



**BY FACSIMILE**

January 11, 2006

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**Re: Solicitation Number E60BQ-004SAD/A  
Promaxis Systems Inc. (File No. PR-2005-045)**

The Canadian International Trade Tribunal (the Tribunal) (Panel: James A. Ogilvy, Presiding Member; Ellen Fry, Member; Elaine Feldman, Member) has reviewed the complaint submitted on behalf of Promaxis Systems Inc. (Promaxis) on January 6, 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) improperly disqualified portions of Promaxis’s proposal.

Subsection 7(1)(c) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (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, or the Agreement on Government Procurement applies”.

In reviewing the evidence before it, the Tribunal notes that page 9 of the Supply Arrangement Request for Proposal (SA RFP) contained, at paragraph Q.2), the requirement that the bidder’s submission “must be received no later than the time and date of bid closing indicated on page 1 of this document.” Page 1 of the SA RFP lists the solicitation closing time as “1400 Hrs EST [Eastern Standard Time] [on] 21 December 2005”.

According to the sections 5.A. and 5.F. of the Tribunal’s complaint form, Promaxis commenced sending its bid by fax to the Bid Receiving Unit of PWGSC approximately 2-3 minutes before the bid receipt deadline. For reasons unknown, the bid transmission was stopped on or about page 14 of the proposal and Promaxis was forced to re-start the transmission approximately 3 minutes after closing

time. This stop-start sequence was repeated twice more, after pages 32 and page 40, respectively.

Section Q.2) of the SA RFP specifically required that the entire proposal be submitted to PWGSC by 14:00 Hrs EST on December 21, 2005, which, in the Tribunal's opinion, overrides any general references that may be generally incorporated from the supply arrangement itself. It was obvious from the evidence on the file that PWGSC did not have the full proposal by that time. The evidence indicates that, by 14:00 Hrs EST, PWGSC had only received, at most, the first 14 pages of Promaxis's proposal. While this may not be consistent with Promaxis's experience with other solicitations in which PWGSC apparently accepted parts of a proposal that were received after the bid closing time, the Tribunal must look at the specifics of the SA RFP in question and, accordingly, it can not find any indication that PWGSC breached its obligations under the trade agreements when it required bidders to submit their proposals by the time specified in the RFP, or when it refused to accept parts of the proposal that were received after that specified time.

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