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PROCUREMENT REVIEW: A PRACTITIONER'S GUIDE

**Attwater
Release No. 1, May 2022**

Procurement Review: A Practitioner's Guide is a practical guide to the bid challenge process conducted by the Canadian International Trade Tribunal (CITT), and to issues that arise in procurements conducted by the federal government. It is directed at those "in the trenches" who want to understand the process and how the CITT has interpreted relevant trade agreements. The book provides practical advice for complainants and for government institutions defending against complaints. The book pieces together the CITT's decisions for purposes of elucidating policies governing procurement. It also provides commentary on the CITT's case law.

This release features updates to case law and commentary in Chapter 1 (Introduction), Chapter 2 (The Bid Complaint Process) and Chapter 3 (Other Procurement Issues), as well as updates to Appendix A (Trade Agreements).

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Highlights

- **Chapter 1 – Introduction – The Trade Agreements as a Source of Redress – Case Law – The Procurement Ombudsman – Case Law** – A Canadian supplier that was awarded a contract may file a complaint in writing with the Procurement Ombudsman with respect to the administration of the contract. The Regulatory Impact Analysis Statement accompanying the regulations provides the examples of note receiving payment or invoices being list. This authority is particularly significant as the CITT’s jurisdiction does not extent to matters of contract administration. This section includes new commentary on two such complaints: *Complaint by 1091847 Ontario Ltd.* (May 6, 2021), Doc. PR-2020-070 (C.I.T.T.), and *Complaint by SoftSim Technologies Inc.* (November 4, 2021), Doc. PR-2021-049 (C.I.T.T.).
- **Chapter 2 – The Bid Complaint Process – Preliminary Matters: Scope and Coverage – Potential Suppliers – Case Law** – Subsection 30.11(1) of the *Canadian International Trade Tribunal Act* provides that 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”. This section provides new commentary on two such complaints: *Complaint by Heitsuk Horizon Maritime Services Ltd.* (May 3, 2021), Doc. PR-2020-068 (C.I.T.T.), *Complaint 1091847 Ontario Ltd.* (May 6, 2021), Doc. Pr-2020-070 (C.I.T.T.), and *Complaint by Wartsila Canada Inc.* (August 3, 2021), Doc. PR-2021-006 (C.I.T.T.).
- **Chapter 2 – The Bid Complaint Process – Preliminary Matters: Scope and Coverage – Monetary Thresholds – Adjusting Monetary Thresholds** – To be covered by one of the trade agreements, the value of the goods, services or constructions services to be procured must be equal to or greater than a defined monetary threshold. The monetary thresholds are established by the trade agreements. Monetary thresholds are revised every two years under the *North American Free Trade Agreement*, the *Canada-Child Free Trade Agreement*, the *Canada-Peru Free Trade Agreement*, the *Canada-Colombia Free Trade Agreement*, the revised World Trade Organization Agreement on Government Procurement, the *Canada-Honduras Free Trade Agreement*, the *Canadian Free Trade Agreement*, the *Canada-Ukraine Free Trade Agreement*, the *Comprehensive Economic and Trade Agreement* between Canada and the European Union, the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* and the *Canada-United Kingdom Trade Continuity Agreement*. Under the *Canada-Korea Free Trade Agreement*, the threshold for goods and services are adjusted as necessary, based on consultations between the parties. The threshold for construction services is revised every two years. This section includes updated charts outlining the monetary thresholds for the two-year period January 1, 2022 to December 31, 2023 under these agreements for Federal Entities (Departments and Agencies), and Federal Enterprises (Crown Corporations and other government enterprises).

ProView Developments

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