



BY FACSIMILE

April 16, 2007

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Subject: Solicitation No. KM110-06-7191
BSI Management Systems Canada Inc. (File No. PR-2007-002)

The Canadian International Trade Tribunal (the Tribunal) (James A. Ogilvy, Presiding Member) has reviewed the complaint submitted on behalf of BSI Management Systems Canada Inc. (BSI) on April 4, 2007, and has decided not to initiate an inquiry into the complaint.

BSI alleged that some of the evaluation criteria set out in the Request for Proposal (RFP) were ambiguous. BSI also alleged that Environment Canada (EC) did not apply the evaluation criteria fairly because, according to BSI: (1) each member of the project team “was required to have government experience”; (2) EC contacted a reference that was not provided by BSI and discussed a BSI employee with that reference; and (3) EC discussed the winning bidder and an ex-BSI employee with a reference provided by BSI.

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.”

The RFP was issued on January 25, 2007, and bids closed on February 16, 2007. According to the complaint, BSI did not raise any concerns during the solicitation period regarding the evaluation criteria, specifically that they were ambiguous. BSI filed its complaint with the Tribunal on April 4, 2007. The Tribunal is of the view, therefore, that if BSI was of the opinion that the evaluation criteria were ambiguous, it knew of the basis of this ground of complaint at the latest on February 16, 2007, when bids closed. Consequently, the Tribunal finds, with regard to this ground of complaint, that the complaint was filed beyond the time limit established by subsection 6(1) of the *Regulations*.

Paragraph 7(1)(c) of the *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.

On March 21, 2007, EC provided BSI with the results of the evaluation of its bid. In the evaluation notes for the project team, EC made the notation that “none of the other [auditors] appear to have government experience.” It also made a notation about unsolicited information obtained from a reference that was not provided by BSI concerning one of BSI’s employees. In its communications with BSI, EC also noted that this latter information was hearsay and was not used in the evaluation of BSI’s proposal. In the evaluation notes under the item for the company, the evaluators made a notation that the reference referred to the contract awardee and an ex-BSI employee.

With respect to the evaluation results for the project team, BSI submitted that, had it known that each individual member of the proposed team was required to have government experience, it would have submitted evidence that its proposed team members did have the required experience. Regarding the evaluation results for the company, BSI submitted that its reference should not have been used to verify information about its competitor.

After a careful review of the complaint and supporting documents filed by BSI, the Tribunal finds that there is insufficient evidence to substantiate BSI’s claim that EC did not apply the evaluation criteria in accordance with the RFP. In the Tribunal’s view, EC did so. Regarding the issue of government experience, the Tribunal notes that the RFP indicated that past relevant experience would be taken into account for the project team, as would the company’s past performance and experience in providing registrar services to similar organizations, and it gave as an example the public sector. Given this fact and the nature of the requirement detailed in the RFP, the Tribunal is of the view that it was not unreasonable for EC to consider the government experience of the bidders’ proposed resources in its evaluation. The Tribunal also notes that EC was transparent about the unsolicited information it received while contacting references, and it appropriately documented this information as hearsay.

The Tribunal will not substitute its judgment for that of the evaluators unless there is evidence that 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 or have based their evaluation on undisclosed criteria. There is no indication that any of these situations have occurred. Accordingly, the Tribunal finds that there is no 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