



Ottawa, Wednesday, April 2, 2003

File No. PR-2002-051

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

AND FURTHER TO a decision to conduct an inquiry into the complaint under subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

DETERMINATION OF THE TRIBUNAL

Pursuant to subsection 30.14(2) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal determines that the complaint is not valid.

Pursuant to section 30.16 of the *Canadian International Trade Tribunal Act* and subject to the limitations found in the statement of reasons, the Canadian International Trade Tribunal awards the Department of Public Works and Government Services its reasonable costs incurred in relation to responding to the complaint, which costs are to be paid by Antian Professional Services Inc. No other costs are awarded.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Susanne Grimes
Susanne Grimes
Acting Secretary

Date of Determination and Reasons: April 2, 2003

Tribunal Member: Pierre Gosselin, Presiding Member

Senior Investigation Officer: Peter Rakowski

Counsel for the Tribunal: Michèle Hurteau

Complainant: Antian Professional Services Inc.

Interveners: Alliance Group
Colterman Marketing Group Canada

Counsel for Colterman Marketing
Group Canada: Greg Farnand

Government Institution: Department of Public Works and Government Services

Counsel for the Government Institution: Ian McLeod



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STATEMENT OF REASONS

COMPLAINT

On January 2, 2003,¹ Antian Professional Services Inc. (Antian) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of *Canadian International Trade Tribunal Act*.² The complaint concerned a Request for a Standing Offer (RFSO)³ by the Department of Public Works and Government Services (PWGSC) (Solicitation No. E60CY-020002/A) for the provision of expositions project management services.

Antian alleged that PWGSC erred in the evaluation process because the two companies that were awarded standing offers, Colterman Marketing Group Canada (CMG) and Alliance Group (Alliance), did not meet the mandatory requirements outlined in the RFSO.

Specifically, Antian submitted that the RFSO required bidders to provide eight examples of expositions projects, completed within the last five years, that demonstrated their capability to provide project management services in support of expositions projects. It also required that the example projects would not be considered if the bidder was acting as a subcontractor. Antian stated that, based on its knowledge of the capabilities and job experience of the bidders that were awarded standing offers, they did not have the requisite experience as prime contractors to meet the mandatory requirements of the RFSO.

Antian requested that, prior to any call-ups, a validation of the eight projects for each of the three firms be completed by PWGSC to ensure that each of the suppliers fully meets mandatory requirement M3. Antian requested that, if it is determined that either supplier No. 1 or supplier No. 2 does not meet this mandatory requirement, the contract be awarded to the next ranked supplier that meets all the mandatory requirements or that the contract be retendered.

On January 10, 2003, the Tribunal informed the parties that the complaint had been accepted for inquiry pursuant to subsection 30.13(1) of the CITT Act and subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.⁴ On January 16, 2003, Alliance filed its comments on Antian's complaint and, on January 20, 2003, the Tribunal granted Alliance intervener status. On

1. The date on which additional information requested by the Tribunal was received.
2. R.S.C. 1985 (4th Supp.), c. 47 [CITT Act].
3. The purpose of this RFSO was to initiate a competitive process leading to the selection of firms to enter into Regional Master Standing Offers (RMSOs) with the Department of Public Works and Government Services.
4. S.O.R./93-602 [Regulations].

January 27, 2003, the Tribunal granted CMG intervener status. On February 7, 2003, PWGSC filed a Government Institution Report (GIR) with the Tribunal in accordance with rule 103 of the *Canadian International Trade Tribunal Rules*.⁵ On February 14, 2003, Antian filed its comments on the GIR and, on February 18, 2003, CMG filed its comments on the GIR.

Given that there was sufficient information on the record to determine the validity of the complaint, the Tribunal decided that a hearing was not required and disposed of the complaint on the basis of the information on the record.

PROCUREMENT PROCESS

On September 20, 2002, an RFSO was published on MERX, Canada's electronic tendering service. The purpose of the RFSO was to establish RMSOs to provide expositions project management services on an "as and when requested basis" for the six regions in Canada, including the National Capital Region.

The solicitation that closed on October 21, 2002, indicated that up to three standing offers would be awarded for the National Capital Region and up to two to be awarded for each of the other regions.

Section 2.16 of the RFSO contained the following mandatory requirement:

1. To be considered responsive, an offer must:
 - (a) **meet all the mandatory requirements** of this solicitation and address each criteria in sufficient depth to permit a complete analysis and assessment by the Evaluation Team. A requirement not addressed will be deemed as not meeting the mandatory requirements. Only offers found to meet the mandatory criteria will be further evaluated in accordance with the evaluation criteria subject to point rating.

As set out in the RFSO, mandatory requirement M3 reads as follows:

M3. The Offeror **must** provide eight (8) expositions projects completed within the last five (5) years demonstrating their capability to provide project management services in support of expositions projects. This item will be rated under R1.

Projects submitted will not be considered if the Offeror was acting as a subcontractor.

Rated requirement R1, referred to in mandatory requirement M3, repeated that submitted projects would not be considered if the offeror was acting as a subcontractor. During the procurement process, in answer to a question from Antian, PWGSC confirmed that projects would not be considered if the bidder was acting as a subcontractor.

The solicitation closed as scheduled on October 21, 2002, and proposals from eight suppliers were received by the bid closing date. According to PWGSC, four of the proposals were non-compliant with respect to certain mandatory requirements of the solicitation, and the remaining four proposals were referred to the evaluation team for examination. According to PWGSC, during a more detailed evaluation, the evaluation team determined that one other proposal failed to obtain a passing mark for a rated requirement and was eliminated. There were three compliant proposals: those of CMG, Alliance and Antian.

On December 20, 2002, Antian was advised by PWGSC that CMG and Alliance had been ranked first and second, respectively, for all regions. Antian ranked third for the National Capital Region.

5. S.O.R./91-499.

On December 23, 2002, Antian wrote to PWGSC raising concerns regarding the award of a standing offer to the first ranked bidder, CMG. Antian received a telephone debriefing on the results of the competitive process that same day. According to PWGSC, the ranking was determined on the basis of the lowest cost per point.

On December 27, 2002, Antian submitted a complaint to the Tribunal and, on January 2, 2003, Antian submitted the additional information requested by the Tribunal.

POSITIONS OF PARTIES

PWGSC's Position

PWGSC submitted that this complaint is based upon allegations made by Antian regarding the experience and competence of CMG and Alliance, which were ranked as the top two bidders in the competitive process.

In response to the allegations regarding CMG's proposal, PWGSC submitted that Antian provided no further substantiation of its allegation regarding CMG, other than claims regarding its alleged personal knowledge of its competitor's experience and competence, and no relevant factual basis in support of its allegation. Further, the facts demonstrate that CMG's bid was properly assessed by the evaluation team and that all work submitted as an example by CMG was as a prime contractor and not as a subcontractor. PWGSC pointed out that CMG's proposal stated that it did not act as a subcontractor in any of these examples. PWGSC also submitted that the evaluation team examined the detailed material provided by CMG concerning each of the eight submitted projects and concluded from the material presented that CMG had acted as the prime contractor with respect to each project.

In order to provide further confirmation regarding subcontract work, PWGSC asked CMG to provide additional evidence of its role as a prime contractor with respect to each listed project.

PWGSC also pointed out that Antian's specific allegation regarding Acart Communications Inc. (Acart) related to work done in 1999 and that none of the eight projects submitted by CMG were performed in 1999. Furthermore, PWGSC submitted that none of the eight projects involved ACART, as suggested by Antian.

In response to Antian's allegations relating to Alliance's proposal, PWGSC submitted that such allegations appear to be based on nothing more substantial than Antian's generalized claims of personal knowledge of the scope and character of a competitor's business. Moreover, the allegations are not supported by the contents of Alliance's proposal, and the evaluation team correctly determined that Alliance's proposal was responsive to mandatory requirement M3. PWGSC submitted that the purpose of mandatory requirement M3 was to provide examples that illustrated skills and experience applicable to the work proposed in the solicitation. In that context, mandatory requirement M3 required the submission of eight "expositions projects" conducted within a particular time frame. PWGSC submitted that neither mandatory requirement M3 nor any other provision of the solicitation documents provided a definition of "expositions projects" and that, more particularly, the solicitation documents did not provide for any minimum scope, size or value for such "expositions projects". PWGSC further submitted that, if the evaluations had applied limitations to, or a definition of, the term "expositions projects" that were not disclosed in the solicitation documents, such action would have been vulnerable to a challenge before the Tribunal as a violation of the relevant trade agreements. PWGSC submitted that, in its proposal, Alliance

identified eight “expositions projects” and included information that provided details of those projects and the skills and capabilities that they demonstrated.

According to PWGSC, the evaluation team, using its procurement and expositions expertise, reviewed Alliance’s proposal and determined that the said proposal satisfied mandatory requirement M3. PWGSC further submitted that the evaluation team determined that the contents of the proposal indicated that Alliance had acted as the prime contractor in all cases. Furthermore, after the receipt of the complaint and upon PWGSC’s request, Alliance provided additional documentation on its role as a prime contractor with respect to each project. Accordingly, PWGSC submitted that there is no substantive basis for Antian’s allegations that the contents of Alliance’s proposal did not meet mandatory requirement M3.

PWGSC concluded by stating that Antian came to the Tribunal as a disappointed bidder and is seeking to have the results of a competitive process overturned by the Tribunal and to be rewarded accordingly. However, Antian offered nothing in its complaint to support its allegations, other than the casting of unsubstantiated aspersions on its competitors’ experience and competence. Accordingly, PWGSC argued that the complaint should be dismissed and that the Crown should be awarded its costs.

Intervenors’ Positions

CMG’s Position

While agreeing with PWGSC’s comments in the GIR, CMG wished to point out that it had a number of other projects that would have qualified under the mandatory section, including the Government Technology Exhibition for 1999, 2000 and 2001. CMG also requested that Antian be required to pay costs.

Alliance’s Position

Alliance disputed Antian’s claims that it had little experience in managing exhibits and submitted that Antian does not know Alliance’s experience. According to Alliance, it has organized and managed exhibits for federal government and private sector organizations, including the Department of Environment, the Department of Communications, Festivals and Events Ontario, the Department of Natural Resources and the Canadian Society for International Health. Alliance also submitted that its bid did not include any of the projects that Antian had assumed that it had included.

Antian’s Position

In its response to the GIR, Antian conceded that PWGSC’s decisions to award the standing offers were made correctly based on the information provided in the tender documents. Antian acknowledged that it had been unaware that the examples provided by Alliance relating to the Pavillion were contracted directly.

With respect to CMG, Antian maintained that CMG did not meet the mandatory requirements of the RFSO on the basis that CMG did not meet the experience requirements for expositions management. According to Antian, CMG had no expositions management responsibilities for the Ottawa Business Show 1998,⁶ as it related to the requirements of the RFSO, and CMG’s proposal should, therefore, have been rejected.

6. Antian alleged that this was one of the projects listed by CMG as meeting the mandatory experience requirements.

Antian submitted that, based on first-hand information, the only person who exercised expositions management responsibilities at the show was the former owner and manager of the show. According to Antian, the owner of CMG was on a full-time contract to manage sales for exhibit spaces for the show and the work also included some marketing and sponsorship development. Based on this information, Antian submitted that CMG did not meet the mandatory experience requirements and requested that CMG be disqualified from the process and that the solicitation be retendered.

TRIBUNAL'S DECISION

Subsection 30.14(1) of the CITT Act requires that, in conducting an inquiry, the Tribunal limit its considerations to the subject matter of the complaint. Furthermore, at the conclusion of the inquiry, it must determine whether the complaint is valid on the basis of whether the procedures and other requirements prescribed in respect of the designated contract have been observed. Section 11 of the Regulations further provides that the Tribunal is required to determine whether the procurement was conducted in accordance with the applicable trade agreements, which, in this instance, is the *Agreement on Internal Trade*.⁷

Antian's original complaint was that both CMG and Alliance, the two companies that were ranked higher than Antian for the standing offer for the National Capital Region, did not meet the mandatory experience requirements specified in the RFSO. In response to the GIR, Antian conceded that a standing offer had been correctly awarded to Alliance. Antian still maintained that CMG did not meet the mandatory requirements of the RFSO.

Accordingly, the issue before the Tribunal is whether Antian provided sufficient evidence for the Tribunal to conclude that PWGSC erred in its assessment of the information contained in CMG's proposal that CMG met the mandatory experience requirements of the RFSO.

The Tribunal notes that Antian made a number of allegations based on personal knowledge and first-hand information as to whether or not the projects listed by CMG actually met the mandatory requirements of the solicitation. The Tribunal observes that, in its reply, Antian submitted that, based on "first-hand" information about CMG's role, CMG's experience with respect to one of the eight submitted projects, the "Ottawa Business Show 1998", would have precluded CMG from meeting the mandatory requirements of the RFSO. PWGSC submitted that its assessment is that CMG was **not** acting as a subcontractor in any of the project examples that it listed. The Tribunal also notes that, after receipt of the complaint, PWGSC asked CMG to provide additional information with respect to its role as a prime contractor for each listed project. Antian suggested that the Tribunal communicate with the former owner and manager of the "Ottawa Business Show 1998" to confirm the veracity of its allegation. The onus is on the complainant, in this case Antian, to substantiate the allegations made. The Tribunal finds that Antian has not met this onus, as it did not provide the Tribunal with any documentary or other type of evidence to support the allegations that it made.

In the Tribunal's opinion, no evidence presented during these proceedings would convince the Tribunal that PWGSC erred in its assessment of the information contained in CMG's proposal that it met the mandatory experience requirements of this solicitation. Accordingly, the Tribunal finds that Antian's allegations are unfounded and that this complaint is, therefore, not valid.

With respect to the issue of costs, both PWGSC and CMG requested that they be reimbursed their costs for responding to this complaint. With respect to PWGSC's request, the Tribunal carefully considered

7. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <<http://www.intrasec.mb.ca/eng/it.htm>>.

the particular circumstances of this procurement proceeding, as well as the amount of work that PWGSC did to respond to Antian's unsubstantiated allegations. Considering that, in its reply, Antian conceded that PWGSC's decisions to award the standing offers were made correctly based on the information provided in the tender documents, and that Antian did not meet the onus of providing evidence to substantiate its allegations against CMG, the Tribunal will award PWGSC its reasonable costs incurred in relation to responding to this complaint.

Accordingly, the Tribunal awards PWGSC its reasonable costs for responding to this complaint, but limits the recoverable costs to the preparation of the GIR. The request for additional information from CMG and Alliance and its associated costs were incurred of PWGSC's own volition and, thus, will not be recoverable. PWGSC is to be guided by the Tribunal's *Procurement Cost Guidelines* in submitting its claim for costs.

Given that the Tribunal was persuaded by PWGSC's submissions in this matter and decided the matter on those submissions and in view of CMG's limited participation in this matter, the Tribunal will not award CMG its costs.

DETERMINATION OF THE TRIBUNAL

Pursuant to subsection 30.14(2) of the CITT Act, the Tribunal determines that the complaint is not valid.

Pursuant to section 30.16 of the CITT Act and subject to the limitations found in the statement of reasons, the Tribunal awards PWGSC its reasonable costs incurred in relation to responding to the complaint which costs are to be paid by Antian. No other costs are awarded.

Pierre Gosselin
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Presiding Member