

**NOTICE OF INTENT TO
SUBMIT A CLAIM TO ARBITRATION
UNDER SECTION B OF CHAPTER 11 OF
THE NORTH AMERICAN FREE TRADE AGREEMENT**

TRAMMELL CROW COMPANY

Investor

v.

GOVERNMENT OF CANADA

Party

Pursuant to Articles 1116 and 1119 of the North American Free Trade Agreement ("NAFTA"), the Investor, Trammell Crow Company ("Trammell Crow"), serves notice of its intention to submit a claim to arbitration for breach of the Party's obligations under NAFTA.

A. NAME AND ADDRESS OF THE DISPUTING INVESTOR

Trammell Crow Company

2001 Ross Avenue, Suite 3400
Dallas, Texas 75201

B. BREACH OF OBLIGATIONS

The Investor alleges that the Government of Canada has breached its obligations under NAFTA Article 1105, and that it has suffered loss and/or harm as a result. Trammell Crow is thus entitled to bring a claim for damages under Article 1116(1) of NAFTA.

The relevant provisions of NAFTA are:

Article 1105 – Minimum Standard of Treatment

1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.
2. Without prejudice to paragraph 1 and notwithstanding Article 1108(7)(b), each Party shall accord to investors of another Party, and to investments of investors of another Party, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.
3. Paragraph 2 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 1102 but for Article 1108(7)(b).

Article 1116(1) – Claim by an Investor of a Party on Its Own Behalf

1. An investor of a Party may submit to arbitration under this Section a claim that another Party has breached an obligation under:
 - (a) Section A or Article 1503(2) (State Enterprises), or
 - (b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A,and that the investor has incurred loss or damage by reason of, or arising out of, that breach.
2. An investor may not make a claim if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.

C. FACTUAL BASIS FOR THE CLAIM

1. Trammell Crow is a public U.S. company incorporated under the laws of Delaware whose stock is traded on the New York Stock Exchange. Trammell Crow is a recognized leader in the North American real estate management services industry.
2. Trammell Crow Corporate Services Canada, Ltd. ("Trammell Crow Canada"), a company incorporated under the laws of Canada, is a wholly-owned subsidiary of Trammell Crow Corporate Services, Inc. which in turn is a wholly-owned subsidiary of Trammell Crow.
3. Canada Post Corporation ("CPC") is a Canadian state enterprise established pursuant to the *Canada Post Corporation Act*. CPC is wholly owned by Canada and has been delegated by the Canadian Parliament the sole and exclusive privilege of operating a postal service in Canada under s. 14.1 of the *Canada Post Corporation Act*. By virtue of Article 1001 and Annex 1001.1a-2 of NAFTA, the procurement practices of CPC are subject to the provisions of NAFTA Chapter 10, which contain

obligations concerning procurement by a NAFTA Party and designated state enterprises acting on behalf of NAFTA Parties.

4. CPC maintains facilities across Canada to carry out its responsibility for the maintenance of the Canadian postal system. On September 1, 1994, CPC entered into a five-year property management agreement covering approximately 17 million square feet of its buildings with two Canadian suppliers of real estate services, Brookfield Lepage Johnson Connors Facility Management Services ("BLJC") and ProFac Facilities Management Services Inc. ("ProFac") (the "1994 Service Agreements").
5. The 1994 Service Agreements were due to expire in March 2000, but were extended on March 30, 2000 by CPC for a period of ten months in order to allow CPC to develop a new approach for outsourcing real estate services ("Facilities Management") from a single supplier. The proposed new service agreement would be subject to Canada's procurement obligations under NAFTA Chapter 10.
6. On April 25, 2000, CPC published a notice of procurement and issued a request for proposal ("RFP") in order to solicit bids for the provision of Facilities Management services to CPC. The RFP called for the provision of Facilities Management services for its total real estate portfolio of approximately 20 million square feet by a single supplier. In contrast to "property management" services, which essentially entail a caretaking function, Facilities Management services are more comprehensive and strategic as they involve management decision-making that maximizes the efficient usage of a customer's properties.
7. Following the publication of the RFP, Trammell Crow Canada began to prepare a proposal for CPC through FM One Alliance Corp. ("FM One"), a joint venture established solely for the purpose of preparing a competitive bid for the supply of real estate services to CPC.
8. Pursuant to the terms of the RFP, Trammell Crow Canada, as the primary partner of the FM One joint venture, was required to certify that it assumed responsibility "for fulfilling the obligations under the RFP and any contract ultimately entered into".
9. The RFP deadline for the submission and proposals for the facilities management contract was June 19, 2000, but was subsequently extended to July 10, 2000.

10. The RFP required all bidders to submit a response which conformed with its "base-bid" cost structure model in order to qualify for consideration. Bidders had the option, however, of also submitting an "alternate-bid" proposal in which they were free to design an alternate cost structure. FM One viewed the ability to submit an alternate bid as crucial to the opportunity of displacing the incumbent suppliers. FM One, BLJC and ProFac all qualified on the base-bid proposal.
11. On May 25, 2000, BLJC brought a complaint before the Canadian International Trade Tribunal ("CITT") pursuant to section 30.11 of the *Canadian International Trade Tribunal Act* on the ground that the RFP did not comply with Chapter 10 of NAFTA. On July 7, 2000, BLJC brought a second complaint before the CITT which alleged that CPC had conducted the procurement in a manner which discriminated against potential suppliers. In the second procurement complaint, BLJC alleged that CPC favoured Profac over other bidders.
12. FM One continued to participate in the RFP process during the time that BLJC's complaints were before the CITT. As a result of the complex requirements in the RFP and the cumbersome base-bid approach adopted by CPC in the RFP, FM One's participation in the process was extremely resource intensive.
13. Throughout the spring and summer of 2000, FM One drew on the efforts of nearly fifty professional staff to prepare a proposal in compliance with the base-bid requirements of the RFP, as well as to identify and improve upon systemic flaws in the base-bid cost structure and prepare an alternative proposal that would have been more advantageous to CPC and FM One. FM One submitted its proposal to CPC on July 10, 2000.
14. After submitting its proposal, FM One was requested by CPC to attend a full-day meeting in Ottawa on August 30, 2000 to review its proposal in detail and to discuss further clarifications of the RFP. At this meeting, FM One identified what it saw as the inherent flaws in the base-bid approach and elaborated on the alternate approach contained in its proposal. CPC benefited from the provision of expert advice on how to properly structure a Facilities Management procurement from FM One officials.
15. On September 6, 2000, the CITT found that the RFP did not comply with NAFTA and ordered CPC to amend or re-issue its RFP to bring it into compliance with the provisions of NAFTA Chapter 10. The CITT determined that CPC had failed to establish and follow "transparent, clear, coherent and fully developed procurement rules" in conducting the procurement. (CITT Decision, September 6, 2000, p. 18). However, the CITT did not directly address BLJC's allegation of possible bias.
16. On October 4, 2000, CPC initiated judicial review proceedings with respect to the CITT determination on the grounds that the CITT had exceeded its jurisdiction in its determination. On October 6, 2000, BLJC initiated its own judicial review

proceedings with respect to the CITT determination on the grounds that the CITT had erred in law and in fact on a number of issues. CPC welcomed FM One's offer to support CPC in its judicial review application.

17. During the period following the CITT's determination in relation to the BLJC complaints, FM One was led to believe that CPC was struggling to find a way to comply with the CITT's recommendation and proceed to completion of the RFP process. In early December of 2000, counsel for FM One was informed that the judicial review proceedings had stalled. During the first week of January, 2001, FM One was informed that CPC was working toward developing a NAFTA-compliant alternative to the original RFP and that FM One's bid was being given serious consideration.
18. Contrary to the indications given by CPC in relation to its intentions regarding the RFP, and unbeknownst to FM One, CPC entered into secret negotiations with BLJC and ProFac during the period between September 2000 and December 2000, regarding the further extension of the 1994 Service Agreements. During this time, CPC gave no indication to FM One that it was prepared to consider further proposals unrelated to the RFP with respect to the management of its properties, nor did it discuss with FM One its intention to discontinue the RFP process.
19. FM One continued to rely, in good faith, on CPC's prior statements that it had terminated the 1994 Service Agreements and was proceeding with a new procurement, regardless of the outcome of the judicial reviews. On the strength of CPC's representations and conduct, FM One continued to devote resources to working with CPC to comply with the CITT ruling and to preserve a competitive position to eventually win the proposed facilities management contract.
20. On January 29, 2001, CPC informed FM One that it was cancelling the RFP. On the same date, CPC also informed FM One that it had decided to "renew" the 1994 Service Agreements with BLJC and ProFac. No indication was given that CPC had ever considered the merits of FM One's alternate cost structure proposal.
21. Contrary to the indications given by CPC regarding its intentions in relation to the RFP, CPC began to seriously consider the cancellation of the RFP process in September 2000, following FM One's identification of various weaknesses in the base-bid cost structure mandated by the RFP. On December 14, 2000, the CPC Board of Directors authorized CPC management to meet with BLJC and ProFac in order to negotiate a renewal of the 1994 Service Agreements. On January 5, CPC met with each of BLJC and ProFac to discuss their respective proposals for the renewal of the 1994 Service Agreements. On January 19, 2001 and January 24, 2001, CPC wrote to ProFac and BLJC, respectively, to confirm its intention to renew the 1994 Service Agreements along the lines of proposals that CPC had received from the two companies, and to negotiate a further extension of the 1994 Service Agreements while the outstanding terms of the renewal were negotiated.

22. The decision to cancel the RFP was not communicated to FM One until January 29, 2001, even though CPC was still carrying on discussions with FM One regarding the RFP and the new facilities management model, as well as encouraging FM One to assist it with its judicial review application.
23. Up until the decision to renew the 1994 Service Agreements, CPC did nothing to bring itself into compliance with its obligations under NAFTA Chapter 10, as determined by the CIIT. Rather, CPC decided to ignore the implications of the CIIT decision and instead characterizes its proposed arrangements with BLJC and ProFac as mere "extensions" of the 1994 Service Agreements.
24. On February 12, 2001, FM One initiated its own complaint before the CIIT regarding the decision to renew the 1994 Service Agreements without putting the services to be provided under those agreements to a competitive procurement process as required by Chapter 10 of NAFTA (the "FM One Complaint").
25. On February 19, 2001, the CIIT issued a stop-award order requiring CPC to refrain from renewing the 1994 Service Agreements while its review of the FM One Complaint was pending.
26. On March 30, 2001, approximately seven weeks after FM One filed its complaint with the CIIT, and while the CIIT's review was pending, CPC concluded agreements with each of BLJC and ProFac, respectively, purporting to "renew" the 1994 Service Agreements, albeit subject to the CIIT's determination in relation to the FM One Complaint.
27. The CIIT issued its Determination with respect to FM One's complaint on June 27, 2001, concluding that FM One's complaint was valid. According to the CIIT's Statement of Reasons for the Determination, issued July 9, 2001, CPC contravened various provisions of NAFTA Chapter 10 in its purported "renewal" of the 1994 Service Agreements with BLJC and ProFac. The CIIT recommended that CPC issue a public solicitation with respect to the Service Agreements in a manner consistent with NAFTA, and that it complete the procurement process within six months.
28. On July 30, 2001, CPC informed the CIIT that it did not intend to implement the CIIT's recommendations pending resolution of judicial review applications brought by BLJC and ProFac with respect to the CIIT's Determination. As a consequence of that decision, CPC is essentially continuing to benefit from the "renewals" of the said Service Agreements, which have been found to be inconsistent with NAFTA.
29. CPC's conduct from the outset of the process in issuing the RFP, including its secret negotiations with BLJC and ProFac, its recent decision to cancel the RFP and "renew" the 1994 Service Agreements with BLJC and ProFac in 1994, and the

contingent "renewals" of those agreements, displays a high-handed disregard for the fundamental principles of fairness and good faith in its dealings with FM One. CPC engaged in secret negotiations with competitors of FM One while the RFP was still officially outstanding and decided to cancel the RFP months before it informed FM One of its decision to do so. CPC accordingly misled FM One, and therefore Trammell Crow and Trammell Crow Canada, into believing that a competitive procurement process was still being pursued.

30. In doing so, CPC induced FM One, Trammell Crow and Trammell Crow Canada to expend resources toward improving and refining their outstanding proposal.
31. When CPC finally informed FM One of its decision to cancel the RFP, FM One had already been denied access to an open and transparent process for bidding on the renewed contracts that CPC proposed to conclude with BLJC and ProFac.
32. As a state enterprise subject to Canada's obligations under Chapter 10 of NAFTA responsible for providing an essential public service (i.e., delivery of first class mail) by way of a statutory monopoly, CPC is a *de facto* agent of Canada. CPC's treatment of FM One is therefore a matter of state responsibility under international law.
33. NAFTA Article 1105 requires Canada, and by extension CPC, to treat the investments of the investors of other NAFTA Parties in accordance with international law, including fair and equitable treatment. CPC's non-transparent, misleading and potentially biased treatment of FM One was neither fair nor equitable, and was otherwise not in accordance with international law.

D. ISSUES

1. Has the Government of Canada, either on its own or through the actions of CPC, acted inconsistently with its obligations under Article 1105 of the NAFTA?
2. If the answer to Issue 1 is in the affirmative, what damages have been suffered by Trammell Crow?

E. RELIEF SOUGHT AND DAMAGES CLAIMED

The Investor claims damages for the following:

1. Damages in the amount of not less than US\$32,000,000 arising out of the Government of Canada's breach of its NAFTA obligations;
2. Costs associated with these proceedings, including all professional fees and disbursements;
3. Pre-award and post-award interest at a rate to be fixed by the tribunal;
4. Maintenance of the integrity of the award in relation to any applicable tax consequences; and
5. Such further relief that the tribunal may deem appropriate.

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Davies Ward Phillips & Vineberg LLP

Davies Ward Phillips & Vineberg LLP
Barristers & Solicitors
44th Floor
1 First Canadian Place
Toronto, Ontario
Canada, M5X 1B1

Telephone: (416) 367-6906
Facsimile: (416) 863-0871

Milos Barutciski
Julie Soloway
Anita Banicevic
Counsel to Trammell Crow Company