



**BY FACSIMILE**

December 18, 2006

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Subject: Solicitation No. W0103-065296/A  
West Atlantic Systems (File No. PR-2006-036)

The Canadian International Trade Tribunal (the Tribunal) (Elaine Feldman, Presiding Member) has reviewed the complaint submitted by West Atlantic Systems (WAS) on December 7, 2006, and has decided not to initiate an inquiry into the complaint.

WAS alleged that the Department of Public Works and Government Services (PWGSC) improperly limited the procurement to the products of a particular manufacturer, namely Hewlett Packard. WAS also alleged that, although the solicitation document was amended to permit consideration of equivalent solutions, the amended solicitation did not provide actual specifications, performance criteria and legitimate operational requirements.

In order for a complaint to be timely, it must be filed within the timeframe set out in section 6 of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (the *Regulations*). Pursuant to subsection 6(2) of the *Regulations*, a potential supplier who has made an objection regarding a procurement relating to a designated contract to the relevant government institution, and is denied relief by that government institution, may file a complaint with the Tribunal within 10 working days after the day on which the potential supplier has actual or constructive knowledge of the denial of relief, if the objection was made within 10 working days after the day on which its basis became known or reasonably should have become known to the potential supplier.

On September 12, 2006, PWGSC issued the solicitation document which, at that time, specified Hewlett Packard products and did not allow for the provision of equivalent products. On October 13, 2006, in response to a request for the removal of the no substitute requirement, PWGSC amended the solicitation document to allow for the provision of equivalent products and included an "Equivalent Products" clause which outlined under what conditions an equivalent product would be considered. At the same time, PWGSC advised you that a network diagram would not be provided for security reasons.

The Tribunal is of the view that WAS knew the basis of its complaint on October 13, 2006, when the RFP was amended by PWGSC to allow for the provision of equivalent products and the conditions under which equivalent products would be considered. At that time, WAS knew that it would not receive any further information regarding the existing network and products being used by DND. The Tribunal is of the opinion that, if as stipulated in the complaint, WAS required "basic and crucial information about the

existing equipment and networking environment that would permit them to develop and submit a responsive proposal”, it should have filed an objection with PWGSC or a complaint with the Tribunal at that time. In order to be considered timely, a complaint would have had to have been filed with the Tribunal or an objection made to PWGSC within 10 working days of October 13, 2006, i.e. no later than October 27, 2006. WAS made an objection to PWGSC on November 22, 2006. Consequently, the Tribunal finds the objection was made beyond the time limit established by subsection 6(2) of the *Regulations*.

Accordingly, the complaint was also filed outside the time limits established by subsection 6(2) of the *Regulations* and cannot be accepted for inquiry.

Yours sincerely,

Hélène Nadeau  
Secretary