

FEDERAL PROCUREMENT UPDATE #1: FILING A COMPLAINT AT THE CANADIAN INTERNATIONAL TRADE TRIBUNAL: A SPRINT RATHER THAN A MARATHON

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The procurement review process by the Canadian International Trade Tribunal (CITT) can be a fast-paced remedy for breaches of trade agreements in procurements carried out by federal government institutions. Therefore, the following summarizes and provides some additional commentary to assist in understanding the CITT's guidelines regarding

1. the *time limits* for and *information needed* to file a procurement complaint, and
2. the *process* of filing a procurement complaint.

An upcoming article will delve more into the substantive aspects of when a complaint may be appropriate.

The Tribunal has published a guide to federal procurement challenges at the CITT. The guide is titled [Procurement Inquiries – a descriptive guide](#). It contains most of the information which is needed to evaluate the filing of a procurement complaint. It covers the topics set out below.

a. Time limits

Generally, a potential supplier that files a complaint with the Tribunal must do so 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. What this means in practice, is that **there are instances where the objection to the government institution responsible for the procurement, or the complaint to the Tribunal, must be made before contract award or even before bids are filed.**^[1]

If a potential supplier has made an objection to the relevant government institution, it may file a complaint with the Tribunal within 10 working days after the day on which it has actual or constructive knowledge^[2] of the denial of relief by that government institution, provided the objection was made to the government institution within the 10-working-day period mentioned in the preceding paragraph.

In other words, by making an objection to the relevant government institution, a potential complainant can

avail itself of the additional time (while the objection is being answered) to evaluate and prepare the filing of a complaint at the Tribunal.

In rare instances, where conditions exist that are beyond the control of the complainant or when, taking into consideration all the circumstances of the procurement, including the good faith of the potential supplier, a complaint raises an issue of a systemic nature, the Tribunal may consider any complaint not filed within the time limits set out above, provided such complaints are filed not later than 30 calendar days after the day on which the basis of the complaint became known or reasonably should have become known to the potential supplier. When a complainant invokes reasons beyond its control, those reasons should be substantiated in the documentation submitted to the Tribunal.

In order to determine the filing deadline, the day on which the designated period of time begins is not counted, but the last day of the period is counted, unless that day is a Saturday, a Sunday or a holiday observed in the province in which a response or filing of documents is required to be made, in which event, the period includes the next working day (see the Tribunal's Practice Notice on [*"Holidays" for the Purpose of Tribunal Proceedings*](#)).

b. Procedure/format for filing

A complaint is filed online via the Tribunal's web site or by email. The Tribunal prefers that complainants use the [complaint form](#). Alternative formats are accepted as long as the documents contain all of the information needed to adjudicate the matter. The usual information necessary to do so are described below.

c. Contents of complaint

The Tribunal's guidelines set out the following as a checklist of items to be covered in a complaint:

1. **Identity of Complainant**
2. **Information on the Procurement**
3. **Identity of Government Institution**
4. **Statement of complaint**
5. **Statement of form of relief/remedy requested**
6. **List of Attachments**
7. **Identification of confidential information and public version**

If complaint contains confidential information, include, along with the confidential version, a [public version of the confidential information must be provided](#). (If the complainant is represented by independent counsel, the filing should include the appropriate forms.)

Complainants should understand that they should provide all relevant documents, if available, with the complaint even if the documents are sensitive and confidential. The Tribunal’s processes protect confidential information from public disclosure when the information and documentation is properly designated as such. Failure to provide relevant documents may result in the complaint being considered incomplete and/or late.

d. Summary of the process

Normally, the Tribunal has 90 days from the filing of the complaint to complete its inquiry. For a variety of reasons, the Tribunal may decide to extend the inquiry to 135 days. This has occurred more frequently in recent years.

The following are steps to be completed in the 90-day timeframe:

Day	Action
1	Tribunal is satisfied that the complaint is properly filed. Complaint is acknowledged, parties advised.
6	Complaint is accepted for inquiry. OR complaint is not accepted for inquiry and the Tribunal issues decision with reasons to follow [Author’s note: In case of non-acceptance, the Tribunal’s process ends at this point subject to an application for judicial review to the Federal Court of Appeal within 30 days of the decision . Reasons usually follow the decision within 15 days.]
8-12	Notice of inquiry is published in the Canada Gazette.
31	Government Institution Report (GIR) received by the Tribunal and sent to the complainant for comment.
38-41	Complainant’s comments on the GIR are sent to the Tribunal and forwarded to the government institution.
42-89	Tribunal’s deliberations, including, if required a public hearing.
90	Determination of the Tribunal is issued. Reasons usually follow in 15 days.

Source: *Procurement Inquiries – a descriptive guide*.

The above is a non-exhaustive summary of the filing procedure and the general contents of a complaint. As set out above, an upcoming article will cover more of the substantive aspects of a complaint.

For more information, or assistance with a federal procurement challenge at the CITT, please contact the author, Peter Jarosz^[3], at: 613.691.6145, peter.jarosz@mcmillan.ca.

by [Peter Jarosz](#)

[1] See for e.g. *Primex Project Management Ltd.*, (August 22, 2002), PR-2002-001 (CITT), where the 10-day time limit, to object to the government institution or file a complaint to the CITT, started at the time of publication of an amendment to the solicitation.

[2] Constructive knowledge may be obtained, for example, as a result of “indirect knowledge of the government institutions decision and knowledge of the government institution's intentions or actions with respect to a procurement that had the effect of amounting to a denial”: see *Cognos Inc.*, (November 29, 2002), PR-2002-017 (CITT) at p. 7.

[3] The author was counsel in the CITT Secretariat’s Legal Services Branch from April 2015 to April 2021. The views expressed in this article are his own.

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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