



**BY FACSIMILE**

July 20, 2004

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**Re: Solicitation Number W7711-037880/A  
Med-Eng Systems Inc. (File No. PR-2004-018)**

The Canadian International Trade Tribunal (the Tribunal) (Richard Lafontaine, Presiding Member) has reviewed the complaint submitted on behalf of Med-Eng Systems Inc. (Med-Eng) and has decided not to initiate an inquiry into this complaint.

Med-Eng alleged the following four grounds of complaint:

1. the Department of Public Works and Government Services (PWGSC) included a Canadian Content requirement into the solicitation even though there was insufficient competition among Canadian suppliers, contrary to Article 504(6)(a) of the Agreement on Internal Trade (AIT).
2. PWGSC included the Canadian Content requirement into the solicitation even though it failed to identify sufficient competition among Canadian suppliers prior to issuing the solicitation, contrary to Article 504(6)(a) of the AIT.
3. PWGSC included restrictive requirements in the solicitation which biased the solicitation process in favour of a particular supplier, contrary to Article 504(3)(b) of the AIT.
4. PWGSC issued the standing offer to a non-compliant bidder, thus failing to properly evaluate the bids in accordance with, and by the requirements provided in, the solicitation, contrary to Article 506(6) of the AIT.

According to the complaint, on May 18, 2004, Med-Eng requested that PWGSC provide information concerning the inclusion of the Canadian Content requirement in the solicitation. On May 20, 2004, PWGSC responded that it "felt that there are sufficient Canadian companies to bid on the requirement". On May 26, 2004, Med-Eng requested that PWGSC provide the names of at least three Canadian companies identified as meeting the Canadian Content requirement. On May 27, 2004, PWGSC responded that it was "not in a position to release these names. By releasing this information we could be putting companies at a disadvantage. A review of the MERX Document Request List will provide you with a list of potential bidders". On June 8, 2004, Med-Eng filed a Request for Information with the Access to Information (ATI) office of PWGSC requesting documentation that would identify three or more suppliers able to supply Canadian goods and/or services as required by the solicitation. On June 22, 2004, Med-Eng was informed by

PWGSC ATI that “[t]he documents you have requested do not exist within PWGSC”. On June 30, 2004, Med-Eng filed an objection with PWGSC concerning the inclusion of the Canadian Content requirement in the solicitation document without appropriate documentary support. On July 2, 2004, PWGSC responded that “[t]here are, in fact, documents we will forward to Access to Information shortly”. On July 7, 2004, PWGSC ATI advised Med-Eng that “[o]nce the contract has been awarded an Access to Information request may be submitted and will be processed at that time”. According to the complaint, Med-Eng has submitted a further request to ATI, however, to date it appears that Med-Eng has not yet received a response.

Subsection 6(2) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (the Regulations) provides that a potential supplier who has made an objection to the relevant government institution within 10 working days after the day on which the basis of the objection became known or reasonably should have become known to the potential supplier, 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 a denial of relief by the government institution.

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”.

The Tribunal is of the view that Med-Eng has not yet received a denial of relief from PWGSC as contemplated by subsection 6(2) of the Regulations. Accordingly, for the first three grounds of complaint identified above, the Tribunal finds that Med-Eng has not allowed PWGSC sufficient time to respond to the objection and, therefore, considers these grounds of complaint to be premature. The Tribunal’s decision on these grounds would not preclude any future complaint once PWGSC has responded to Med-Eng’s objection. If Med-Eng wishes to file a new complaint, it must do so within the time limits specified in the Regulations and that complaint must contain a clear and detailed statement explaining how PWGSC violated the applicable trade agreements. Med-Eng can request that the evidence previously filed be joined with any new complaint.

As for the fourth ground of complaint, the Tribunal finds that Med-Eng’s complaint does not disclose a reasonable indication that the procurement has not been carried out in accordance with the applicable trade agreements, as contemplated by subsection 7(1)(c) of the Regulations. The Tribunal is not satisfied that the information submitted with the complaint discloses a reasonable indication that PWGSC improperly evaluated the winning bid in contravention of Article 506(6) of the AIT.

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