



BY FACSIMILE

June 9, 2004

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Re: Solicitation Number C2700-030493/B
Flag Connection Inc. (File No. PR-2004-013)

The Canadian International Trade Tribunal (the Tribunal) (Zdenek Kvarda, Presiding Member) has reviewed the complaint submitted on behalf of Flag Connection Inc. and has decided not to initiate an inquiry into this complaint.

Flag Connection Inc. alleges that Public Works and Government Services Canada (PWGSC) awarded a contract to a bidder whose proposal (including pre-award samples) was non-compliant to the specifications. Flag Connection Inc. also alleges that PWGSC and Heritage Canada have accepted the delivery of products that were not compliant to the contract specifications.

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.

According to the complaint, PWGSC advised Flag Connection Inc. on February 24, 2004, that a contract was awarded to another bidder. On March 30, 2004, Flag Connection Inc. sent an objection to PWGSC regarding the current solicitation. PWGSC sent a response dated May 3, 2004, to Flag Connection Inc., which, according to the evidence on file, was received by Flag Connection Inc. on May 7, 2004.

The Tribunal is of the view that Flag Connection Inc.'s correspondence of March 30, 2004, to PWGSC was an objection as contemplated by subsection 6(2) of the Regulations as it related specifically to the current procurement process. Although Flag Connection Inc. corresponded with PWGSC before that date, in the Tribunal's opinion this was the first indication in the complaint that Flag Connection Inc. was making an objection relating to the current procurement. That objection was therefore made 25 working days after Flag Connection Inc. was advised that the contract had been awarded to the same firm as in previous years. In the Tribunal's opinion Flag Connection Inc. received a denial of relief to that objection on May 7, 2004, when it received the letter from PWGSC dated May 3, 2004. The Tribunal finds that both the objection and the complaint, which was not filed with the Tribunal until May 28, 2004, were filed beyond the ten working day time limits prescribed. The Tribunal therefore cannot accept the complaint for inquiry.

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

This decision would not preclude any future complaint that Flag Connection Inc. may choose to file. If Flag Connection Inc. wishes to file a complaint relating to a future procurement, it should do so within the time limits specified in the Regulations and described above.

For further information you may visit our web site at www.citt-tcce.gc.ca.

Yours sincerely,

Susanne Grimes
Acting Secretary