



BY FACSIMILE

January 16, 2007

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Subject: Solicitation No. T8080-06-0183  
Europe Displays, Inc. (File No. PR-2006-039)

The Canadian International Trade Tribunal (the Tribunal) (Elaine Feldman, Presiding Member) has reviewed the complaint submitted on behalf of Europe Displays, Inc. (EDI) on January 5, 2007, and has decided not to initiate an inquiry into the complaint.

EDI alleged that the Department of Transport (TC) violated its obligations under both Chapter Ten of the *North American Free Trade Agreement (NAFTA)* and the *Agreement on Government Procurement (AGP)* by incorrectly deciding that EDI was ineligible to submit a proposal in response to Solicitation No. T8080-06-0183. According to EDI, the procurement is covered by both *NAFTA* and the *AGP* since the procurement is for goods rather than services (i.e. goods constitute the largest portion of the bid price.) Finally, EDI submitted that, if the procurement is for services, TC has incorrectly described it as “Communications, Photographic, Mapping, Printing and Publication Services”.

On December 21, 2006, TC advised EDI that its proposal would be returned unopened and unevaluated because EDI was located in the United States and, therefore, had been deemed ineligible to submit a bid. TC advised EDI that it was unable to accept its proposal because the procurement was for communications services and, therefore, excluded from *NAFTA*, and that only proposals from Canadian firms could be accepted.

After a careful review of the complaint and supporting documents filed by EDI, the Tribunal finds that the requirement is for the design and construction of the Canadian Pavilion that will be part of the XXIIIrd World Road Congress in Paris, France. Page 11 of first tab 5 of Volume 1, “Procurement Documents”, has a section called “Intellectual Property” that states the following:

Notwithstanding article GC 11 of the General Conditions, all materials, references and specifications provided to the Contractor to facilitate the performance of the work and production of the design and deliverables shall remain the Property of the Crown. *The Contractor shall retain all rights to the design and deliverables.*

[Emphasis added]

Since the title of the deliverables remains with the contractor, the Tribunal finds that, irrespective of the proportion of goods to services, the requirement cannot be considered to be for the supply of goods or, for the same reason, a construction services contract.

Contrary to what was published in the Notice of Proposed Procurement on MERX, which categorized the procurement as “Events Planning and Management Services”, the Tribunal is of the opinion that the most appropriate category under which to classify this procurement would be a form of exhibit services. While the actual procurement is not for the management of the exhibit, it certainly relates to Canada’s participation in the exhibition. Exhibit services are found in Appendix 1001.1b-2-B of *NAFTA* under category T002 “Communications Services” (incl. exhibit Services).

The Schedule of Canada in Section B of Annex 1001.1b-2 of *NAFTA* specifically excludes all classes of Category T – “Communications, Photographic, Mapping, Printing and Publications Services”. This class specifically includes exhibit services. With respect to the *AGP*, exhibit services would be a type of business service and they are not listed as being covered in Annex 4 of the *AGP* and therefore would also be excluded from the *AGP*.

While the Tribunal is of the opinion that the procurement may be subject to the *Agreement on Internal Trade (AIT)*, a complaint pursuant to that agreement must be filed by a “Canadian supplier”. Article 518 of the *AIT* defines “Canadian supplier” as a “supplier that has a place of business in Canada”. It also defines “place of business” as “an establishment where a supplier conducts activities on a permanent basis that is clearly identified by name and accessible during normal working hours”. The Tribunal notes that EDI has not filed a complaint under the *AIT* nor has it provided any evidence that it meets the definition of a Canadian supplier. The material submitted by EDI shows that it is a supplier that conducts its activities on a permanent basis in the United States. The Tribunal therefore concludes that EDI does not have standing to file a complaint with the Tribunal under the *AIT*.

In light of the above, the Tribunal will not conduct an inquiry into this complaint and considers the matter closed.

Yours sincerely,

Hélène Nadeau  
Secretary

cc: Mr. Marc A. Whelan (public version of complaint)  
Transport Canada