



TRANSLATION

BY FACSIMILE

November 28, 2007

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Subject: Solicitation No. SEL-2007-A-032436-1

Bureau d'études stratégiques et techniques en économique (File No. PR-2007-068)

The Canadian International Trade Tribunal (the Tribunal) (Ellen Fry, Presiding Member) has reviewed the complaint submitted on behalf of Bureau d'études stratégiques et techniques en économique (B.E.S.T.E.) on November 19, 2007, and has decided not to initiate an inquiry into the complaint.

B.E.S.T.E.'s allegations with regard to its complaint can be summarized as follows:

- (1) the Canadian International Development Agency (CIDA) violated the Tribunal's determination dated September 5, 2007;
- (2) CIDA placed itself in a conflict of interest situation by having the re-evaluation of the proposals done solely by its staff;
- (3) there was a lack of expertise in local governance on the part of the evaluators who took part in the re-evaluation;
- (4) the evaluation of the proposals was erroneous and inequitable, particularly with regard to Requirement 1 of the Request for Proposals (RFP);
- (5) Requirement 12 of the RFP should have been taken out of the re-evaluation since the violation of the order to provide documents prevented B.E.S.T.E. from presenting certain arguments concerning the work experience of the successful bidder.

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 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.

The Tribunal examined the grounds of complaint in the order in which they were presented.

CIDA violated the Tribunal's determination issued September 5, 2007

The Tribunal is of the view that it does not have jurisdiction to inquire into this ground of complaint since it concerns CIDA's observance of the Tribunal's recommendations issued September 5, 2007.

CIDA placed itself in a conflict of interest situation by having the re-evaluation of the proposals done solely by its staff

The Tribunal is of the view that this ground of complaint does not disclose a reasonable indication that the procurement was not carried out in accordance with the applicable trade agreements. The Tribunal notes that, on September 5, 2007, it recommended that CIDA "... form an evaluation team composed of new evaluators who have not been involved in any way in the procurement at issue or in a related procurement to re-evaluate the bids..." The Tribunal notes that it did not recommend that the new evaluators not be CIDA employees.

There was a lack of expertise in local governance on the part of the evaluators who took part in the re-evaluation

The Tribunal is of the view that this ground of complaint was filed outside of the prescribed time limits. Indeed, under subsection 6(1) of 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." Subsection 6(2) of the *Regulations* states that a potential supplier who has made an objection to the relevant government institution, and is denied relief by that government institution, may file a complaint with the Tribunal "... within 10 working days after the day on which the potential supplier has actual or constructive knowledge of the denial of relief, if the objection was made within 10 working days after the day on which its basis became known or reasonably should have become known to the potential supplier."

The Tribunal notes that the Request for a Summary Proposal (RFSP) did not specify that the evaluators were required to have any experience in a particular field. If, after reading the RFSP, B.E.S.T.E. wanted to complain about this, it had to do so within 10 working days after October 27, 2006, i.e. the bid closing date.

The evaluation of the proposals was erroneous and inequitable, particularly with regard to Requirement 1 of the RFP

The Tribunal does not usually substitute its judgement for that of the evaluators, unless 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, have based their evaluation on undisclosed criteria or have otherwise not conducted the evaluation in a procedurally fair way.

The Tribunal is of the view that this ground of complaint does not disclose a reasonable indication that the procurement was not carried out in accordance with the applicable trade agreements.

Requirement 12 of the RFP should have been taken out of the re-evaluation since the violation of the order to provide documents prevented B.E.S.T.E. from presenting certain arguments concerning the work experience of the successful bidder

The Tribunal is of the view that it does not have jurisdiction to inquire into this ground of complaint. Indeed, the order made by the Tribunal on May 29, 2007, is incidental to File Nos. PR-2007-010 and PR-2007-012 for which the Tribunal has already issued its determinations and made its recommendations.

Consequently, the Tribunal will not conduct an inquiry into the complaint and considers the matter closed.

Yours sincerely,

Hélène Nadeau
Secretary