



BY FACSIMILE

January 23, 2006

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**Re: Solicitation Number CD383
OYE! Canada (File No. PR-2005-047)**

The Canadian International Trade Tribunal (the Tribunal) (Presiding Member: Ellen Fry), has reviewed the complaint submitted on behalf of OYE! Canada (OYE!) on January 16, 2006, and has decided not to initiate an inquiry into the complaint.

The complaint alleged that the National Capital Commission (NCC) had improperly disqualified OYE!'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 the Request for Proposal (RFP) and the Terms of Reference (TOR) advise bidders that the "Proposal Submission" (PS) Form must be included in the bidder's proposal:

Paragraph 4 of the RFP – "**Mandatory Requirements** 1 and 2 [the PS Form] must also be provided in a separate envelope clearly marked for this purpose." (emphasis in original);

Paragraph 10 of the RFP – "Page 3 of 3 of this request for proposal [the PS Form] must be dated, signed and returned with your proposal, thereby acknowledging the receipt and acceptance of the Terms of Reference and the General Conditions for Professional and Consulting Services.";

Paragraph 9.1 of the TOR entitled “Mandatory Requirements” – “There are **3 mandatory requirements** that must be achieved to complete the entire evaluation process within this Request for Proposal (RFP) ... **Number 2**, it is a **mandatory requirement** that Proponents sign and return page 3 of 3 of the Request for Proposal document (see page 2 of 3 of the RFP, item #10) with their Proposal...Failure to comply with mandatory requirements numbers 1 and 2 will render your Proposal non responsive and it will receive no further review.” (emphasis in original); and,

Paragraph 11.1 of the TOR entitled “Overview” – “Please ensure mandatory requirements numbers 1 and 2 are included with your proposal... The NCC should therefore receive from each Proponent:...One (1) separate envelope containing mandatory requirements numbers 1 and 2 entitled “Mandatory Requirements”.”

According to the sections 5.A. and 5.F. of the Tribunal’s complaint form, OYE! acknowledged that “the document that was included in the Mandatory Requirements contained a blank [PS Form], rather than one that had been signed and witnessed by a company representative.”

The above noted provisions of the RFP and TOR required that the PS Form be signed and returned with the bidder’s proposal. The evidence indicates that, in OYE!’s case, this was not done. Accordingly, the Tribunal cannot find any reasonable indication that the NCC breached its obligations under the trade agreements when it disqualified OYE!’s proposal for not including the signed form.

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