



BY FACSIMILE

May 30, 2006

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Re: Solicitation Number C1111-050664/A
FLAG CONNECTION INC. (File No. PR-2006-011)

The Canadian International Trade Tribunal (the Tribunal) (Presiding Member: Elaine Feldman) has reviewed the complaint submitted on behalf of FLAG CONNECTION INC. (FCI) on May 17, 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) had improperly disqualified FCI's proposal and, as a result, had improperly awarded the contract to another company.

Subsection 7(1)(c) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (the Regulations) requires that the Tribunal 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) in question, C1111-050664/A, stipulated, on page 19, that the bidder was to "ensure that the pre-award sample is manufactured in accordance with the technical requirement of this Request for Proposal and is fully representative of the bid submitted as rejection will be the basis of declaring the bid from that firm non-responsive." The Tribunal considers this to mean that, when the pre-award sample submitted with a proposal does not meet the technical requirements of the RFP, that proposal would be disqualified.

The Tribunal notes that, on May 5, 2006, PWGSC advised FCI by e-mail that its pre-award sample had failed to meet the “visual inspection requirements” as it had found eight instances where the sample was not in conformance with the RFP’s technical requirements. In the complaint to the Tribunal, FCI stated that PWGSC was neither qualified to conduct the measuring necessary to obtain the provided results nor had the flag been properly conditioned, as required by CAN/CGSB-4-2 No. 2, in the case of a measuring dispute between the sample provider and the measurer.

FCI has presented no evidence that the sample conformed to the requirement but instead argued that PWGSC was not qualified to perform an adequate assessment. The Tribunal finds that at least three of PWGSC’s listed occurrences of non-conformance - the single row of reinforced stitching, the lack of mark identifying that the flag has met the requirements of CAN/CGSB-98.1, and the length of the Rope Assemblies rope component - could have been properly identified by PWGSC through a visual inspection. Therefore, the Tribunal considers that the disqualification of FCI’s proposal by PWGSC was in accordance with the RFP.

With respect to FCI’s claim of bias by PWGSC, the Tribunal finds that there is no indication in the complaint that, in disqualifying FCI’s proposal for non-conformity of the pre-award sample with the technical requirements of the RFP, PWGSC demonstrated bias towards FCI.

With respect to “conditional acceptance” measures that may have been part of previous solicitations, the Tribunal notes that the RFP at issue, C1111-050664/A, contains no clauses that would allow for such acceptance in relation to the required pre-award samples. Given this, the Tribunal finds that PWGSC’s treatment of FCI’s proposal is consistent with page 19 of the current RFP, in which bidders were informed that their pre-award sample was to be manufactured in accordance with the technical requirement and that the rejection of the sample would be the basis for declaring the bid non-responsive.

With respect to the pre-award sample submitted by the firm that was awarded the contract, the Tribunal finds that there is nothing in the complaint to indicate that that pre-award sample did not meet the technical requirements of the RFP.

Accordingly, the Tribunal determines that there is no reasonable indication that the procurement has not been carried out in accordance with the applicable trade agreements.

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