



BY FACSIMILE

May 20, 2005

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**Re: Solicitation Number A1632-11/20-04-6004
Joint Venture of Rosemary Trehearne and Associates
and Bud Long and Associates Inc. (File No. PR-2005-006)**

I wish to inform you that the Canadian International Trade Tribunal (Presiding member: Meriel V.M. Bradford) has reviewed the complaint submitted on May 13, 2005, by the Joint Venture of Rosemary Trehearne and Associates and Bud Long and Associates Inc. (Joint Venture) regarding a procurement (Solicitation No. A1632-11/20-04-6004) by the Department of Indian Affairs and Northern Development (DIAND) for consulting services. In the complaint, Joint Venture argues that one of the mandatory evaluation criteria (M3) of the Request for a Standing Offer is arbitrary and invalid. The Tribunal has decided not to initiate an inquiry into this complaint.

Subsection 6(2) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (the Regulations) states that “A potential supplier who has made an objection regarding a procurement relating to a designated contract to the relevant government institution, and is denied relief by that government institution, may file a complaint with the Tribunal within 10 working days after the day on which the potential supplier has actual or constructive knowledge of the denial of relief, if the objection was made within 10 working days after the day on which its basis became known or reasonably should have become known to the potential supplier.”

According to the evidence provided in the complaint, on March 2 and on March 10, 2005, Joint Venture objected to DIAND, regarding the mandatory evaluation criterion M3. On March 8 and March 21, 2005, DIAND informed Joint Venture that the mandatory evaluation criterion would remain the same. Having learned from DIAND of the existence of a Departmental Procurement Review Committee (Committee), Joint Venture filed an interim submission with that Committee on March 31, 2005. On April 6, 2005, DIAND informed Joint Venture that it had to file its formal appeal stating its grievance issue(s) with the Committee no later than 3:00 p.m., that day, in order for it to be considered. Joint Venture did not file a formal appeal.

In the Tribunal’s view, on April 6, 2005, Joint Venture had constructive knowledge of the denial

of relief. Joint Venture could infer from DIAND's March 8 and March 21 statements to the effect that the mandatory evaluation criterion M3 would remain the same and from the fact that the period for appeal to the Committee had expired, that the relief it had been seeking would not be granted.

In the Tribunal's opinion, in order to be considered timely, a complaint would have had to be filed with the Tribunal within 10 working days of April 6, 2005. As Joint Venture's complaint was filed with the Tribunal on May 13, 2005, the Tribunal finds that the complaint was not filed within the required time limits established by subsection 6(2) of the Regulations.

Joint Venture requested that the Tribunal consider the application of subsections 6(3) and 6(4) of the Regulations. Those subsections provide that a potential supplier may file a complaint no later than 30 days after the day on which the basis of the complaint became known or reasonably should have become known to the potential supplier if the Tribunal determines that:

- a) the failure to file the complaint within 10 working days was attributable to a cause beyond the control of the potential supplier; or
- b) the complaint concerns any aspect of the procurement process, of a systemic nature, relating to a designated contract, and compliance with the applicable trade agreements.

Even if the Tribunal were satisfied that one of the two conditions for the application of subsections 6(3) and 6(4) set out above were met, Joint Venture would have had to file its complaint with the Tribunal within 30 days of the day on which the basis of the complaint became known to Joint Venture. In this case, the deadline for filing this complaint with the Tribunal would have been within 30 days of, at the latest, March 2, 2005. As the complaint was filed on May 13, 2005, the Tribunal considers that it would have been filed outside of the allowed time frame.

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