



Ottawa, Monday, November 4, 2002

File No. PR-2001-049

IN THE MATTER OF a complaint filed by Aviva Solutions 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 Aviva Solutions Inc. its reasonable costs incurred in preparing and proceeding with the complaint.

## ORDER

### INTRODUCTION

In a determination made on April 29, 2002, the Canadian International Trade Tribunal (the Tribunal) awarded Aviva Solutions Inc. (Aviva) its reasonable costs incurred in relation to preparing and proceeding with the complaint.

On May 30, 2002, Aviva submitted its claim for costs to the Tribunal in the amount of \$35,276.84. The Department of Public Works and Government Services (PWGSC) sent its comments on Aviva's claim on June 25, 2002. Aviva did not provide a response to these comments.

On September 20, 2002, the Tribunal requested further documentation to support some of the fees and expenses submitted in Aviva's claim for costs. This information was to be provided by September 27, 2002. On October 18, 2002, the Tribunal advised Aviva that, since no response had been received, it would proceed to consider the matter based on the documentation on file.

### COMPLAINT COSTS

Aviva's complaint costs consist of \$8,165.00 in legal fees, \$2,015.62 in disbursements, \$16,225.35 in representative's<sup>1</sup> fees and \$8,870.87 in service provider's fees. The amount for representative's fees is for the work of one of Aviva's employees, i.e. 166 hours at \$85.00 per hour.

PWGSC submitted that the claim for costs submitted by Aviva is inconsistent with the Tribunal's *Procurement Cost Guidelines* (the Guidelines), excessive and out of proportion with the complexity of the matter. Specifically, PWGSC stated that Aviva claimed time attributed to one of its employees, alleging that the employee acted as its "representative" in this matter. It pointed out that the fees claimed as representative's fees were \$16,225.35 and that the employee was identified, in Aviva's previous correspondence with the Tribunal, as "Sales Development Manager" for Aviva. According to PWGSC, an examination of the record discloses that at no point did the employee act as Aviva's representative before the Tribunal and at no point did Aviva ever identify this employee as its representative. PWGSC stated that, in fact, throughout the proceedings, the individual representing Aviva was the Vice-President, Legal and

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1. 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, and "procurement proceeding" is defined as a Tribunal proceeding in respect of a complaint.

Contracts. PWGSC referred to section 5.2.3 of the Guidelines, which states that costs will not generally be recoverable in respect of employees, officers or directors of a claimant who were acting in their usual capacity. It submitted that any claims made by Aviva in respect of this employee should be dismissed on the basis that he did not act as Aviva's "representative" for the purposes of the complaint.

PWGSC also submitted that the claim for \$8,870.87 in fees for The Baxter Group (Baxter) as an "Expert Witness/Service Provider" is excessive in the circumstances of this complaint. It submitted that, based on the invoice submitted by Baxter, a significant portion of the service provided by Baxter apparently related to advice on the complaint process itself.

With respect to PWGSC's claim that the fees for Baxter are excessive in the circumstances of this complaint, the Tribunal requested further documentation from Aviva as evidence that this cost was incurred. This documentation was not provided by Aviva. Accordingly, the Tribunal disallows the amount claimed for service provider's fees.

The Tribunal notes that Aviva requested reimbursement of legal fees for two in-house counsel, plus PST and GST, as well as representative's fees. The courts have found that, absent a situation where an in-house counsel or another employee represents a litigant in a proceeding, the power to award costs does not include the power to compensate a litigant for the time spent by its employees in connection with the proceeding.<sup>2</sup> Therefore, the Tribunal does not award any costs in relation to the second in-house legal counsel or in relation to other employees who participated in the proceedings in their capacity as employees. Furthermore, the PST and GST claimed in relation to in-house legal fees are not reimbursable, as they do not constitute costs incurred by Aviva. Thus, the Tribunal disallows the amount of \$1,065.00 claimed for PST and GST with respect to in-house legal counsel. Accordingly, the Tribunal is prepared to allow the amount of \$5,000.00 claimed for one in-house counsel as per the Guidelines.

Disbursement costs were not disputed by PWGSC, and the Tribunal finds them reasonable in the circumstances. Accordingly, the Tribunal will allow these costs as filed.

## CONCLUSION

The Tribunal hereby awards Aviva its costs in the amount of \$7,015.62 for preparing and proceeding with the complaint. These costs consist of \$5,000.00 for an in-house legal representative and \$2,015.62 for disbursements. The Tribunal directs PWGSC to take appropriate action to ensure prompt payment.

Patricia M. Close  
Patricia M. Close  
Presiding Member

Michel P. Granger  
Michel P. Granger  
Secretary

2. See, for example, *Energy Absorption Systems v. Y. Boissonnault & Fils*, [1991] F.C.J. No. 53 (FCTD).