



BY FACSIMILE

May 22, 2007

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Subject: Solicitation No. W8486-07JWAB/A
Papp Plastics & Distributing Ltd. (File No. PR-2007-015)

The Canadian International Trade Tribunal (the Tribunal) (James A. Ogilvy, Presiding Member) has reviewed the complaint submitted by Papp Plastics & Distributing Ltd. (Papp) on May 9, 2007, and has decided not to initiate an inquiry into the complaint.

Papp's complaint relates to a Request for a Standing Offer (RFSO) for the repair and refurbishment of trunk lockers for the Department of National Defence (DND), issued by the Department of Public Works and Government Services (PWGSC). Papp alleged that:

- (1) the solicitation process was unfair, as biased and inaccurate specifications were used, which ultimately gave a competitive advantage to the incumbent supplier;
- (2) PWGSC, DND and the incumbent supplier were all aware that only a single stay had to be replaced or modified on the trunk lockers, not two, as specified in the Statement of Work (SOW), which, according to Papp, allowed the incumbent supplier to bid a lower price than Papp;
- (3) the solicitation included ambiguous mandatory financial requirements;
- (4) PWGSC was negligent in allowing a painting method that could compromise the integrity of the trunk lockers; and
- (5) Papp was disadvantaged during the solicitation process, since it, being the original equipment manufacturer supplier, was held to the higher standard of refurbishment, while its competitors would be allowed to simply repair the boxes.

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 February 13, 2007, PWGSC issued an RFSO for the repair and refurbishment of trunk lockers for DND. The bid closing date was March 19, 2007. With respect to allegations (1), (3), (4) and (5), the Tribunal notes that they relate to the requirements stated in the RFSO and SOW. The Tribunal is of the opinion that, for those allegations, Papp knew or reasonably should have known the basis of its complaint

not later than March 19, 2007, when bids closed. According to the complaint, Papp did not make an objection to PWGSC. Rather, it filed a complaint with the Tribunal on May 9, 2007, which is more than 10 working days after March 19, 2007. Consequently, the Tribunal finds that these grounds of complaint were filed beyond the time limit established by subsection 6(1) of the *Regulations*.

With respect to allegation (2), the Tribunal notes that this allegation also concerns the SOW as it relates to the stays on the trunk lockers. Notes 2 and 3 of the SOW state the following:

2. Previous design drawbacks with the use of a single design lid stay have been overcome with the provision of a left hand and right hand lid stay design as defined by the requirements of the lid stay part number listed in the table above, therefore;
3. **Regardless of serviceability or condition of the single lid stay design, Trunk Lockers that are received on award of this contract and in the future, (with only single lid stays) are to be replaced with the superior LH and RH designs.**

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 (AIT)* or the *Agreement on Government Procurement* applies. In this case, only the *AIT* applies.

Other than Papp's uncorroborated reported telephone communication with the representative of a parts supplier, who allegedly stated that the design for one of the stays was the same as the original stay, there is no evidence to substantiate the claim that only one stay had to be replaced or modified. Moreover, there is no evidence to support the allegation that a bidder took advantage of such knowledge or that the SOW was imprecise. Indeed, the SOW indicates that, when trunk lockers were received with only one stay, two new stays had to be installed.

In view of the foregoing, the Tribunal finds that there is no evidence that there was any information left undisclosed or withheld during the bidding process which would have allowed any other bidder to bid a lower price than Papp's and win the solicitation as a result. Consequently, the information provided does not disclose a reasonable indication that the procurement has not been carried out in accordance with the applicable trade agreement.

Finally, regarding Papp's question about a possible connection between an employee of PWGSC and the winning contractor, the complaint provides no evidence to support such speculation. Consequently, the Tribunal 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 agreement.

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