



October 13, 2017

Caroline Briand
Cain Lamarre
630 boul. Rene-Levesque Ouest, Suite 2780
Montreal, Quebec, H3B 1S6

Re: Water Treatment Plant & Reservoir, Arviat, Nunavut
Complaint pursuant to s. 9.11 (c) NNI Regulations of April 01, 2017
RFP Reference no.: CT2017-11
Project no.: 15300-00253

Dear Ms. Briand,

The following determination is made under the provisions of the *Nunavummi Nangminiaqatunik Ikajuuti (NNI) Regulations* (Regulations). Because the bidding and complaint processes in this matter took place under the Regulations that came into force on April 1, 2017, references in this decision to the Regulations will be to that version.

Determination of the Tribunal

The Tribunal finds that it does not have jurisdiction to proceed, and therefore does not accept the complaint for hearing.

Facts regarding the complaint

On June 9, 2017, the Government of Nunavut issued a Request for Tenders (RFT) to construct a water treatment plant in Arviat NU. Four bidders, including Almiq Contracting Ltd. (Almiq), responded to the RFT.

On August 1, 2017, the Contract Authority advised Almiq that its bid was non-compliant and non-responsive, and provided its reason for disqualifying the bid. On August 21 Almiq learned from an online posting by the Government of Nunavut that the contract had been awarded to another bidder. On August 28 Almiq submitted a challenge under s.9.11 (a) of the Regulations, and the Contract Authority responded under s.9.11 (b) on September 5, again confirming Almiq's disqualification. Almiq

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Inuksugait Plaza, Iqaluit, Nunavut.

was not satisfied with the response, and on September 12 filed a formal complaint with the Tribunal under s.9.11(c) and s.9.14.

Although the letter from the Contract Authority was undated, the Tribunal is satisfied that each step of the complaint process took place within the specified time limit. The complaint also provided the information required under s.9.13. The Tribunal therefore concludes that the complaint was properly filed.

A panel was formed of all members of the Tribunal under s.9.15 to consider whether the Tribunal had jurisdiction to hear the complaint and whether the complaint disclosed a reasonable indication that the NNI was breached. The Tribunal notes that its having jurisdiction is a necessary precondition for any consideration of the substance of the complaint, and that a lack of jurisdiction precludes any further action on its part.

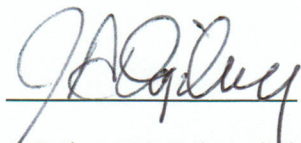
Reasons for the decision

In its deliberations on the question of jurisdiction, the Tribunal considered the terms of s.7 of the Regulations regarding the evaluation process. Under these terms, it concluded:

1. that s.7.3 applies in this instance, the pertinent language being: “No Proposal or Bid shall be evaluated or ranked ... where the Bid or Proposal is considered non-compliant, incomplete, non-responsive or not responsible.” The Contract Authority deemed Almiq’s proposal to be non-compliant and non-responsive, and provided grounds for that conclusion. As a result the Contract Authority did not evaluate or rank Almiq’s bid;
2. that the application of s.7.3 is not discretionary: the use of “shall” renders it mandatory. In this instance, the Contract Authority must not evaluate or rank Almiq’s bid once it is deemed non-compliant; and
3. that this carries through to the Tribunal’s mandate: given that the bid is, in effect, nullified under s.7.3, there is no valid complaint for the Tribunal to hear, and consequently the Tribunal has no jurisdiction in the matter.

Determination

Given that it does not have jurisdiction to proceed, the Tribunal does not accept the complaint for hearing and considers the matter closed.



J. Ogilvy, NNI Tribunal Chair

C.C. Mr. Don Galloway, Procurement Officer, Community and Government Services
Ms. Adrienne Silk, Director, Legal & Constitutional, Government of Nunavut

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