



**BY EMAIL**

February 14, 2007

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Re: Request for Proposal Number IC400620  
SECOR Consulting Inc. (File No. PR-2006-043)

The Canadian International Trade Tribunal (the Tribunal) (Meriel V. M. Bradford, Presiding Member) has reviewed the complaint submitted on behalf of SECOR Consulting Inc. (SECOR) on February 5, 2007, and has decided not to initiate an inquiry into the complaint.

SECOR alleged that Industry Canada (IC) improperly awarded the contract to another firm, despite the fact that SECOR had submitted a proposal that was rated higher and priced lower than the winning contractor's proposal. SECOR further alleged that, in doing so, IC violated the terms of the request for proposal (RFP), specifically section 9.0, relating to the requirement of security clearances.

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 the Agreement on Internal Trade and the North American Free Trade Agreement apply.

SECOR submitted that section 9.0 of the RFP should be interpreted to mean that IC would initiate a security screening request for the successful contractor, if that contractor did not have the necessary security level. By initiating the screening on December 6, 2006, SECOR submitted that it appeared that IC intended to delay the contract award until SECOR was issued the necessary security clearances, given its superior proposal.

The Tribunal has reviewed the evidence contained in the complaint, including amended section 9.0, which read:

The Consultants must have a security clearance to the level of "***ENHANCED***". No contract will be awarded unless this requirement is met. Industry Canada will initiate a security screening request if the successful contractor is not security cleared at this level.

Although the use of the phrase "successful contractor" in the third sentence is clearly contradictory given the second sentence, the Tribunal is of the view that section 9.0 should be interpreted to mean that IC will not award a contract until the required security level is achieved and that IC will initiate a security screening on behalf of any bidder that does not have the requisite security clearances. The Tribunal notes that, to further clarify the situation, IC advised all bidders, in amendment

No. 2, of the following: “[i]f you have not obtained the “Secret” level security clearance by the award date you will be judged non-compliant and thus ineligible for the contract.” The Tribunal notes that this reference to “secret” should have read “enhanced”, in accordance with solicitation amendment No. 001.

The Tribunal notes that, after an exchange of e-mails between IC, SECOR and Industrial Security Division staff of the Department of Public Works and Government Services (PWGSC) regarding what IC was required to do to initiate a security clearance on behalf of SECOR, IC started the process on or about December 7, 2006, when it sent a “Request for Private Sector Organization Screening” form to PWGSC. On December 11, 2006, SECOR received correspondence from PWGSC indicating that IC had initiated the clearance process and informing SECOR that it could not proceed with the screening until it received certain documents from SECOR. In addition, the letter stated that if SECOR did not provide the requested information by February 6, 2007, PWGSC would consider that SECOR was not interested in obtaining the clearance and would so inform IC. According to the evidence in the complaint, the next correspondence related to the security clearances was an e-mail from IC to SECOR dated January 3, 2007, asking whether SECOR had received its security rating. According to the letter from IC dated January 31, 2007, SECOR advised IC on January 3, 2007, that it would be submitting the security paperwork before January 12, 2007. The evidence on the file indicates that the paperwork was not actually filed until January 24, 2007, or one day after SECOR was informed that the contract had been awarded to another company.

The Tribunal also notes that section 10.0 of the RFP informed bidders that the work was to be split into two phases, the first of which was to run from January to March and for which the final report was “**REQUIRED** at the end of phase one, prior to March 22, 2007.”(emphasis in the original).

The Tribunal considers that the RFP adequately informed bidders of the schedule of work (section 10.0) and of what IC was willing to do, even if they did not have the necessary security clearances, to afford bidders the opportunity to bid on the work (section 9.0). The Tribunal is of the opinion that IC correctly initiated the process, on behalf of SECOR, in early December 2006. The Tribunal also considers that IC, through amendment No. 2, advised bidders of the consequence of not having the necessary security clearances at the time of contract award. The Tribunal believes that IC provided SECOR with a reasonable amount of time to obtain the required security clearances, then evaluated SECOR’s proposal, including the requirement for security clearances, and then, in accordance with amendment No. 2, properly judged it to be non-compliant and awarded the contract to another bidder.

Accordingly, the Tribunal determines that the complaint 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

cc: Ms. Estelle Audet (public version of the complaint, by mail)  
Industry Canada