



**BY FACSIMILE**

October 7, 2005

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**Re: Solicitation Numbers 01948-050015/D and 01948-050015/E  
MAXXAM Analytics Inc. (File No. PR-2005-024)**

The Canadian International Trade Tribunal (the Tribunal) (Pierre Gosselin, Presiding Member) has reviewed the complaint submitted on behalf of MAXXAM Analytics Inc. (MAXXAM) on September 30, 2005, and has decided not to initiate an inquiry into this complaint.

MAXXAM alleged that the Department of Public Works and Government Services (PWGSC) improperly awarded a contract to a bidder that should not have been allowed to participate in solicitation 01948-050015/E and requested that the contract be terminated and awarded instead to MAXXAM.

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, the first solicitation, 01948-050015/D, contemplated awarding contracts to the two proposals with the lowest priced bids. The primary contract, for roughly 60% of the work, was awarded to Can Test Ltd. According to the information submitted with the complaint, no other proposal was found to be compliant and, therefore, a second contract for the remaining 40% of the work was not awarded. MAXXAM submitted that the terms of the first solicitation dictated that the winner of the primary contract could not receive the second contract within that solicitation. Based on the conditions in first solicitation, MAXXAM argued that Can Test should, therefore, have been excluded from participating in the second solicitation.

On the basis of the information submitted with the complaint, the Tribunal finds no

evidence that PWGSC acted improperly in awarding the second contract to Can Test Ltd. While the second solicitation is related to the first, the Tribunal finds nothing in the wording of the second solicitation that would support MAXXAM's premise that clauses, terms and conditions contained in the initial solicitation are automatically brought forward and included in the second solicitation. The Tribunal views the second solicitation as being free of any obligation or direction from the first solicitation, *unless specifically incorporated*.

As such, the Tribunal does not find any reasonable indication that PWGSC breached the *Agreement on Internal Trade*, the only trade agreement applicable to this requirement, in awarding the second contract to Can Test Ltd.

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