



BY FACSIMILE

February 16, 2006

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**Re: Solicitation Numbers SEL-04-1AD-INV and SEL-04-1AD-AUDIT
BMCI Consulting Inc. (File No. PR-2005-049)**

The Canadian International Trade Tribunal (the Tribunal) (Presiding Member: Zdenek Kvarda) has reviewed the submissions received on January 27 and February 7, 2006, from BMCI Consulting Inc. (BMCI) regarding the Canadian International Development Agency (CIDA) Request for Standing Offer (RFSO) Nos. SEL-04-1AD-INV and SEL-04-1AD-AUDIT. The Tribunal has decided not to initiate an inquiry into this complaint.

BMCI alleges that CIDA has not provided it with sufficient information regarding the evaluation of proposals that would permit it to file a complaint with the Tribunal.

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.”

On April 4 and 5, 2005, BMCI received letters from CIDA indicating that its proposals were deemed to be unsuccessful. On April 19, 2005, a debriefing was held between BMCI and CIDA. According to the complaint, after being provided with some information related to the evaluation, “BMCI was informed that the debriefing was terminated and any further information must be obtained through Access to Information.”

Article 1015 6(b) of the *North American Free Trade Agreement* stipulates that an entity shall, on request of a supplier whose tender was not selected for award, provide pertinent information to that supplier concerning the reasons for not selecting its tender, the relevant characteristics and advantages of the tender selected and the name of the winning supplier.

The Tribunal is of the view that BMCI became aware or reasonably should have become aware of the basis of its complaint on April 19, 2005, when, at the debriefing it was provided with all

the information CIDA was willing to provide in relation to the solicitation. The reference to “Access to Information” was not, in the Tribunal’s opinion, an indication that any more information would be forthcoming. Thus, 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 made with CIDA within 10 working days of April 19, 2005. Since BMCI did not file an objection with CIDA and filed its complaint with the Tribunal on February 7, 2006, 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 the complaint for inquiry.

It should be noted that the Tribunal does not have jurisdiction over the Access to Information process. Should BMCI receive information pursuant to its request under the *Access to Information Act* that indicates CIDA has not followed the applicable trade agreements in evaluating proposals, the Tribunal’s decision at this time regarding this complaint would not preclude the filing of a future complaint in that regard.

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