



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2014-001

MGIS Inc. and iGeoSpy Inc.  
in Joint Venture

*Decision made  
Thursday, April 10, 2014*

*Decision issued  
Wednesday, April 23, 2014*

*Reasons issued  
Friday, April 25, 2014*

IN THE MATTER OF a complaint filed pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C., 1985, c. 47 (4th Supp.).

**BY**

**MGIS INC. AND IGEOSPY INC. IN JOINT VENTURE**

**AGAINST**

**THE DEPARTMENT OF NATIONAL DEFENCE**

**DECISION**

Pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal has decided not to conduct an inquiry into the complaint.

Jason W. Downey  
Jason W. Downey  
Presiding Member

Gillian Burnett  
Gillian Burnett  
Secretary

The statement of reasons will be issued at a later date.

## STATEMENT OF REASONS

1. Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,<sup>2</sup> a potential supplier may file a complaint with the Canadian International Trade Tribunal (the Tribunal) concerning any aspect of the procurement process that relates to a designated contract and request the Tribunal to conduct an inquiry into the complaint. Subsection 30.13(1) of the *CITT Act* provides that, subject to the *Regulations*, after the Tribunal determines that a complaint complies with subsection 30.11(2) of the *CITT Act*, it shall decide whether to conduct an inquiry into the complaint.
2. The complaint relates to two Requests for Availability (RFA) (S73390 and S81085) by the Department of National Defence (DND) for the provision of financial management services.
3. Both S73390 and S81085 are call-ups under the provisions of the Standing Offer (SO) for Temporary Help Services in the National Capital Area (the SO).
4. MGIS Inc. and iGeoSpy Inc. in Joint Venture (MGIS) alleged that DND improperly cancelled S73390 and then reissued a modified RFA via S81085, all of which was designed to give the incumbent provider a competitive advantage.
5. As the complaint relates to two distinct RFAs, the Tribunal will analyze each RFA separately.

### S73390

6. Paragraph 7(1)(c) of the *Regulations* requires that the Tribunal determine whether the information provided by a complainant discloses a reasonable indication that the procurement has not been conducted in accordance with whichever of Chapter Ten of the *North American Free Trade Agreement*,<sup>3</sup> Chapter Five of the *Agreement on Internal Trade*,<sup>4</sup> the *Agreement on Government Procurement*,<sup>5</sup> Chapter Kbis of the *Canada-Chile Free Trade Agreement*,<sup>6</sup> Chapter Fourteen of the *Canada-Peru Free Trade Agreement*,<sup>7</sup> Chapter Fourteen of the *Canada-Colombia Free Trade Agreement*<sup>8</sup> or Chapter Sixteen of the *Canada-Panama Free Trade Agreement*<sup>9</sup> applies. In this case, only the *AIT* applies.

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1. R.S.C., 1985, c. 47 (4th Supp.) [*CITT Act*].

2. S.O.R./93-602 [*Regulations*].

3. *North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2 (entered into force 1 January 1994).

4. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <[http://www.ait-aci.ca/index\\_en/ait.htm](http://www.ait-aci.ca/index_en/ait.htm)> [*AIT*].

5. 15 April 1994, online: World Trade Organization <[http://www.wto.org/english/docs\\_e/legal\\_e/final\\_e.htm](http://www.wto.org/english/docs_e/legal_e/final_e.htm)>.

6. *Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile*, 1997 Can. T.S. No. 50 (entered into force 5 July 1997). Chapter Kbis, entitled “Government Procurement”, came into effect on September 5, 2008.

7. *Free Trade Agreement between Canada and the Republic of Peru*, online: Department of Foreign Affairs and International Trade <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/peru-perou/chapter-chapitre-14.aspx>> (entered into force 1 August 2009).

8. *Free Trade Agreement between Canada and the Republic of Colombia*, online: Department of Foreign Affairs and International Trade <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/colombia-colombie/anc-colombia-toc-tdm-can-colombie.aspx>> (entered into force 15 August 2011).

9. *Free Trade Agreement between Canada and the Republic of Panama*, online: Department of Foreign Affairs and International Trade <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/panama/panama-toc-panama-tdm.aspx>> (entered into force 1 April 2013).

7. With respect to S73390, MGIS acknowledged that the RFA was cancelled by DND prior to the complaint being filed. However, MGIS contended that the reason given by DND for the cancellation of S73390 was not genuine.

8. By the terms of the SO, “Standard Acquisition Clauses and Conditions 2010B”, “General Conditions – Professional Services (Medium Complexity)” (the general conditions), are incorporated into the SO by reference. These general conditions provide as follows:

The Offeror acknowledges that a standing offer is not a contract and that the issuance of a Standing Offer and Call-up Authority does not oblige or commit Canada to procure or contract for any goods, services or both listed in the Standing Offer. The Offeror understands and agrees that Canada has the right to procure the goods, services or both specified in the Standing Offer by means of any other contract, standing offer or contracting method.

9. In light of this clause, the issuance of an RFA by way of S73390 in no way obligated DND to enter into a contract for services. Thus, the Tribunal finds that the cancellation of S73390 was permitted by the provisions of the general conditions.

10. As the Tribunal finds that there is no reasonable indication that the cancellation of S73390 breached the terms of the *AIT*, the Tribunal will not conduct an inquiry into this ground of complaint.

### **S81085**

11. Subsection 30.11(1) of the *CITT Act* limits the Tribunal’s jurisdiction to “. . . complaint[s] . . . concerning any aspect of the procurement process that relates to a designated contract . . . .”

12. Subsection 7(1) of the *Regulations* sets out three conditions which must be met for the Tribunal to decide to conduct an inquiry in respect of a complaint. One of the conditions is that the complaint be in respect of a designated contract.

13. Section 30.1 of the *CITT Act* defines “designated contract” as “. . . a contract for the supply of goods or services that has been or is proposed to be awarded by a government institution and that is designated or of a class of contracts designated by the regulations”.

14. Subsection 3(1) of the *Regulations* provides that any contract concerning a procurement of goods or services or any combination of goods or services, as described in the relevant trade agreements (in this case, the *AIT*), that has been or is proposed to be awarded by a government institution, is a designated contract.

15. In order for a contract concerning the procurement of services by government entities<sup>10</sup> to be considered a “designated contract”, the *AIT* specifies that it must have a value equal to or greater than \$100,000.<sup>11</sup>

16. Although there is some jurisprudence indicating that the Tribunal may conduct an inquiry into a complaint when it appears that the value of the procurement is lower than the thresholds of the relevant trade agreements, the Tribunal could only do so if it were in possession of evidence clearly indicating that the valuation method selected by the government institution was intended to avoid the obligations of the agreements.<sup>12</sup> The Tribunal is of the view that no such evidence has been presented in this case.

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10. For a list of government entities covered, see Annex 502.1A of the *AIT*.

11. See Annex 502.1A of the *AIT* and “Contracting Policy Notice: 2013-5”.

12. *Sunny Jaura d.b.a. Jaura Enterprises v. Department of Public Works and Government Services* (5 September 2012), PR-2012-007 (CITT) at para. 22.

17. Moreover, while MGIS has stated that S81085 could be amended to increase the hours required, and therefore the monetary value of the services required, the Tribunal once again notes that MGIS has not offered any evidence to support this statement.

18. Having reviewed all the information on the record, the Tribunal is satisfied that S81085 does not meet the minimum monetary threshold required by the *AIT*. In its e-mail of March 20, 2014, in which it informed MGIS that it was not successful in being awarded the call-up, DND stated that the value of the contract for S81085 was \$51,867.00, inclusive of HST. As this amount is below the monetary threshold set by the *AIT*, the Tribunal finds that this agreement does not apply and that the complaint therefore does not relate to a “designated contract”. Accordingly, the Tribunal is without jurisdiction to conduct an inquiry into the complaint.

19. Under these circumstances, the complaint cannot be said to have a valid basis and must therefore be dismissed pursuant to paragraph 10(a) of the *Regulations*.

## DECISION

20. Pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal has decided not to conduct an inquiry into the complaint.

Jason W. Downey

Jason W. Downey  
Presiding Member