



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

---

## DECISION AND REASONS

File No. PR-2020-032

SoftSim Technologies Inc.

*Decision made  
Tuesday, September 15, 2020*

*Decision and reasons issued  
Wednesday, November 4, 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**

**SOFTSIM TECHNOLOGIES INC.**

**AGAINST**

**THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT 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.

Cheryl Beckett

---

Cheryl Beckett

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 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.

## SUMMARY OF RFP AND COMPLAINT

[2] On July 14, 2020, the Social Sciences and Humanities Research Council (SSHRC), in conjunction with the Natural Sciences and Engineering Research Council (NSERC) issued a Request for Proposals (RFP) for the hiring of one Programmer/Analyst Level 2 (Solicitation No. N21-18634) under the Task-based Informatics Professional Services (TBIPS) Supply Arrangement.<sup>3</sup> The bid closing date for the solicitation was July 29, 2020, at 2:00 p.m. Eastern Daylight Time.

[3] At the time the RFP was issued, Cofomo Inc. was the incumbent contractor. The contract was from March 3, 2020, to August 28, 2020, with a total contract value of \$108,192.98.

[4] On or before July 29, 2020, SoftSim Technologies Inc. (SoftSim) submitted a bid in the solicitation at issue.

[5] On August 21, 2020, SSHRC/NSERC communicated to SoftSim that the solicitation had been cancelled and would be reissued as a new procurement. SSHRC/NSERC explained that it decided to cancel and reissue the solicitation when it realized that the criteria, as written, did not allow for the proper evaluation of candidates' experience and skills using the software that was to be developed by the Programmer/Analyst. SSHRC/NSERC advised that due to this realization, the technical bids were not scored and the financial bids were not opened, and invited SoftSim to rebid on the revised bid solicitation.

[6] SoftSim objected to this cancellation, suggesting that it was motivated by a desire to retain the incumbent contractor, Cofomo Inc. In a series of five emails in the span of two hours, SoftSim communicated its objections to this cancellation and its concerns that its bid would be shared with competitors. SoftSim requested that the original RFP be reinstated and that the contract be awarded to the lowest qualified bidder.

[7] On August 26, 2020, SSHRC/NSERC responded to SoftSim's concerns, assuring SoftSim that the intent of reissuing the RFP was to provide all bidders with clearer evaluation criteria.

[8] SoftSim sent its initial complaint on August 21, 2020, with supplementary submissions made on August 26, 2020, and September 10, 2020, following requests for additional information by the Tribunal on August 24, 28 and September 10, 2020.

---

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

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

<sup>3</sup> Task-based Informatics Professional Services, Centralized Professional Services ePortal, Department of Public Works and Government Services.

[9] The Tribunal acknowledged SoftSim's complaint as filed on September 10, 2020.

## ANALYSIS

[10] On September 15, 2020, pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal decided not to conduct an inquiry into the complaint for the reasons that follow.

[11] To begin, it should be noted that the Standard Instructions – Goods or Services – Competitive Requirements<sup>4</sup> of the Standard Acquisition Clauses and Conditions (SACC) Manual are incorporated by reference into the solicitation documents at issue. Chapter 11 of this document outlines the rights of Canada in procurements and reads as follows:

Canada reserves the right to:

- a. reject any or all bids received in response to the bid solicitation;
- b. enter into negotiations with bidders on any or all aspects of their bids;
- c. accept any bid in whole or in part without negotiations;
- d. *cancel the bid solicitation at any time*;
- e. *reissue the bid solicitation*;
- f. if no responsive bids are received and the requirement is not substantially modified, reissue the bid solicitation by inviting only the bidders who bid to resubmit bids within a period designated by Canada; and,
- g. negotiate with the sole responsive Bidder to ensure best value to Canada.

[Emphasis added]

[12] There are many legitimate reasons why a procuring entity may cancel a procurement: budget cuts, changing work requirements, few interested bidders, error. Cancelling a procurement for the sole purpose of gaining a technical or financial advantage in later procurements would not constitute a legitimate reason and would form the basis of a valid procurement complaint.

[13] For the Tribunal to inquire into a procurement complaint there must be a reasonable indication that a procuring entity has violated one of Canada's trade agreements.<sup>5</sup> In the present case, a significant number of serious allegations have been made by SoftSim about the integrity, loyalty and commitment of public servants to their fellow Canadians.

[14] The Tribunal takes such allegations seriously and expects complainants to provide a minimum of evidence to support their argument. SoftSim has not provided any arguments or evidence to support its allegation that SSHRC/NSERC sought to increase the chances that a preferred vendor would win. In this connection, the Tribunal has consistently held that mere allegations are insufficient to substantiate a claim.<sup>6</sup>

---

<sup>4</sup> 2003 (28-05-2020) Standard Instructions - Goods or Services - Competitive Requirements, Standard Acquisition Clauses and Conditions (SACC) Manual, Public Works and Government Services Canada.

<sup>5</sup> *Regulations*, s. 7(c).

<sup>6</sup> *Veseys Seeds Limited, doing business as Club Car Atlantic v. Department of Public Works and Government Services* (10 February 2010), PR-2009-079 (CITT) at para. 9; *Flag Connection Inc. v. Department of Public Works and Government Services* (25 January 2013), PR-2012-040 (CITT) at para. 35; *Manitex Lifting ULC v. Department of Public Works and Government Services* (19 March 2013), PR-2012-049 (CITT) at para. 22.

[15] The Tribunal “presumes the good faith and honesty both of the bidders and of the public servants mandated to evaluate their bid.”<sup>7</sup> As much as the Tribunal takes SoftSim at its word and treats its complaints with the degree of seriousness and import they deserve, it is incumbent on any party seeking to rebut this presumption of good faith to provide evidence of the alleged wrongdoing.

## DECISION

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

Cheryl Beckett  
\_\_\_\_\_  
Cheryl Beckett  
Presiding Member

---

<sup>7</sup> *MasterBedroom Inc. v. Department of Public Works and Government Services* (28 June 2017), PR-2017-017 (CITT) at para. 12; *GESFORM International* (26 May 2014), PR-2014-012 (CITT) at para. 16.