



Ottawa, Thursday, July 10, 2003

File No. PR-2002-035

IN THE MATTER OF a complaint filed by CVDS Inc. under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47;

AND FURTHER TO a determination made pursuant to subsection 30.16(1) of the *Canadian International Trade Tribunal Act* awarding CVDS Inc. its reasonable costs incurred in preparing and proceeding with the complaint.

ORDER

In a determination made on January 22, 2003, the Canadian International Trade Tribunal (the Tribunal) awarded CVDS Inc. (CVDS) its reasonable costs incurred in relation to preparing and proceeding with the complaint.

On February 13, 2003, CVDS submitted to the Tribunal its claim for costs in the amount of \$13,997.90. The Department of Public Works and Government Services (PWGSC) filed comments on CVDS's claim on March 7, 2003. CVDS responded to those comments on March 13, 2003.

CVDS originally claimed \$13,997.90 for in-house costs incurred in relation to bid preparation, and preparing and proceeding with the complaint. That amount included representative's fees for the work by one of its employees, i.e. 27.75 days at \$400 per day for a total of \$12,767.79. Disbursements relating to in-house costs were claimed in the amount of \$590.80, while \$639.31 was claimed for travel costs and incidentals.

PWGSC submitted that the claim for costs incorrectly included time relating to bid preparation and the procurement process. More particularly, PWGSC was of the view that the time claimed by CVDS for its in-house representative does not relate solely to the complaint process. It submitted that the first seven entries on Form II – Summary of Representative's Fees, totalling 16 days, all relate to bid preparation and the procurement process, not the complaint process. Therefore, PWGSC submitted that, according to the Tribunal's determination, only costs associated with preparing and proceeding with the complaint should be awarded. According to PWGSC, all claims for time prior to the initiation of the complaint process ought to be disallowed, thereby reducing the eligible time from 27.75 days to 11.75 days.

With respect to the disbursements claimed, PWGSC submitted that they also appeared to be related in part to bid preparation and noted, in particular, the following entries on pages 1 and 3 of Form V – Summary Statement of Disbursements: "RFP 3 copies", "MERX download", "Deliver RFQ Ottawa 29 July", "Debriefing PWGSC Ottawa 9 Oct". Also listed were meal claims for July 29 and October 9. In addition, PWGSC submitted that GST and QST do not apply to in-house photocopying.

In its comments filed on March 13, 2003, CVDS submitted that it should be compensated also for bid preparation costs as a departure from the *Procurement Cost Guidelines*, under paragraph 5.2.2, as it believed that circumstances exist which warrant a departure. CVDS also filed an amended cost claim in

which it reduced the amount for in-house representative fees from \$12,767.79 to \$5,406.18, reflecting only the actual time spent in preparing and proceeding with the complaint (11.75 days). CVDS also reduced the total amount claimed for disbursements, travel and incidentals from \$1,077.67 to \$653.93, reflecting only costs associated with preparing and proceeding with the complaint..

The Tribunal finds that the time spent by the representative prior to the preparation of the complaint is outside of the award made by the Tribunal. Accordingly, only the reasonable costs incurred in preparing and proceeding with the complaint are recoverable. In the Tribunal's opinion, the costs were incurred between the drafting of the complaint, the filing of the complaint with the Tribunal on October 24, 2002, and the filing of the claim for costs on February 20, 2003. Therefore, the Tribunal will not allow any claims for costs that do not relate to preparing and proceeding with the complaint before the Tribunal.

With respect to the in-house representative's fees, the Tribunal allows \$4,700.00, which represents the representative's fees at \$400.00 per day (excluding GST and QST). The Tribunal also allows \$579.01 in disbursements, which excludes GST and QST that were included in in-house photocopying and travel expenses.

The Tribunal is not prepared to reconsider its decision with respect to the cost award and will not permit any additional costs to be claimed beyond those already submitted.

In consideration of the above, the Tribunal hereby awards CVDS costs in the amount of \$5,279.01 for preparing and proceeding with the complaint. It directs PWGSC to take appropriate action to ensure prompt payment.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary