



**BY FACSIMILE**

February 13, 2006

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**Re: Solicitation Number EN869-043168/A  
Digidyne inc. (File No. PR-2005-053)**

The Canadian International Trade Tribunal (the Tribunal) (Presiding Member: Pierre Gosselin), has reviewed the complaint submitted on behalf of Digidyne inc. on February 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 Canada (PWGSC) improperly cancelled the subject Request for Proposal (RFP) and inappropriately issued extensions to the existing contract to another company.

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”.

According to the complaint, Digidyne submitted its proposal in a timely manner and was requested, on December 21, 2005, to confirm its total bid evaluated price, which it did that same day. The next piece of correspondence on the file is an e-mail from PWGSC, dated January 24, 2006, which advised Digidyne inc. that the “requirement is hereby cancelled.”

In reviewing the evidence before it, the Tribunal notes that clause A.11 of the RFP entitled “Rights of Canada” states that “Canada reserves the right to...cancel and/or reissue this requirement at any time”. The Tribunal cannot find any reasonable indication that PWGSC breached its obligations under the trade agreements when it included clause A.11 in the RFP or when it exercised its right to cancel the requirement.

Regarding the second element of the complaint - that extensions to existing contract EN869-020653/001/EW were inappropriately issued to a competitor of Digidyne inc. - the Tribunal's jurisdiction to conduct an inquiry is limited. It does not have the authority to investigate existing government-contractor relationships or any alleged improprieties on the part of one bidder regarding its treatment of another bidder's sub-contractor. The Tribunal notes that there is no evidence that PWGSC has awarded, inappropriately or otherwise, any contract or contract extension to Sun Microsystems. The only evidence of extensions is that pertaining to the ones Digidyne has received subsequent to the contract's original termination date of March 31, 2005.

The Tribunal notes your concern that the cancellation provides your competition "with the opportunity to make material changes to the proposed new RFP that may jeopardize our consortiums future opportunity to respond with a technical and low price response". In keeping with its mandate of ensuring the trade agreements' goal of conducting procurement in an open, fair and transparent manner, the Tribunal will review any evidence that Digidyne inc. or any company may bring to its attention regarding the new RFP and determine if an inquiry is warranted based on that evidence.

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