



BY FACSIMILE

December 9, 2005

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**Re: Request for Proposal Number FP802-5-0121
Western Marine Community Association (File No. PR-2005-038)**

The Canadian International Trade Tribunal (the Tribunal) (Presiding Member: Meriel V. M. Bradford) has reviewed the complaint submitted on December 2, 2005, on behalf of Western Marine Community Association (WMCA), and has decided not to initiate an inquiry into this complaint.

According to subsection 6(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (the Regulations), 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.” Subsection 6(2) of the Regulations states that a potential supplier who has made an objection to the relevant government institution, and is denied relief by that government institution, may file a complaint with the Tribunal “within 10 working days after the day on which the potential supplier has actual or constructive knowledge of the denial of relief, if the objection was made within 10 working days after the day on which its basis became known or reasonably should have become known to the potential supplier.”

In other words, a complainant has 10 working days from when it first becomes aware of, or should have become aware of, its ground of complaint either to object to the contracting authority - in this case the Department of Fisheries and Oceans (DFO) – or to file a complaint with the Tribunal. In the event that a complainant has filed its objection with the contracting authority in a timely manner, and the contracting authority denies the objection, the complainant has 10 working days from when it received this denial to file its complaint with the Tribunal.

WMCA’s complaint raises two different grounds of complaint: the first alleges that the evaluation criteria included an inappropriate pricing element as a determining factor in the contract award process, and the second that the contracting authority improperly disclosed WMCA’s price structure information, thereby giving an unfair advantage to the other bidders.

The Request for Proposal (RFP) contained both the evaluation criteria and the above-mentioned financial information regarding the total amount of revenue collected and the fee deducted during the previous five years. WMCA received the RFP on or about August 18, 2005. The Tribunal notes that amendments to the RFP, Addendum No. 3, dated September 19, 2005, contained detailed information related to how the evaluation of the cost of proposals would be done. It would be realistic to expect that WMCA reasonably should have known the basis for its complaint shortly after receiving the RFP and subsequent amendments but certainly before September 26, 2005, the day on which WMCA submitted its proposal to DFO. Using even the date of September 26, 2005, in order to be considered timely, an objection would then have had to have been made to DFO, or a complaint filed with the Tribunal, within 10 working days of this date, or by no later than October 11, 2005. As the objection to DFO was not made until November 24, 2005, and the complaint was not filed with the Tribunal until December 2, 2005, the Tribunal finds that the complaint has not been filed within the required time limits established by subsections 6(1) and 6(2) of the Regulations.

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