



BY FACSIMILE

April 26, 2007

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Re: Solicitation No. EN578-060454/A
PSC The Public Sector Company Limited (File No. PR-2007-006)

The Canadian International Trade Tribunal (the Tribunal) (Presiding Member: Pierre Gosselin) has reviewed the complaint submitted on behalf of PSC The Public Sector Company Limited (PSC) on April 12, 2007, and has decided not to initiate an inquiry into the complaint.

PSC alleged that the Department of Public Works and Government Services (PWGSC) included mandatory criteria not essential to the performance of the services being sought and that PWGSC had released information too near to the end of the solicitation process for it to properly react to the new information.

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* applies. In this case, *NAFTA* and the *AIT* apply.

The complaint centred on two requirements of the Request for Proposal (RFP): M10—that the proposed resource have 5 years of experience in giving briefings to senior management; and M11—that the proposed resource have 10 years of experience in consulting/working with any number of levels of government. PSC claimed that these criteria were not required for a “Procurement Specialist” and that they had never appeared in any similar solicitations. PSC also alleged that PWGSC acted unfairly by taking six days to respond to questions and by only releasing the responses after it was too late for PSC to request an extension to the RFP closing date.

The Tribunal does not consider that there is any evidence that PWGSC was acting in a manner contrary to *NAFTA* and the *AIT* when it included criteria M10 and M11 in the solicitation. In fact, it appears that, at the request of some suppliers, PWGSC relaxed the requirement somewhat before the deadline for the receipt of proposals. While it may be true that not all holders of a supply arrangement may have access to a resource that would allow them to bid, the complaint does not present any evidence that the requirement

was deliberately constructed to preclude certain suppliers or to direct the procurement to a favoured supplier.

With respect to the allegation concerning the timely dissemination of information, the Tribunal notes that PWGSC stated that it posted the final amendment on March 23, 2007, whereas PSC claimed that the amendment was not posted until March 26, 2007, or too late, according to the terms of the RFP, for PSC to request a further extension of the due date for the receipt of bids. The Tribunal finds that the complaint failed to provide sufficient evidence that the final amendment was not posted before March 26, 2007, or even on March 23, 2007. The Tribunal notes that, in its e-mail to PWGSC dated March 28, 2007, PSC stated that it had “checked the . . . [w]ebsite on March 23” and that the answers to its questions had not been posted. The Tribunal was given no evidence as to the time at which this check was performed. On the other hand, PWGSC indicated that it did indeed post the amendment on March 23, 2007. It is therefore possible that the answer was posted on March 23, 2007, but subsequent to the hour at which PSC checked to see if it had been posted.

The Tribunal is therefore of the opinion that PSC’s complaint does not demonstrate a reasonable indication that the procurement was not conducted in accordance with *NAFTA* and the *AIT*. In light of this, the Tribunal will not conduct an inquiry into the complaint and considers the matter closed.

Yours sincerely,

Hélène Nadeau
Secretary