



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2009-047

Reicore Technologies Inc.

*Decision made  
Tuesday, September 22, 2009*

*Decision and reasons issued  
Friday, September 25, 2009*

IN THE MATTER OF a complaint filed under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47

**BY**

**REICORE 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.

Stephen A. Leach  
Stephen A. Leach  
Presiding Member

Hélène Nadeau  
Hélène Nadeau  
Secretary

## 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 (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. The complaint relates to a procurement (Solicitation No. W8486-096618/A) by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence (DND) for the provision of fibre optic cable assemblies. Reicore Technologies Inc. (Reicore) alleges that, after it was awarded a contract, PWGSC inappropriately issued a stop work order.
3. On June 1, 2009, PWGSC issued a Request for Proposal (RFP) for the provision of fibre optic cable assemblies. On June 17, 2009, the bidding period closed. On September 2, 2009, PWGSC awarded a contract to Reicore.
4. On September 10, 2009, PWGSC sent a letter to Reicore, which reads as follows:

Further to your telephone conversation with [name of PWGSC employee] on Thursday, September 03, 2009, this is the written confirmation for the Stop Work Order.

The Contractor must stop immediately all work related to the Contract, including the Work of subcontractors, until further notice by the Contracting Authority. The Contractor must place no further orders and incur no further expense. The Contractor must also provide the Contracting Authority with current detailed contract status information.
5. On September 15, 2009, Reicore filed its complaint with the Tribunal.
6. According to Reicore, PWGSC claimed to have awarded the contract in error, as a lower-priced proposal was subsequently identified.
7. As noted above, subsection 30.11(1) of the *CITT Act* only allows for the filing of complaints that concern an aspect of the “procurement process” that relates to a designated contract. All four trade agreements similarly provide that the “procurement process” begins after an entity has decided on its procurement requirement and continues through to the awarding of the contract.<sup>3</sup> However, in this case,

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

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

3. See Article 514(2)(a) of the *Agreement on Internal Trade*, 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <[http://www.ait-aci.ca/index\\_en/ait.htm](http://www.ait-aci.ca/index_en/ait.htm)> [*AIT*]; Article 1017(1)(a) of the *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 (entered into force 1 January 1994) [*NAFTA*]; General Note 2 of the *Agreement on Government Procurement*, 15 April 1994, online: World Trade Organization <[http://www.wto.org/english/docs\\_e/legal\\_e/final\\_e.htm](http://www.wto.org/english/docs_e/legal_e/final_e.htm)> [*AGP*]; General Note 5 of Chapter Kbis of the *Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile*, 1997 Can. T.S. No. 50 (entered into force 5 July 1997) [*CCFTA*]. Chapter Kbis, entitled “Government Procurement”, came into effect on September 5, 2008.

only the *AIT* applies, as the goods being procured are not included for coverage under *NAFTA*, the *AGP* or the *CCFTA*.<sup>4</sup>

8. The Tribunal notes that Reicore's complaint does not relate to the evaluation process and does not provide any indication as to whether or why the award of the contract to the lowest bidder in this case would violate the procurement provisions of the trade agreements. Rather, its complaint appears to be concerned only with the impending termination of its contract. Therefore, the Tribunal finds that Reicore's complaint concerns a matter of contract administration, which falls outside the "procurement process", and, as a result, is not within the Tribunal's jurisdiction.

9. In light of the above, the Tribunal will not conduct an inquiry into the complaint and considers the matter closed.

## DECISION

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

Stephen A. Leach  
Stephen A. Leach  
Presiding Member

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4. According to the contract, the goods being procured are classified under Federal Supply Classification group 60. In accordance with Section A of Annex 1001.1b-1 of *NAFTA*, only the goods listed in Section B of that annex purchased by (or on behalf of) DND are included for coverage. As Section B does not include group 60, this procurement is not covered under *NAFTA*. Annex 1 of the *AGP* provides a list of the goods that are covered when purchased by (or on behalf of) DND; group 60 is not included; therefore, the procurement is not covered by the *AGP*. In accordance with Section A of Annex Kbis-01.1-3 of the *CCFTA*, only the goods listed in Section B of that annex purchased by (or on behalf of) DND are included for coverage. As Section B does not include group 60, this procurement is not covered under the *CCFTA*.