



**BY FACSIMILE**

June 6, 2006

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**Re: Solicitation Number F1768-050069/A  
HITT Holland Institute of Traffic Technology B.V. (File No. PR-2006-013)**

The Canadian International Trade Tribunal (the Tribunal) (Presiding Member: Pierre Gosselin) has reviewed the complaint submitted on behalf of HITT Holland Institute of Traffic Technology B.V. (HITT) on May 23, 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 HITT's proposal and, as a result, had improperly awarded the contract to the incumbent supplier.

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.

HITT alleged that PWGSC ignored or misinterpreted information provided in the covering letter and the compliance matrix of its proposal. HITT also alleged that PWGSC did not take into account information it provided to PWGSC on March 24, 2006 in response to clarification questions emailed to HITT by PWGSC on March 21, 2006.

Regarding the first ground of complaint, the Tribunal notes that Paragraph 1 of Part 1 of Annex C to the request for proposal (RFP) instructs bidders that they are "to address each requirement in sufficient depth to permit a complete analysis and assessment by the Evaluation Team." The Tribunal considers this to mean that the evaluators should be capable of assessing each requirement with the information found in the proposal and when they are unable to find adequate information regarding any mandatory technical requirement of the RFP, that would imply that the proposal is non-responsive. In addition, on page 8 of 24 of the RFP, bidders were required to include a compliance statement that demonstrated compliance with each requirement of the specification. The Tribunal also notes that page 20 of the RFP, reserved the right of PWGSC to "seek clarification or verify any or all information" provided by the bidder.

The Tribunal cannot find a reasonable indication that PWGSC erred in declaring that the proposal did not fully meet the technical requirements. In particular, PWGSC determined that there were numerous points from Annex A and Annex A.1 where “compliance was not specified” i.e. where the term “noted” was used apposite the particular specification. HITT included, on page 1-2 of its proposal, a listing of the different terms it used in its proposal’s compliance matrix. In it, HITT specifically stated that a “C” in the compliance matrix indicates that HITT was compliant with the requirement whereas the word “Noted” is defined as meaning “read and understood”. The Tribunal considers the two terms to have distinct meanings and cannot be used interchangeably. The Tribunal therefore finds that PWGSC was correct in its determination that the term “noted” does not confirm compliance.

Regarding the second ground of complaint, to the effect that PWGSC did not properly take into account HITT’s clarifications of March 24, 2006, the Tribunal notes that on March 21, 2006, PWGSC sought information from HITT as a result of its evaluation of HITT’s proposal. The Tribunal agrees that the evaluation of HITT’s proposal was initially conducted on March 21, 2006. However, there is no evidence that PWGSC did not consider HITT’s March 24, 2006 responses to the clarification questions prior to having found that HITT’s proposal did not meet all the technical requirements of the RFP and awarding the contract on March 30, 2006.

Accordingly, the Tribunal determines that the complaint does not disclose a reasonable indication that the procurement has not been carried out in accordance with the applicable trade agreements or that PWGSC had either acted in bad faith, or a discriminatory manner, when it conducted the evaluations.

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

cc: Mr. Brian G. Whiteway  
International Communications and Navigation Limited