



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2018-026

SoftSim Technologies Inc.

*Decision made
Monday, September 10, 2018*

*Decision and reasons issued
Friday, September 14, 2018*

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

SOFTSIM TECHNOLOGIES INC.

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.

Randolph W. Heggart

Randolph W. Heggart
Presiding Member

STATEMENT OF REASONS

1. Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,² 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. SoftSim Technologies Inc. (SoftSim) filed the present complaint with the Tribunal on September 6, 2018. It concerns the same solicitation, and raises the same grounds of complaint, as were in issue in File No. PR-2018-025.³ In that file, the Tribunal ruled that it could not consider the matter, because SoftSim had yet to receive a definitive response to the objection that it made to the Department of National Defence (DND) on August 20, 2018.

3. SoftSim now calls upon the Tribunal because it believes that it received a definitive response to its objection and, consequently, that it has been denied the relief it was seeking. SoftSim founds this belief on the contents of an e-mail from a DND official dated September 5, 2018.

4. The Tribunal disagrees. The Tribunal reads that e-mail as indicating only that the DND official continues to await guidance from other government officials in regard to SoftSim's objection ("... [S]ince it is an active complaint, I am awaiting guidance from [the DND's] legal department."). The official states in his e-mail to SoftSim that the "... process could take some time, so don't reserve any resources or hold up any business waiting on a resolution". SoftSim claims that that statement would indicate that the DND "has no intention of issuing a relief". The Tribunal finds SoftSim's interpretation of that statement to be speculative, at best. In sum, the Tribunal is still not in a position to consider the complaint because the DND has yet to respond to SoftSim's objection in any definitive manner, let alone deny SoftSim the relief it is seeking. Therefore, the Tribunal has decided not to conduct an inquiry into the complaint.

5. The Tribunal notes that SoftSim's e-mail to the Tribunal dated September 6, 2018, contains the following statement: "... [W]e asked that the Tribunal put on hold the award of the contract." The Tribunal specifies that it has the power to order the postponement of the award of a contract *only* if the contract is *not yet* awarded (subsection 30.13(3) of the *CITT Act*). In the present circumstances, since the DND awarded a contract on August 15, 2018, a postponement of award order cannot be granted. The remedies provided for at subsection 30.15(2) of the *CITT Act* can be recommended only at the conclusion of an inquiry in which the Tribunal finds a violation (or violations) of the trade agreements; remedies to a valid complaint include one or more of the following: that a new solicitation for the designated contract be issued; that the bids be re-evaluated; that the designated contract be terminated; that the designated contract be awarded to the complainant; or, that the complainant be compensated by an amount specified by the Tribunal.

6. The present decision does not preclude SoftSim from filing a new complaint within 10 working days of receiving a denial of relief from the DND. Furthermore, as stated by the Tribunal at paragraph 8 of its reasons in File No. PR-2018-025, if the DND fails to respond to SoftSim's objection within 30 working

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

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

3. For details in regard to the solicitation and grounds of complaint in issue, see *Re Complaint filed by SoftSim Technologies Inc.* (5 September 2018), PR-2018-025 (CITT).

days of August 23, 2018, that is by October 5, 2018, SoftSim can consider the DND's silence as a constructive denial of relief, and file a new complaint within 10 working days of that date, i.e. by October 22, 2018.

DECISION

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

Randolph W. Heggart

Randolph W. Heggart
Presiding Member