



BY FACSIMILE

October 19, 2007

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Subject: Solicitation No. W8486-087108/A
Gear Up Motors (File No. PR-2007-059)

The Canadian International Trade Tribunal (the Tribunal) (James A. Ogilvy, Presiding Member) has reviewed the complaint submitted by Gear Up Motors on October 5, 2007, and has decided not to initiate an inquiry into the complaint.

The complaint relates to a procurement by the Department of Public Works and Government Services (PWGSC) for flashlights on behalf of the Department of National Defence.

Gear Up Motors alleged that PWGSC incorrectly deemed its proposal non-compliant, as its proposed products did not have certification.

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*, Chapter Five of the *Agreement on Internal Trade* or the *Agreement on Government Procurement* applies.

According to the complaint, on July 10, 2007, PWGSC issued amendment No. 004 which revised the descriptions of the required products for items 2 and 3. The revised descriptions read as follows:

...

Flashlight, right angle type; Accom two 1.5 volt cells; plastic case; explosion proof; watertight; one blackout and two red filters; two lamps; clip and ring; color olive drab. In acc/with Mil-F-3747E; Type 2; style 2 with the following exceptions: will waive first article testing; will accept test results from any recognized laboratory. Certification shall be molded or embedded into the plastic body.

...

On October 2, 2007, PWGSC advised Gear Up Motors as follows: “We asked for ‘Certification shall be molded or embedded into the plastic body’. No certification. Your bid is not acceptable.” In its reply e-mail to PWGSC, Gear Up Motors stated the following:

...

The full text of that paragraph says:

“in acc/with Mil – F-3747E: Type 2: style 2 with the following exceptions: will waive first article testing; will accept test results from any recognized laboratory.”

This paragraph simply means that if certification is provided, no first article testing will be done by the customer. My product did not have certification – therefore the customer is obligated to test the product for acceptability.

The Tribunal is of the view that the plain meaning of the descriptions of items 2 and 3 indicates that (1) test results that would have been accepted remained the bidder’s responsibility and (2) certification was required to be molded or embedded into the plastic body. Gear Up Motors stated that its product did not have certification. It follows therefore that Gear Up Motors could not satisfy the second requirement that certification be molded or embedded into the goods.

Consequently, the Tribunal is of the view that there is no evidence that the evaluators did not properly apply themselves in evaluating Gear Up Motors’ proposal, and it 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 the complaint and considers the matter closed.

Yours sincerely,

Hélène Nadeau
Secretary