



BY FACSIMILE

November 6, 2007

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Subject: Solicitation No. W8486-088731/A
West Atlantic Systems (File No. PR-2007-063)

The Canadian International Trade Tribunal (the Tribunal) (Presiding Member: James A. Ogilvy) has reviewed the complaint submitted by West Atlantic Systems (West Atlantic) on October 25, 2007, and has decided not to initiate an inquiry into the complaint.

West Atlantic alleged the following: (1) that the Request for Proposal (RFP) contained restrictive references to another company's products and inadequate equivalency provisions for bidders offering products other than those specifically identified in the RFP; (2) that the Department of Public Works and Government Services (PWGSC) failed to provide the necessary information, in the form of network diagrams, to allow bidders to submit proposals offering equivalent products; and (3) that PWGSC failed to adequately describe the operational requirement without referencing another company's products.

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 in a timely manner and has actual or constructive knowledge of the denial of relief, the complainant may then file a complaint with the Tribunal within 10 working days.

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. In this case only the *AIT* applies. The value of the procurement does not meet the threshold necessary for coverage under the *AGP* and the goods in question, because they were purchased on behalf of the Department of National Defence, are not covered by *NAFTA*.

Based on the information found in the complaint, West Atlantic directed a number of questions to PWGSC with regard to the grounds of complaint, to which PWGSC responded via two amendments. According to the complaint, West Atlantic downloaded amendment 1 on October 9, 2007, and amendment 2 on October 11, 2007. In amendment 1, PWGSC denied West Atlantic's request for the provision of a network diagram as well as its request to remove all references to the other company's products. PWGSC also advised bidders that the equivalency sections of the RFP were still in force and would have to be adhered to by bidders considering equivalent products. In amendment 2, PWGSC denied West Atlantic's request to provide the operational requirement without referencing the other company's products.

The Tribunal is of the view that West Atlantic was aware on October 9, 2007, of PWGSC's responses regarding the removal of references to the competitor's products, the status of the RFP's equivalency provisions and whether PWGSC would provide a network diagram. 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 October 23, 2007. As the complaint was not filed until October 25, 2007, the Tribunal finds that these grounds were not filed within the pertinent time limit.

Regarding the ground of complaint that PWGSC did not provide the operational requirement without referencing another company's products, the Tribunal notes that the *AIT* does not require that operational requirements be expressed in any particular format. The Tribunal finds that, by indicating that it required interoperability with Cisco products, PWGSC had thereby specifically set out its operational requirements. The Tribunal also notes that the RFP contained clauses that allowed for the provision of equivalent products. Accordingly, the Tribunal finds, in relation to this ground, that West Atlantic's complaint does not disclose a reasonable indication that the procurement was not carried out in accordance with the *AIT*.

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

Yours sincerely,

Hélène Nadeau
Secretary