



**BY FACSIMILE**

October 1, 2007

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_:

Subject: Solicitation No. 0D160-070788  
IPSS Inc. (File No. PR-2007-056)

The Canadian International Trade Tribunal (the Tribunal) (Serge Fréchette, Presiding Member) has reviewed the complaint submitted by IPSS Inc. (IPSS) on September 21, 2007, and has decided not to initiate an inquiry into the complaint.

IPSS alleged that the Department of Public Works and Government Services (PWGSC) incorrectly evaluated its proposal. Specifically, it alleged that it should have received full marks for rated criterion 8 which required proposed resources to have experience writing briefing notes to senior management on serious cyber threats or incidents.

Paragraph 7(1)(c) of the *Canadian International Trade Tribunal Procurement Inquiry 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 (NAFTA)*, Chapter Five of the *Agreement on Internal Trade (AIT)* or the *Agreement on Government Procurement (AGP)* applies. The government institution in the present matter, Public Safety Canada, is not listed (nor its predecessors) in Annexes 1 or 3 of Canada's Appendix to the *AGP*. Consequently only *NAFTA* and the *AIT* are applicable.

It should be noted that, as a matter of law, 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 or have based their evaluation on undisclosed criteria, the Tribunal will not substitute its judgement for that of the evaluators. The Tribunal is of the view that the complaint does not demonstrate that any of the above circumstances were applicable.

According to the complaint, on September 18, 2007, PWGSC advised IPSS that no points could be awarded for rated criterion 8 for any of the referenced projects because, though reference was made to briefing notes, the résumés of the proposed resources did not specifically include reference to “senior management” and the evaluation team could not ascertain this in reviewing the project content within the résumés.

IPSS submitted that the proposed resources were incumbents in the roles on an intermittent basis over a period of approximately four years and that, as such, the technical evaluation team was clearly aware of the tasks that were completed by the incumbents in those roles. IPSS also submitted that, though the words “senior management” were used in some but not all projects, its response to rated criterion 8 demonstrated that briefing notes were in fact prepared for senior levels.

The Tribunal notes that it is clear in the Request for Proposal (RFP) that proposals would be evaluated on the basis of their content alone. Clause A1 of the RFP reads, in part, as follows:

Bidders who have previously satisfied this requirement or similar requirements, in particular, should note that this solicitation represents a new articulation of the requirement and no Bidders should assume that past practices will continue, except to the extent that they have been expressly articulated in this solicitation, or that the Bidder’s existing capabilities meet the requirement simply because they have met previous requirements.

Clause A15 of the RFP reads, in part, that “Canada will evaluate a Bidder’s proposal on the documentation provided as part of that proposal.” The Tribunal is of the view that there is an onus on the bidder to ensure that its proposal is clear and precise.

The Tribunal is of the view that there is no evidence that the evaluators did not properly apply themselves in evaluating IPSS’s proposal or that they have ignored vital information contained in the proposal. The Tribunal will not substitute its judgment for that of the evaluators. Therefore, the Tribunal finds that the complaint does not disclose a 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 this complaint and considers the matter closed.

Yours sincerely,

Susanne Grimes  
Acting Secretary