



Ottawa, Tuesday, September 24, 2002

File No. PR-2001-026

IN THE MATTER OF a complaint filed by McNally Construction 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* to award McNally Construction Inc. its reasonable costs incurred in relation to preparing and proceeding with the complaint.

ORDER

INTRODUCTION

In a determination made on December 6, 2001, the Canadian International Trade Tribunal (the Tribunal), pursuant to subsection 30.16(1) of the *Canadian International Trade Tribunal Act*,¹ awarded McNally Construction Inc. (McNally) its reasonable costs incurred in relation to preparing and proceeding with the complaint.

On January 7, 2002, McNally submitted a claim for \$15,454.88 in costs incurred in relation to preparing and proceeding with the complaint. In response to a query from the Tribunal, McNally submitted on July 18, 2002, that it had inadvertently omitted one page of its claim. This page was forwarded to the Tribunal and, as a result, McNally's claim was revised to \$25,142.38.

The Department of Public Works and Government Services (PWGSC) filed comments on McNally's claim on May 27, 2002, and supplemented those comments on July 23, 2002, after receiving McNally's additional information.

McNally's claim included representatives' fees incurred for the work by four of its employees: 100.0 hours by two employees at a rate of \$85.00 per hour and 107.5 hours by two other employees at a rate of \$125.00 per hour. McNally claimed \$1,500.00 for a service provider's fees, using Form III of the Tribunal's *Procurement Cost Guidelines* (the Guidelines) entitled "Summary of Expert Witness's and Other Service Provider's Fees". Disbursements for office expenses in the amount of \$769.54 were claimed, along with disbursements for travel expenses of \$935.34.

PWGSC submitted that McNally's claims are excessive and inconsistent with the Guidelines. It submitted that the claim for the time of employees should be limited to only one employee, i.e. the employee who acted as the main representative for McNally. It submitted that the Tribunal explained in File Nos. PR-98-032² and PR-98-033³ why the claim for only one employee is generally permitted and that those cases were applicable in this instance. It also submitted that the hourly rate does not comply with the Guidelines, which set out that it should be based on the number of years that an individual has acted as a representative, as defined therein. For a service provider with 0 to 5 years of experience as a representative,

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1. R.S.C. 1985 (4th Supp.), c. 47 [hereinafter CITT Act].
 2. *Re Complaint Filed by Polaris Inflatable Boats (Canada)* (8 March 1999) (CITT).
 3. *Ibid.*

the rate is \$85.00 per hour. Finally, it submitted that any disbursements relating to travel by employees other than the employee who acted as representative should be disallowed.

McNally did not provide comments on PWGSC's submissions, but, in its response to the Tribunal's request for additional information, provided the reason for the travel expenses claimed and submitted an invoice for the work of the service provider.

McNally claimed expenses for four of its employees. The Tribunal allows the claim for the time spent by one employee, i.e. the operations manager who signed the correspondence and who was identified by McNally as its representative in this proceeding. McNally claimed 77.5 hours for the operations manager, which the Tribunal finds reasonable. According to Appendix B to the Guidelines, the hourly rate applicable to an in-house representative with 0 to 5 years of experience as a representative is \$85.00. The Tribunal sees no compelling reason to deviate from this amount in this instance. Therefore, it allows the in-house representative's fee in the amount of \$6,587.50.

With respect to the claim for a service provider's fees, McNally provided an invoice for \$577.70 in support of these costs. The claim of \$1,500.00 made using Form III of the Guidelines does not represent the actual costs incurred. The actual costs incurred are the costs as invoiced and, as such, are allowed in the amount of \$577.70.

With respect to the disbursements for office expenses claimed by McNally, the Tribunal finds that these costs are reasonable and supported by invoices; therefore, it allows the full amount of \$769.54. Although the travel expenses claimed are not travel expenses relating to the particular employee designated as the representative for McNally, the claim is reasonable and the costs are out-of-pocket expenses that would not have been incurred in the absence of the complaint. Therefore, the Tribunal allows the full amount claimed of \$935.34.

The Tribunal awards total costs in the amount of \$8,870.08.

CONCLUSION

The Tribunal hereby awards McNally costs in the amount of \$8,870.08 in relation to preparing and proceeding with the complaint and directs PWGSC to take appropriate action to ensure prompt payment.

Ellen Fry
Ellen Fry
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary