



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2019-064

eVision Inc., SoftSim Technologies  
Inc., in Joint Venture

*Decision made  
Tuesday, March 24, 2020*

*Decision issued  
Wednesday, March 25, 2020*

*Reasons issued  
Tuesday, April 7, 2020*

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., 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 since the complaint is premature.

Peter Burn

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Peter Burn

Presiding Member

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 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 a Request for Proposals (RFP) (Solicitation No. S2758956) issued on February 10, 2020, by the Department of National Defence (DND). The RFP was for the provision of one temporary help resource under the Temporary Help Services Supply Arrangement Offer. The closing date of the solicitation was February 12, 2020.

[3] The complainant, eVision Inc., SoftSim Technologies Inc., in Joint Venture (SoftSim), alleges that there was a breach of its confidential information by DND, that DND is favouring another bidder, and that DND erroneously found that SoftSim's candidate did not have the required security clearance. SoftSim seeks the reimbursement of its bid preparation and complaint costs along with compensation to be determined by the Tribunal, and that it be awarded the contract.

[4] The complainant submitted its bid for the solicitation at issue on February 12, 2020. On February 24, 2020, DND indicated that SoftSim's candidate did not have the required security clearance. Between February 24 and March 2, 2020, SoftSim and DND corresponded in order to address this issue. On March 3, 2020, DND indicated that it was waiting for its client to provide a signed copy of the contract.

[5] On March 4, 2020, DND advised SoftSim that it was cancelling the solicitation due to administrative errors and complaints from other bidders regarding the security clearance issue, and that it would reissue the solicitation. Later that day, DND reissued the solicitation with a closing date of March 6, 2020. SoftSim replied to DND the same day to outline its grounds of complaint and to ask that it be awarded the contract, failing which it would file a complaint with the Tribunal. On March 5, 2020, DND cancelled the reissued solicitation, stating that it would not be resolicited until further notice. On March 6, 2020, SoftSim asked DND for instructions as it still expected its candidate to begin work the next week. DND replied the same day that the requirement was put on hold, and that further information would be provided once available.

[6] On March 10, 2020, SoftSim emailed DND for an update on the contract for its candidate. On March 12, 2020, DND reiterated that the requirement had been put on hold and that further information would be provided once available. That same day, SoftSim replied by asking that it be awarded the contract, submitting that it had fairly won the mandate and that the requirement still existed. SoftSim also submitted that the other bidders' complaints were without basis and that it would participate in any reissued solicitation if DND proceeded that way. DND responded that day that the matter had "now been referred to legal", that it was being processed accordingly, and that it could not provide any further information on the matter. SoftSim then replied by asking why the matter was referred to the legal department, stating that it was ready to resolve the matter peacefully

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

<sup>2</sup> SOR/93-602 [*Regulations*].

and willing to withdraw its complaint with the Tribunal if such a course of action would help DND move forward. In another email to DND, SoftSim also noted that it had not been updated on the matter.

[7] Subsection 6(2) of the *Regulations* provides that “[a] potential supplier who has made an objection . . . to the relevant government institution, and is denied relief by that government institution, may file a complaint with the Tribunal within 10 working days after the day on which the potential supplier has actual or constructive knowledge of the denial of relief, if the objection was made within 10 working days after the day on which its basis became known or reasonably should have become known to the potential supplier.”

[8] As indicated above, SoftSim first informed DND of its grounds of complaint on March 4, 2020, and reiterated its request to be awarded the contract on March 12, 2020. DND indicated on March 12, 2020, that the matter had been referred to its legal department. There seems to have been no further correspondence from DND since. It therefore appears that the matter is still pending before the government institution and that there has yet to be denial of relief. Consequently, the Tribunal will not, at this time, conduct an inquiry into SoftSim’s complaint.

[9] The Tribunal’s decision does not preclude SoftSim from filing a new complaint within 10 working days of receiving a denial of relief from DND. Furthermore, if DND fails to respond to SoftSim’s objection within 60 days of the issuance of these reasons, i.e. by June 6, 2020, the Tribunal may construe DND’s silence as an implicit denial of relief. In that case, SoftSim could file a new complaint with the Tribunal within 10 working days of that date. Should it file a new complaint, SoftSim may request that documents already filed with the Tribunal be joined to the new complaint.

[10] If SoftSim files a new complaint, the Tribunal will then decide whether to inquire into the complaint, having particular regard to the regulatory conditions of the *Regulations*.

## **DECISION**

[11] Pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal has decided not to conduct an inquiry into the complaint since the complaint is premature.

Peter Burn  

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Peter Burn  
Presiding Member