



Ottawa, Tuesday, October 23, 2001

File No. PR-2000-065

IN THE MATTER OF a complaint filed by Cifelli Systems Corporation 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 determination made pursuant to subsections 30.15(4) and 30.16(1) of the *Canadian International Trade Tribunal Act* to award Cifelli Systems Corporation its reasonable costs incurred in preparing a response to the solicitation and in relation to filing and proceeding with the complaint.

ORDER

INTRODUCTION

In a determination made on June 21, 2001, the Canadian International Trade Tribunal (the Tribunal), pursuant to subsections 30.15(4) and 30.16(1) of the *Canadian International Trade Tribunal Act*,¹ awarded Cifelli Systems Corporation (Cifelli) its reasonable costs incurred in preparing a response to the solicitation and in relation to filing and proceeding with its complaint.

On July 26, 2001, Cifelli submitted to the Tribunal its claim for costs in the amounts of \$18,282.25 for complaint costs and \$5,772.26 for bid preparation costs. The Department of Public Works and Government Services (PWGSC) sent comments on Cifelli's claim on August 31, 2001. Cifelli responded to these comments on September 17, 2001, and supplemented its claim for costs by an additional \$2,835.20.

COMPLAINT COSTS

Cifelli has claimed \$20,937.50 in fees for the principal of the company who was acting as a representative² in this procurement proceeding. That amount represents 167.5 hours calculated at \$125 per hour. Cifelli has also claimed \$179.95 in disbursements that the Tribunal has attributed to the complaint costs.

PWGSC submitted that the number of hours claimed for filing and proceeding with the complaint is excessive, given the nature and level of complexity of the complaint. PWGSC also submitted that the claim for an hourly rate of \$125 does not conform to the Tribunal's *Procurement Cost Guidelines* and that a rate of \$85 per hour would be more appropriate. PWGSC further submits that there may be a duplication of costs relating to the process of familiarization with respect to the complaint process, since Cifelli's representative was also preparing a second complaint at the same time. PWGSC questions the validity of the supporting documentation provided by Cifelli for the time spent on various tasks. Finally, PWGSC

1. R.S.C. 1985 (4th Supp.), c. 47.
2. In the *Procurement Cost Guidelines*, "representative" is defined as a person who represents a party to a procurement proceeding, but who is not a legal counsel. "Procurement proceeding" means a Tribunal proceeding in respect of a complaint.

submitted that time spent by the representative to prepare the claim for costs should not be allowed as part of complaint costs.

Cifelli responded to PWGSC's comments in detail. Primarily, Cifelli argued that the hours that it submitted were reasonable and that the actual time worked by the representative on the complaint exceeded 250 hours. Cifelli submitted that the supporting documentation that it provided as part of its claim was valid and appropriate. Cifelli submitted that its rate claimed of \$125 per hour is reasonable, given that the representative has a history of more than 9 years with the company. Cifelli submitted that no costs relating to the other complaint were claimed. Finally, Cifelli submitted that the time spent on the claim for costs is reasonable and appropriate in this case.

The Tribunal is of the view that no significant complexity was inherent to this matter and that the amount of time claimed by Cifelli is excessive. The Tribunal will allow one half of the hours claimed, or 83.75 hours. Contrary to the representation made by Cifelli that the representative has acted in this capacity for over 9 years, the Tribunal finds that, given the definition of representative, the individual in question has acted in the capacity of representative for between 0 and 5 years and, thus, an hourly rate of \$85 is appropriate. Therefore, the Tribunal allows costs for the representative in the amount of \$7,118.75. With respect to disbursements, the Tribunal finds these claims to be adequately supported and allows the full amount of \$179.95. Therefore, the full amount of complaint costs allowed is \$7,298.70.

BID PREPARATION COSTS

Cifelli has claimed \$5,750.00 in fees for the work performed by the principal of the company in relation to preparing a response to the solicitation. That amount represents 46 hours calculated at \$125 per hour. Cifelli has also claimed \$22.26 in disbursements that the Tribunal has attributed to the bid preparation costs.

With respect to the bid preparation costs, PWGSC submits that, given the value of the contract that was awarded as a result of the solicitation (\$29,485.00 plus GST), the amount claimed by Cifelli is excessive. PWGSC recommends an amount based on 7.5 hours and an hourly rate of \$85. PWGSC again questions the validity of the supporting documentation provided by Cifelli for the time spent on various tasks.

Cifelli submitted that the 29.5 hours spent on bid preparation were reasonable and that the 16.5 hours spent on follow-up were a result of the problems caused by the structure of the specification. Cifelli justified its hourly rate by re-iterating the arguments that it made with respect to complaint costs.

The Tribunal finds that 29.5 hours expended in preparing a proposal for a contract valued at approximately \$30,000 is not unreasonable. The Tribunal agrees with Cifelli's submission that the additional 16.5 hours expended was a direct result of the problems inherent in the procurement and will allow the full 46 hours as claimed. With respect to the appropriate hourly rate for bid preparation, the principal of Cifelli was not acting as a representative before the Tribunal. Therefore, the restriction applied in the *Procurement Cost Guidelines* for rates of representatives does not apply here. At a rate of \$125 per hour, 29.5 hours for bid preparation amount to \$3,687.50, which is approximately 12.5 percent of the value of the contract as awarded. The Tribunal finds this amount to be reasonable. The additional 16.5 hours invested in bid follow-up were a direct result of the difficulties with the procurement, and the Tribunal finds this reasonable in the circumstances and will allow these hours at the same hourly rate. Therefore, the Tribunal grants Cifelli costs for preparing a response to the solicitation in the amount of \$5,772.26, as claimed.

CONCLUSION

The Tribunal hereby awards Cifelli costs in the amount of \$7,298.70 in relation to filing and proceeding with the complaint and \$5,772.26 for preparing a response to the solicitation, and directs PWGSC to take appropriate action to ensure prompt payment.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary