



BY FACSIMILE

January 18, 2006

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**Re: Request for Proposal No.: IRB-2005-06-01
Société Gamma Inc. (File No. PR-2005-043)**

The Canadian International Trade Tribunal (the Tribunal) (Panel: Meriel V. M. Bradford, Presiding Member; James A. Ogilvy, Member; Elaine Feldman, Member) has reviewed the complaint submitted on behalf of Société Gamma Inc. (Gamma) on January 5, 2006, and has decided not to initiate an inquiry into the complaint.

The complaint alleged that the Immigration and Refugee Board (IRB) improperly disqualified Gamma's 13 proposals submitted in response to an Request For Proposal (RFP) for translation and editing services because the IRB was incorrectly seeking references for the individual resources being proposed by Gamma, whereas Gamma alleged that the language of the subject rated criterion - RC 7/CC 7 - requested references related to the bidder's corporate capabilities. Gamma submitted that its interpretation of the criterion was consistent with the same language usage in other parts of the RFP.

Paragraph 7(1)(c) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (the Regulations) indicates 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 of Chapter Ten of NAFTA, Chapter Five of the Agreement on Internal Trade, or the Agreement on Government Procurement applies". The Agreement on Internal Trade alone covers translation and editing services, so it is the only agreement that applies in this case.

In the RFP, Criterion RC 7/CC 7 read as follows:

Each resource must provide the names of two clients for reference verification with the name of the organization, the name and current telephone of the contact person, who knows your work, a short description of the work, the type and length of the work and

when it was done.

Chaque ressource doit fournir le nom de deux clients à des fins de vérification des références: le nom de l'organisation, le nom et le numéro de téléphone actuel de la personne-ressource qui connaît votre travail et une courte description du travail effectué, du type et de la durée du travail ainsi que le mois et l'année d'exécution.

The wording of criterion RC 7/CC 7 imposed an obligation on the resource, not on the bidder. In the Tribunal's view, this wording indicates that the references to be provided under this criterion concerned the resource and not the bidder. The Tribunal finds that other provisions of the RFP, as amended, confirm this interpretation. Specifically, the Tribunal notes the following excerpts from the RFP:

- Amendment No. 2, last paragraph of page 7, top of page 8:

“... ADD : Each Proposal submitted must be for one resource only....

DELETE Where there are multiple suppliers holding "As and when required Contracts", the work will be offered to the first ranked company....]

REPLACE WITH: Where there are multiple suppliers holding "As and when required Contracts", the work will be offered to the first ranked resource.”

“[...] AJOUTER : Une ressource seulement peut être présentée avec chaque proposition. [...]

RAYER la première phrase suivante :

Dans le cas où plusieurs fournisseurs sont titulaires de « contrats selon les besoins », le travail est offert à la société qui occupe le premier rang.

REEMPLACER PAR :

Dans le cas où plusieurs fournisseurs sont titulaires de « contrats selon les besoins », le travail est offert à la ressource qui occupe le premier rang.”

- Amendment No. 2, page 9 regarding the EXAMPLE OF PROPOSAL EVALUATIONS:

“REPLACE WITH:...The Bidder no. 5 will be disqualified at the Technical Evaluation...The Resources of bidders' nos. 1, 2 and 3 will have their references checked, if resources fail the reference check, they will be eliminated, the resources for bidder no. 4 failed the reference check, therefore, the Financial Proposal envelopes for bidders no 4 and 5 will be returned to the respective Bidders unopened....” [emphasis added]

“REEMPLACER PAR : [...] Le soumissionnaire n° 5 sera inadmissible à l'évaluation du volet technique [...] Les ressources des soumissionnaires n° 1, 2, 3 et 4 passeront à la vérification des références, les ressources du soumissionnaire n° 4 ont échoué les références, ce qui fait que les enveloppes de proposition financière des soumissionnaires n° 4 et 5 seront retournées non ouvertes aux soumissionnaires respectifs. [...] [emphasis added]

In the Tribunal's view, Amendment No. 2 regarding the example of proposal evaluations clearly indicated that it was the references provided for the resource that would be checked. Accordingly, the Tribunal finds that there is no reasonable indication that the IRB breached its obligations under the Agreement on Internal Trade when it evaluated Gamma's proposals in the manner that it did.

In light of the above, the Tribunal will not conduct an inquiry into this complaint and it hereby considers the matter closed.

Yours sincerely,

Hélène Nadeau
Secretary