



BY FACSIMILE

September 1, 2004

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**Re: Solicitation Number H5020-4-X11
KnowTech Solutions Inc. (File No. PR-2004-032)**

The Canadian International Trade Tribunal (the Tribunal) (James A. Ogilvy, Presiding Member) has reviewed the complaint submitted on behalf of KnowTech Solutions Inc. (KnowTech) and has decided not to initiate an inquiry into this complaint.

KnowTech alleged that (i) Health Canada (HC) improperly favoured the incumbent supplier by including a “prohibitive degree of [Pest Management Regulatory Agency] specific experience” in the solicitation requirement, (ii) HC improperly declared KnowTech’s bid non-compliant because it proposed a team approach rather than an individual resource, and (iii) HC did not inform bidders of the results of the procurement in accordance with the procedures established in the solicitation document.

Subsection 6(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (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.” Subsection 6(2) of the Regulations reads, in part, that a potential supplier may object to the relevant government institution “within 10 working days after the day on which its basis became known or reasonably should have become known to the potential supplier” and has 10 more working days “after the day on which the potential supplier has actual or constructive knowledge of the denial of relief” by the government institution within which to file a complaint with the Tribunal.

According to the complaint the Request for Proposal (RFP) was issued on May 7, 2004, and bids closed on June 16, 2004. With respect to the first ground of complaint, the Tribunal is of the view that KnowTech knew or reasonably should have known its basis of complaint on or about May 7, 2004, when the RFP was issued, but no later than June 16, 2004, the closing date for bids. The complaint was not filed with the Tribunal until August 26, 2004, which is significantly beyond the 10 working day time limit prescribed in the Regulations. The Tribunal therefore considers ground (i) of the complaint to have been filed outside of the prescribed time limits and cannot accept this ground of complaint for inquiry.

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”.

With respect to the second ground of complaint, the Tribunal has reviewed the evidence submitted with the complaint and is of the opinion that there is no reasonable indication that HC failed to evaluate KnowTech’s proposal in accordance with the criteria published in the solicitation. With reference to the specific allegation that HC’s reason for rejecting KnowTech’s bid was that it proposed a team approach rather than an individual resource, the Tribunal is of the view, first, that the RFP was sufficiently clear in its requirement for an individual resource and, second, that the evidence shows this to have been only one of the bases for considering the KnowTech bid non-compliant. Therefore, with respect to this ground of complaint, the Tribunal finds that KnowTech’s complaint does not disclose a reasonable indication that the procurement has not been carried out in accordance with the applicable trade agreements.

Regarding the third ground of complaint, the Tribunal notes that, in accordance with section 6.6 of the RFP, for “any proposals which are found to be non-compliant, the financial part of the bid or proposal will be returned unopened with a letter from Health Canada indicating that the bid/proposal was non compliant.” The Tribunal also notes that, in accordance with section 6.8 of the RFP, “Health Canada will communicate to all bidders the name and address of the successful candidate(s) as well as the total dollar value and award date for the contract(s)”. KnowTech submitted in its complaint that “According to the RFP the results were supposed to be mailed to each bidder. This did not happen and we had to ask and then lookup the results on MERX.” The Tribunal notes that, while HC published the name and address of the successful contractor on MERX, it appears that it might not have notified KnowTech of this result as directly or as promptly as contemplated by the RFP. Nevertheless, the Tribunal is of the opinion that HC’s actions or omissions in this regard caused no prejudice to KnowTech or to the integrity of the procurement process and therefore will not accept the complaint for inquiry on this ground.

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

Yours sincerely,

Hélène Nadeau
Secretary