



BY FACSIMILE

October 12, 2006

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Subject: Solicitation No. E6TOR-06RM04/A
The Language Studio Inc. (File No. PR-2006-028)

The Canadian International Trade Tribunal (the Tribunal) (Meriel V. M. Bradford, Presiding Member) has reviewed the complaint filed by The Language Studio Inc. in electronic format on October 4, 2006, and in hard copy on October 5, 2006, and has decided not to initiate an inquiry into the complaint.

The Language Studio Inc. made the following allegations:

- The Department of Public Works and Government Services (PWGSC) allowed a monopoly situation to occur by awarding standing offers to only one supplier.
- There was contradicting and misleading information in the solicitation document.
- PWGSC made an error in the final calculation of The Language Studio Inc.'s overall mark and, while the error has since been corrected, the Language Studio Inc. alleges that that error is sufficient grounds to request a review of the calculations for all bidders.

The Tribunal notes that the applicable trade agreements in this case are the *Agreement on Internal Trade*, the *North American Free Trade Agreement (NAFTA)* and the *Agreement on Government Procurement*.

According to subsection 6(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations (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.”

With respect to the first allegation, the Tribunal notes that the Notice of Proposed Procurement and the Request for a Standing Offer (RFSO) very clearly indicated that there may be only one standing offer issued per region. The RFSO also indicated that offerors may submit a bid for any or all geographic areas; however, a separate and complete offer is required for each area and further, an organization can receive more than one standing offer, but not in the same geographic area. The RFSO was published on May 30, 2006, and bids closed on July 10, 2006. With regard to the first allegation, the Tribunal is of the view that The Language Studio Inc. knew or reasonably should have known the basis of its complaint when it received the RFSO, or no later than July 10, 2006, the bid closing date. The Language Studio Inc. did not raise an objection with PWGSC regarding the number of standing offers to be awarded, and it did not file its complaint with the Tribunal until October 5, 2006. Consequently, the Tribunal finds that this ground of complaint was filed beyond the time limit established by subsection 6(1) of the *Regulations*. Accordingly, this ground of complaint is out of time, and the Tribunal cannot proceed to determine if it discloses a reasonable indication of a breach of the applicable trade agreements.

With respect to the second allegation, the Tribunal notes that clause 2.7.4 of the RFSO indicates how bids will be evaluated and contractors selected. This clause indicates a relative weighting of 60 percent for technical score and 40 percent for price. The RFSO gives an example of a “best value” calculation using a weighting of 70 percent for technical score and 30 percent for price. As noted above, the RFSO was published on May 30, 2006, and bids closed on July 10, 2006. The Language Studio Inc. did not seek clarification or raise an objection with PWGSC regarding the difference between the selection methodology and the example shown. It filed its complaint with the Tribunal on October 5, 2006.

In Primex Project Management Ltd., File No. PR-2002-001, the Tribunal stated the following:

In this case, both article 3.8 of Annex A and amendment No. 001 were patently ambiguous, and Primex, by not seeking clarification or by not filing an objection or a complaint in a timely manner, assumed the risk of being time-barred from making any subsequent complaint or objection with respect to the lack of clarity of these requirements.

With regard to the second allegation, the Tribunal is of the view that The Language Studio Inc. knew or reasonably should have known the basis of its complaint when it received the RFSO, or no later than July 10, 2006, the bid closing date. Consequently, the Tribunal finds that this ground of complaint was filed beyond the time limit established by subsection 6(1) of the *Regulations*. Accordingly, this ground of complaint is out of time, and the Tribunal cannot proceed to determine if it discloses a reasonable indication of a breach of the applicable trade agreements.

In order for the Tribunal to inquire into the grounds for 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) requires in part that the Tribunal, 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 carried out in accordance with whichever of Chapter Ten of NAFTA, Chapter Five of the Agreement on Internal Trade, the Agreement on Government Procurement . . . applies.”

The Tribunal finds that the third allegation is filed on time. However, the Tribunal finds that, while PWGSC made an error in the final calculation of The Language Studio Inc.'s overall mark, the error has been corrected and, as such, there is insufficient evidence in the complaint to substantiate the claim that a review of all bidders' calculations is necessary. Accordingly, the Tribunal concludes 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 foregoing, the Tribunal will not conduct an inquiry into this complaint and considers the matter closed.

Yours sincerely,

Hélène Nadeau
Secretary