



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2014-039

eVision Inc. & SoftSim  
Technologies Inc.

*Decision made  
Wednesday, November 19, 2014*

*Decision issued  
Thursday, November 20, 2014*

*Reasons issued  
Monday, November 24, 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**

**EVISION INC. & SOFTSIM TECHNOLOGIES INC.**

**AGAINST**

**THE IMMIGRATION AND REFUGEE BOARD**

**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.

Serge Fréchette  
Serge Fréchette  
Presiding Member

## 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.

### SUMMARY OF THE COMPLAINT

2. This complaint relates to a procurement (Solicitation No. 20140856/IRB-NHQ) by the Immigration and Refugee Board (IRB) for the provision of project management services. The complainant, eVision Inc. & SoftSim Technologies Inc. in joint venture (eVision), alleges that the IRB unfairly terminated the contract awarded to it.

3. eVision submits that it mistakenly informed the IRB that its proposed resource was unavailable for work, which prompted the termination of the contract. However, eVision submits that the proposed resource was and is available for work and that cancelling the contract is no longer necessary.

### RELEVANT FACTS

4. On September 9, 2014, the IRB issued a solicitation for the provision of project management services. On September 23, 2014, the bidding period closed. On October 14, 2014, the IRB awarded the contract to eVision.

5. On October 21, 2014, the IRB asked eVision for its proposed resource's availability. On October 24, 2014, eVision informed the IRB that its proposed resource was no longer available and suggested a replacement resource. On October 30, 2014, eVision submitted the new proposal for the replacement resource.

6. On November 6, 2014, the IRB wrote to eVision asking why the initial resource was unavailable. eVision responded the same day, indicating that the initial resource was unavailable due to family medical responsibilities.

7. Later that day, the IRB informed eVision that the replacement resource did not meet the requirements of the position. The IRB also informed eVision that, according to section 1.4 of Part 5 of the solicitation, "family illness" was not a valid reason for proposing a substitute resource.<sup>3</sup>

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

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

3. Section 1.4 of Part 5 of the solicitation reads as follows:

#### **1.4 Status and Availability of Resource**

The Bidder certifies that, should it be awarded a contract as a result of the bid solicitation, every individual proposed in its bid will be available to perform the Work as required by Canada's representatives and at the time specified in the bid solicitation or agreed to with Canada's representatives. If for reasons beyond its control, the Bidder is unable to provide the services of an individual named in its bid, the Bidder may propose a substitute with similar qualifications and experience. The Bidder must advise the Contracting Authority of the reason for the substitution and provide the name, qualifications and experience of the proposed replacement. For the purposes of this clause, only the following reasons will be considered as beyond the control of the Bidder: death, sickness, maternity and parental leave, retirement, resignation, dismissal for cause or termination of an agreement for default.

8. In the same correspondence, the IRB informed eVision that it was terminating the contract for convenience in accordance with section 2.1 of the general conditions of the contract. These general conditions incorporate by reference clause 2035 of the General Conditions - Higher Complexity - Services (2014-09-25) of the Standard Acquisition Clauses and Conditions Manual of the Department of Public Works and Government Services. This clause reads as follows:

At any time before the completion of the Work, the Contracting Authority may, by giving notice in writing to the Contractor, terminate for convenience the Contract or part of the Contract. Once such a notice of termination for convenience is given, the Contractor must comply with the requirements of the termination notice. If the Contract is terminated in part only, the Contractor must proceed to complete any part of the Work that is not affected by the termination notice. The termination will take effect immediately or, as the case may be, at the time specified in the termination notice.

9. On November 6 and November 7, 2014, eVision wrote to the IRB asking it to reconsider its decision to terminate the contract and informing it that the initially proposed resource was available to work on the project.

10. On November 7, 2014, the IRB wrote to eVision informing it that the IRB would not reverse its decision and that the contract was terminated as of 3:43 p.m. on November 6, 2014.

11. On November 7, 2014, eVision filed an incomplete complaint with the Tribunal. On November 17, 2014, eVision provided the Tribunal with the required additional documents and its complaint was considered compliant with subsection 30.11(2) of the *CITT Act*.

## TRIBUNAL'S JURISDICTION

12. As noted above, subsection 30.11(1) of the *CITT Act* only allows for the filing of complaints that concern an aspect of the "procurement process" that relates to a designated contract. The relevant trade agreements similarly provide that the "procurement process" begins after an entity has decided on its procurement requirement and continues through to the awarding of the contract.<sup>4</sup> For example, Article 514 of the *AIT* reads as follows:

2. In order to promote fair, open and impartial procurement procedures, the Federal Government shall adopt and maintain complaint procedures for procurement covered by this Chapter that:

- (a) allow suppliers to submit complaints concerning any aspect of the *procurement process, which for the purposes of this Article begins after an entity has decided on its procurement requirement and continues through to the awarding of the contract;*

...

[Emphasis added]

13. eVision's only ground of complaint relates to the termination of the contract by the IRB, which the Tribunal determines is a matter of contract administration rather than a matter which concerns an aspect of

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4. See Article 514(2)(a) of the *Agreement on Internal Trade*, 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*]; Article 1017(1)(a) of the *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).

the procurement process. As such, the complaint falls outside of the “procurement process”, and it is not within the Tribunal’s jurisdiction to conduct an inquiry into this complaint.

14. In light of the above, the Tribunal will not conduct an inquiry into the complaint and considers the matter closed.

## **DECISION**

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

Serge Fréchette  
Serge Fréchette  
Presiding Member