



BY FACSIMILE

March 18, 2004

_____:

**Re: Solicitation Number 01581-040693/B
Mitel Networks (File No. PR-2003-081)**

The Canadian International Trade Tribunal (the Tribunal) (Presiding Member: Patricia M. Close) has reviewed the complaint submitted on behalf of Mitel Networks (Mitel) and has decided not to initiate an inquiry into this complaint.

Subsection 7(1)(c) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (the Regulations) reads, in part, that a complaint must disclose “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”.

Subsection 6(1) of 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”.

On December 23, 2003, Mitel discovered a new Request for Proposal (RFP) by Public Works and Government Services Canada (PWGSC). On or before January 12, 2004, Mitel submitted an official bid in response to this RFP. On or around February 25, 2004, Mitel learned that the contract had been awarded to another bidder and that Mitel was non-compliant with two of the requirements of the RFP, in particular, the cost of any additional cabling, and the provision of references from two projects within 100 kilometres of the Swift Current installation site.

The RFP requested:

“Any additional cabling requirements. \$_____ Lot.”

A note below read “if the existing cabling is replaced to support proposed system, the cost to replace the cabling must be clearly identified. All associated cost to replace or remove existing cable must be clearly identified”. In its bid, Mitel provided a per cable run price. In its complaint, Mitel stated that it did this because it interpreted this pricing request to require a price quote should PWGSC decide to replace or add cable during the installation, and that this would have been clarified to PWGSC if PWGSC did not understand Mitel’s response. In the Tribunal’s opinion, the RFP requirement was for the total costs of all cable, not costs per replaced cable as bid, and Mitel did not comply with this requirement of the RFP. In addition, in the Tribunal’s opinion, there was no requirement by PWGSC to obtain clarification of Mitel’s response to this part of the RFP. Therefore, the Tribunal finds that this ground of the complaint does not raise a reasonable indication that the procurement has not been carried out in accordance with NAFTA, the Agreement on Internal Trade, or the Agreement on Government Procurement, as required by subsection 7(1)(c) of the Regulations.

The mandatory requirement for references from two projects within 100 kilometres of the installation site in Swift Current does appear to disclose a reasonable indication that the procurement has not been carried out in accordance with Chapter Five of the Agreement on Internal Trade. However, in the Tribunal’s opinion, in order to be considered timely, a complaint would have had to have been filed with the Tribunal not later than 10 working days after the day on which the basis for the complaint became known or reasonably should have been known to Mitel. As Mitel reviewed the second RFP on or around December 23, 2003, but did not file a complaint with the Tribunal until March 10, 2004, the Tribunal finds that the complaint was not filed within the required time limits established by subsection 6(1) of the Regulations.

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

Yours sincerely,

Michel P. Granger
Secretary