



BY FACSIMILE

March 3, 2004

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Re: Forestell & Associates Human Resources Consulting (File No.: PR-2003-080)

I wish to inform you that the Canadian International Trade Tribunal (the Tribunal) has reviewed the complaint filed by Forestell & Associates Human Resources Consulting (Forestell), regarding a procurement for assistance in the development of a Service Policies/Funding Framework for the Military Family Services Program. The Tribunal (Presiding Member: Gosselin) has decided not to initiate an inquiry into this complaint.

Pursuant to subsection 30.11(1) of the CITT Act, a potential supplier may file a complaint with the Tribunal concerning any aspect of the procurement process that relates to a “designated contract”. Section 30.1 of the CITT Act defines a “designated contract” as “a contract for the supply of goods or services that has been or is proposed to be awarded by a government institution and that is designated or of a class of contracts designated by the regulations”. A “government institution” is defined under the same section as “any department or ministry of state of the Government of Canada, or any other body or office, that is designated by the regulations”. Subsection 3(2) of the Regulations reads, in part, as follows:

For the purposes of the definition “government institution” in section 30.1 of the Act, the following are designated as government institutions:

- (a) the federal government entities set out in the Schedule of Canada in Annex 1001.1a-1 of NAFTA, under the heading “CANADA” in Annex 502.1A of the Agreement on Internal Trade or under the heading “CANADA” in Annex 1 of the Agreement on Government Procurement;
- (b) the government enterprises set out in the Schedule of Canada in Annex 1001.1a-2 of NAFTA or under the heading “CANADA” in Annex 3 of the Agreement on Government Procurement.

According to the Request for Proposals submitted with the complaint, the contracting authority and the originator with respect to this procurement is the Director, Military Family Services, Canadian Forces Personnel Support Agency (DMFS/CFPSA). The Tribunal notes that

DMFS/CFPSA does not appear in any of the schedules or annexes prescribed in subsection 3(2) of the *Regulations* and there is no evidence that DMFS/CFPSA is part of the Department of National Defence. Accordingly, the Tribunal does not have jurisdiction to investigate this complaint.

For future reference you should also take note that, according to subsection 6(2) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (the *Regulations*), a potential supplier who has made an objection regarding a procurement relating to a designated contract to the relevant government institution, and is denied relief by that government institution, may file a complaint with the Tribunal within 10 working days after the day on which the potential supplier has actual or constructive knowledge of the denial of relief, if the objection was made within 10 working days after the day on which its basis became known or reasonably should have become known to a potential supplier.

It appears that Forestell made an objection to the contracting authority on April 24, 2003, and received a denial of relief to this objection on June 2, 2003. Since this complaint was filed with the Tribunal on February 24, 2004, even had the contracting authority been covered by one of the applicable trade agreements, the complaint would have been filed outside the time limits required under section 6(2) of the *Regulations*.

Accordingly, the Tribunal cannot accept the complaint for inquiry and considers the matter closed.

Yours sincerely,

Michel P. Granger
Secretary