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PROCUREMENT REVIEW: A PRACTITIONER'S GUIDE

Attwater

Release No. 2, August 2023

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). It also features updates to Appendix A. Trade Agreements.

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Highlights

- **Preliminary Matters: Scope and Coverage – D. Monetary Thresholds – § 2:94 Minimum Monetary Thresholds** – Citing the recent Canadian International Trade Tribunal decision in *Complaint by Star-Ting Inc.* (October 7, 2022), Doc. PR-2022-035, this section includes commentary on questions of jurisdiction before the Tribunal. In determining whether the Tribunal has jurisdiction over a procurement and deciding whether to initiate an inquiry, the Tribunal will base its decision on the evidence current on the record. As such, it is incumbent on a procuring entity to present evidence of the true procurement value if the procuring entity challenges the Tribunal's jurisdiction over the procurement on the basis that the estimated procurement value is below the monetary thresholds of the applicable trade agreements.
- **Chapter 2. The Bid Complaint Process – V. Determinations, Recommendations and Cost Awards – Challenging Determinations by the CITT – Judicial Review – The Standard of Review for CITT Decisions – Case Law** – This section has been updated to include commentary on the reasonableness standard of review of decisions issued by the Canadian International Trade Tribunal as discussed in the 2023 Federal Court of Appeal decision in *Heiltsuk Horizon Maritime Services Ltd. et al. v. Atlantic Towing Ltd. et al.*, 2023 FCA 88 [Heiltsuk], which followed the Supreme Court of Canada decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. Further reference to this case regarding the standard of review of the Tribunal decision can be found in § 2:114. The Standard of Review for Contracting Authority Decisions – Determining an Appropriate Standard of Review – Case Law. Additionally, § 2:223 the CITT Makes Recommendations – The CITT May Recommend a Remedy – Case Law includes new commentary from *Heiltsuk* with respect to what body has jurisdiction to award a remedy following the appeal decision.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
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- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
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