



BY FACSIMILE

July 29, 2005

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Re: Solicitation Number E60ZG-040001/B
Canadian Bonded Credits Limited (File No. PR-2005-011)

The Canadian International Trade Tribunal (the Tribunal) (Pierre Gosselin, Presiding Member) has reviewed the complaint submitted on behalf of Canadian Bonded Credits Limited (CBCL) on July 20, 2005, and has decided not to initiate an inquiry into this complaint.

CBCL alleged that the Department of Public Works and Government Services (PWGSC) wrongly disqualified CBCL's response to the solicitation and requested that the proposal be re-instated as a compliant bid.

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".

According to the complaint, on February 22, 2005, CBCL requested clarification concerning mandatory paragraph D.2.1.3, and more specifically whether or not it could use federal government experience as one of the three references required by that paragraph.

On March 3, 2005, PWGSC issued amendment 002 to the solicitation, in which it stated "No. Mandatory requirement D.2.1.3 restricts the previous experience...to clients in the private sector and/or provincial and/or municipal governments to allow all offerors to be evaluated in a fair and equitable manner."

CBCL argued that its interpretation of this response was that, in the interests of fairness, bidders were not allowed to submit references from any federal government departments that were covered by the old standing offer. CBCL submitted that the Crown corporation reference it provided in response to paragraph D.2.1.3, the Canada Mortgage and Housing Corporation (CMHC), was not covered by that old standing offer. In the alternative, CBCL submitted that the CMHC is

distinguishable from federal government entities covered by the subject solicitation, engages in commercial activities and that the mere reference to clients in the “private sector” does not necessarily and automatically have the result of excluding Crown corporations.

On the basis of the information submitted with the complaint the Tribunal finds that CBCL has failed to provide any evidence of its proposal being improperly disqualified.

The Tribunal believes that PWGSC was clear when it stated that mandatory clause D.2.1.3. required references to be from the private sector and/or provincial and/or municipal governments and that CBCL could not use its federal government experience. The Tribunal does not believe that PWGSC’s statement could reasonably be interpreted, as CBCL has done, to mean that federal government organizations not included under the old standing offer could be used as references.

The Tribunal notes that the request for a standing offer states, at paragraph 2 on page 4, that the solicitation was to establish standing offers to “satisfy the requirement of any federal government department and agency or Crown Corporation as identified in Schedule I, II and III of the *Financial Administrative Act* (FAA)...” and that the CMHC is listed on Schedule III of the FAA.

The Tribunal also believes that pursuant to the CMHC’s constitutive legislation,¹ it does not qualify as a private sector company, being under the control of the government. Accordingly, the Tribunal is of the opinion that PWGSC was acting properly and in accordance with the terms and conditions of its solicitation documents when it disqualified CBCL’s proposal on the basis that CBCL did not provide the mandatory three references from the private sector and/or provincial and/or municipal governments. Accordingly, there is no reasonable indication that PWGSC breached the *Agreement on Internal Trade*, the only trade agreement applicable to this requirement, in disqualifying CBCL’s proposal.

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

1. Canada Mortgage and Housing Corporation Act, R.S.C 1985, c. C-7.