



**BY FACSIMILE**

May 11, 2005

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**Re: Request for Standing Offer Number EP 357-040075/A  
Antian (File No. PR-2005-002)**

The Canadian International Trade Tribunal (the Tribunal) (Zdenek Kvarda, Presiding Member) has reviewed the complaint filed on behalf of Antian on April 29, 2005, and has decided not to initiate an inquiry into this complaint.

Antian alleged that the Department of Public Works and Government Services (PWGSC) incorrectly evaluated its bid. It alleged that it should have received more points for its rated technical proposal.

Subsection 7(1)(c) of the *Canadian International Trade Tribunal Procurement Inquiry 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”.

On April 15, 2005, Antian was advised by PWGSC that it would not receive a standing offer since a more favourable offer had been accepted. At a debrief held on April 20, 2005, Antian became aware of PWGSC’s conduct of the evaluation as well as its rationale for the score given to Antian’s technical proposal.

The Tribunal has expressed a view in the past that, unless the evaluators have not applied themselves in evaluating a bidder’s proposal, the Tribunal will not substitute its judgement for that of the evaluators. After having carefully reviewed the information submitted with the complaint, the Tribunal is of the opinion that the information does not indicate that PWGSC did not apply themselves in evaluating Antian’s proposal. In fact, the Tribunal notes that Antian scored quite high on the technical points and that it was not selected as the successful bidder as another bidder had a lower cost per point score. Therefore, the Tribunal finds that there is not a reasonable indication that PWGSC breached the applicable trade agreements in awarding Antian the number of points it received for the rated evaluation and the Tribunal will not inquire into this ground of complaint.

Antian also alleged that PWGSC did not follow the evaluation procedures set out in the

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solicitation document. It submitted that the client official and the PWGSC procurement official were co-chairs of the evaluation committee. According to Antian, in order to ensure prudence and probity of the evaluation process, the client officials could not also chair the evaluation committee. The solicitation document states that:

“An evaluation team composed of government officials from PWGSC and the client department will evaluate the proposals on behalf of Canada. In addition, Canada reserves the right to include as evaluation members, non-government employees that are not in conflict of interest by performing this task. The evaluation committee will be chaired by PWGSC”.

According to the complaint PWGSC’s procurement specialist was responsible for the review of the mandatory requirements as well as all the financial data and the director of the program who has the necessary expertise lead the technical evaluation.

The Tribunal notes that the “client department” in this case in the Exhibitions Program Group of PWGSC. The Tribunal also notes that the evaluation procedures set out in the solicitation document states that the evaluation committee be chaired by PWGSC. While, the evaluation procedures do not specifically state which PWGSC official is to chair the evaluation committee, the Tribunal is of the opinion that the solicitation document must be interpreted to mean that the Contracting Authority had to be in attendance to oversee the evaluation to ensure fairness and equitable treatment of bidders during the evaluation process.

After having carefully reviewed the information submitted with the complaint, the Tribunal is of the view that there is no evidence to suggest that the evaluation process has not be conducted in a fair and non-discriminatory manner or that the integrity of the procurement process has been prejudiced in any way.

Therefore, the Tribunal finds that there is not a reasonable indication that PWGSC breached the applicable trade agreements in conducting its procurement. 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