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INTERNATIONAL TRADE LAW



Amendments to Procurement Contracts Are Subject to CITT Review October 19, 2006

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Trade Law

The decision of the Canadian International Trade Tribunal (“CITT” or the “Tribunal”) in *Canyon Contracting*^[1] may significantly limit the ability of federal government departments and agencies to amend contracts that have been awarded following a competitive process. The CITT is the federal administrative tribunal with jurisdiction to review the procurement decisions made by most federal government departments and agencies. The Tribunal is empowered to recommend remedial measures or compensation where a federal government entity fails to comply with procurement obligations designed to promote fair, open and transparent tendering.

The Tribunal’s jurisdiction extends to “any aspect of the procurement process.”^[2] In previous cases, the CITT has found that the procurement process begins when a government department or agency has decided on its requirements and continues until the contract is awarded. Decisions taken after the contract is awarded, such as contract amendments, have traditionally been treated as matters of contract administration that fall outside the Tribunal’s jurisdiction.^[3]

In the recent *Canyon Contracting* decision, the CITT found that Parks Canada erred by amending a contract in a manner that was inconsistent with the mandatory requirements of the original tender documents. The Tribunal stated in its reasons that, “[i]t is not a simple matter of contract administration if a mandatory term of a procurement is changed after bids are received or even after a contract is awarded.” Instead, the Tribunal found that Parks Canada’s amendment to a term of the contract, which had been a mandatory term of the RFP, amounted to a new procurement and thus was subject to fair tendering requirements. In these circumstances, Parks Canada should have terminated the contract and re-tendered.

The *Canyon Contracting* decision may have significant implications on the manner in which federal government contracts are administered. The principle recognized by the Tribunal in this case renders contract amendments subject to challenge before the CITT. It will also restrict the ability of federal government departments and agencies to amend contracts in a manner that departs from the requirements of the original tender documents.

[1]. *Canyon Contracting v. Parks Canada Agency* (September 19, 2006), CITT PR-2006-016, online: CITT <http://www.citt-tcce.gc.ca/procure/determin/pr2q016_e.asp>.

[2]. *Canadian International Trade Tribunal Act*, R.S., 1985, c. 47 (4th Supp.), s. 30.11(1).

[3]. See, for example, *Liftow Limited*, Tribunal File No. PR-99-017, Determination of the Tribunal dated October 13, 1999.

The purpose of this document is to provide information as to developments in the law. It does not contain a full analysis of the law nor does it constitute an opinion of Ogilvy Renault LLP or any member of the firm on the points of law discussed.

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