



BY FACSIMILE

June 25, 2007

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Subject: Solicitation No. M9020-071958
Mega-Technical Holdings Inc. (File No. PR-2007-022)

The Canadian International Trade Tribunal (the Tribunal) (Panel: Ellen Fry, Presiding Member; James A. Ogilvy and Serge Fréchette, Members) has reviewed the complaint submitted on behalf of Mega-Technical Holdings Inc. (Mega-Tech) on June 14, 2007, and has decided not to initiate an inquiry into the complaint.

Mega-Tech alleged that the Department of Public Works and Government Services (PWGSC) improperly rejected its proposal. According to the complaint, PWGSC found Mega-Tech's proposal non-compliant because it did not include a statement of compliance with respect to SAE J595 from an accredited laboratory. Mega-Tech submitted that it had included, as part of its proposal, reports that demonstrated the compliance of its proposed product with SAE J595 and that it had also included a statement in its covering letter that indicated that its proposal was compliant with all the mandatory requirements of the Request for a Standing Offer (RFSO).

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* applies. In this case, only *NAFTA* and the *AIT* apply.

Annex C to the RFSO, as amended, states that bidders "must provide a statement of compliance as per SAE J595 rated in Class 1 for the Blue and Red L.E.D. modules from an accredited lab". The Tribunal considers that this requirement clearly indicates that, as a mandatory requirement, a proposal had to include such a statement in order for it to be considered compliant. Section 1.1 of Part 4 of the RFSO also informed bidders that offers not meeting all the mandatory requirements would be considered non-responsive.

Mega-Tech acknowledges that it did not provide the required statement of compliance from an accredited laboratory. However, it claims that it provided other information in its proposal and covering letter which demonstrated that its proposal met all the mandatory requirements.

The Tribunal is of the opinion that, having made the requirement to include statements of compliance from an accredited laboratory as mandatory and informing bidders of the consequences of non-compliance with the mandatory criteria, PWGSC was obligated to follow the terms of the RFSO when it rejected Mega-Tech's proposal.

Accordingly, the Tribunal finds that Mega-Tech's complaint does not disclose a reasonable indication that the procurement was not carried out in accordance with the applicable trade agreements. Therefore, the Tribunal will not conduct an inquiry into the complaint and considers the matter closed.

Yours sincerely,

Hélène Nadeau
Secretary