

Ottawa, Thursday, October 25, 2001

File No. PR-2000-039

IN THE MATTER OF a complaint filed by Siemens Westinghouse Incorporated 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 subsection 30.16(1) of the *Canadian International Trade Tribunal Act*, awarding Siemens Westinghouse Incorporated its reasonable costs incurred in relation to filing and proceeding with the complaint.

ORDER

In a determination made on March 19, 2001, the Canadian International Trade Tribunal (the Tribunal) awarded Siemens Westinghouse Incorporated (Siemens) its reasonable costs incurred in relation to filing and proceeding with the complaint.

On May 1, 2001, Siemens submitted to the Tribunal its claim for costs in the amount of \$58,969.63. On September 4, 2001, the Department of Public Works and Government Services (PWGSC) submitted comments on Siemens' claim. On September 19, 2001, Siemens submitted its response to PWGSC's comments.

COMPLAINT COSTS

Siemens has claimed \$37,541.76 for legal fees, \$10,750.00 for the fees of a service provider and \$10,677.87 for disbursements.

PWGSC submitted that Siemens' claim for senior legal counsel time at 149.4 hours is excessive, given the straightforward nature of the complaint and proceedings. PWGSC also submitted that the claim for disbursements relating to expenses incurred by Siemens' employees should not be recoverable.

Siemens submitted that the issues raised in the complaint could not be described as straightforward and, in fact, were substantial factual and legal. With respect to expenses incurred by Siemens' employees, Siemens submitted these were necessary expenses incurred during the debriefing process after the re-evaluation.

With respect to PWGSC's suggestion that the claim for counsel's time in preparing the complaint is excessive, the Tribunal finds that the total claimed for 270.2 hours, an amount of \$32,645.00 (no taxes applied), is not unreasonable, given the complexity of the case. The Tribunal also notes that the actual invoices show amounts that are considerably higher. However, since the provincial sales tax (PST) is not applicable to legal services in Ontario, the Tribunal reduces the total claimed by the amount of PST added. Therefore, the Tribunal allows \$34,930.16 for legal services.

With respect to the claim for a service provider's fees in the amount of \$10,750.00, the Tribunal notes that the Form III submitted is duly completed and signed. While there is no invoice or detailed breakdown of these costs, PWGSC did not raise any objection to the fees and, as such, the Tribunal will allow them as claimed.

The disbursements claimed that relate to expenses that Siemens' employees incurred during the debriefing process after the re-evaluation of the procurement would, by their nature, be more properly considered bid preparation and follow-up expenses. In its determination, the Tribunal granted Siemens only those costs incurred in relation to filing and proceeding with the complaint. In addition, Siemens was represented by counsel in this proceeding, and expenses incurred by employees while a complainant is represented by counsel are not normally granted. Therefore, the Tribunal does not allow those expenses relating to the travel of Siemens' employees to attend the debriefing session with PWGSC. With respect to the disbursements claimed that relate to photocopies, binding, long distance communications, courier services and postage, the Tribunal notes that they are supported by invoices and finds them to be reasonable in the circumstances. Therefore, the Tribunal allows disbursements in the amount of \$2,396.85.

CONCLUSION

The Tribunal hereby awards Siemens costs in the amount of \$48,077.01 in relation to filing and proceeding with the complaint and directs PWGSC to take appropriate action to ensure prompt payment.

Patricia M. Close

Patricia M. Close
Presiding Member

Pierre Gosselin

Pierre Gosselin
Member

James A. Ogilvy

James A. Ogilvy
Member

Michel P. Granger

Michel P. Granger
Secretary