



**BY FACSIMILE**

April 24, 2007

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Subject: Solicitation No. W0105-07E017/A  
Ready John Inc. (File No. PR-2007-003)

The Canadian International Trade Tribunal (the Tribunal) (Elaine Feldman, Presiding Member) has reviewed the complaint submitted on behalf of Ready John Inc. (Ready John) on April 5, 2007, and the additional information received on April 17, 2007, and has decided not to initiate an inquiry into the complaint.

Ready John alleged that a contract<sup>1</sup> was awarded to a non-qualified bidder. Specifically, Ready John alleged that Hoyt's Septic Services Ltd. (Hoyt) is not a qualified bidder because it does not have 250 units (chemical toilets) available to it at all times, as required by clause 18.1.1 of the Request for a Standing Offer (RFSO).

Under subsection 6(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (the *Regulations*), a complaint must 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."

On April 5, 2007, Ready John submitted a complaint to the Tribunal. However, the Tribunal determined that the complaint did not include all relevant information and that additional information was required in order to decide whether to conduct an inquiry into the complaint. On April 13, 2007, the Tribunal notified Ready John that additional information was required and requested that the information be provided as soon as possible, keeping in mind the time frames of section 6 of the *Regulations*. By a letter dated April 16, 2007, which was received by the Tribunal by e-mail at 2:26 p.m. on April 17, 2007, counsel for Ready John responded to the Tribunal's request and provided additional information.

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1. It should be noted that, although Ready John alleged that a contract was awarded, the information provided indicates that it was the issuance of a standing offer that was in question.

According to the information received, the basis of the complaint became known to Ready John on March 29, 2007, that is, when it was informed that a standing offer had been issued to Hoyt. Since Ready John did not file an objection with the Department of Public Works and Government Services (PWGSC), Ready John had 10 working days from March 29, 2007, to file a complaint, including all relevant information, with the Tribunal. Thus, Ready John had until April 16, 2007, to file such a complaint. Given that the information requested by the Tribunal was only received on April 17, 2007, the Tribunal is not convinced that Ready John's complaint was filed on time. However, given that the letter sent to the Tribunal on behalf of Ready John is dated April 16, 2007, the Tribunal will not reject the complaint on the basis that it was filed beyond the time limit established by subsection 6(1) of the *Regulations* and will proceed to examine whether the complaint can be accepted for inquiry.

Paragraph 7(1)(c) of the *Regulations* requires that the Tribunal determine whether the information provided by a 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*, Chapter Five of the *Agreement on Internal Trade* or the *Agreement on Government Procurement* applies.

Clause 18.1.1 of the General Instructions of the RFSO reads as follows:

Number of Toilets: For the purpose of this Standing Offer the Contractor must have available to them at all times a minimum of 250 units.

On February 9, 2007, amendment No. 001 to the RFSO was issued. In the answer to question 5, PWGSC defined the phrase "available to them at all times" as follows:

"Accessible, obtainable"; therefore the supplier would not need to have actual possession of the toilets, but would have "access to" the toilets if needed.

In its complaint, Ready John submitted that the term "available" "means that the units are in the Contractor's possession or must be readily available to meet the requirements of the Request" and alleged that Hoyt had "considerably less than 250 chemical toilets *in its possession*". [Emphasis added.]

The Tribunal is of the view that the wording, as provided in the RFSO and as further clarified by PWGSC, is clear in that to "have available at all times" does not mean that the bidder would have to have 250 units "in its possession" or have the toilets "readily available". Rather, the contractor must be able to access and obtain the units if needed. In the Tribunal's view, Ready John has not provided evidence that Hoyt would not have "access to" the toilets "if needed".

The Tribunal further notes that the terms "Standing Offer" and "Contractor" are used in clause 18.1.1. A "Standing Offer" is issued in response to an RFSO and a contract is formed when a call-up is made, and the "Contractor" is the entity authorized to perform the services under that call-up. Considering the reference to the term "Contractor", the Tribunal is of the opinion that there was no requirement, as a condition of bidding, that the *bidder* had to have 250 units in its possession prior to submitting an offer in response to the RFSO. Rather, the contractor must be able to access the toilets when needed.

In the light of the foregoing, the Tribunal finds that there is insufficient evidence to substantiate Ready John's claim that PWGSC issued a standing offer to a non-qualified bidder. The Tribunal is of the view that there is no evidence to indicate that the evaluators at PWGSC had any reason to believe that Hoyt did not meet the requirements of the solicitation and, therefore, finds that the information provided does not disclose a 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 the complaint and considers the matter closed.

Yours sincerely,

Hélène Nadeau  
Secretary