



BY FACSIMILE

May 27, 2004

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Re: Solicitation Number E60HN-04VISU/A
Winnipeg Audio-Visual Services Inc. (File No. PR-2004-011)

The Canadian International Trade Tribunal (the Tribunal) (Ellen Fry, Presiding Member) has reviewed the complaint submitted on behalf of the Winnipeg Audio-Visual Services Inc (Winnipeg A-V) and has decided not to initiate an inquiry into this complaint.

Subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (the Regulations) sets out three conditions that must be satisfied before the Tribunal may conduct an inquiry in respect of a complaint. The third condition, found in paragraph 7(1)(c), requires that “the information provided by the complainant, 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 whichever [trade agreement] applies”.

The allegations in this complaint relating to the actions by the Department of Public Works and Government Services (PWGSC), with respect to the current procurement process - Request for Standing Offer (RFSO) E60HN-04VISU/A - have been examined by the Tribunal in relation to the requirements specified in the tender documents. It should be noted that the Tribunal could not take into consideration allegations concerning PWGSC’s actions with respect to the previous procurement, as it is not the subject of the complaint. The Tribunal considered carefully the relevant requirements specified in the current RFSO, which were clear:

- Paragraph 2.1 Evaluation Criteria – “The Offeror must comply with ALL terms and conditions specified in this Request for Standing Offer. Bids not complying with all terms and conditions and requirements will be given no further consideration. The use of the words “shall”, “must”, “will”, “minimum”, “maximum” and “at least” express a MANDATORY requirement. The Offeror must address each clause appearing in this RFSO by indicating “COMPLY” or “UNDERSTOOD”. Where “to be specified by the bidder” appear[s], the Offeror must provide the information required. Where “Optional” appears, this clause is not a mandatory requirement”;

- Paragraph 2.2 Bid Evaluation – “...The bidder must supply an original letter from each identified manufacturer of the items quoted authorizing the distributor/dealer to supply the products as an Authorized Canadian Distributor/Dealer. No photocopy or copy will be accepted”; and
- Paragraph 2.6 Service (returns, credits, refunds and backorders) (to be specified by the bidder) – “The bidder must provide a detailed description of the processes whereby returns, credits, refunds and backorders which is managed by standard call-up, Electronic Ordering System and/or other ordering processes”.

The complaint indicated that the proposal submitted by Winnipeg A-V did not fulfil the requirements of any of these paragraphs. Consequently, based on the information provided in the complaint, the Tribunal is of the view that PWGSC was correct in determining the proposal to be non-compliant. The Tribunal notes that after Winnipeg A-V was advised by PWGSC that its proposal had been disqualified, it attempted to rectify its proposal. However, after the deadline for submitting bids had passed, PWGSC did not have the discretion to accept these modifications to Winnipeg A-V's proposal. To do so would have been a violation of the applicable trade agreements.

Accordingly, the Tribunal finds that the complaint does not disclose a reasonable indication that the procurement has not been carried out in accordance with the applicable trade agreements. The Tribunal, therefore, will not conduct an inquiry into this complaint and considers the matter closed.

Yours sincerely,

Susanne Grimes
Acting Secretary