



BY FACSIMILE

April 28, 2005

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**Re: Solicitation Number A1632-11/20-04-6005
Joint Venture of Rosemary Trehearne and Associates
and Bud Long and Associates Inc. (File No. PR-2005-003)**

I wish to inform you that the Canadian International Trade Tribunal (Presiding member: Meriel V.M. Bradford) has reviewed the complaint submitted on April 25, 2005, by the Joint Venture of Rosemary Trehearne and Associates and Bud Long and Associates Inc. regarding a procurement (Solicitation No. A1632-11/20-04-6005) by the Department of Indian Affairs and Northern Development for consulting services. The Tribunal has decided not to initiate an inquiry into this complaint.

Subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (the Regulations) sets out three conditions that must be satisfied before the Tribunal may conduct an inquiry in respect of a complaint. One of these conditions is that the complaint be in respect of a "designated contract" (i.e. a contract to which the trade agreements apply).

According to the documents provided with your complaint, this procurement falls under the set-aside program for aboriginal business.

Article 1802 of the Agreement on Internal Trade (AIT) reads, in part:

This agreement does not apply to any measure adopted or maintained with respect to Aboriginal peoples.

In addition, paragraph 1(d) of Annex 1001.2b of the North American Free Trade Agreement (NAFTA) excludes "set-asides for small and minority businesses." Finally, paragraph 1(d) of the General Notes for Canada to the World Trade Organization Agreement on Government Procurement (AGP) also excludes "set-asides for small and minority businesses." Therefore, neither the AIT, NAFTA nor the AGP apply to this procurement and, as such, the Tribunal does not have the jurisdiction to accept the complaint for inquiry.

In the event that any of the trade agreements had applied to this procurement, the Regulations would also have required that the Tribunal satisfy itself that certain other conditions were met before it could consider the complaint for inquiry. These conditions include whether or not the complainant is a potential supplier, whether the value of the prospective contract is above the thresholds of the trade agreements, whether the complaint is filed in a timely matter (i.e. within 10 working days after actual or constructive knowledge of denial of relief) as well as whether or not there is a reasonable indication that the procurement has not been carried out in accordance with the provisions of the trade agreements.

The Tribunal recommends that any potential complainant review its descriptive guide regarding the procurement review process, which can be found on its Web site at http://www.citt-tcce.gc.ca/publicat/guide20042_e.asp or http://www.citt-tcce.gc.ca/publicat/guide20042_f.asp. This guide provides additional information that complainants may wish to review prior to submitting a complaint. Of particular note are sections 5, 6 and 7 of the Regulations.

As mentioned above, as the Tribunal does not have the jurisdiction to accept the complaint for inquiry, it considers the matter closed.

Yours sincerely,

Hélène Nadeau
Secretary