



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2021-049

SoftSim Technologies Inc.

*Decision made and issued
Thursday, November 4, 2021*

*Reasons issued
Friday, November 19, 2021*

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 NATURAL SCIENCES AND ENGINEERING RESEARCH COUNCIL

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.

Serge Fréchette

Serge Fréchette
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*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 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.

BACKGROUND

[2] SoftSim Technologies Inc. (SoftSim) filed its complaint on October 28, 2021, regarding a Request for Proposal (Solicitation N22-19006) (RFP) issued on June 21, 2021, by the Natural Sciences and Engineering Research Council (NSERC) and the Social Sciences and Humanities Research Council (SSHRC), further to a supply arrangement for task-based informatics professional services (PWGSC File No. EN578-170432) (TBIPS).

[3] The RFP is for the provision of programmer/software developers, up to three level 3 resources and up to two level 2 resources.

[4] On or before the bid closing date of July 6, 2021, at 2:00 PM (EDT), SoftSim submitted a responsive bid.

[5] On July 23, 2021, SoftSim was awarded a contract in the amount of \$235,921.40 (taxes included) for the services of its proposed programmer/software developer.

[6] On August 31, 2021, NSERC/SSHRC issued a stop work order. Following a verification of SoftSim's candidate's credentials, it was believed that SoftSim's candidate did not possess the requisite experience with the software application Scribe, as stipulated in SoftSim's bid and required in the RFP documents.³

[7] On October 5, 2021, following further correspondence between NSERC/SSHRC, the agencies requested SoftSim's permission to terminate the contract on mutual consent and indicated that it would otherwise begin the process to terminate the contract for default.⁴

[8] On October 8, 2021, counsel for SoftSim responded to NSERC/SSHRC's letter, suggesting that NSERC/SSHRC's conclusion that SoftSim's candidate was unqualified for the position was mistaken and that its request to terminate the contract was unfounded. Accordingly, counsel for SoftSim stated as follows:

Our client considers that the contract is valid and remains in full force and effect, and it remains ready and able to perform its obligations thereunder. We expect that NSERC will also respect its obligations pursuant thereto.⁵

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

² SOR/93-602 [*Regulations*].

³ Exhibit PR-2021-049-01.B (protected) at 60-63.

⁴ *Ibid.* at 64-66.

⁵ *Ibid.* at 70-71.

[9] On October 18, 2021, NSERC/SSHRC sent a letter to SoftSim confirming that they were cancelling the contract with SoftSim for default, that they reserved the right to sue for losses and damages related to the default and that they would be reporting the contract termination for default to the government authorities responsible for the TBIPS supply arrangement.⁶

[10] On October 20, 2021, SoftSim filed with the Tribunal a number of documents related to its complaint. Following interactions with the Tribunal Registry, SoftSim perfected its complaint on October 28, 2021.

[11] SoftSim alleges that NSERC/SSHRC have disregarded the qualifications of its candidate and have improperly terminated their contract with SoftSim. It is alleged by SoftSim that the team lead of the project to which its candidate was assigned is biased and exerted undue influence on the matter in order to terminate SoftSim's contract and award it to a company NSERC/SSHRC are allegedly affiliated with.⁷

[12] As a remedy, SoftSim requests that NSERC/SSHRC either restore the contract and allow their contractor to continue working on the project or compensate SoftSim for the full value of the contract.⁸

ANALYSIS

[13] To initiate an inquiry, the Tribunal must find that (a) the complainant is a potential supplier, (b) the complaint is in respect of a designated contract and (c) the complaint discloses a reasonable indication that the procurement has not been carried out in accordance with the applicable trade agreements,⁹ which, subject to certain exceptions contained in the TBIPS supply arrangement, are all applicable trade agreements to which Canada is a party.¹⁰ For the purposes of this complaint, discussion will focus on the Canadian Free Trade Agreement.¹¹

[14] For the reasons provided below, the Tribunal finds that SoftSim's complaint does not pertain to a breach of the trade agreements in relation to the procurement process, but rather is a matter of contract administration outside of the Tribunal's jurisdiction. Accordingly, the Tribunal will not initiate an inquiry into the complaint.

[15] The *CITT Act* and the *Regulations* allow a potential supplier to complain to the Tribunal about any aspect of a procurement process for a designated contract. When applying these provisions, however, the Tribunal has made an important distinction between the procurement process and contract administration. The procurement process begins after the government institution has decided on its procurement requirement and continues through to the awarding of the contract. Contract administration is a separate phase that takes place after the procurement process is

⁶ *Ibid.* at 67-68.

⁷ Exhibit PR-2021-049-01A at 19.

⁸ *Ibid.*

⁹ Subsection 7(1) of the *Regulations*.

¹⁰ Department of Public Works and Government Services, Solicitation No. EN578-170432/B, Request for Supply Arrangement, 29 December 2017, at section 2.6 of Component 1.

¹¹ 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).

completed. It deals with issues that arise as a contract is performed and managed. The Tribunal has been clear that matters of contract administration are beyond the scope of its jurisdiction.¹²

[16] The evidence presented by SoftSim clearly shows that it had been awarded a contract pursuant to the RFP, that it had begun work on the contract and that the contract authority, NSERC/SSHRC, had decided to stop work and then terminate the contract with SoftSim for default. All of these issues arose *after* contract award and are considered by the Tribunal to be issues of contract administration.

[17] SoftSim requested alternative dispute resolution services from the Office of the Procurement Ombudsman in regard to this matter; that avenue presents a means to address issues related to contract administration.¹³

[18] Accordingly, without making any pronouncement on the legal arguments SoftSim has made with respect to its contract with NSERC/SSHRC, the Tribunal finds itself outside of its mandate and must decline to inquire into this complaint.

DECISION

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

Serge Fréchette

Serge Fréchette

Presiding Member

¹² *Vidéotron Ltée v. Shared Services Canada* (5 October 2018), PR-2018-006 (CITT) at para. 16; *Softsim Technologies Inc.* (19 December 2018), PR-2018-032 at para. 41; *Valcom Consulting Group Inc. v. Department of National Defence* (14 June 2017), PR-2016-056 at para. 32; *HDP Group Inc.* (28 December 2016), PR-2016-047 (CITT) at para. 10; *Access Corporate Technologies Inc. v. Department of Transport* (14 November 2013), PR-2013-012 (CITT) at para. 44, footnote 18; *Paul Pollack Personnel Ltd. o/a The Pollack Group Canada* (7 October 2013), PR-2013-016 (CITT) at para. 32; *ML Wilson Management v. Parks Canada Agency* (6 June 2013), PR-2012-047 (CITT) at para. 36.

¹³ Exhibit PR-2021-049-01.B (protected) at 49.