



**TRANSLATION**

**BY FACSIMILE**

October 6, 2006

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Subject: Solicitation No. T8080-06-0001  
The Access Information Agency Inc. (File No. PR-2006-027)

The Canadian International Trade Tribunal (the Tribunal) (Serge Fréchette, Presiding Member) has reviewed the complaint filed by The Access Information Agency Inc. (AIA) in electronic format on September 22, 2006, and in hardcopy format on September 25, 2006, and has decided not to initiate an inquiry into the complaint.

AIA made the following allegations:

- 1) Transport Canada (TC) evaluated in a discriminatory and careless manner the mandatory information set out in the Request for Proposal (RFP), since the bidder, Irena Lang Consulting, did not meet the requirements;
- 2) the evaluation committee did not establish an adequate rating scale and the evaluation criteria were not set out accurately in the RFP;
- 3) the bidders did not possess enough information to prepare their submissions;
- 4) the maximum allowable cost specified in the RFP suggested that there was discrimination in terms of application and evaluation;
- 5) the number of successful bidders suggested that it was impossible to respond to the RFP as it was set out and, specifically, with respect to clause 8.1.4 of Appendix B;
- 6) the RFP did not contain the requirement for a written statement with regard to former public servants. Furthermore, the conflict of interest provision did not invite bidders to divulge potential conflicts;
- 7) TC failed to deal with AIA's requests for a debriefing in a timely manner.

According to subsection 6(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (the *Regulations*), a complaint shall 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 order for the Tribunal to inquire into the grounds on which the complaint was filed in a timely manner, the conditions set out in subsection 7(1) of the *Regulations* must be met. Paragraph 7(1)(c) of the *Regulations* requires in part that the Tribunal must, within five working days after the day on which a complaint is filed, determine whether “the information provided by the complainant . . . discloses a reasonable indication that the procurement has not been conducted in accordance with whichever of Chapter Ten of NAFTA, Chapter Five of the Agreement on Internal Trade or the Agreement on Government Procurement applies.”

For practical reasons, the Tribunal will not deal with the AIA’s allegations in the order in which they were presented in the complaint. Rather, the Tribunal will consolidate the allegations according to their nature.

Regarding the evidence in support of allegations No. 2 and No. 3 and the time limit provided for filing complaints with the Tribunal, the Tribunal notes, with respect to allegation No. 2, that there is no evidence that discloses a reasonable indication that criteria not specified in the RFP were used by TC. Furthermore, the Tribunal considers that bidders are responsible for making enquiries when they believe that the criteria are not sufficiently clear. With respect to allegation No. 3, the Tribunal notes that the limited number of successful bids does not, *per se*, show that the bidders did not have the required information to prepare their bids. Moreover, the Tribunal considers that the bidders are responsible for requesting clarifications in a timely manner. The Tribunal notes that, in this complaint, all questions concerning the RFP and its contents, including those questions concerning the evaluation criteria and the amendments to the RFP, should have been, according to the *Regulations*, filed with the Tribunal not later than 10 working days after the deadline of July 19, 2006, (the bid closing date) or not later than August 2, 2006, (10 working days after the bid closing date). Therefore, since the complaint was filed on September 22 and 25, 2006, the Tribunal could not initiate an inquiry into allegations No. 2 and No. 3 even though there was sufficient supporting evidence.

With respect to the other grounds cited and the evidence in support of these allegations, the Tribunal considers, concerning allegation No. 1, that the failure to register the company name, *per se*, does not give an indication as to the legal existence of the company or the existence of a TPS number for this company. With regard to the evaluation of the mandatory information, AIA did not provide any evidence that discloses a reasonable indication that there was discriminatory treatment or inappropriate evaluation of the identification criteria or of the legal capacity required in the RFP. With respect to allegation No. 4, the Tribunal notes that it is serious and that AIA did not provide any reasonable supporting evidence. Regarding allegation No. 5, the Tribunal notes that the fact that only two bidders were successful does not show, in any way, that there was a breach of the provisions of the RFP, as alleged by AIA, notwithstanding that the application of the provision dealing with competition between the successful parties could prove to be less efficient than the one that it otherwise contemplates. Concerning allegation No. 6, the Tribunal notes that the applicable trade agreements do not contain any obligation regarding the inclusion, in the RFP, of a provision dealing with former public servants. Furthermore, none of the alleged facts shows that there could have been a breach of the conflict of interest provisions of the RFP. Consequently, the Tribunal finds that the complaint does not disclose a reasonable indication that this procurement, with respect to allegations No. 1, No. 4, No. 5 and No. 6, was not conducted in accordance with the applicable trade agreements.

Finally, with respect to allegation No. 7, the Tribunal notes that, by e-mail and by facsimile dated September 15, 2006, AIA requested feedback from TC and required explanations regarding results. AIA filed its complaint on September 22 and 25, 2006. The Tribunal finds that, in the circumstances, the time limit cited by AIA does not seem to be outside the norm and, consequently, that this ground is premature. This determination of the Tribunal does not preclude AIA from filing a complaint in the future, as soon as TC has addressed its request or if TC does not address its request in a reasonable time frame.

Yours sincerely,

Hélène Nadeau  
Secretary