



BY FACSIMILE

July 30, 2007

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Subject: Solicitation No. W8486-075823/A
Papp Plastics & Distribution Limited (File No. PR-2007-028)

The Canadian International Trade Tribunal (the Tribunal) (Panel: Meriel V. M. Bradford, Presiding Member; Pierre Gosselin, Member; Serge Fréchette, Member) has reviewed the complaint submitted on behalf of Papp Plastics & Distribution Limited (Papp) on July 19, 2007, and has decided not to initiate an inquiry into the complaint.

This complaint relates to Solicitation No. W8486-075823/A by the Department of Public Works and Government Services (PWGSC) for multiple operation boxes on behalf of the Department of National Defence (DND).

Papp alleges the following:

- The Request for Proposal (RFP) was unfairly biased in favour of the product of the winning bidder, Pelican Products Inc. (Pelican), and unfairly discriminated against Papp. In particular, Papp questions DND's actions during pre-solicitation consultations and trials, and alleges a discriminatory price advantage for Pelican.
- PWGSC incorrectly accepted a bid from Pelican that was non-compliant with at least two mandatory requirements.

Papp alleges violations of various provisions of the *Agreement on Government Procurement (AGP)*, the *North American Free Trade Agreement (NAFTA)* and the *Agreement on Internal Trade (AIT)*. The Tribunal notes that, according to the RFP, the multiple operation boxes fall under North Atlantic Treaty Organization Stock Number 8460-20-002-9740 (product code 84). According to Annex 1 of Appendix I of the *AGP* and to Section B of Annex 1001.1b-1 to *NAFTA*, product code 84 is exempt from the application of the *AGP* and *NAFTA*. Accordingly, only the *AIT* applies to this solicitation.

Paragraph 7(1)(c) of the *Canadian International Trade Tribunal Procurement Inquiry 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 *NAFTA*, Chapter Five of the *AIT* or the *AGP* applies. In this procurement, only Chapter Five of the *AIT* applies.

On April 5, 2007, PWGSC issued the RFP with a bid closing date of May 8, 2007. On June 12, 2007, PWGSC informed Papp that Pelican was the winning bidder. According to Papp, on June 18, 2007, it received a copy of a DND trial and evaluation report on barrack box replacements, dated March 1, 2002. On June 19, 2007, Papp made an objection to PWGSC regarding the selection of Pelican as the winning bidder. PWGSC responded to Papp's objection on July 5, 2007, and, on July 19, 2007, Papp filed its complaint with the Tribunal.

Papp bases its first allegation on the existence and contents of the March 2002 DND trial and evaluation report for possible barrack box replacements. The Tribunal considers that any alleged wrongful behaviour that occurred during any pre-solicitation consultations and trials is not a subject into which the Tribunal can inquire, as these activities do not form part of the procurement process. The Tribunal notes however that this report reviewed barrack boxes from major manufacturers that were on the market during the report period, i.e. 1999-2001. The Tribunal also notes that this report does not recommend the adoption of the specifications that are found in the RFP. Accordingly, the Tribunal finds that the evidence does not disclose a reasonable indication that the procurement was not carried out in accordance with the trade agreements, as there is no direct connection between the impugned report and the RFP.

With respect to Papp's second allegation, the Tribunal is of the view that, according to the evidence in the complaint, there is no basis for the Tribunal to find that PWGSC did not follow the evaluation criteria set out in the RFP. The complaint does not provide any evidence that the product proposed in the Pelican bid failed to meet the requirements of the procurement. Further, the Pelican product that was bid may in fact differ from the item identified by Papp on the basis of information Papp found on Pelican's Web site as model 1630. The Tribunal notes that the RFP provides that the bidder "must comply with the **pre-award** requirements" set out in Part 1 of Annex B to the RFP. Papp has not provided the Tribunal with a reasonable indication that Pelican did not meet the requirements of the RFP.

In the Tribunal's view, at bid closing, the requirement is for bidders to certify that the product meets the requirements, with actual compliance being tested at a further stage in the contract award and pre-production process. Based on the information contained in the complaint, the Tribunal finds that there is no basis to determine that PWGSC did not follow the procedures set out in the RFP with respect to evaluating the technical requirements and selecting the winning bidder, as provided for by the *AIT*. Consequently, for this ground of complaint, the information does not disclose a reasonable indication that the procurement was not 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,

Susanne Grimes
Acting Secretary