



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2016-010

Cision Canada Inc.

*Decision made  
Monday, May 30, 2016*

*Decision and reasons issued  
Thursday, June 2, 2016*

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**

**CISION CANADA INC.**

**AGAINST**

**THE CANADIAN SPACE AGENCY**

**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

## 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 concerns a Request for Proposal (Solicitation No. 9F015-20150519) issued by the Canadian Space Agency (CSA) for the provision of media monitoring services. Cision Canada Inc. alleges that the CSA did not evaluate its technical proposal in a fair and equitable manner. Furthermore, it alleges that the CSA incorrectly rejected its proposal because it had not submitted the appropriate schedule with its financial proposal.

3. Having examined the complaint, the Tribunal is of the opinion that it does not have jurisdiction to inquire.

4. As mentioned above, subsection 30.11(1) of the *CITT Act* limits the Tribunal's jurisdiction to "... any aspect of the procurement process that relates to a *designated contract* ..." [emphasis added]. Furthermore, subsection 7(1) of the *Regulations*, which sets out the conditions that must be met before the Tribunal may inquire into a complaint, stipulates amongst other things that the complaint must concern a "designated contract".

5. Also, 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".

6. A designated contract, under section 30.1 of the *CITT Act*, is therefore defined in part as a contract for the supply of goods or services that has been awarded by a *government institution*. Section 30.1 defines "government institution" as "any department or ministry of state of the Government of Canada, or any other body or office, that is designated by the regulations".

7. In this regard, subsection 3(2) of the *Regulations* designate as government institutions the federal government entities or government enterprises set out in the following sections of the trade agreements that are potentially applicable: Schedule of Canada in Annex 1001.1a-1 and in Annex 1001.1a-2 of the *North American Free Trade Agreement*,<sup>3</sup> under the heading "CANADA" in Annex 1 and in Annex 3 of the *Agreement on Government Procurement*,<sup>4</sup> Schedule of Canada in Annex Kb1s-01.1-1 and in Annex

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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, online: Department of Foreign Affairs, Trade and Development <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/text-texte/toc-tdm.aspx?lang=eng>> (entered into force 1 January 1994).

4. *Revised Agreement on Government Procurement*, online: World Trade Organization <[http://www.wto.org/english/docs\\_e/legal\\_e/rev-gpr-94\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.htm)> (entered into force 6 April 2014).

*Kbis*-01.1-2 of Chapter *Kbis* of the *Canada-Chile Free Trade Agreement*,<sup>5</sup> Schedule of Canada in Annex 1401.1-1 and in Annex 1401.1-2 of Chapter Fourteen of the *Canada-Peru Free Trade Agreement*,<sup>6</sup> Schedule of Canada in Annex 1401.1-1 and in Annex 1401.1-2 of Chapter Fourteen of the *Canada-Colombia Free Trade Agreement*,<sup>7</sup> Schedule of Canada in Annex 14-A of Chapter Fourteen of the *Canada-Korea Free Trade Agreement*,<sup>8</sup> Schedule of Canada in Annex 17.1 and in Annex 17.2 of Chapter Seventeen of the *Canada-Honduras Free Trade Agreement*,<sup>9</sup> Schedule of Canada in Annex 1 and in Annex 2 of Chapter Sixteen of the *Canada-Panama Free Trade Agreement*<sup>10</sup> and the federal government entities referred to in Chapter 5 of the *Agreement on Internal Trade*.<sup>11</sup>

8. The CSA is not listed in the relevant schedules or annexes of the trade agreements. Furthermore, the CSA is specifically excluded from the scope of Chapter 5 of the *AIT* in accordance with Annex 502.2A.

9. The Tribunal therefore concludes that the CSA is not a federal government entity or a government enterprise covered by the agreements and, therefore, it is not a “government institution” in accordance with section 30.1 of the *CITT Act*.

10. For this reason, the Tribunal also concludes that the contract that relates to this procurement process is not a designated contract within the meaning of the *CITT Act*.

11. Given that the procurement in question does not relate to a designated contract, the Tribunal does not have jurisdiction to inquire into the complaint. In light of this conclusion, the Tribunal will not consider the issue of whether the complaint meets the other conditions for inquiry set out in subsection 7(1) of the *Regulations*.

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5. *Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile*, 1997 Can. T.S. No. 50, online: Department of Foreign Affairs, Trade and Development <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/chile-chili/menu.aspx?lang=en>> (entered into force 5 July 1997). Chapter *Kbis*, entitled “Government Procurement”, came into effect on September 5, 2008.
  6. *Free Trade Agreement between Canada and the Republic of Peru*, online: Department of Foreign Affairs, Trade and Development <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/peru-perou/peru-toc-perou-tdm.aspx?lang=eng>> (entered into force 1 August 2009).
  7. *Free Trade Agreement between Canada and the Republic of Colombia*, online: Department of Foreign Affairs, Trade and Development <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/colombia-colombie/can-colombia-toc-tdm-can-colombie.aspx?lang=eng>> (entered into force 15 August 2011).
  8. *Free Trade Agreement between Canada and the Republic of Korea*, online: Department of Foreign Affairs, Trade and Development <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/korea-coree/toc-tdm.aspx?lang=eng>> (entered into force 1 January 2015).
  9. *Free Trade Agreement between Canada and the Republic of Honduras*, online: Department of Foreign Affairs, Trade and Development <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/honduras/toc-tdm.aspx>> (entered into force 1 October 2014).
  10. *Free Trade Agreement between Canada and the Republic of Panama*, online: Department of Foreign Affairs, Trade and Development <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/panama/panama-toc-panama-tdm.aspx>> (entered into force 1 April 2013).
  11. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<http://www.ait-aci.ca/agreement-on-internal-trade/>> [*AIT*].

**DECISION**

12. 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