

## **BID CHALLENGES—PROCUREMENT REVIEW**

### **INTRODUCTION**

The *North American Free Trade Agreement (NAFTA)*, the *Agreement on Internal Trade (AIT)*, the *World Trade Organization Agreement on Government Procurement (AGP)* and the *Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile (CCFTA)* require the signatories to maintain an independent bid challenge authority. The *Canadian International Trade Tribunal Act (CITT Act)* establishes the Canadian International Trade Tribunal (the Tribunal) as the bid challenge authority for Canada. Parliament has enacted legislation designed to ensure that the procurements covered by these agreements are conducted in an open, fair and transparent manner and, wherever possible, in a way that maximizes competition. (Refer to the *Procurement Review Process: A Descriptive Guide* found on this Web site.)

### **COMPLAINT**

Any potential supplier that believes that it has been treated unfairly during the solicitation, evaluation of bids or awarding of contracts relating to a designated procurement, may file a complaint with the Tribunal. However, that supplier is encouraged to first attempt to resolve the issue with the government institution responsible for the procurement by filing an objection with that government institution. If this process is not successful or if a supplier wishes to deal directly with the Tribunal, the complainant may request the Tribunal to consider the case by filing a complaint within the prescribed time limit, which is generally 10 working days from the day on which the basis of the complaint became known.

A complaint must contain the identity of the complainant, the description of the designated contract in question and the name of the government institution that awarded or is to award the contract. It must provide a clear and detailed statement of the grounds of the complaint. As well, the complaint should contain a statement of the form of relief requested, the address, the telephone and fax numbers of the complainant, the name of the contact person to whom communications should be addressed, and all information and documents that are relevant to the complaint and in the complainant's possession. Potential suppliers may use the form on this Web site to make a complaint.

The Tribunal reviews complaints to determine if they contain all the necessary information. The complainant is given an opportunity to provide any missing information within the specified time limit for filing.

### **DECISION TO CONDUCT AN INQUIRY**

The Tribunal's decision to conduct an inquiry is based, in part, on whether the complaint discloses that the procedural requirements of one or more of the relevant agreements were not followed. An example of this is where the government institution responsible for the procurement has used an overly restrictive specification or has acted in another manner to limit competition. In addition, the estimated contract value must exceed a certain minimum and be for a product or service that is covered by one of the trade agreements. The Tribunal makes its decision within five working days after the complaint is filed. A written decision is subsequently issued.

If the Tribunal decides to conduct an inquiry, the government institution and all other interested parties are sent a formal notification of the complaint and a copy of the complaint itself. The official notice of inquiry is published on MERX, Canada's electronic tendering service, and in Part I of the *Canada*

*Gazette*. If the contract in question has not been awarded, the Tribunal may order the government institution to postpone awarding any contract pending the disposition of the complaint by the Tribunal.

## **INQUIRY PROCESS**

Within 25 days of receiving a complaint that is subsequently accepted for inquiry, the government institution responsible for the procurement responds by filing a Government Institution Report (GIR) with the Tribunal. The complainant and other parties to the inquiry are sent a copy of the GIR. The complainant then has 7 working days to file its comments on the GIR with the Tribunal. The Tribunal forwards these comments to the government institution and other parties to the inquiry.

Copies of any other submissions or reports prepared for the inquiry are also circulated to all parties for their comments. The Tribunal then reviews the information on the record to determine whether it is sufficient to decide the case. If there is insufficient information or if information is disputed, the Tribunal may, on its own initiative or after considering the request of a party, schedule a hearing at which parties and counsel may appear before the Tribunal.

## **DETERMINATION**

The Tribunal then determines whether the complaint is valid. If the complaint is found to be valid, the Tribunal may recommend remedies to the government institution (such as re-tendering, re-evaluating or providing compensation). The *CITT Act* requires that recommendations made by the Tribunal in its determination be implemented to the greatest extent possible.

Under the normal time frame, the Tribunal must issue its determination and recommendations within 90 days of the filing of the complaint. Under certain circumstances, the deadline for issuing the determination and recommendations extends beyond 90 days, but under no circumstances does it exceed 135 days. (Refer to the Practice Notice, *Complaints by Potential Suppliers – CITT Inquiries*, found on this Web site)

The Tribunal may award reasonable costs to the complainant or the responding government institution, depending on the nature and circumstances of the case. The Tribunal may also award a supplier its costs incurred in responding to a solicitation.

## **JUDICIAL REVIEW**

The Tribunal's determination may be judicially reviewed by the Federal Court of Appeal.

## PROCUREMENT REVIEW PROCESS

