



BY FACSIMILE

January 4, 2006

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Re: Solicitation Number 3X005-050001/A
Market Research Associates Ltd. (File No. PR-2005-040)

The Canadian International Trade Tribunal (the Tribunal) (Presiding Member: Zdenek Kvarda) has reviewed the submission received on December 16, 2005, and partially revised on December 19, 2005, from Market Research Associates Ltd. (MRA) regarding the Department of Public Works and Government Services (PWGSC) Request for Standing Offer (RFSO) No. 3X005-050001/A. The Tribunal has decided not to initiate an inquiry into this complaint for the reasons that follow.

Your complaint contained multiple grounds of complaint:

1. that PWGSC gave preferential treatment to universities;
2. that PWGSC gave preferential treatment to subsidized bidders;
3. that the evaluation process was unfair;
4. that the call-up procedures in the standing offer issued to MRA differed from the procedures specified in the RFSO and amendment number 001 thereto;
5. that the financial limitation for call-ups stated in the standing offer issued to MRA differed from that stated in the RFSO; and,
6. that by designating “vicinities” as part of the call-up procedure, the RFSO violates the objectives of the Agreement on Internal Trade.

In order for a complaint to be timely, it must be filed within the timeframe set out in section 6 of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (the *Regulations*). Pursuant to subsection 6(1) of the *Regulations*, a complaint must 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.” In the event that a supplier objects to the contracting agency, subsection 6(2) of the *Regulations* states that:

“A potential supplier who has made an objection regarding a procurement relating to a designated contract 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.”

When the Tribunal finds that a ground of complaint is timely, it then assesses whether that ground discloses a reasonable indication that PWGSC breached the applicable trade agreements. Paragraph 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 one of Chapter Ten of NAFTA, Chapter Five of the *Agreement on Internal Trade* or the *Agreement on Government Procurement* ... applies”.

In light of the above, the Tribunal considered each of the grounds separately for timeliness and, where appropriate, reasonable indication of a breach by PWGSC.

Ground 1: That PWGSC gave preferential treatment to universities

With respect to the allegation that PWGSC gave preferential treatment to universities, the Tribunal is of the view that MRA became aware of its basis of complaint on November 3, 2005, when it received the names of the successful bidders. The Tribunal notes that MRA objected verbally to PWGSC on November 7, 2005, which is within the required time limits established by subsection 6(2) of the *Regulations*. On December 8, 2005, MRA received PWGSC’s response and the Tribunal considers that denial of relief was given on that date. MRA filed its complaint with the Tribunal on December 16, 2005, and therefore the Tribunal considers that this ground of complaint is filed on time.

With respect to whether this ground provides a reasonable indication of a breach, the Tribunal notes that PWGSC’s response to MRA indicated that:

“The purpose of the AIT was the eliminate barriers to trade, investment and mobility within Canada and to further liberalize trade throughout the Canadian economy. The Government successfully achieves this by allowing all Canadian suppliers equal access. Treasury Board in 2003, directed PWGSC to allow Universities to bid with the industry thus further achieving this goal.”

Since the Tribunal does not have evidence before it to the contrary, it therefore finds that there is no reasonable indication that the procurement has not been carried out in accordance with the applicable trade agreements and it will not accept this ground of complaint for inquiry.

Ground 2: That PWGSC gave preferential treatment to subsidized bidders

Regarding the allegation that PWGSC gave preferential treatment to subsidized bidders, the Tribunal is of the view that MRA became aware of its basis of complaint on November 3, 2005, when it received the names of the successful bidders. The Tribunal notes that MRA objected verbally to PWGSC on November 7, 2005, which is within the required time limits established by subsection 6(2) of the *Regulations*. On December 8, 2005, MRA received PWGSC's response, which indicated that "[t]he portion of your letter pertaining to subsidized companies will need further investigation into our policies and procedures. This information will come at a later date". Based on this response, the Tribunal finds that MRA has not yet received its denial of relief and therefore finds that this ground of complaint is premature. The Tribunal's decision at this time regarding this ground of complaint does not preclude any future complaint by MRA once PWGSC has responded to its objection. If MRA wishes to file a new complaint, it must do so within 10 working days after it receives actual denial of relief by PWGSC.

Ground 3: That the evaluation process was unfair

With respect to the allegation that the evaluation process was unfair, the Tribunal notes that the RFSO was issued on July 14, 2005, and that bids closed on August 4, 2005. The Tribunal is of the view that the evaluation criteria and the process were clearly stated in the RFSO. The Tribunal is also of the view that MRA became aware or reasonably should have become aware of the basis of its complaint on August 4, 2005, at the latest, when bids closed. In the Tribunal's opinion, in order to be considered timely, a complaint would have had to have been filed with the Tribunal or an objection would have had to have been filed with PWGSC within 10 working days of August 4, 2005. Since MRA objected verbally to PWGSC on November 7, 2005, the Tribunal finds that the objection was not filed within the required time limits established by subsection 6(2) of the *Regulations* and cannot accept this ground of complaint for inquiry.

Ground 4: That the call-up procedures in the standing offer issued to MRA differed from the procedures specified in the RFSO and amendment number 001 thereto

Regarding the allegation that the call-up procedures in the standing offer issued to MRA differed from the procedures specified in the RFSO and amendment number 001 thereto, the Tribunal is of the view that MRA became aware of its basis of complaint on or about November 24, 2005, when it received its standing offer. The Tribunal notes that MRA did file an objection with PWGSC on December 7, 2005, which is within the required time limits established by subsection 6(2) of the *Regulations*. On December 8, 2005, MRA received PWGSC's response which did not specifically address MRA's concern regarding the call-up procedures. The Tribunal considers that denial of relief was given on that date as PWGSC did not indicate that it would respond to that issue. MRA filed its complaint with the Tribunal on December 16, 2005, and therefore the Tribunal considers that this ground of complaint is filed on time.

With respect to “reasonable indication” of a breach, the Tribunal notes that, while the wording of the call-up procedures in the standing offer issued to MRA differ slightly from that stated in the RFSO, there is no evidence that indicates that the amendment was applied to the detriment of any of the bidders and that the procurement is in violation of the applicable trade agreements. 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 and it will not accept this ground of complaint for inquiry.

Ground 5: That the financial limitation for call-ups stated in the standing offer issued to MRA differed from that stated in the RFSO

Regarding the allegation that the financial limitation for call-ups stated in the standing offer issued to MRA differed from that stated in the RFSO, it is the Tribunal’s view that MRA became aware or reasonably should have become aware of the basis of its complaint on or about November 24, 2005, when it received its standing offer. In the Tribunal’s opinion, in order to be considered timely, a complaint would have had to have been filed with the Tribunal or an objection would have had to have been filed with PWGSC within 10 working days of November 24, 2005. Since MRA did not file an objection with PWGSC and filed its complaint with the Tribunal on December 16, 2005, the Tribunal finds that the complaint was not filed within the required time limits established by subsection 6(1) of the *Regulations* and cannot accept this ground of complaint for inquiry.

Ground 6: That by designating “vicinities” as part of the call-up procedure, the RFSO violates the objectives of the Agreement on Internal Trade

With respect to the allegation that by designating “vicinities” as part of the call-up procedure, the RFSO violates the objectives of the Agreement on Internal Trade, it is the Tribunal’s view that MRA became aware or reasonably should have become aware of the basis of its complaint on August 4, 2005, at the latest, when bids closed. In the Tribunal’s opinion, in order to be considered timely, a complaint would have had to have been filed with the Tribunal or an objection would have had to have been filed with PWGSC within 10 working days of August 4, 2005. Since MRA did not file an objection with PWGSC and filed its complaint with the Tribunal on December 16, 2005, the Tribunal finds that the complaint was not filed within the required time limits established by subsection 6(1) of the *Regulations* and cannot accept this ground of complaint for inquiry.

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

Yours sincerely,

Hélène Nadeau
Secretary