



BY FACSIMILE

November 14, 2003

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Re: Hike Metal Products Ltd. (File No. PR-2003-061)

I wish to inform you that the Canadian International Trade Tribunal (the Tribunal) has reviewed the complaint submitted by Hike Metal Products Ltd. (Hike) regarding a procurement (Solicitation No. W8472-03MM01/A) by Public Works and Government Services Canada (PWGSC) on behalf of the Department of National Defence for the provision of work/patrol boats. The Tribunal (Presiding Member: Bradford) has decided not to initiate an inquiry into this complaint.

Subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* sets out three conditions that must be satisfied before the Tribunal may conduct an inquiry in respect of a complaint. One of these conditions is that the complaint, and any other information examined by the Tribunal in respect of the complaint, discloses a reasonable indication that the procurement has not been carried out in accordance with the applicable trade agreements.

Hike alleged that PWGSC improperly declared its proposal non-compliant. The reasons provided to Hike by PWGSC for the rejection of its proposal were that Hike did not provide contract financial security with its proposal, that Hike did not provide a cost breakdown with its proposal and that the vessel proposed by Hike did not meet the requirement for a fully loaded vessel speed of 30 knots.

With respect to the cost breakdown, the Tribunal notes that section B-11 of the Request for Proposal (RFP) provides, in part, that “[t]he Bidder shall include with its proposal a complete cost breakdown of its bid price for the Work. Each item of work or services in the specification is to be priced individually to indicate labour, material, overhead and profit ... Alternatively, Bidders may complete the attached Appendix “C” which is the minimum amount of information required.”

The use of the word ‘shall’ indicates that this requirement is mandatory. Section B-2 Basis of Selection, found on page 8 of 57 of the RFP, reads at item (1): “To be considered responsive, a proposal shall meet all the mandatory requirements of this Request for Proposal. Proposals not meeting this requirement will be given no further consideration and deemed non-responsive”.

In the Tribunal’s opinion, the requirement for either a detailed cost breakdown or the completion of Appendix “C” found in section B-11 of the RFP is clear. According to the material submitted with the complaint, Hike chose to complete Appendix “C” in response to this requirement. The Tribunal notes that Appendix “C” contains item descriptions along with columns where labour, material, overhead and profit breakdowns can be entered. The information submitted with the complaint indicates that while most of the material cost items are provided in Hike’s proposal, only a total labour cost and total overhead & profit cost were provided. There is no breakdown per item for these costs. Therefore, the Tribunal is of the opinion that PWGSC, in disqualifying Hike’s proposal for not providing a cost breakdown as required by section B-11 of the RFP, did not breach the procurement provisions of the applicable trade agreements.

The Tribunal is of the view that PWGSC correctly followed sections B-2 and B-11 of the RFP in finding Hike’s proposal to be non-compliant. Therefore, the Tribunal considers that it would be inconsequential to examine the other reasons provided by PWGSC for the disqualification of Hike’s proposal (i.e. for not submitting contract financial security with its proposal and for proposing a vessel that does not meet the requirement for fully loaded vessel speed of 30 knots).

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

Yours sincerely,

Michel P. Granger
Secretary