



**BY FACSIMILE**

April 12, 2005

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**Re: Solicitation Number W0118-04S39J/A  
Cindy’s Cleaning Co. (File No. PR-2005-001)**

The Canadian International Trade Tribunal (the Tribunal) (Presiding Member: Richard Lafontaine) has reviewed the complaint submitted on April 4, 2005, on behalf of Cindy’s Cleaning Co. (CCC), and has decided not to initiate an inquiry into this complaint.

According to subsection 6(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (the Regulations), a complaint shall 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.” Subsection 6(2) of the Regulations states that a potential supplier who has made an objection 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 the potential supplier.”

In other words, a complainant has 10 working days from when it becomes aware of an alleged breach of the trade agreements to either object to the contracting authority – in this case the Department of Public Works and Government Services (PWGSC) - or to file a complaint with the Tribunal.

CCC’s complaint relates to clauses regarding the provision of security deposits and/or surety bonds contained in the original Request for Proposal (RFP) dated January 7, 2005, as well as in amendment 001 to the RFP issued on January 18, 2005. The relevant clauses stipulate that bidders must provide the Government with different types of performance and/or security bonds to demonstrate that the company is capable of fulfilling the requirements of any awarded contracts. While the original RFP required the bidders to provide a performance bond or a security deposit of 50% of the value of the contract, amendment 001 presented bidders with the option of providing a security deposit of 10% of the value of the contract in lieu of a 50% performance bond.

On March 11, 2005, CCC sent a letter to PWGSC in which the issue with respect to the requirement for a 50% performance bond was raised. On March 24, 2005, CCC received a letter from PWGSC advising that the requirement for the 50% performance bond was a mandatory condition and was not negotiable.

CCC complained that, when it was advised that it was the successful bidder, the requirement for it to provide a 50% performance bond was unfair. In the Tribunal's opinion, this ground of complaint reasonably should have become known to CCC when it was provided with amendment 001 on January 18, 2005. In order to be considered timely, a complaint would then have had to have been filed with the Tribunal, or an objection filed with PWGSC, within 10 working days of receipt of the amendment, or by no later than February 1, 2005, regardless of whether CCC believed that there was a typo in the amendment. The Tribunal is of the view that bidders cannot leave to chance their understanding of the terms and conditions associated with any solicitation in respect of which they are submitting a bid. Hence, in the event of a perceived "typo" on the part of PWGSC, such as in this case, bidders should request clarifications prior to bidding in order to ensure that their proposals will address all essential requirements of the solicitation.

As CCC did not file an objection or complaint by February 1, 2005, the Tribunal finds that the required time limits established by subsections 6(1) and 6(2) of the Regulations were not respected in this matter. Therefore, the Tribunal will not conduct an inquiry into this complaint and it hereby considers the matter closed.

Yours sincerely,

Hélène Nadeau  
Secretary