



BY FACSIMILE

October 11, 2005

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**Re: Solicitation Number EN843-040024/A
CDI Education Corporation (File No. PR-2005-025)**

The Canadian International Trade Tribunal (the Tribunal) (Zdenek Kvarda, Presiding Member) has reviewed the complaint submitted on behalf of CDI Education Corporation (CDI) on September 30, 2005, and has decided not to initiate an inquiry into this complaint.

CDI alleged that the Department of Public Works and Government Services (PWGSC) discriminated against its proposal by failing to process all of its security applications in a timely manner. It also alleged that PWGSC improperly granted SPM Group Ltd. (SPM) an unfair advantage by processing its security applications in a timely manner while not affording CDI that same benefit, therefore awarding the contract to SPM on an arbitrary, previously undisclosed non-transparent award date, prior to the Department completing the security application process.

Paragraph 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”.

On July 22, 2005, PWGSC advised CDI that its proposal for Project Management Training was the lowest price per rated point, but the contract would not be awarded to it because the security requirements were not met. The contract was awarded to SPM, the proposal with the second lowest price per rated point. On July 25, 2005, CDI requested a debriefing on the procurement process and in its letter, CDI stated that, of the ten employees it submitted as part of its bid, eight have received the necessary security clearance. The debriefing took place on July 28, 2005. On August 3, 2005, CDI submitted a Notice of Objection (the notice) to PWGSC, pursuant to section 6 of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*. On September 16, 2005, PWGSC responded to CDI's notice. In the meantime, on or about August 23, 2005, CDI received the remaining security clearances from the Canadian and International Industrial Security Directorate of PWGSC.

The Tribunal notes that, in its letter to CDI dated September 16, 2005, PWSCG pointed out that Request for Proposal (RFP) amendment number two clearly stated that contract award was estimated for the end of June 2005, and that course delivery would be starting during the week of September 6, 2005. The same letter indicated that bidders were advised that these dates were only planned and that many factors could impact the events. In addition, the Tribunal notes that article 2.0 on page 4 of 53 of the RFP, reads, in part, that Canada will not delay the award of any contract to allow bidders to obtain the required security clearance.

The Tribunal is of the view that no evidence has been presented that indicates PWSCG discriminated against CDI or in favour of SPM in relation to the processing of security clearance applications. The mere fact that the applications from CDI were not all processed at the same time does not indicate, by itself, that CDI was treated in a manner that would be in violation of the applicable trade agreements. The Tribunal is also of the view that no evidence has been presented that indicates PWSCG failed to follow the RFP in the awarding of the contract to SPM. Therefore, the Tribunal finds that there is no reasonable indication that the procurement has not been carried out in accordance with the applicable trade agreements.

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