



Ottawa, Tuesday, July 10, 2001

File No. PR-2000-041

IN THE MATTER OF a complaint filed by BancTec (Canada) Inc. 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 decision made pursuant to subsections 30.15(4) and 30.16(1) of the *Canadian International Trade Tribunal Act* to award BancTec (Canada) Inc. its reasonable costs incurred in preparing a response to this solicitation, but limiting those costs to the costs involved in preparing and giving its oral presentation, and to award BancTec (Canada) Inc. its reasonable costs incurred in relation to filing and proceeding with the complaint.

ORDER

INTRODUCTION

In a determination made on February 14, 2001, the Canadian International Trade Tribunal (the Tribunal), pursuant to subsection 30.16(1) of the *Canadian International Trade Tribunal Act*,¹ awarded BancTec (Canada) Inc. (BancTec) its reasonable costs incurred in relation to filing and proceeding with its complaint. In addition, the Tribunal, pursuant to subsection 30.15(4), awarded BancTec its reasonable costs incurred in preparing a response to this solicitation, but limited those costs to the costs involved in preparing and giving its oral presentation.

On March 16, 2001, BancTec submitted to the Tribunal its claim for costs. BancTec claimed complaint costs in the amount of \$10,016.08 and bid preparation costs for its oral presentation in the amount of \$139,362.39. On April 20, 2001, after receiving additional information and documents from BancTec, the Department of Public Works and Government Services (the Department) sent comments on BancTec's claim. On April 23, 2001, BancTec responded to the comments and modified the claim in relation to complaint costs to \$10,883.08, to reflect additional counsel time required to prepare these submissions on cost. BancTec did not modify the bid preparation costs for its oral presentation.

COMPLAINT COSTS

BancTec has claimed \$10,883.08 for filing and proceeding with its complaint. The Department made no comments with respect to this claim. A careful review of BancTec's submission has revealed nothing that would indicate to the Tribunal that these charges were not actually incurred, and the Tribunal finds these costs to be reasonable in the circumstances. Accordingly, BancTec's claim for complaint costs in the amount of \$10,883.08 is allowed in its entirety.

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

BID PREPARATION COSTS

BancTec has claimed \$139,362.39 for preparing its oral presentation in response to the Request for Proposal.

The Department submitted a significant list of concerns related to BancTec's claim. These concerns include:

- A lack of supporting documentation for the time claimed for certain employees
- Claiming time for employees other than those that were present at the presentation
- Claiming time for employees before July 26, 2000 (the date on which the Department notified BancTec that it would be required to make the oral presentation) or after the presentation date
- A double counting of one hour of employee time
- Claiming rates for employees that do not represent actual costs
- Claiming rates for employees that include fringe benefits and overhead
- Claiming travel expenses for employees other than those whose time spent is supported by time sheets
- Claiming travel expenses for travel unrelated to the presentation
- Claiming disbursements for long distance telephone calling that is unsupported by documentation
- Claiming in excess of \$0.10 per page for in-house photocopying
- Claiming certain third-party expenditures

In assessing bid preparation costs, the Tribunal applies the principles listed in Appendix A of the *Procurement Cost Guidelines*. Appendix A indicates that “[b]id preparation costs are the direct and indirect costs incurred by a claimant in preparing a bid” [emphasis added] and sets out guiding principles for determining what those costs should include. The Tribunal normally accepts reasonable costs claimed for bid preparation that were actually incurred by the claimant in preparing a bid for the contract in question. As such, these costs reflect actual salaries or invoiced charges and do not include opportunity costs. Fringe benefits and overhead charges are costs that would have been incurred by BancTec as indirect costs and are considered to be bid preparation costs.

In this case, the Tribunal limited the bid preparation costs to those costs associated with preparing and giving the oral presentation. It is not unreasonable for BancTec to have done some preparation prior to receiving confirmation on July 26, 2000, that it would be required to make an oral presentation. However, the Tribunal concludes that any costs incurred prior to that time were prospective and should reasonably have been kept to a minimum. It is not reasonable that approximately 50 to 60 percent of its total personnel costs would have been incurred in this prospective fashion. It would be reasonable, in the Tribunal's estimate, to incur approximately 10 percent of the final costs for the oral presentation prior to being notified on July 26, 2000, that the oral presentation would be required. Therefore, the Tribunal will determine the allowable personnel costs incurred after the July 26, 2000, notification and then treat those costs as representing 90 percent of the total personnel costs for preparing the oral presentation, i.e. total allowable personnel costs equal allowable costs incurred after July 26, 2000, divided by 90 percent.

In determining which personnel costs will be allowable, the Tribunal refers to Appendix A of the *Procurement Cost Guidelines*, which reads at paragraph 1.2:

All bid preparation costs claimed, whether direct or indirect, **must** be supported. Copies of invoices, receipts, timecards and other documentation necessary to support a claim are to be submitted when the claim is filed. [Emphasis added]

Some type of supporting documentation is needed when claiming personnel time with regard to bid preparation costs. In this case, BancTec has only provided supporting documentation in the form of time sheets and/or agenda pages for four employees. Therefore, the Tribunal will only allow the time claimed for those employees, subject to the restrictions mentioned in the previous paragraphs. As such, the Tribunal allows \$16,301.73 for 202 hours worked after July 26, 2000, as supported by the detailed time sheets and agenda pages and calculated with the respective combined hourly rate, as submitted by BancTec for those four employees. A small double counting error in relation to one employee is corrected. The Tribunal also allows \$1,811.30 for work prior to receiving notification, calculated as described above. Therefore, a total of \$18,113.03 is allowed for personnel costs.

On the issue of travel expenses, the Tribunal does agree that travel after the oral presentation date cannot reasonably be considered as preparation for the oral presentation. However, the Tribunal will allow the travel expenses incurred for travel after the July 26, 2000, notification date, as these expenses are supported by BancTec's accounting records. Therefore, travel expenses of \$3,766.73 are allowed.

With respect to the third-party expenditures for preparation for the oral presentation, these expenses are supported by invoices that are dated subsequent to the notice of July 26, 2000, and the Tribunal has no reason to believe that these were not legitimate expenses in preparation for the oral presentation. As such, these costs are allowed in the amount of \$24,593.62.

With respect to the disbursements claimed, there is no support for the expenses described as "CD's" and "[p]hone [c]alls – [l]ong [d]istance"; as such, these claims are not allowed. With respect to the in-house photocopying, the allowable rate, as per Appendix B of the *Procurement Cost Guidelines*, is \$0.10/copy. Therefore, the Tribunal allows \$50 for the disbursements in relation to 500 photocopies.

CONCLUSION

The Tribunal hereby awards BancTec costs in the amount of \$10,883.08 in relation to filing and proceeding with the complaint and costs in the amount of \$46,523.38 in relation to preparing and giving its oral presentation and directs the Department to take appropriate action to ensure prompt payment.

Patricia M. Close

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Presiding Member

Michel P. Granger

Michel P. Granger

Secretary