



BY FACSIMILE

April 5, 2007

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Re: Solicitation Number EJ192-060003/A
Evrupos Janitorial Services Limited (File No. PR-2006-051)

The Canadian International Trade Tribunal (the Tribunal) (Panel: Serge Fréchette, Presiding Member; Zdenek Kvarda, Member; Ellen Fry, Member) has reviewed the complaint submitted on behalf of Evrupos Janitorial Services Limited (Evrupos) on March 23, 2007, and has decided not to initiate an inquiry into the complaint.

Evrupos alleged that the Request for Proposal (RFP) failed to clearly identify the requirements of the procurement, that the Department of Public Works and Government Services (PWGSC) improperly evaluated its proposal by not applying the listed evaluation criteria, and that PWGSC interpreted certain criteria of the RFP in a way that was inconsistent with their meaning. Evrupos specifically argued that PWGSC improperly determined that its proposal had not met the mandatory criteria identified in Sections 2.2 and 2.8 of the above-noted solicitation.

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*, Chapter Five of the *Agreement on Internal Trade* or the *Agreement on Government Procurement* applies. In this case, all three agreements apply.

Generally speaking, the Tribunal will not substitute its judgment for that of the evaluators unless, in its view, 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, have based their evaluation on undisclosed criteria, or have otherwise not conducted the evaluation in a procedurally fair way.

Section 2.8 of the RFP informed bidders that they were required to provide “. . . evidence of its experience and satisfactory performance of the Non Working On-site Supervisor(s) by referencing one (1) project or contract for clients of a duration of three (3) years, within the past ten (10) years” The Tribunal considers that the only reasonable interpretation of this requirement is that the proof submitted had to show 3 completed years of experience in the **past** 10 years, otherwise the requirement would not demonstrate experience. The evaluators' conclusion that the proof submitted did not meet the requirement because, at the time the bid was submitted, the contract that was used to demonstrate the proposed resource's credentials represented just under 29 months of experience, or less than 3 years of experience, is consistent with that interpretation. The Tribunal therefore considers PWGSC's evaluation

results regarding this criterion not to be unreasonable.

Regarding the criterion identified in Section 2.2 of the RFP, the Tribunal notes that, even if it were to conduct an enquiry into this particular aspect of the complaint, and were to find in favour of Evripos, the failure of Evripos to have met the requirements of the mandatory criterion identified in Section 2.8 means that Evripos would still not be eligible for contract award.

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