



BY FACSIMILE

April 3, 2007

_____:

Subject: Solicitation No. EN869-040407/A
TPG Technology Consulting Ltd. (File No. PR-2006-050)

The Canadian International Trade Tribunal (the Tribunal) (Panel: Meriel V. M. Bradford, Presiding Member; James A. Ogilvy, Member; Elaine Feldman, Member) has reviewed the complaint submitted on behalf of TPG Technology Consulting Ltd. (TPG) on March 23, 2007, and has decided not to initiate an inquiry into the complaint.

TPG alleged that the Department of Public Works and Government Services (PWGSC) did not evaluate the bids fairly, impartially and in accordance with the published criteria in that a re-confirmation exercise not contemplated in the Request for Proposal (RFP) was performed by a single evaluation team member. TPG also alleged that it has a reasonable apprehension that there was bias in the bid evaluation process and/or that there was an appearance of a conflict of interest on the part of PWGSC because an individual who had connections to both TPG and CGI Group Inc (CGI) was appointed to the position of Director General of Products and Services within the Information Technology Services Branch (ITSB) of PWGSC.

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." Subsection 6(2) of the *Regulations* states that a potential supplier who has made an objection 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."

With respect to TPG's first ground of complaint, according to the complaint, PWGSC advised TPG in November 2006 that it was going to be awarded the contract. Again, according to the complaint, later that month, PWGSC advised TPG that the technical evaluation results were being re-confirmed. On or about February 26, 2007, PWGSC advised TPG that CGI, not TPG, was determined to be the winning bidder. The Tribunal notes that TPG knew of the re-confirmation process in November 2006 and that it knew on or about February 26, 2007, that following the re-confirmation, CGI and not TPG would be awarded the contract. TPG filed its complaint with the Tribunal on March 23, 2007. The Tribunal is of the view, therefore, that TPG knew of the basis of this ground of complaint in November 2006, when it learned that a re-confirmation of the evaluation was taking place and knew, on or about February 26, 2007, at the latest, that the re-confirmation process had been completed. Consequently, the Tribunal finds, with regard to the first ground of complaint, that the complaint was filed beyond the time limit established by subsection 6(1) of the *Regulations*.

With respect to TPG's second ground of complaint, on May 29, 2006, TPG expressed concerns to PWGSC regarding the status of Mr. Jirka Danek and the conflict of interest it would create if he were to accept an executive position within ITSB. At that time, TPG requested that PWGSC refrain from making a letter of offer to Mr. Danek until the issue could be discussed in more detail and a plan worked out to protect the interests of all stakeholders. PWGSC then issued the RFP, dated May 30, 2006, and Mr. Danek's resignation from Avalon Works Corp. and his acceptance of a senior role with the Government of Canada were announced in a press release issued by Avalon Works Corp. on June 2, 2006. Also on June 2, 2006, the Chief Executive Officer of ITSB advised TPG that it should have no concerns about conflict of interest on Mr. Danek's part because he would not be involved in procurement and contracting activities. The Tribunal is of the view that PWGSC's reply constitutes denial of relief with regard to TPG's objection to Mr. Danek's appointment. TPG did not pursue the matter further until it filed its complaint with the Tribunal on March 23, 2007. Consequently, the Tribunal finds, with regard to the second ground of complaint, that the complaint was filed beyond the time limit established by subsection 6(2) of the *Regulations*.

Accordingly, the complaint is not accepted for inquiry.

Yours sincerely,

Hélène Nadeau
Secretary