

Ottawa, Friday, February 25, 2000

File No.: PR-99-040

IN THE MATTER OF a complaint filed by Brent Moore & Associates under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47;

AND IN THE MATTER OF a motion by the Department of Public Works and Government Services for an order dismissing the complaint on the basis that the Tribunal does not have the jurisdiction to conduct an inquiry into the procurement because the procurement does not relate to a “designated contract” within the meaning of section 30.1 and as required by subsection 30.11(1) of the *Canadian International Trade Tribunal Act* and as defined in subsection 3(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.

ORDER

The Canadian International Trade Tribunal hereby dismisses the motion by the Department of Public Works and Government Services.

Patricia M. Close
Patricia M. Close
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary

The Statement of Reasons will follow at a later date.

Date of Order: February 25, 2000
Date of Reasons: March 29, 2000

Tribunal Member: Patricia M. Close

Investigation Manager: Randolph W. Heggart

Investigation Officer: Paule Couët

Counsel for the Tribunal: Michèle Hurteau

Complainant: Brent Moore & Associates

Counsel for the Complainant: Ronald D. Lunau

Intervener: Intertask Limited

Government Institution: Department of Public Works and Government Services

Counsel for the Government Institution: Christianne M. Laizner

Ottawa, Wednesday, March 29, 2000

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STATEMENT OF REASONS

INTRODUCTION

On December 21, 1999, Brent Moore & Associates (BMA) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ concerning the procurement by the Communications Coordination Services Branch (CCSB), a constituent of the Department of Public Works and Government Services (the Department), of meeting management services for various federal government departments and agencies identified in the Request for a Standing Offer (RFSO) (Solicitation No. EP045-9-1001/A).

BMA alleged that, in conducting this procurement, the Department has failed to define, in the RFSO, the terms “prime” and “back-up” as these apply to the successful bidders. Furthermore, BMA alleged that, by insisting on a “right of first refusal” on the part of the ranked successful bidders, the Department has introduced a call-up procedure different from that described in the RFSO.

BMA requested, as a remedy, that the Department allow the users of the standing offer to access the qualified firms of their choice in the National Capital Region by issuing call-ups without giving right of first refusal to firms in ranked order. Alternatively, BMA sought compensation that recognizes the opportunity that it lost. In addition, BMA requested its reasonable costs incurred in preparing a response to this solicitation and for the filing and processing of this complaint.

On January 5, 2000, the Tribunal informed the parties that the complaint had been accepted for inquiry, as it met the conditions set out in section 7 of the *Canadian International Trade Tribunal*

1. R.S.C. 1985 (4th Supp.), c. 47 [hereinafter CITT Act].

Procurement Inquiry Regulations.² On January 13, 2000, the Tribunal informed the parties that Intertask Limited (Intertask) had been granted intervener status in the matter.

On January 31, 2000, the Department filed a notice of motion requesting that the Tribunal dismiss the complaint because it did not have jurisdiction to hear this matter by virtue of the fact that the procurement at issue does not relate to a “designated contract” as required by subsection 30.11(1) of the CITT Act and as defined in subsection 3(1) of the Regulations. Specifically, the procurement at issue is for “public relation services”, which are not subject to the disciplines of the trade agreements.

POSITION OF PARTIES

The Department explained its position in the motion. It submitted that the “meeting management services” procured by the CCSB on behalf of client departments must be exclusively for events which have a communications or public relations purpose. The Department also submitted that the CCSB, created in November 1997, as a result of the integration of the operations of the Advertising and Public Opinion Research Sector, the Public Regulations and Print Operations Sector, and the Reference Canada/Canada Primary Internet Site of the Department, has a mandate to harmonize the delivery of government information to Canadians and to provide effective communications coordination and support services to client departments.

The Department further submitted that the components of “meeting management services” included, *inter alia*, in the relevant Notice of Proposed Procurement (NPP) and the RFSO, establishing meeting objectives and designing meeting formats, planning program content, media relations, marketing promotion and publicity, planning and managing function room setup, managing exhibits, determining audio-visual requirements, arranging entertainment, producing and printing meeting materials, which are not covered by the *North American Free Trade Agreement*,³ the *Agreement on Government Procurement*⁴ or the *Agreement on Internal Trade*.⁵

The Department submitted that these services are properly classified as “Communications, Photographic, Mapping, Printing and Publication Services”, which are excluded services under NAFTA, Annex 1001.1b-2.

The Department further submitted that the “meeting management services” are not included in the AGP and are excluded from the AIT by virtue of paragraph 1(f) of Annex 502.1B,⁶ which excludes “advertising and public relation services”.

Furthermore, the Department submitted that, although the coverage of services under the trade agreements may differ, the classification of services must be consistent throughout the trade agreements in order to avoid confusion on the part of suppliers and afford transparency of the application of the trade agreements. The Department also argued that it would be unworkable if “meeting management” services or

2. S.O.R./93-602 [hereinafter Regulations].

3. 32 I.L.M. 289 (entered into force 1 January 1994) [hereinafter NAFTA].

4. Annex 4 to the *Agreement on Government Procurement*, 15 April 1994, online: World Trade Organization Homepage <<http://www.wto.org/wto/govt/agreem.htm>> [hereinafter AGP].

5. As signed at Ottawa, Ontario, on 18 July 1994 [hereinafter AIT].

6. Formerly para. 1(g) of Annex 502.1B. Amended by the Second Protocol of Amendment signed at Ottawa, Ontario, on February 20, 1998.

“event planning and management” services were specifically classified as “public relation services” under NAFTA and classified as something else under the AIT and the AGP. Also, there is no better classification for “meeting management services” or “event planning and management services” than as public relation services. In the normal course of trade, the Department added, “public relation services” are understood to include “meeting management” services or “event planning and management” services.

In the alternative, in the event that the Tribunal determines that it does have jurisdiction in this matter, the Department requested an extension of time in which to file the Government Institution Report.

On February 9, 2000, Intertask, which represents itself as “the first private sector firm of professional meeting managers in Canada”, submitted that the “meeting management services”, as defined in the RFSO and in the industry, are services which pertain to the physical operational arrangements and logistics for meetings, not to their substantive content. Intertask submitted that the Canadian public relations society, inc. definition proffered by the Department pertains to the involvement of public relation firms in supporting the advocacy function which is part of the substantive role of the client. Professional meeting planners, whose services were sought in the RFSO, Intertask submitted, are specifically prohibited by their industry practices and ethical standards from providing public relation services or engaging in the preparation, presentation or management of the substantive aspects of meetings. Furthermore, Intertask submitted that all other federal departments have separate procurement criteria and specific series of standing offers for public relation services, distinct from meeting management services.

In its reply of February 11, 2000, to the Department’s motion, BMA submitted that “meeting management services” are not the same as “public relations or advertising” services and, accordingly, are not excluded from the AIT, the only trade agreement under which BMA’s complaint was made. Thus, BMA submitted, it is the provisions of the AIT which govern.

BMA submitted that the terms of the AIT are clear and do not require recourse to the provisions of other treaties, such as NAFTA or the AGP, as an aid to construction. Furthermore, there is no support for the Department’s contention that the language of the AIT must be read into the agreement to make it consistent with NAFTA, an entirely different international treaty.

BMA submitted that the Department cannot rely on paragraph 1(f) of Annex 502.1B of the AIT to exempt this procurement from the application of the AIT because meeting management services, the object of the RFSO at issue, are clearly distinguishable from advertising and public relation services. The meeting management services and the advertising and public relation services have different objectives, cover different tasks and duties, and require different education and certification standards, and their respective practitioners subscribe to different codes of professional conduct.

Furthermore, although BMA accepts that “meeting management services” fall under the category relating to “expositions and events management”, the mere fact that “expositions and events management” is contained on a list of CCSB services with public relations and advertising does not automatically disqualify meeting management services from coverage under the AIT. For example, BMA submitted that “printing”, which is also contained on the same list of CCSB services as “public relations” services and “advertising” services, is specifically included in the definition of services covered under the AIT.

BMA submitted that, expositions and events management professionals, such as meeting managers, do not play a role in the formulation of the substantive content of public relations. The meetings that they arrange may provide a “forum” through which such content can be communicated, but the actual public

relation work is not their responsibility. Public relation and advertising professionals, not meeting managers, carry out that responsibility.

In summary, BMA submitted that the tasks itemized in the RFSO do not attempt to influence public opinion or to alter public behaviour, which is essentially the role of a public relation professional. In fact, these tasks are virtually identical to the meeting management tasks outlined by Meeting Professionals International – Canadian Council.

In its response of February 17, 2000, to BMA's and Intertask's comments on the motion, the Department noted that neither BMA nor Intertask takes issue with the exclusion of this procurement from coverage under NAFTA or the AGP. However, the Department submitted that both take issue with the Department's classification of the services covered by the RFSO.

The Department submitted that the RFSO sets forth the types of services required, all of which must be considered in making a decision on classification. The Department submitted that BMA and Intertask have cited only selective provisions of the Departmental Individual Standing Offer in support of their argument and have omitted all reference to services required under the RFSO that are clearly public relation services under the definitions provided by BMA and Intertask. Furthermore, the Department submitted that the limitations, which Intertask places on the services that it elects to offer as its business, are irrelevant to the classification of the services in the RFSO.

The Department submitted that the first thing to do in order to determine whether a procurement is excluded from coverage under any of the trade agreements is to examine the services required and make a decision on classification. In this context, the Department submitted that the AIT contains no requirements on how services are to be classified. Therefore, in the absence of a classification system in the AIT, the Department submitted that it must maintain a system of classification of services that is consistent throughout the trade agreements. Uniformity of application of such a classification system, the Department submitted, affords transparency to suppliers and uniformity of application by the Department and avoids confusion on the part of suppliers and the parties to the trade agreements. The Department argued that, while coverage of services under the trade agreements may differ, the classification of services must be the same.

The Department submitted that the information relied upon by BMA, when read in its full and proper context, clearly demonstrates that the services required under the RFSO were properly classified as public relation services.

The Department submitted that, although on its own, meeting or events management is properly classified for procurement purposes as a public relation service, the inclusion in the RFSO's scope of work of services, such as negotiating sponsorship, partnership and official supplier arrangements, media relations, marketing promotion and publicity, managing exhibits, producing and printing meeting materials and development of interactive Web sites, confirms that the necessary and proper classification of the requirement at issue is unambiguously one for public relation services. On the question of the differing education, qualification or codes of conduct, the Department submitted that such qualifications or adherence to these voluntary codes of conduct were not requirements of the RFSO and, accordingly, are of no assistance or relevance in determining the issue of the classification of the requirements under the RFSO.

Furthermore, the Department submitted that the listing of CCSB services in the "Customer Manual" is not only out-of-date but not an authoritative source on the matter of the classification of services under the trade agreements.

Finally, in response to a number of subsidiary arguments raised by BMA and Intertask, the Department submitted that public relation professionals do plan conferences, that the CMP⁷ designation, or, in fact, any meeting industry designation, was not a requirement of the RFSO at issue and that there is no separate procurement process for public relation services in the context suggested by Intertask, as the all-encompassing nature of the term would not aid bidders in determining which public relation services were being procured.

For all the above reasons, the Department reiterated that the proper procurement classification of the requirement covered by the RFSO is public relation services, which services are excluded from coverage under the trade agreements.

TRIBUNAL'S DECISION

After careful consideration of the submissions, the Tribunal finds that the "meeting management services" being procured in this solicitation cannot be categorized as "public relation services". Therefore, the "meeting management services" are not exempt from the scope and coverage of the "Procurement" chapter of the AIT under paragraph 1(f) of Annex 502.1B.

The Tribunal based its decision on the following findings and considerations. First, it does not agree with the Department that, because the AIT does not prescribe a classification system for goods and services, a classification system, such as that found in NAFTA, must be imported into the AIT by the Government. While the Tribunal is cognizant of the value of consistency and transparency, it is of the opinion that the three trade agreements at issue are legally separate one from the other. The Department or a party to any of the agreements cannot, on the ground of administrative efficiency or any other ground, impose a component of one agreement on either of the other agreements, unless there is a specific reference to that effect in an agreement.

Second, given that the AIT does not define the term "public relation services" found at paragraph 1(f) of Annex 502.1B, the Tribunal has relied upon, in the first instance, the ordinary meaning and professional definitions of the term "public relation services". It is not persuaded that "meeting management services" can be categorized as "public relation services". The concept of "public relations" involves supporting an advocacy function, whereas "meeting management" centres around the planning of successful meetings.

As to whether the particular meeting management services sought in this procurement could be included under the definition of "public relations", the Tribunal examined the list of functions which appeared in the NPP and the RFSO, which read as follows:

To provide the Project Authority, on an as and when requested basis, with meeting management services for meeting functions for which the Project Authority may be responsible for including:

- Establishing or clarifying meeting objectives and designing meeting formats
- Budgeting and financial management including subcontracting and making payments to subcontractors
- Planning program content
- Identifying, negotiating with selected sites and facilities
- Negotiating sponsorship, partnership and official supplier arrangements
- Media relations

7. Certified Meeting Professional.

Marketing promotion and publicity
Security and risk management
Reservations and housing
Transportation
Preparing Specification Guidebook/Staging Guides/documenting specifications
Registration and/or establishing registration procedures
Arranging for and using support services, e.g. simultaneous interpretation, IT hardware and software, etc.
Coordinating all meeting aspects
Briefing facilities staff – Pre-Meetings
Shipping
Planning and managing function room setup
Managing exhibits
Managing hospitality, food and beverage
Determining audiovisual requirements
Selecting and making provisions for speakers
Arranging entertainment
Guest and family programs
Producing and printing meeting material
Evaluating – Post Meetings
Development of Interactive Websites.

The Tribunal concluded from a review of the above list that, although a limited number of functions could relate to public relation type services, i.e. “media relations” and “marketing promotion and publicity”, the overwhelming majority of the items listed concern the delivery of functions required to ensure the proper management and support of meetings. Moreover, not all these services would necessarily be required, rather they are to be provided on an “as and when requested basis”.

The mandatory requirement in the RFSO, more specifically, mandatory criterion M3, clearly puts the emphasis on knowledge and experience in organizing meetings. There is no specific requirement in the RFSO that deals with experience and qualification in the field of public relations.

For the above reasons, the Tribunal concluded that “meeting management” services, the object of this solicitation, are not the same as “public relation” services and, therefore, are not exempt from the application of the AIT. Accordingly, the Tribunal dismissed the Department’s motion and continued its inquiry into this complaint.

Patricia M. Close
Patricia M. Close
Presiding Member