



**BY FACSIMILE**

March 17, 2006

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**Re: Solicitation Number EN994-035646/C**  
**Bell Canada (File No. PR-2005-055)**

The Canadian International Trade Tribunal (the Tribunal) (Panel: James A. Ogilvy, Presiding Member; Zdenek Kvarda, Member; Serge Fréchette, Member) has reviewed the complaint submitted on behalf of Bell Canada (Bell) on March 7, 2006, and has decided not to initiate an inquiry into the complaint.

The complaint alleged that the Department of Public Works and Government Services (PWGSC) had improperly awarded a contract to MTS Allstream Inc. (MTS). Specifically, Bell alleged that MTS's proposal did not comply with the Canadian Radio-television and Telecommunications Commission (CRTC) regulatory framework, which was a mandatory requirement of the solicitation in question.

As a procedural matter first, subsection 6(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (the Regulations) states that a complaint shall 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."

According to the evidence on the file, Bell discovered its ground of complaint on February 21, 2006, when it received PWGSC's letter advising it that the contract had been awarded to MTS. According to subsection 6(1) of the Regulations, Bell had 10 working days after this date, or by March 7, 2006 to file its complaint with the Tribunal. As Bell's last two submissions were received by the Tribunal on March 8 and 10, 2006 respectively, the Tribunal considers then to have been filed outside of the allowable time limits and they were not considered by the Tribunal.

In respect of the substance of the complaint, subsection 7(1)(c) of the 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 of Chapter Ten of NAFTA, Chapter

Five of the Agreement on Internal Trade [*AIT*], or the Agreement on Government Procurement applies”.

In reviewing the evidence before it, the Tribunal notes that the request for proposal (RFP) contained two sections particularly pertinent to the issue before the Tribunal: paragraph 20.1, in which the bidders were informed that it was their sole responsibility to obtain the approvals required by any CRTC regulations or rulings that applied to the services being procured; and section A of part 1 of appendix A, in which the bidders were informed of, and provided with, the certification requirements that had to be submitted as part of their bids.

The Tribunal interprets these two clauses as meaning that a bidder was required to determine what CRTC regulations/tariffs/rules had to be considered when proposing a particular service strategy, and then to certify, to PWGSC, that the necessary steps had been taken to ensure that it would be able to provide the services in the manner that it proposed in its bid.

Moreover, the Tribunal notes that clause 2.2 of section C of part 1 of the RFP allows PWGSC, at its discretion, to verify any information or data submitted by a bidder. The Tribunal also notes that clause 20.0 of the model contract specifically allows PWGSC to verify post-contract award the certifications made by a bidder and gives Canada the right to terminate the contract for default if the bidder is unable to comply with the certifications.

The Tribunal does not believe that the solicitation strategy described above imposed an obligation on PWGSC to perform verification of a bidder’s certifications before awarding the contract. In this case, paragraph 20.1 of the RFP unequivocally places the responsibility with respect to compliance with the CRTC regulations solely on the shoulders of the bidders, not PWGSC. The Tribunal is more of the view that the verification of the compliance with CRTC regulations and the potential impact on the subject contract are matters of contract administration and beyond the jurisdiction of the Tribunal.

Given the terms and conditions included in the supply arrangement, the RFP and the model contract, PWGSC’s actions with respect to this procurement were not conducted in a manner that violated the *AIT*, the only trade agreement that applies to this procurement. Accordingly, the Tribunal cannot find a reasonable indication that the procurement was not carried out in accordance with Chapter Five of the *AIT* when PWGSC awarded MTS the contract in question.

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