



BY FACSIMILE

September 21, 2005

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**Re: Solicitation Number WA012-04S074/A
MAXXAM Analytics Inc. (File No. PR-2005-018)**

The Canadian International Trade Tribunal (the Tribunal) (Ellen Fry, Presiding Member) has reviewed the complaint submitted on behalf of MAXXAM Analytics Inc. (MAXXAM) on September 13, 2005, and has decided not to initiate an inquiry into this complaint.

MAXXAM alleged that the Department of Public Works and Government Services (PWGSC) incorrectly modified its price proposal by imputing unit costs for certain tests that MAXXAM intended to perform at no charge to the Crown.

Subsection 6(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (the Regulations) provides, in part, that a complaint must be filed with the Tribunal “not later than 10 working days after the day on which the basis of the complaint became known or reasonably should have become known to the potential supplier.” Subsection 6(2) of the Regulations provides, in part, that a potential supplier may object to the relevant government institution “within 10 working days after the day on which its basis became known or reasonably should have become known to the potential supplier” and has 10 more working days “after the day on which the potential supplier has actual or constructive knowledge of the denial of relief” by the government institution within which to file a complaint with the Tribunal.

According to the complaint, on August 9, 2005, PWGSC requested a clarification of MAXXAM’s pricing proposal. PWGSC requested that MAXXAM provide a response by 9:00 am on August 11, 2005, or “we will consider that you have not included a price for items 6, 15, 26, 43 & 53 and will substitute the highest price from other bids for these items as detailed [in] Step 2 of Annex 3 in our RFP”. Step 2 of Annex 3 of the solicitation reads as follows: “[a]ny item for which no price is quoted or which shows “no bid” or “no quote” will be assessed using the highest quoted price received amongst all bids, for that particular item(s)”.

On August 12, 2005, MAXXAM responded to PWGSC's request for clarification. On August 16, 2005, PWGSC advised MAXXAM that it could not accept its clarification response as it was received after 9:00 am on August 11, 2005, that PWGSC had substituted the highest quoted prices, and that MAXXAM's bid was not the successful bid.

The Tribunal is of the view that MAXXAM knew or reasonably should have known its basis of complaint on August 16, 2005, when it was informed that the highest quoted prices were substituted in its bid and that it was not the successful bidder. MAXXAM did not file an objection with PWGSC and did not file its complaint with the Tribunal until September 13, 2005. The Tribunal therefore considers the complaint to have been filed outside of the prescribed time limits and cannot accept the complaint for inquiry.

Consequently, the Tribunal will not conduct an inquiry into this complaint. The Tribunal considers the matter closed.

Yours sincerely,

Hélène Nadeau
Secretary