



BY FACSIMILE

November 30, 2004

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**Re: Solicitation Number W8472-055012/A
Canal Marine, Division of Canadian Shipbuilding & Engineering Ltd.
(File No. PR-2004-042)**

The Canadian International Trade Tribunal (the Tribunal) (Zdenek Kvarda, Presiding Member) has reviewed the complaint submitted on behalf of Canal Marine, Division of Canadian Shipbuilding & Engineering Ltd. (Canal) and has decided not to initiate an inquiry into this complaint.

Canal alleged that the Department of Public Works and Government Services (PWGSC) incorrectly declared its proposal non-compliant. Specifically, the complaint indicated that PWGSC found Canal's bid non-compliant under section 3.3 of the Statement of Work (SOW) as it did not break its spares listing into two components and under section 3.5 of the SOW as it did not provide the recommended tests and trials in writing.

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

Canal alleged that it provided the unit price and total price in accordance with the solicitation document, that the requirements did not indicate that detailed information was to be provided as part of the bid and that the financial evaluation was met in accordance with the solicitation document. Requirement 3.3 of the SOW, Annex A of the Request for Proposals (RFP), reads, in part, as follows: "The contractor shall provide a recommended spares listing with costing for each item. This spares listing shall be divided into two components... ." Requirement 3.5 of the SOW reads as follows: "The contractor shall provide a recommended series of post-installation system tests and trials to be conducted to ensure complete functionality of the system." Appendix 1 to Annex C of the RFP at Mandatory Requirements reads, in part, as follows: "Mandatory requirements are identified by the use of the words "must", "shall" and "will". Bidder responses must indicate compliance, or non-compliance with each mandatory requirement of annex

A and appendix 1 to annex A. Bidder responses must include sufficient information to demonstrate compliance with each mandatory requirement... . The “Bidder’s Response” may follow the numbering of annex 1 and appendix 1 to annex A and for each requirement, the bidder must either include the specific reference to indicate where in their response the information is found or include the complete response directly under that heading.”

The Tribunal is of the view that Appendix 1 to Annex C of the RFP was sufficiently clear in its requirement that the proposal contain two separate spare parts lists and a series of post-installation system tests and trials. Even though these requirements referred to the contractor, there was a necessity to include sufficient information in the proposal to demonstrate compliance with each mandatory requirement of Annex A. The Tribunal has reviewed the evidence submitted with the complaint and is of the opinion that there is no reasonable indication that PWGSC failed to evaluate Canal’s proposal in accordance with the criteria published in the solicitation. As such, the Tribunal finds that Canal’s complaint does not disclose a reasonable indication that the procurement has not been carried out in accordance with the applicable trade agreements.

With respect to the additional materials filed by Canal on November 29, 2004, these items were received outside the time limit allowed by section 6 of the Regulations and could not be used by the Tribunal in arriving at its decision.

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