



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2010-064

Siva & Associates Inc.

*Decision made  
Wednesday, September 15, 2010*

*Decision and reasons issued  
Thursday, September 23, 2010*

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

**BY**

**SIVA & ASSOCIATES INC.**

**AGAINST**

**THE NEW BRUNSWICK DEPARTMENT OF SUPPLY AND SERVICES**

**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

Dominique Laporte  
Dominique Laporte  
Secretary

## STATEMENT OF REASONS

1. Pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> and subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,<sup>2</sup> the Canadian International Trade Tribunal (the Tribunal) has jurisdiction to inquire into complaints by potential suppliers concerning any aspect of the procurement process that relates to a designated contract.
2. The complaint relates to a procurement (Solicitation No. 9851006) by the New Brunswick Department of Supply and Services (NBDSS) on behalf of the Central New Brunswick Academy for the provision of microscopes.
3. Siva & Associates Inc. (Siva) alleges that its contract to supply microscopes was improperly cancelled by the NBDSS.
4. 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”.
5. Subsection 3(1) of the *Regulations* provides that, for the purposes of the definition of “designated contract” in section 30.1 of the *CITT Act*, any contract or class of contract concerning a procurement of goods or services or any combination of goods or services, as described in Article 1001 of the *North American Free Trade Agreement*,<sup>3</sup> Article 502 of the *Agreement on Internal Trade*,<sup>4</sup> Article 1 of the *Agreement on Government Procurement*,<sup>5</sup> Article Kbis-01 of Chapter Kbis of the *Canada-Chile Free Trade Agreement*<sup>6</sup> or Article 1401 of Chapter Fourteen of the *Canada-Peru Free Trade Agreement*<sup>7</sup>, by a government institution, is a designated contract.
6. Section 30.1 of the *CITT Act* defines “government institution” as “any department or ministry of state of the Government of Canada, or any body or office, that is designated by the regulations”.
7. Subsection 3(2) of the *Regulations* designates the federal government entities set out in the Schedule of Canada in Annex 1001.1a-1 of the *NAFTA*, under the heading “CANADA” in Annex 502.1A of the *AIT*, under the heading “CANADA” in Annex 1 of the *AGP*, in the Schedule of Canada in Annex Kbis-01.1-1 of Chapter Kbis of the *CCFTA* or in the Schedule of Canada in Annex 141.1-1 of Chapter Fourteen of the *CPFTA* as government institutions.

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

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)> [*AGP*].

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) [*CCFTA*]. 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) [*CPFTA*].

8. The Tribunal notes that neither the NBDSS nor the Central New Brunswick Academy is listed in any of these schedules or annexes. The Tribunal finds that neither entity is a covered federal government entity and, as such, that neither is a “government institution” as described in the agreements.

9. Furthermore, the above trade agreement articles cover various kinds of goods and services where the procurement value must exceed prescribed monetary thresholds. Article 502 of the *AIT* prescribes the lowest monetary threshold for the procurement of goods, which stands at \$25,000.

10. The Tribunal notes that the value of the present contract is \$13,957.76, which is below the monetary thresholds for the procurement of goods under all of the aforementioned trade agreements including the *AIT*.

11. For both of these reasons, the Tribunal finds that the contract is not a “designated contract”.

12. Given that the procurement at issue does not relate to a designated contract, the Tribunal lacks the jurisdiction to inquire into the complaint and considers the matter closed.

### **DECISION**

13. 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