



BY FACSIMILE

August 3, 2007

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Subject: Solicitation No. W8486-07JB09/A
Quantum Marine Ltd. (File No. PR-2007-029)

The Canadian International Trade Tribunal (the Tribunal) (Panel: Meriel V. M. Bradford, Presiding Member; James A. Ogilvy, Member; Ellen Fry, Member) has reviewed the complaint submitted by Quantum Marine Ltd. (Quantum) on July 27, 2007, and has decided not to initiate an inquiry into the complaint.

The complaint relates to a procurement for “Short Range and Long Range Beacons” for operational and training units of the Canadian Forces by the Department of Public Works and Government Services (PWGSC). Quantum is a distributor of a product manufactured by Adventure Lights, a Canadian manufacturer of light beacons. Quantum alleges that the following:

- PWGSC improperly declared its proposal non-compliant, specifically regarding pricing for options and accessories.
- There is a reasonable apprehension of bias and preferential treatment since, according to Quantum, the specifications for the beacons were biased towards the winning bidder’s product. Specifically, Quantum raised issues regarding the requirements for the type of battery for use in the beacons.

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

The Request for Proposal (RFP) states, at clause 13.3.1.1, that “Bidders must propose firm unit prices at Annex “D”, FOB Destination, Goods and Services Tax or the Harmonized Sales Tax excluded, Customs duties and Excise taxes included. Bidders must propose firm unit prices for each year, including Option years. **Price evaluation will be based on the total net lot price for the initial three-year period only.**” Annex D to the RFP clearly states that the price evaluation will be based on the total net lot price for the first three years only.

Quantum's completed Annex D provided a total net lot price for short-range beacons and a total net lot price for long-range beacons, as well as a total assessed lot price for evaluation. Quantum also listed separately at the bottom of each page various accessories with a unit price for each. It is apparent that some or all of these accessories were required in order to satisfy the mandatory requirements of the RFP, but there is no indication as to whether these unit prices applied to the fixed lot or the "as and when required" method of pricing in the tables. It is also apparent that the total assessed lot price for evaluation in Quantum's proposal did not include the accessories and, according to the information contained in the complaint, the total assessed lot price was the financial information upon which PWGSC based its evaluation of Quantum's bid.

Given the specific requirements stated in the RFP with respect to the pricing that bidders were required to submit, the Tribunal finds that there is no indication that PWGSC failed to follow the requirements of the RFP when it evaluated Quantum's proposal without taking into consideration the accessories. Accordingly, the Tribunal finds that the evidence does not disclose a reasonable indication that the procurement was not carried out in accordance with the applicable trade agreement.

With respect to the second allegation, Quantum's previous complaint (File No. PR-2007-023) also contains the same allegation which, the Tribunal decided in that case, had been filed outside the time limits allowed by the *Regulations*. Since the Tribunal has already rendered a final decision with respect to that allegation, it has discharged its legal duty and cannot review it again except under very limited circumstances, such as where it is necessary to correct a clerical error, an accidental error or omission, an ambiguity, or where the decision in question was procured by reason of fraud or other circumstances which call its integrity into question. The Tribunal is of the view that Quantum's purported conformance with article 4.4 of the RFP as the reason for not filing a complaint with the Tribunal does not constitute any of the circumstances that would allow the Tribunal to review its decision.

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