



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DETERMINATION AND REASONS

File No. PR-2018-015

SoftSim Technologies Inc.

v.

National Research Council Canada

*Determination issued  
Wednesday, October 3, 2018*

*Reasons issued  
Thursday, October 11, 2018*

**TABLE OF CONTENTS**

DETERMINATION..... 1

STATEMENT OF REASONS ..... 1

    SUMMARY OF COMPLAINT ..... 1

    PROCUREMENT PROCESS..... 1

    PROCEEDINGS OF THE COMPLAINT..... 2

    RELEVANT PROVISIONS OF THE RFP ..... 2

    ANALYSIS..... 5

        Position of the Parties ..... 5

        Tribunal’s Analysis..... 6

COSTS..... 8

DETERMINATION OF THE TRIBUNAL..... 9

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

AND FURTHER TO a decision to conduct an inquiry into the complaint pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

**BETWEEN**

**SOFTSIM TECHNOLOGIES INC.**

**Complainant**

**AND**

**NATIONAL RESEARCH COUNCIL CANADA**

**Government  
Institution**

**DETERMINATION**

Pursuant to subsection 30.14(2) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal determines that the complaint is not valid.

Pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal awards the National Research Council Canada its reasonable costs incurred in responding to the complaint, which costs are to be paid by SoftSim Technologies Inc. In accordance with the *Procurement Costs Guideline*, the Canadian International Trade Tribunal's preliminary indication of the level of complexity for this complaint case is Level 1, and its preliminary indication of the amount of the cost award is \$1,150. If any party disagrees with the preliminary indication of the level of complexity or the preliminary indication of the amount of the cost award, it may make submissions to the Canadian International Trade Tribunal, as contemplated in Article 4.2 of the *Procurement Costs Guideline*. The Canadian International Trade Tribunal reserves jurisdiction to establish the final amount of the cost award.

Peter Burn

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Peter Burn

Presiding Member

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

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Complainant:	SoftSim Technologies Inc.
Government Institution:	National Research Council Canada
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## STATEMENT OF REASONS

[1] On July 20, 2018, SoftSim Technologies Inc. (SoftSim) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> regarding a Request for Proposals (RFP) (Solicitation No. 18-22022) issued by the National Research Council Canada (NRC) for the provision of one project manager.<sup>2</sup>

[2] On July 24, 2018, the Tribunal decided to conduct an inquiry into the complaint, having determined that it met the requirements of subsection 30.13(1) of the *CITT Act* and the conditions set out in subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.<sup>3</sup>

[3] The Tribunal inquired into the complaint, as required under sections 30.13 to 30.15 of the *CITT Act*.

[4] For the following reasons, the Tribunal finds that the complaint is not valid.

## SUMMARY OF COMPLAINT

[5] SoftSim alleged that the NRC erred in its evaluation of three point-rated technical criteria of the RFP, namely, point-rated criterion R1 regarding IM/IT or project management post-secondary education, R3 regarding the management of multiple stakeholder IM/IT projects, and R4 regarding experience in fundamental or applied research projects involving IM/IT components. According to SoftSim, its proposal should have been awarded full marks under each criterion and was, therefore, improperly deemed non-responsive.

[6] As a remedy, SoftSim requested the re-evaluation of its bid.

## PROCUREMENT PROCESS

[7] The RFP was issued by the NRC on June 20, 2018, under a Task-Based Informatics Professional Services (TBIPS) Supply Arrangement (SA). The solicitation was open to pre-qualified suppliers that hold a TBIPS SA for Tier 1 in the National Capital Region, which included SoftSim. The closing date was July 6, 2018.

[8] By the RFP closing date, the NRC had received three proposals, including one submitted by SoftSim.

[9] The technical evaluation was conducted and completed between July 11 and 13, 2018. SoftSim was awarded 55/85 points. Consequently, SoftSim's bid was determined to be non-

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

2. SoftSim filed a deficient complaint on July 17, 2018. On July 20, 2018, SoftSim filed additional information further to a request made by the Tribunal on July 18, 2018, pursuant to subsection 30.12(2) of the *CITT Act*. Therefore, in accordance with rule 96(1)(b) of the *Canadian International Trade Tribunal Rules*, SOR/91-499 [*Rules*], and subsection 30.11(2) of the *CITT Act*, the complaint is considered to have been filed on March 16, 2018.

3. SOR/93-602 [*Regulations*].

compliant because the mandatory passing mark for the point-rated technical criteria was 80 percent (or 68/85 points).<sup>4</sup>

[10] On July 17, 2018, the NRC advised SoftSim that its bid was non-compliant and that it would not be awarded a contract.<sup>5</sup>

[11] The same day, SoftSim requested a debriefing from the NRC. On July 18, 2018, the NRC provided SoftSim a debriefing through e-mail, which revealed the score awarded for each criterion, along with the evaluators' notes.

[12] The NRC awarded SoftSim 0/10 points for criterion R1 because it failed to explain how its proposed resource's education related to IM/IT or project management. SoftSim received 20/30 points for criterion R3 because the stakeholders in two of the submitted projects were stated but not defined, and because no durations were associated with the relevant subprojects. Finally, the NRC awarded SoftSim 0/10 points for criterion R4 as it did not explain how the cited projects could be considered fundamental or applied research projects.<sup>6</sup>

[13] SoftSim alleged that the evaluation was not accurate, and that the evaluators were biased against its proposed resource.

## **PROCEEDINGS OF THE COMPLAINT**

[14] On July 20, 2018, SoftSim filed the present complaint with the Tribunal.

[15] On July 24, 2018, the Tribunal informed the parties that the complaint had been accepted for inquiry because it met the requirements of subsection 30.11(2) of the *CITT Act* and the conditions set out in subsection 7(1) of the *Regulations*.

[16] On August 20, 2018, the NRC filed its Government Institution Report (GIR) with the Tribunal in accordance with section 103 of the *Rules*.

[17] On the same day, SoftSim filed its comments on the GIR.

[18] Given that the information on the record was sufficient to determine the merits of the complaint, the Tribunal decided that an oral hearing was not necessary and ruled on the complaint based on the written record.

## **RELEVANT PROVISIONS OF THE RFP**

[19] Part 3 of the RFP contained bid preparation instructions. These instructions provided as follows, in relevant parts:

### **3.2 SECTION I: TECHNICAL BID**

...

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4. Exhibit PR-2018-015-11A (protected) at para. 37, Vol. 2.

5. Exhibit PR-2018-015-01A (protected) at 29, Vol. 2.

6. Exhibit PR-2018-015-01B (protected) at 3-4, Vol. 2.

v. **For Proposed Resources:** The technical bid must include **One (1) résumé/CV** per resource. The same individual must not be proposed for more than one Resource Category. The Technical bid must demonstrate that each proposed individual meets the qualification requirements described (including any educational requirements, work experience requirements, and professional designation or membership requirements). With respect to the proposed resources:

...

E. For any requirements that specify a particular time period (e.g., 2 years) of work experience, Canada will disregard any information about experience if the technical bid does not include the relevant dates (month and year) for the experience claimed (i.e., the start date and end date). Canada will evaluate only the duration that the resource actually worked on a project or projects (from his or her start date to end date), instead of the overall start and end date of a project or a combination of projects in which a resource has participated.

F. For work experience to be considered by Canada, the technical bid must not simply indicate the title of the individual's position, but must demonstrate that the resource has the required work experience by explaining the responsibilities and work performed by the individual while in that position. In situations in which a proposed resource worked at the same time on more than one project, the duration of any overlapping time period will be counted only once toward any requirements that relate to the individual's length of experience.

[20] Part 4 of the RFP addressed the evaluation procedures and basis of selection. The RFP contained both mandatory technical criteria and point-rated technical criteria to be addressed by the bidder. Articles 4.2(a) and (b) provided as follows:

**a. Mandatory Technical Criteria :**

Each bid will be reviewed to determine whether it meets the mandatory requirements of the bid solicitation. Any element of the bid solicitation that is identified specifically with the words "must" or "mandatory" is a mandatory requirement. Bids that do not comply with each and every mandatory requirement will be considered non-responsive and be disqualified.

**b. Point-Rated Technical Criteria :**

Each bid will be rated by assigning a score to the rated requirements, which are identified in the bid solicitation by the word "rated" or by reference to a score. Bidders who fail to submit complete bids with all the information requested by this bid solicitation will be rated accordingly.

[21] The RFP at article 4.4 provided the following basis of selection:

To be considered responsive, a bid must:

(a) meet all the first mandatory evaluation criteria and clearly indicate location in their proposal where they meet each criteria

(b) Evaluation Method: Highest Mandatory and Technical Merit (**70%**) and Price (**30%**)  
(Rated criteria will be averaged)

(c) obtain the required minimum of **80%** overall of the points available for the criteria specified in this solicitation which are subject to point rating

(d) Bids not meeting (a), (b) and (c) above will be given no further consideration.

[22] As stated above, SoftSim's complaint challenged the NRC's evaluation of three point-rated technical criteria of the RFP, namely criteria R1, R3 and R4, which state as follows in "Annex A – Statement of Work & Evaluation Criteria":

<b>Rated Criteria</b>			
<b>Demonstrated Compliance:</b>			
<i>The bidder must provide a resume of all proposed resources highlighting qualifications and experience in the relevant field, indicating <b>BEYOND ANY DOUBT</b> that the qualifications of the proposed individual meet the requirements outlined under the Mandatory Requirements</i>			
<b>Criteria</b>	<b>Description</b>	<b>Max pts</b>	<b>Evaluation guideline</b>
R1	The Bidder should demonstrate that the proposed resource has completed a post-secondary education in a field related to IM/IT or project management from a recognized institution.	10	No diploma provided = 0 pts College or university diploma copy provided = 10 pts
...			
R3	The Bidder should demonstrate that the proposed resource has experience in managing multiple stakeholder IM/IT projects within the last 10 years	30	5 points will be given for each full year of applicable experience up to a maximum of 30 points.
R4	The Bidder should demonstrate that the resource has recent experience in fundamental or applied research projects that involve IM/IT components.	10	2 points will be given for each full year of applicable experience up to a maximum of 10 points.
...			
	<b>Max Total Points</b>	<b>85</b>	



	(Minimum score of 80% to pass)		
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## ANALYSIS

[23] Subsection 30.14(1) of the *CITT Act* requires that, in conducting an inquiry, the Tribunal limit its considerations to the subject matter of the complaint. At the conclusion of the inquiry, the Tribunal must determine whether the complaint is valid on the basis of whether the procedures and other requirements prescribed in respect of the designated contract have been observed.

[24] Section 11 of the *Regulations* provides that the Tribunal is required to determine whether the procurement was conducted in accordance with the applicable trade agreements, which, in this case, are the *World Trade Organization Agreement on Government Procurement*,<sup>7</sup> the *North American Free Trade Agreement*<sup>8</sup> and the *Canadian Free Trade Agreement*,<sup>9</sup> among others.<sup>10</sup>

[25] The *AGP*, *NAFTA*, and the *CFTA* each require that a procuring entity provide potential suppliers with all information necessary to permit them to prepare and submit responsive bids, including the criteria which will be used for evaluating and awarding the contract.<sup>11</sup>

[26] Each agreement further requires that, to be considered for contract award, a tender must, at the time of opening, conform to the essential requirements set out in the tender documentation, and requires that procuring entities award contracts in accordance with the evaluation criteria specified in the tender documentation.<sup>12</sup>

## Position of the Parties

[27] With regard to criterion R1, SoftSim argued that it should have been awarded 10/10 points as its proposed resource has a Master of Applied Science in Electrical Engineering and a Master of

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7. *Revised Agreement on Government Procurement*, online: World Trade Organization <[http://www.wto.org/english/docs\\_e/legal\\_e/rev-grp-94\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/rev-grp-94_01_e.htm)> (entered into force 6 April 2014) [*AGP*].
  8. *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: Global Affairs Canada <<http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/fta-ale/index.aspx?lang=eng>> (entered into force 1 January 1994) [*NAFTA*].
  9. *Canadian Free Trade Agreement*, online: Internal Trade Secretariat <<https://www.cfta-alec.ca/wp-content/uploads/2017/06/CFTA-Consolidated-Text-Final-Print-Text-English.pdf>> (entered into force 1 July 2017) [*CFTA*].
  10. Several other trade agreements are applicable to this solicitation, which we refrain from listing here for reasons of economy. See RFP, article 1.2(d) (Exhibit PR-2018-015-01 at 20, Vol. 1).
  11. For instance, Article 1013(1) of *NAFTA* provides as follows: “Where an entity provides tender documentation to suppliers, the documentation shall contain all information necessary to permit suppliers to submit responsive tenders . . . . The documentation shall also include: . . . (h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders . . . .”; see also Article X(7) of the *AGP*; Article 509(7) of the *CFTA*.
  12. For instance, Articles 1015(4)(a) and (d) of *NAFTA* provide as follows: “An entity shall award contracts in accordance with the following: (a) to be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation . . . (d) awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation.” See also Articles XV(4) and (5) of the *AGP*; Articles 515(4) and (5) of the *CFTA*.

Engineering in Engineering Management from the University of Ottawa. In its complaint documents, SoftSim submitted that the Master's degree in Engineering Management contains compulsory courses in project management and management skills, and has optional courses in project information management, which should fulfill the requirement of being "in a field related to IM/IT or project management".<sup>13</sup>

[28] The NRC responded that it was reasonable for the evaluation team not to award any points for criterion R1 because SoftSim had not provided proof of its resource's purported education for its Master of Engineering in Engineering Management, nor how its Master of Applied Science in Electrical Engineering related to IM/IT or project management. The NRC noted that the explanation given by SoftSim in its complaint documents was not provided in its proposal.<sup>14</sup>

[29] Regarding criterion R3, the NRC awarded SoftSim 20/30 points as only two of the four projects submitted by SoftSim included sufficient information to clearly identify the multiple stakeholders involved. As for the two remaining projects, the NRC submitted that SoftSim did not explain how each entity or group identified could be a separate stakeholder. In addition, the NRC noted that criterion R3 required the experience be acquired within the last ten years. According to the NRC, SoftSim either did not provide the duration of the relevant subprojects, or they were completed more than ten years ago.<sup>15</sup>

[30] SoftSim submitted that its proposal had clearly identified the stakeholders involved.<sup>16</sup> According to SoftSim, for the two projects rejected by the NRC, the multiple stakeholders were listed in its proposal as "PO (product owner) and BA (business analyst)", "the Change Control Board (CCB), RNC Release team, Back Office Team and project governance", and "RNC Release team, Release CoreTeam and VP wireless".<sup>17</sup> SoftSim did not address the absence of stated durations for the subprojects, nor the fact that they had been completed over ten years ago.

[31] As for criterion R4, the NRC awarded SoftSim 0/10 points as it did not explain how the projects cited are "research projects". The NRC submitted that, although the "research" keyword is used throughout SoftSim's description of the applicable projects, the projects are referred to as "business transformation initiatives" in the proposal.<sup>18</sup>

[32] In response, SoftSim referred back to its proposal and stated that the description of the applicable projects demonstrated that the proposed resource had the required experience in research projects.<sup>19</sup>

### **Tribunal's Analysis**

[33] The Tribunal typically accords a large measure of deference to evaluators in their evaluation of proposals. In general, the Tribunal will only interfere with an evaluation that is unreasonable<sup>20</sup> and

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13. Exhibit PR-2018-015-01D (protected) at 2, Vol. 2. SoftSim refers to the University of Ottawa's course catalogue for the Master of Engineering in Engineering Management.

14. Exhibit PR-2018-015-11A (protected) at paras. 57-59 and 61, Vol. 2.

15. *Ibid.* at paras. 65, 68-69, and 72-73.

16. Exhibit PR-2018-015-01D (protected) at 3, Vol. 2.

17. Exhibit PR-2018-015-11A (protected) at 65 and 70, Vol. 2.

18. *Ibid.* at para. 79.

19. Exhibit PR-2018-015-01D (protected) at 2, Vol. 2.

will substitute its judgment for that of the evaluators only when the evaluators have not applied themselves in evaluating a bidder's proposal, have ignored vital information provided in a bid, have wrongly interpreted the scope of a requirement, have based their evaluation on undisclosed criteria or have otherwise not conducted the evaluation in a procedurally fair way.<sup>21</sup>

[34] In addition, it is well established that the bidder bears the onus of demonstrating that all relevant criteria and requirements have been met in their proposals.<sup>22</sup> In other words, bidders bear the responsibility of “connecting the dots”—they must take care to ensure that any and all supporting documentation in their bids clearly demonstrate compliance. It is incumbent upon the bidder to exercise due diligence in the preparation of its proposal to ensure that it is unambiguous and properly understood by the evaluators.<sup>23</sup>

[35] The Tribunal finds nothing unreasonable in the evaluation of SoftSim's bid in relation to criteria R1, R3 and R4.

[36] Regarding criterion R1, the Tribunal first notes that the RFP explicitly required bidders to provide copies of diplomas in order to be awarded any points. SoftSim did not provide a copy of its proposed resource's Master of Engineering in Engineering Management and was not awarded any points for this degree. In addition, the Tribunal has previously held that it is up to the bidder to provide sufficient information and evidence to demonstrate the relevance of a diploma, for example through a copy of the school's curriculum or of school transcripts.<sup>24</sup> This information was absent from SoftSim's proposal, and it cannot now attempt to introduce new information to address any shortcomings.<sup>25</sup> As such, the Tribunal finds that it was reasonable for the NRC not to award any points to SoftSim for this criterion.

[37] Regarding criterion R3, the Tribunal finds that it was reasonable for the NRC not to award points in two of the four projects. For the two accepted projects, SoftSim stated the different entities to which the stakeholders belonged. For the two rejected projects, SoftSim listed the teams involved, without indicating what entities they belonged to. As listed in its proposal, the purported stakeholders

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20. As stated by the Tribunal in *Joint Venture of BMT Fleet Technology Ltd. and NOTRA Inc. v. Department of Public Works and Government Services* (5 November 2008), PR-2008-023 (CITT) at para. 25, the government institution's “determination will be considered reasonable if it is supported by a tenable explanation, regardless of whether or not the Tribunal itself finds that explanation compelling.” See also *Samson & Associates v. Department of Public Works and Government Services* (28 April 2015), PR-2014-050 (CITT) [*Samson*] at para. 35.
  21. *Excel Human Resources Inc. v. Department of the Environment* (2 March 2012), PR-2011-043 (CITT) at para. 33.
  22. *Samson & Associates v. Department of Public Works and Government Services* (16 July 2015), PR-2015-002 (CITT) at para. 49; *Valcom Consulting Group Inc. v. Department of Public Works and Government Services* (9 July 2014), PR-2013-044 (CITT) at para. 32.
  23. *Integrated Procurement Technologies, Inc.* (14 April 2008), PR-2008-007 (CITT); *Samson & Associates v. Department of Public Works and Government Services* (19 October 2012), PR-2012-012 (CITT) at para. 28; *Raymond Chabot Grant Thornton Consulting Inc. and PricewaterhouseCoopers LLP v. Department of Public Works and Government Services* (25 October 2013), PR-2013-005 and PR-2013-008 (CITT) at para. 37.
  24. *Samson*, *supra* note 21 at paras. 40-42.
  25. *Maxxam Analytics Inc. v. Department of Public Works and Government Services* (20 September 2007), PR-2007-017 (CITT) at para. 37; *NOTRA Environmental Services Inc.* (16 December 1997), PR-97-027 (CITT); *Bell Mobility v. Department of Public Works and Government Services* (14 July 2004), PR-2004-004 (CITT); *Francis H.V.A.C. Services Ltd. v. Canada (Public Works and Government Services)* 2017 FCA 165 (CanLII) at para. 22.

cited in the two rejected projects appear to belong to different teams of the same entity. SoftSim did not provide sufficient information for the NRC to determine whether the teams listed represent separate stakeholders.

[38] In addition, both projects are subdivided into a number of subprojects, for which no duration is provided. Article 3.2(v)(E) of the RFP required the NRC to evaluate the duration of the relevant subprojects rather than that of the overarching project, and to disregard any experience that did not include this information. The experience cited by SoftSim for criterion R3 is related to specific subprojects, but the only duration specified is that of the overarching project. The NRC could not itself supply the missing subproject durations. Accordingly, the Tribunal finds that it was reasonable for the NRC not to award SoftSim points for the two rejected projects.

[39] The Tribunal also notes that the evaluators erred in awarding 20 points to SoftSim under criterion R3. The evaluation guideline provides five points for each full year of applicable experience. Because the two accepted projects only demonstrate a total of 18 months of experience, SoftSim should have only been awarded 5/30 points.

[40] Finally, for criterion R4, the Tribunal has stated that a requirement to “demonstrate” means more than simply listing an ability; rather, a bidder has to prove how it has actually acquired a purported ability.<sup>26</sup> In this case, SoftSim was required to demonstrate experience in fundamental or applied research projects involving IM/IT components. Other than stating that the applicable projects are “research projects”, SoftSim did not describe how they either deepened the understanding of fundamental or basic principles, or put any research into practical use.<sup>27</sup> The Tribunal sees no reasonable basis to conclude that SoftSim’s proposal provided sufficient detail to demonstrate that its proposed resource had experience in fundamental or applied research projects.

[41] In sum, the Tribunal finds that the NRC’s evaluation was not unreasonable and, therefore, defers to the judgment of its evaluators. The onus was on SoftSim to respond to the requirements of the RFP. It failed to do that. The Tribunal was presented with no evidence to show that SoftSim ought to have been awarded more points. In fact, it received more than it should have.

[42] For the reasons provided above, the Tribunal finds that the complaint is not valid.

## COSTS

[43] Pursuant to section 30.16 of the *CITT Act*, the Tribunal awards the NRC its reasonable costs incurred in responding to the complaint, which costs are to be paid by SoftSim. In accordance with the *Procurement Costs Guideline* (the *Guideline*), the Tribunal’s preliminary indication of the level of complexity for this complaint is Level 1, as the procurement involved personal services by one party and related only to three rated requirements. In addition, the proceedings were straightforward and did not involve complicated procedural issues. As such, the Tribunal’s preliminary indication of the amount of the cost award is \$1,150.

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26. *Antian Professional Services Inc. v. Department of Public Works and Government Services* (5 August 2008), PR-2008-001 (CITT) at para. 36.

27. The *Collins Dictionary* defines “fundamental research” as “research carried out to deepen understanding of the fundamental or basic principles of something”, and “applied research” as “research that is put to practical use”. Available online: <https://www.collinsdictionary.com/dictionary/english/fundamental-research> and <https://www.collinsdictionary.com/dictionary/english/applied-research>.

**DETERMINATION OF THE TRIBUNAL**

[44] Pursuant to subsection 30.14(2) of the *CITT Act*, the Tribunal determines that the complaint is not valid.

[45] Pursuant to section 30.16 of the *CITT Act*, the Tribunal awards the NRC its reasonable costs incurred in proceeding with the complaint, which costs are to be paid by SoftSim. In accordance with the *Guideline*, the Tribunal's preliminary indication of the level of complexity for this complaint case is Level 1, and its preliminary indication of the amount of the cost award is \$1,150. If any part disagrees with the preliminary indication of the level of complexity or the preliminary indication of the amount of the cost award, it may make submissions to the Tribunal, as contemplated in Article 4.2 of the *Guideline*. The Tribunal reserves jurisdiction to establish the final amount of the cost award.

Peter Burn

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Peter Burn

Presiding Member