



BY FACSIMILE

May 21, 2004

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Re: Solicitation Number W8485-03LK03/A
L-3 Communications Spar Aerospace Limited (File No. PR-2004-010)

The Canadian International Trade Tribunal (the Tribunal) (Panel: Ellen Fry, Presiding Member; Pierre Gosselin, Member; Zdenek Kvarda, Member) has reviewed the complaint submitted on behalf of L-3 Communications Spar Aerospace Limited (Spar) and has decided not to initiate an inquiry into this complaint.

Spar alleged that (i) Public Works and Government Services Canada (PWGSC) failed to apply the published evaluation criteria relating to transition implementation costs and did not include all such costs when evaluating proposals; and, (ii) in the alternative, that PWGSC adopted an interpretation of the provisions of the tender documents relating to transition costs and transition implementation costs that disclosed ambiguity with respect to the requirements of the procurement and the criteria that were used in the evaluation of bids.

Subsection 6(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (the Regulations) reads, in part, that a complaint must be filed with the Tribunal “not later than 10 working days after the day on which the basis of the complaint became known or reasonably should have become known to the potential supplier.” Subsection 6(2) of the Regulations reads, in part, that a potential supplier may object to the relevant government institution “within 10 working days after the day on which its basis became known or reasonably should have become known to the potential supplier” and has 10 more working days “after the day on which the potential supplier has actual or constructive knowledge of the denial of relief” by the government institution within which to file a complaint with the Tribunal.

Subsection 7(1)(c) of the Regulations reads, in part, that the Tribunal shall, within five working days after the day on which the complaint is filed, determine whether “the information provided by the complainant ... discloses a reasonable indication that the procurement has not been carried out in accordance with whichever one of Chapter Ten of NAFTA, Chapter Five of the Agreement on Internal Trade or the Agreement on Government Procurement applies”.

According to the complaint, on July 21, 2003, Spar requested that PWGSC amend the solicitation to incorporate revised transition cost figures. On July 25, 2003, PWGSC responded that its position regarding transition costs would not change and that legitimate transition costs do not include costs that the government would have incurred in the regular course of business. On August 6, 2003, Spar again advised PWGSC of its concern with respect to transition costs as stated in the solicitation. PWGSC responded to Spar on September 11, 2003, advising that the issue of transition costs was addressed in its correspondence of July 25, 2003, and that its position has not changed. On March 30, 2004, PWGSC advised Spar that a contract had been awarded. On April 8, 2004, Spar filed an objection with PWGSC regarding PWGSC's treatment of transition costs in the evaluation of bids. On April 30, 2004, PWGSC held a briefing to report on its overall bid evaluation.

With respect to ground (ii) of the complaint, the Tribunal is of the view that Spar knew, through the publication of the RFP and its exchange of correspondence with PWGSC in July 2003, PWGSC's position regarding transition costs. The Tribunal is of the view that Spar's correspondence of August 6, 2003, is an objection to PWGSC's approach with respect to this aspect of the procurement and that Spar received a denial of relief to that objection on September 11, 2003. If Spar believed that the RFP was ambiguous in this respect, that ambiguity should reasonably have been apparent at that point in time. The complaint in this case was not filed with the Tribunal until May 14, 2004, which is significantly beyond the ten working day time limit prescribed. The Tribunal therefore considers ground (ii) of the complaint to have been filed outside of the prescribed time limits and cannot accept this ground of the complaint for inquiry.

Regarding ground (i) of the complaint, the Tribunal has reviewed the evidence submitted with the complaint and is of the opinion that there is no reasonable indication that PWGSC failed to evaluate the proposals in accordance with the criteria published in the solicitation. Therefore, with respect to this ground of complaint, the Tribunal finds that Spar's complaint does not disclose a reasonable indication that the procurement has not been carried out in accordance with the applicable trade agreements.

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

Yours sincerely,

Susanne Grimes
Acting Secretary