



BY FACSIMILE

October 20, 2006

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Subject: Solicitation No. E60PS-040067/B
Kerr Norton (1021076 Ontario Inc.) (File No. PR-2006-029)

The Canadian International Trade Tribunal (the Tribunal) (James A. Ogilvy, Presiding Member) has reviewed the complaint submitted on behalf of Kerr Norton (1021076 Ontario Inc.) on October 13, 2006, and has decided not to initiate an inquiry into the complaint.

Kerr Norton alleged that the Department of Public Works and Government Services (PWGSC) improperly declared its bid non-compliant. Specifically, it alleged that its bid included the appropriate detailed documentation to support the mandatory requirement regarding yield testing results and that PWGSC disregarded this documentation.

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

Paragraph 7(1)(c) of the *Canadian International Trade Tribunal Procurement Inquiry 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 one of Chapter Ten of *NAFTA*, Chapter Five of the *AIT* or the *AGP* applies.

The mandatory requirement relating to this complaint, found on page 15 of the Request for a Standing Offer (RFSO), reads as follows:

- H) All non-qualified products listed in Pricing Basis "A" and in Pricing Basis "B" must meet or exceed the re-manufacturing methods and procedures as identified in the CAN/CGSB-53.148-2004 for Re-manufactured Toner Cartridges and the OEM for that cartridge. Test results that [support] the request must be submitted with [the] offer (refer to Appendix A.1 and A.4).

Amendment No. 001 to clause C.1.1, under the heading “C.1 PRICING NOTES” of Appendix “C”, dated January 13, 2006, reads as follows:

- Offeror must indicate the page yield for the remanufactured cartridges offered in Pricing basis “A” and “B”. Detailed documentation must accompany the offer indicating the remanufactured cartridge testing results that will support the page yield submitted for Pricing basis “A”.

The information submitted with the complaint indicates that Kerr Norton did not include, in its proposal, copies of the completed reports verifying the yields, as required by the RFSO. Instead, Kerr Norton submitted its own independently audited quality system showing how yields would be documented and a blank “Cartridge Components Evaluation” form. Kerr Norton advised PWGSC that it had not send completed forms due to the confidential nature of the proprietary information.

According to the Tribunal, there is no evidence that Kerr Norton contacted PWGSC during the solicitation process regarding any concerns that it might have had over the submission of confidential documents with its bid. Furthermore, all but one of the forms submitted with the complaint, in both confidential and public versions, are dated after the bid closing date. Therefore, it is difficult for the Tribunal to conclude that the test results were available for inclusion with the bid.

After reviewing the evidence before it, the Tribunal finds that there is no reasonable indication that PWGSC improperly declared Kerr Norton’s bid non-compliant or that the procurement was not 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,

Susanne Grimes
Acting Secretary