



BY FACSIMILE

August 20, 2004

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Re: Solicitation Number EC095-040004/A
Market Research Associates Ltd. (File No. PR-2004-027)

The Canadian International Trade Tribunal (the Tribunal) (Presiding Member; Ellen Fry) has reviewed the complaint submitted on behalf of Market Research Associates Ltd. (MRA) 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 the Tribunal shall, within five working days after the day on which the complaint is filed, determine whether “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 one of Chapter Ten of NAFTA, Chapter Five of the Agreement on Internal Trade, the Agreement on Government Procurement or the Canada — Korea Agreement on the Procurement of Telecommunications Equipment applies.”

The complaint indicates that MRA downloaded the tender documents for this procurement at 10:19 a.m. on July 20, 2004, the day before bid closing. A diskette was required in order to bid. The notice of proposed procurement indicated as follows: "Attachment: YES (MERX) Diskette", but did not indicate whether the information on the diskette was or was not available immediately by electronic means. To obtain the diskette, MRA used the “MERX website order form”. According to the complaint, this form set mail delivery as the "default option", and in MRA's view, the courier delivery option to obtain the diskette could easily have been overlooked. According to MRA, it ordered the diskette via mail delivery and did not receive it in time to meet the bid closing date.

MRA complained that the notice of proposed procurement did not clearly identify the requirements of the procurement, in violation of Article 506(6) of the AIT, in that it did not specify how and when the diskette could be obtained; that the timing of the events in the tender process, in relation to obtaining the diskette,

prevented suppliers from submitting bids, in violation of Article 504(3)(c) of the AIT; and that suppliers were not provided a reasonable time to bid, in violation of Article 506(5) of the AIT.

While MRA has cited Article 506(6) in relation to the ‘tender announcement document’, Article 506(6) applies to the tender documents themselves and not to the notice. Article 506(4) applies to the notice of a call for tenders. The notice published on MERX in relation to the subject solicitation contained a clear indication that an attachment in the form of a diskette formed part of the tender documents. While it certainly would have been helpful if the notice had provided more information on how to obtain the diskette, this information was obtainable elsewhere on the MERX website, (e.g. on the “MERX website order form”). Accordingly, there is no reasonable indication that Article 506(6) or 506(4) have been breached.

The diskette was available by courier as well as by mail, and consequently could be provided to bidders within a short time after being ordered. MRA did not download the tender documents until the day before bids had to be submitted, even though it was aware of the solicitation some time earlier. PWGSC has no obligation under the trade agreements to make the information on the diskette available immediately by electronic means and therefore, in leaving things to such a late date, MRA took the risk that the information on the diskettes might not be available in time to bid. Accordingly, there is no reasonable indication that Article 504(3)(c) or 506(5) have been breached.

Accordingly, the Tribunal finds that there is no reasonable indication that this procurement was not carried out in accordance with the applicable trade agreements. In light of the foregoing, the Tribunal will not conduct an inquiry into this complaint and considers the matter closed.

Yours sincerely,

Hélène Nadeau
Secretary