is known as the MASH sector (municipalities, academic institutions, schools, and hospitals).

The Canadian government advertises all of its procurement opportunities on a Web site called MERX (www.MERX.com). In addition to Canadian government procurement opportunities, provincial and municipal governments may also post their procurement opportunities on MERX.

Each provincial, municipal, and institutional purchaser has unique procurement policies or bylaws that are, by necessity, beyond the scope of this article. Accordingly, the focus of this article is restricted to Canadian government procurement.

Trade Treaties and Government Procurement

Canada is a signatory to international and domestic agreements that promote trade opportunities with the Canadian government for both foreign and domestic suppliers.

Pursuant to the North American Free Trade Agreement (NAFTA) and the World Trade Organization's Agreement on Government Procurement (AGP) foreign suppliers from other member nations have the right to bid on a

broad range of Canadian government procurements¹ covered by the trade agreements and are entitled to the benefit of the obligations imposed by the agreements on the member nations in carrying out their procurement activities.

The Agreement on Internal Trade (AIT)² is a domestic Canadian trade agreement. Its purpose is to provide equal trade opportunities to domestic suppliers regardless of their province or territory of origin. It does not apply to foreign suppliers, although foreign suppliers with offices in Canada, Canadian subsidiaries, or their Canadian distributors can take advantage of the AIT.

The primary procurement obligations common to all the trade agreements include: nondiscrimination based on country and/or province of origin; an open, transparent tendering process; a competitive procurement; and a fair procurement process.

Although most federal government procurements are covered by one or more of the trade agreements, there are some minimum monetary thresholds and subject matter exclusions to be considered. The monetary thresholds are different for each of the trade agreements, may fluctuate year to year, and vary depending on the type of contract and in some cases the identity of the procuring entity.

The notable subject matter exclusions include procurements necessary to protect intellectual property; human, animal, or plant life or health; and public safety. In some contexts exclusions also exist for procurements set aside for aboriginal suppliers, urgently needed goods and services, and for procurements necessary for national security or national defense purposes. However, in order to rely on this exemption, the Canadian government must specifically invoke it. In such cases, the Canadian government may give preference to Canadian suppliers or impose Canadian content requirements upon Canadian suppliers. Interested foreign suppliers often team with a Canadian company that will act as the prime contractor for the proposed procurement.

Canadian Government Procurement System

Existing alongside the trade agreements is a framework of Canadian statutes, regulations, and policies that implement Canada's international and domestic trade obligations. While the Canadian government's procurement statutes provide the foundation of its procurement system, the main operative provisions are found in the Canadian government's written procurement practices, policies, and procedures. These make the Canadian system different than the U.S. government statute and Federal Acquisition Regulation-based procurement system.

The contracting policy of the Canadian federal govern-

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ment, which is set out in the *Treasury Board Manual*, is at the core of that system. It provides:

Contracting Policy

1. Policy Objective

The objective of government procurement contracting is to acquire goods and services and carry out construction in a manner that enhances access, competition and fairness and results in best value or if appropriate, the optimal balance of overall benefits to the Crown and the Canadian people.

2. Policy Statement

Government contracting shall be conducted in a manner that will:

- (a) stand the test of public scrutiny in matters of prudence and probity, facilitate access, encourage competition and reflect fairness in the spending of public funds;
- (b) ensure the pre-eminence of operational requirements;
- (c) support long-term industrial and regional development and other appropriate national objectives, including aboriginal economic development;
- (d) comply with the government's obligations under the North American Free Trade Agreement, the World Trade Organization—"Agreement on Government Procurement and the Agreement on Internal Trade."³

The procurement arm of the Canadian government is the Department of Public Works and Government Services Canada (PWGSC). PWGSC conducts most of the procurements on behalf of federal government departments and agencies, including the Department of National Defence, with a small number, primarily low dollar value contracts, being handled directly by individual purchasing departments. It also acts as the federal government's construction services purchaser and property manager.

PWGSC's purchasing policies, which are set out in the supply manual, apply to procurements undertaken by PWGSC. The "governing postulate" states: "Integrity: PWGSC's supply activities will be open, fair and honest." In addition to the supply manual, PWGSC procurement activities are governed by three major statutes:

- (1) Financial Administration Act⁴ and regulations;
- (2) Department of Public Works and Government Services Act;⁵
- (3) Defence Production Act⁶ (for military contracts).

The Government Contracts Regulations⁷ (GCR) enacted pursuant to the Financial Administration Act also apply to Canadian government procurements and require the competitive soliciting of bids before any contract is entered into. However, consistent with the trade agreements, contracts may be entered into without soliciting bids under

the following limited exceptions:

- (a) the need is one of pressing emergency in which delay would be injurious to the public interest;
- (b) the estimated expenditure does not exceed certain smaller financial limits (depending on the nature of the acquisition), although contracting authorities are expected to solicit bids whenever it is cost-effective to do so;
- (c) the nature of the work is such that it would not be in the public interest to solicit bids, for example, where there are security considerations or to alleviate socioeconomic disparity; and
- (d) only one person or supplier appears capable of performing the contract, such as where there are patent or copyright requirements or technical capability factors and technological expertise.

When the government decides, based on one or more of the above exceptions, to sole source a contract that would otherwise require a competitive process, it posts an advance contract award notice (ACAN) on MERX.⁸ This gives suppliers an opportunity to submit a statement of capabilities meeting the requirements of the ACAN if they believe they are capable of supplying the goods or services described and to request a competitive procurement be held instead. The subsequent decision by the government to continue to proceed with the ACAN or to open the procurement to competition is subject to challenge by either the supplier selected in the ACAN or an interested competitor upon filing a complaint with the Canadian International Trade Tribunal (CITT), as discussed in detail later in this article.

Competitive procurements take various forms including invitations to tender (ITT), requests for quotation (RFQ), requests for proposal (RFP), requests for standing offer (RFSO), and requests for supply arrangement (RFSAs), which are posted daily and made available to suppliers on MERX.

Until recently, the Canadian government used ITTs and RFPs as the primary mode of procuring larger value contracts. However, as of 1 April, 2005, the Canadian government introduced significant changes by requiring the use of RFSOs for certain commodities and services in order to "deliver services smarter, faster and at a reduced cost."⁹

The Canadian government gives the following definition for a standing offer:

A standing offer is not a contract. A standing offer is an offer from a potential supplier to provide goods and/or services at pre-arranged prices, under set terms and conditions, when and if required. No contract exists until the Government issues an order or call-up against the standing offer, and there is no actual obligation by the government to purchase until that time.¹⁰

Different types of RFSOs are commonly used. Some require national supply commitments while others may cover smaller geographic regions. In many cases more than one supplier will be selected for an award.

There are certain types of goods and services where PWGSC has mandated the use of RFSOs including, for example, procurements for vehicles, clothing, office supplies, fuel, furniture, and telecommunications equipment and services. If the commodity being purchased falls within that commodity description, the government department wishing to purchase the commodity must do so pursuant to a standing offer. If there is no requirement for a standing offer, the federal government may purchase the goods and services in the usual manner. If a supplier does not have a PWGSC standing offer and an existing standing offer is in effect for a good or service, the supplier can wait until the standing offer expires and then submit its own standing offer in response to a new RFSO, attempt to sell to the government by subcontracting with an existing standing offer supplier, or seek an exemption.

An RFSA is another similar nonbinding procuring arrangement, but is used much less frequently than an RFSO. It is a form of prequalification to supply goods or services based on predetermined terms and conditions. However, a subsequent procurement process (either competitive or sole source) will determine the scope of work or product required. Multiple suppliers may also be prequalified in an RFSA.

PWGSC also has a standard acquisition clauses and conditions (SACC) manual that contains various standard clauses PWGSC uses in drafting procurement contracts and that may be incorporated by reference into the procuring documents pursuant to sections 21 and 22 of the Department of Public Works and Government Services Act.

Common Law of Tendering

A large body of common law also exists in Canada that establishes rights and obligations of both bidders and the Canadian government in the procurement process.

Twenty-five years ago, the Supreme Court of Canada in *Ontario v. Ron Engineering & Construction (Eastern) Ltd.*¹¹ instituted a significant change in the law of tendering in Canada. It held that, when a compliant bidder responded to a tender call, a notional contract, called “Contract A” was formed. One of the terms of Contract A was that the bidder, if selected, was required to honor the terms of its bid by entering into Contract B, which was the contract to perform the work in question. In *Ron Engineering*, the bidder made an error in its bid price that was not evident on the face of its bid and, when its bid was selected, refused to enter into Contract B. The court found that the bidder breached its Contract A obligations and forfeited its bid security required by the tender call.

A plethora of case law has followed that further refined when Contract A does or does not come into existence, the implied terms of Contract A, whether there was a breach of Contract A, and the damages flowing from the breach.

In 1999, in *MJB Enterprises Ltd. v. Defence Construction (1951) Ltd.*, the Supreme Court of Canada clarified that not every procurement process gives rise to Contract A.¹² The court in that case said that it would look to the inten-

tion of the parties, i.e., did the parties intend to create a contractual relationship by the tender call and the submission of the bid, in order to determine whether a Contract A arose. The court looks at the substance of the documentation, not the form. However, a tender call, by its terms, can specifically negate the intention to create Contract A. Where such a specific provision is lacking, the courts then must discern the intention of the parties.

Whether Contract A is created has important legal consequences for both parties. If Contract A does arise:

- (i) and the government has determined a bidder is compliant and selects that bid, it can oblige that bidder to enter into Contract B or forfeit its bid security;
- (ii) and the government has determined a bidder is noncompliant, it owes no further obligations to that bidder;
- (iii) likewise, noncompliant bidders cannot be called upon to honor their Contract A obligations; and
- (iv) an unsuccessful compliant bidder can sue the government if Contract B was awarded to a noncompliant bidder or if the government breached its obligations owed to all bidders.

Once it is determined Contract A has come into existence, the court must determine its terms by looking at the terms of the procuring document and any implied terms based on custom or usage, the legal incidents of the type of contract in question, or the presumed intention of the parties.

In *MJB*, the court found it was a presumed intention of the parties that only compliant tenders were eligible for acceptance. Thus, the court found it was an implied term that the tender document did not permit the government to accept a noncompliant bid. Whether the terms of Contract A have been breached depends on the terms of the procuring documents and any terms the court implies.

Where a party has breached its Contract A obligations, the next step is the determination of the appropriate remedy that, in most cases, is an assessment of damages. In *MJB*, the court held that if Contract B would have been awarded to the bidder, the court must consider whether the loss of Contract B, although caused by the breach of Contract A, is too remote.

However, if no Contract A arises, an unsuccessful bidder seeking a common law remedy must instead rely on other causes of action, such as those based on implied obligations, which are aimed at preserving and reinforcing the integrity of the procurement process. Implied obligations recognized by Canadian courts include:

- (i) the duty to provide proper disclosure to all bidders;
- (ii) the duty to treat all bidders fairly and equally; and
- (iii) the duty to conduct a fair competition.

As regards the obligation to disclose relevant information, the U.S. doctrine of superior knowledge was recently considered by the courts in Ontario. In *Amertek v. Canadian Commercial Corporation*,¹³ the trial judge, after a five-month trial, applied the doctrine of superior knowledge in Canadian law for the first time and found that the Canadian government

was in possession of “vital information” that it failed to disclose to Amertek. On appeal, the Court of Appeal disagreed that the information was vital but left open the possibility that the doctrine of superior knowledge may apply to commercial negotiations involving the federal government.

The courts in Canada have consistently found and applied a duty to treat all bidders fairly and equally, such that all information disclosed pursuant to questions by one bidder must be shared with all other bidders. Preferential treatment of one bidder is forbidden.

The duty to conduct a fair competition includes ensuring that the process is as transparent as possible. This also includes avoiding conflicts of interest and ensuring decisions are free from bias.

Common Law and Statutory Remedies

In addition to remedies existing under the trade agreements, which are discussed below, bidders can pursue claims against the federal government in the Federal Court of Canada¹⁴ or the various provincial superior courts depending on the nature of the complaint and the remedy sought. The jurisdiction of the Federal Court of Canada is determined by the Federal Courts Act. It has exclusive jurisdiction over certain disputes and concurrent jurisdiction with provincial superior courts over other disputes.¹⁵ The provincial superior courts, with the exception of the superior court in the Province of Quebec, which is governed by the Civil Code, are common law courts of general and inherent jurisdiction (except where the Federal Court has exclusive jurisdiction).

As discussed, the government in its procuring activities has certain rights and obligations to disqualify noncompliant bids and accept a compliant one. Where the bidder violates the terms of Contract A or the terms of Contract B, it may be liable for the government’s damages, which may include the cost of retendering or the government’s reprourement costs.

Unsuccessful bidders that believe their bids should have been accepted have the following legal recourse available to them:

- (i) to commence an action for damages in one of the provincial superior courts;
- (ii) to commence an action for damages in the Federal Court of Canada;
- (iii) to commence an application for judicial review in the Federal Court (certiorari, prohibition, mandamus), although the case law is mixed as to whether the court will entertain such an application;¹⁶ or
- (iv) to file a complaint with the CITT protesting the award (discussed in detail below).

Because Canada’s system of government was inherited from England, the government of Canada continues to enjoy certain privileges and immunities that are vestiges of the same protections possessed by the sovereign in much earlier times. One such advantage possessed by the government is the prohibition against awarding an injunction or

granting an order for specific performance. Section 22(1) of the Crown Liability and Proceedings Act¹⁷ states:

Where in proceedings against the Crown any relief is sought that might, in proceedings between persons, be granted by way of injunction or specific performance, a court shall not, as against the Crown, grant an injunction or make an order for a specific performance but in lieu thereof may make an order declaratory of the rights of the parties.

Thus, a contractor cannot seek an injunction or an order for specific performance against the government. Where, for example, the contract specifically requires the government to provide information or equipment that the contractor needs to perform the contract and the government defaults, the contractor cannot force compliance by way of injunction or specific performance. To protect itself, the contractor should negotiate other terms that compensate it for any such government defaults. Although a contractor can seek declaratory relief, courts have held that they will not grant interlocutory or interim declaratory relief. Thus, a declaration can only be made at a trial that, by that time, may be of limited value.

Canadian International Trade Tribunal

Canada’s treaty obligations under NAFTA, the AGP, and the AIT require it to maintain an independent complaint authority to adjudicate trade-related disputes. The CITT, established pursuant to the Canadian International Trade

Complaints filed after the 10-day deadline are routinely rejected by the tribunal at the filing stage, regardless of merit.

Tribunal Act (CITT Act),¹⁸ fulfills this mandate by conducting inquiries into complaints by potential suppliers about the propriety of the federal government’s handling of procurements covered by these trade agreements.¹⁹

Suppliers²⁰ may file protests with the CITT if they believe that the government has not complied with its treaty obligations in the conduct of the procurement process. The CITT does not investigate complaints arising during contract performance. These disputes may be brought to the provincial superior courts or the Federal Court as discussed above.

Since a primary procurement goal of the trade agreements is to ensure equal opportunity to compete with Canadian suppliers on federal government procurements, lack of competition and unfairness in the competitive process form the basis of most complaints. Common complaints filed with the CITT include awarding contracts to noncompliant bidders, failing to identify and employ bid evaluation criteria, restricting competition by improperly using sole source contracts, and issuing unduly narrow technical specifications to exclude suppliers.

There is a 10-day²¹ deadline for filing a complaint with the CITT. Extreme care is required to ensure the deadlines are met as they are strictly enforced and the consequences are severe. Complaints filed after the 10-day deadline are routinely rejected by the tribunal at the filing stage, regardless of merit. Accordingly, suppliers wishing to file a protest must move quickly upon learning of the basis for the complaint.

The complaint itself is made in writing and must include, among other criteria, the full factual basis for the complaint as well as copies of all relevant documents. The tribunal requires strict compliance with these requirements and will reject deficient complaints. Although the tribunal will give suppliers an opportunity to remedy deficiencies in the complaint materials, it will not extend the filing deadline.

As complaints often include confidential business or proprietary information, special procedures exist to ensure such information can be considered by the tribunal, government officials involved in the procurement, and legal

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counsel²² but not disclosed to other parties or the public.²³ This is particularly important as competitors to the contract can and often do seek leave of the tribunal to intervene in the complaint.

Within five days of receiving a supplier complaint, the CITT will decide whether to conduct an inquiry into the complaint. At that time the tribunal may also order the government department to delay the award of the contract pending the outcome of its inquiry if an award has not yet been made.²⁴ For this reason the tribunal ordinarily completes the inquiry process within 90 days.²⁵ The tribunal has no jurisdiction to delay the performance of the contract pending its inquiry once the contract has been awarded. The tribunal continues its inquiry into the complaint regardless of the award status of the contract.

After the complaint has been accepted for inquiry, the government responds to the complaint by filing a government institute report (GIR) responding to the issues raised in the complaint. Thereafter the complainant and any intervenors may deliver a reply to the GIR. Once all submissions have been filed, the tribunal proceeds to conduct a hearing based on the written submissions and without oral evidence or argument. Although the tribunal has the authority to conduct an oral hearing, in practice it does not. Virtually all bid protest complaints filed with the CITT are dealt with by way of documentary submissions. As such, suppliers must ensure their written materials are complete when filed.

At the conclusion of the hearing stage, in deciding whether the complaint is valid, the tribunal considers all relevant circumstances, including the seriousness of any procurement process deficiency by the government, the degree of resulting prejudice to the bidders and the competitive process, whether the parties acted in good faith, and the extent of contract performance.²⁶

If the CITT concludes that the supplier's complaint is valid, the tribunal delivers written reasons and "recommends" a remedy to the government, which may include cancelling the contract, reevaluating the bids, conducting a full or partial retender, awarding the contract to the complainant and/or paying monetary compensation to the complainant. The CITT also has the authority to award costs.²⁷ Although the CITT's recommendation does not bind the government, the trade agreements and the CITT Act expressly require the government to implement the tribunal's recommendation to the greatest extent possible.

Subsequent Federal Court decisions have also reinforced this obligation.²⁸ Although it is still possible for the government to refuse to implement the recommendations, it has been done only rarely and for reasons the government deems are compelling.

In spite of its limited powers to "recommend," the CITT remains an effective tool for suppliers. The percentage of successful complaints is high and results can be achieved quickly and inexpensively relative to court proceedings.

The CITT procedure, however, does have limitations. Unlike a court action, there is a lack of documentary or oral discovery that may elicit evidence from government representatives supporting the supplier's complaint. Moreover, the relatively short time frame for filing a complaint makes obtaining documents pursuant to a request under the Access to Information Act²⁹ impractical unless made well in advance. Another limitation is that the tribunal cannot make determinations of liability or award compensatory damages relating to tort or breach of contract. That requires an action in the provincial superior courts or the Federal Court. Suppliers with potential tort or breach of contract complaints that are not dependent on a breach of the provisions of the trade agreements should carefully weigh the pros and cons of each forum.

Tribunal decisions are also reviewable on an application for judicial review to the Federal Court of Appeal. CITT decisions are subject to a high degree of deference by the court as the standard of review for nonjurisdictional grounds is patent unreasonableness.

Lobbying Activities

As efforts to obtain an award of a government contract often begin long before the procurement documents are issued and include contact with various government officials, care should also be taken by bidders and their counsel, both in the United States and Canada, to ensure compliance with Canadian laws governing lobbying activities.

As a result of significant changes to Canada's Lobbyists Registration Act (LRA)³⁰ made in 2005, special attention must be given to the lobbyist registration requirements when pursuing federal government procurement opportunities.

Under the LRA, lobbyist registration is required (subject to certain thresholds and exemptions discussed below) in respect of communications with a federal public office holder relating to the following activities:

- (i) the development of federal legislative proposal;
- (ii) the introduction or amendment of a federal bill or resolution;
- (iii) the making or amending of any federal regulation, policy or program;
- (iv) the awarding of any grant or contribution, tax credit or other financial benefit; and
- (v) federal contracts.

The scope of the registration requirement is far reaching. A "federal public office holder" includes *any* officer or employee of a federal department or agency and not just members of the Senate, the House of Commons, and their staff.

Although there is a limited exemption from registration for communications in respect of a federal contract, it only applies where communications are undertaken by internal company employees. Where communications are undertaken by a paid external consultant retained by the company, registration by the consultant is required.

Provided certain thresholds are met, registration is required in respect of the remaining listed activities no matter whether they are undertaken by external paid consultants or internal company employees.

If it is determined that internal company employees engage in lobbying activities as described above, registration is required if the lobbying activities of the company's officers or employees (individually or as an aggregate equivalent) constitute a "significant" part of the duties of one equivalent individual. The office of the Lobbyists Registrar has issued an interpretation bulletin interpreting "significant" to mean more than 20 percent of an individual's time, either individually or in the aggregate.³¹ Where this threshold is met, the most senior officer of the corporation must register on behalf of the company every six months for the duration of the lobbying activity. Internal company employees are not required to register on an individual basis.

Also exempt from registration are responses to written requests for information from a federal public office holder. Responses to requests for "comments" or "advice," however, still require registration if they otherwise fall within the activities listed above.

Registration is made to the Office of the Registrar of Lobbyists. The registration process requires disclosure of detailed information about the corporation, the nature of the lobbying activity, the employees undertaking the lobbying activities, and details of any former public offices held by those employees.

In addition to complying with the registration requirements, both lobbyists and public office holders must abide by the Lobbyists' Code of Conduct.³² The code sets high

ethical standards and requires integrity, honesty, and openness in all lobbying communications. It also establishes rules to ensure transparency, confidentiality, and avoidance of conflict of interest.

Care should be taken to ensure compliance with the LRA and its regulations. Contravention of the LRA or the regulations is a summary conviction criminal offense and carries a maximum fine of C\$25,000. The making of knowingly false or misleading statements under the LRA to the registrar can be prosecuted as a summary offence, which upon conviction carries a maximum C\$25,000 fine and/or imprisonment up to six months, or as an indictable offense, which upon conviction carries a maximum fine of C\$100,000 and/or imprisonment of not more than two years.

Conclusion

Although the federal government procurement regime in Canada differs in significant ways from that in the United States, the types of goods and services purchased by each government do not differ greatly and the legal system and remedies are similar. An understanding of the intricacies of Canadian procurement law will improve access to this potentially lucrative market and increase foreign suppliers' chances of success in obtaining Canadian government contracts.

Endnotes

1. Including procurements by government-owned corporations above certain monetary thresholds.
2. The AIT is signed by each of the Canadian provinces, the Yukon and Northwest Territories, and the federal government.
3. See Treasury Board Contracting Policy at www.tbs-sct.gc.ca/pubs_pol/dcgpubs/contracting/contractingpol_e.asp.
4. Financial Administration Act, R.S., 1985, c. F-11.
5. Department of Public Works and Government Services Act, R.S., 1996, c. 16.
6. Defence Production Act, R.S., 1985, c. D-1.
7. Government Contracts Regulations, S.O.R./87-402, s.6.
8. For more information regarding ACANs, see *supra* note 3, ¶¶ 10.7.13-10.7.17.
9. See <http://contractscanada.gc.ca/en/so-newrules-e.htm>.
10. *Id.*
11. [1981] 1 S.C.R. 111, 119 D.L.R. (3d) 267 (S.C.C.)
12. MJB Enterprises Ltd. v. Defence Construction (1951) Ltd. [1999] 1 S.C.R. 619, 170 D.L.R. (4th) 577.
13. (2003), 229 D.L.R. (4th) 419 (Ont. S.C.J.) 39 B.L.R. (3d) 163, *rev'd* (2005) 76 O.R. (3d) 241 (C.A.), leave to appeal to the S.C.C. refused [2005] S.C.C.A. No. 439; Blaney, McMurtry LLP represented Amertek in this matter.
14. Established by the Federal Courts Act, R.S., 1985, c. F-7.
15. *Id.*, see §§ 17-26, inclusive.
16. The issue depends on whether the purchasing decision was based on the exercise of a statutory power (which favors judicial review) or was operational decision within the government's discretion.
17. Crown Liability and Proceedings Act, R.S., 1985, c. C-50.
18. R.S., 1985, c. 47 (4th Supp).
19. As coverage under each treaty varies, each must be examined individually to ensure procurements meet the monetary thresholds and are not otherwise excluded.
20. "Suppliers" include all potential bidders, but does not include subcontractors.
21. Weekends and holidays are excluded from the calculation of the 10-day filing deadline.

22. In order to obtain copies of confidential information counsel must undertake not to disclose such information to his or her client.

23. For more information regarding the requirement to disclose information and the process for protecting confidential information in complaints before the CITT, refer to the CITT Act, *supra*, s. 44-49 and the CITT's guideline entitled: "Procedural Guidelines for the Designation and Use of Confidential Information in Canadian International Trade Tribunal Proceedings" available at www.citt-tcce.gc.ca.

24. The government may cause the tribunal to revoke an order postponing the contract award where the government objects to the postponement and certifies in writing that the contract is urgent or that the delay of the award is contrary to the public interest. Such objections by the government typically arise in the context of procurements for military equipment. See CITT Act, *supra*, at s. 30.12(3) and (4).

25. See Canadian International Trade Tribunal Procurement Inquiry Regulations SOR/93-602s12. An expedited 45-day inquiry may be requested within three days of filing of the complaint. Extensions may also be granted, but cannot exceed 135 days from the filing of the complaint.

26. CITT Act, *supra*, s. 30.15(3).

27. Except in exceedingly rare circumstances, the tribunal does not award costs against unsuccessful complainants.

28. See NAFTA Article 1017(1), CITT Act, *supra*, s. 30.18 and Wang Canada Ltd. v. Canada (Minister of Public Works and Government Services), [1999] F.C. 3 (T.D.).

29. R.S., 1985, c. A-1.

30. R.S., 1985, c. 44 (4th Supp.) as amended.

31. See <http://strategis.ic.gc.ca/epic/internet/inlobbyist-lobbyiste.nsf/en/nx00111e.html>.

32. See <http://strategis.ic.gc.ca/epic/internet/inlobbyist-lobbyiste.nsf/en/nx00019e.html>.