



**BY FACSIMILE**

December 14, 2007

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Subject: Solicitation No. EN869-060329/T (RVD118)  
Netgear Inc. (File No. PR-2007-071)

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The Canadian International Trade Tribunal (the Tribunal) (Ellen Fry, Presiding Member) has reviewed the complaint submitted on behalf of Netgear Inc. (Netgear) on December 6, 2007, and has decided not to initiate an inquiry into the complaint.

Netgear alleged that the Department of Public Works and Government Services (PWGSC):

- (1) incorrectly declared its proposal non-compliant on the grounds that the products offered were not listed on the PWGSC-approved preferred product list (PPL) at bid closing; and
- (2) despite the provisions permitting equivalents, improperly limited the procurement to the products of a particular supplier, namely, Cisco Systems Inc.

According to subsection 6(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* (the *Regulations*), a complaint shall 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.”

In other words, a complainant has 10 working days from the date on which it first becomes aware of its ground of complaint to either object to the contracting authority or file a complaint with the Tribunal. If a complainant objects to the contracting authority within the 10-working-day time frame, the complainant may file a complaint with the Tribunal within 10 working days after it has actual or constructive knowledge of the denial of relief.

With respect to the first ground of complaint, PWGSC advised Netgear on November 1, 2007, that its proposal had been declared non-compliant as, in its view, the products it offered were not listed on the PWGSC-approved PPL at bid closing. Later that day, Netgear responded to PWGSC and submitted that, in its view, the products were on the PPL and requested that PWGSC verify this observation. On November 6, 2007, PWGSC restated that, in its view, Netgear's quote did not properly identify the products listed on the approved PPL and once again advised Netgear that its proposal had been declared non-compliant.

The Tribunal is of the view that Netgear was aware on November 6, 2007, if not before, of PWGSC's response regarding the reason why its proposal had been deemed non-compliant and that PWGSC had denied the relief it was seeking. In order for a complaint to have been filed with the Tribunal in accordance with section 6 of the *Regulations*, it would have needed to be filed with the Tribunal within 10 working days of that date, or by November 21, 2007. As the complaint was not filed until December 6, 2007, the Tribunal finds that this ground of complaint was not filed within the required time limit.

With respect to the second ground of complaint, the Tribunal is of the view that Netgear should reasonably have known about its basis of complaint when it read the specifications included with the solicitation, which must have been by October 11, 2007, the bid closing date, at the latest. Netgear did not make an objection to PWGSC nor did it file a complaint with the Tribunal within 10 working days after this date. Therefore, the Tribunal finds that this ground of complaint was not filed within the required time limit.

Notwithstanding the foregoing, the Tribunal would like to comment concerning the substance of your complaint. With respect to Netgear's allegation that PWGSC incorrectly declared its proposal non-compliant on the basis that the products offered were not listed on the PWGSC-approved PPL at bid closing, the Tribunal notes that the product codes included in Trust Business Systems' proposal (as Netgear's agent) are not identical to those on the document submitted to PWGSC via e-mail on November 20, 2007. Consequently, even if the Tribunal had considered that this ground of complaint was filed in a timely manner, it would have considered that there was no reasonable indication of a breach of the applicable trade agreements and consequently would not have accepted this ground of complaint for inquiry.

The Tribunal will therefore not conduct an inquiry into the complaint and considers the matter closed.

Yours sincerely,

Susanne Grimes  
Acting Secretary