



BY FACSIMILE

May 7, 2004

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Re: Solicitation Number W8486-025221/A
Marathon Management Company (File No. PR-2004-006)

The Canadian International Trade Tribunal (the Tribunal) (Patricia Close, Presiding Member) has reviewed the complaint submitted on behalf of the Marathon Management Company (Marathon) 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) reads, in part, “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”.

Marathon submitted that it had been misled by the representative of the Department of Public Works and Government Services (PWGSC) and had been told that it was to receive contracts for all the items in the solicitation. Marathon submitted that it had incurred costs to have all its products tested, and that these costs exceeded the value of the contracts that Marathon was awarded.

With respect to the requirement for testing, the Tribunal finds that the Request for Proposal (RFP) conforms to the requirements of the trade agreements in that it clearly specifies that the qualification process could include bidders having to provide samples and/or independent testing results. The correspondence from PWGSC requesting that Marathon have its proposed products tested specifically indicates that the tests are to be done at no cost to Canada and that “in no way should you interpret this request [for testing] as meaning a contract has been awarded to your firm. Such queries are for bid evaluation purposes only”.

Marathon purported that the contracts for the items not awarded to Marathon would be awarded to company(ies) that had submitted higher-priced bid(s). The Tribunal was unable to find any supporting evidence for this allegation in the complaint documentation. In fact, Marathon indicated in the complaint that it is unknown whether the other contracts have been awarded. The Tribunal notes that the RFP indicated that, for administrative reasons, there would be multiple small contracts awarded. The Tribunal also notes that the RFP incorporated PWGSC's standard Instructions and Conditions, 9403 (05/2003) by reference. Paragraph 2 of that reference reads, in part, "Bids may be accepted in whole or in part. The lowest or any bid will not necessarily be accepted." As such, 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.

In light of the above, the Tribunal will not conduct an inquiry into this complaint and considers the matter closed. Your correspondence of May 5, 2004, will not form part of the record this case and is being returned to you under separate cover.

Yours sincerely,

Susanne Grimes
Acting Secretary