



BY FACSIMILE

November 24, 2004

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**Re: Solicitation Number W8470-01MP01
Agusta Westland International Limited (File No. PR-2004-041)**

The Canadian International Trade Tribunal (the Tribunal) (Panel: Pierre Gosselin, Presiding Member; Patricia Close, Member; Zdenek Kvarda, Member) has reviewed the complaint submitted on behalf of Agusta Westland International Limited (AWIL) and has decided not to initiate an inquiry into this complaint.

Subsection 30.11(1) of the CITT Act provides that “Subject to the Regulations, a potential supplier may file a complaint with the Tribunal concerning any aspect of the procurement process that relates to a designated contract and request the Tribunal to conduct an inquiry into the complaint”(emphasis added).

Subsection 6(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (the Regulations) reads that: “Subject to sections (2) and (3), a potential supplier who files a complaint with the Tribunal... must do so 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.”

Further, subsection 7(1) of the Regulations sets out three further conditions that must be satisfied before the Tribunal may conduct an inquiry in respect of a complaint, which are that the complainant be a potential supplier, that the complaint be in respect of a designated contract and that the complaint discloses a reasonable indication that the procurement has not been carried out in accordance with the applicable trade agreements.

The Tribunal has always applied sections 6 and 7 of the Regulations consecutively and is of the opinion that it must first determine whether a complaint is filed within the prescribed time limit found in subsection 6(1) prior to considering the additional prerequisite conditions under subsection 7(1). In other words, the Tribunal only considers threshold issues (e.g., whether the complainant is a “potential supplier” under the trade agreements) after it has determined that the complaint is properly filed within the regulated time limit.

According to the complaint, on July 23, 2004, the Department of Public Works and Government

Services (PWGSC) advised AWIL that its bid had been evaluated as non-compliant and, on the same date, announced publicly that the bid submitted by Sikorsky International Operations, Inc. had been selected. Also according to the complaint, on or by August 23, 2004, PWGSC provided AWIL with detailed information pertaining to the evaluation of the bids. The Tribunal finds that AWIL knew or reasonably should have known the basis of the complaint on or by August 23, 2004. Accordingly, pursuant to subsection 6(1) of the Regulations, AWIL should have filed its complaint with the Tribunal within 10 working days of that date, that is, by September 7, 2004, at the latest. As the complaint was not filed until November 17, 2004, the Tribunal cannot accept the complaint for inquiry. Also, the Tribunal notes that the complaint was filed well beyond the time limits applicable to special circumstances of subsection 6(4).

In making its decision, the Tribunal is cognisant of the threshold issue raised in the complaint with respect to AWIL's status as a "Canadian supplier", however, given that it does not have the jurisdiction to accept the complaint, the Tribunal will not opine on any other aspect of the case.

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