



**BY FACSIMILE**

November 27, 2006

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Subject: Solicitation Number T8493-050104/B  
Columbia Avionics, Inc. (File No. PR-2006-032)

The Canadian International Trade Tribunal (the Tribunal) (James A. Ogilvy, Presiding Member; Pierre Gosselin, Member; Ellen Fry, Member) has reviewed the complaint submitted on behalf of Columbia Avionics, Inc. (Columbia) on November 14, 2006, and has decided not to initiate an inquiry into the complaint.

Columbia alleged that the Department of Public Works and Government Services (PWGSC) improperly evaluated its financial proposal and awarded a contract to a non-compliant bidder.

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 of Chapter Ten of the *North American Free Trade Agreement (NAFTA)*, Chapter Five of the *Agreement on Internal Trade (AIT)* or the *Agreement on Government Procurement (AGP)* applies. In this case, since Columbia is a supplier located in the United States, its recourse would be under *NAFTA* and the *AGP*.

On September 14, 2006, PWGSC informed Columbia that a contract had been issued to another bidder for a total value of US\$7,678,358. Later that day, Columbia requested further information from PWGSC regarding the evaluation of its bid, as it claimed to have proposed a lower total value than the contract award amount. It also claimed that the successful bidder failed to meet all the mandatory requirements.

On September 15, 2006, at the request of PWGSC, Columbia provided an explanation for its proposed pricing structure, which included two options for PWGSC's consideration. Later that day, PWGSC provided Columbia with additional information concerning the evaluation of its bid.

On September 20, 2006, Columbia filed an objection with PWGSC regarding the evaluation of its financial proposal and restated its opinion that the winning bidder was non-compliant with respect to requirement 1.03, Line Item 5, i.e. the Attitude Heading Reference System, requirement 1.03 Line Item 7, i.e. the Weather Radar System, and requirement 1.04 Line Item 4, i.e. the Radio Management Units. On November 2, 2006, PWGSC responded to Columbia's objection relating to the evaluation of its financial proposal by indicating that Columbia's proposed Option 1 was not considered an acceptable solution, as it did not comply with requirement 1.03, Line Item 3 of the Statement of Requirements. For this reason, PWGSC did not include this option in its evaluation of the financial proposal. However, PWGSC stated that Columbia's proposed Option 2 was acceptable and that it had determined that the total assessed price for that option, for evaluation purposes, was US\$ 7,834,292, which was not the lowest assessed price. This was the reason PWGSC gave for not placing the contract with Columbia. In addition, PWGSC indicated that the winning bidder was deemed compliant on all the specific grounds raised by Columbia and stated in the reasons for its decision that the evaluators were satisfied that the successful bidder's proposed solution for each of the three requirements was acceptable.

After a careful review of the complaint and supporting documents filed by Columbia, including PWGSC's letter responding to Columbia's objection, the Tribunal finds that there is insufficient evidence to substantiate Columbia's claim that PWGSC incorrectly determined that Option 1 was not an acceptable solution. Further, the Tribunal is of the opinion that there is insufficient evidence to conclude that PWGSC incorrectly evaluated the winning bidder's proposal and found that it was compliant. The Tribunal will not substitute its judgement for that of the evaluators unless there is evidence that the evaluators have not applied themselves in evaluating a bidder's proposal, have ignored vital information provided in a bid, have wrongly interpreted the scope of a requirement or have based their evaluation on undisclosed criteria.

Accordingly, the Tribunal finds that there is no reasonable indication that PWGSC has breached either of 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