



Ottawa, Monday, November 18, 2002

File No. PR-2001-051

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

## ORDER

In a determination made on May 2, 2002, pursuant to subsection 30.16(1) of the *Canadian International Trade Tribunal Act*,<sup>1</sup> the Canadian International Trade Tribunal (the Tribunal) awarded DRS Technologies Inc. (DRS) its reasonable costs incurred in relation to preparing and proceeding with the complaint.

On June 3, 2002, DRS submitted to the Tribunal its claim for costs in the amount of \$78,173.46. The Department of Public Works and Government Services (PWGSC) filed comments on DRS's claim on June 26, 2002. DRS responded to those comments on July 4, 2002.

DRS claimed a total of \$59,153.13 (including GST and PST) in legal fees for 245 hours. That amount represents 142.1 hours at \$285.00/hour for the senior counsel, 95.3 hours at \$110.00/hour for a second counsel, 6.4 hours at \$60.00/hour for an articling student and 1.2 hours at \$60.00/hour for a legal assistant. It also claimed \$7,790.33 (including GST) in disbursements relating to legal services. It also claimed expenses for a service provider in the amount of \$11,230.00, which represented 53 hours at \$200.00/hour.

PWGSC commented that the fees claimed for legal services are excessive, both in rate and number of hours claimed, and are unsupported by either invoices or receipts. It submitted that there is no reason to deviate from the hourly rates set in the Tribunal's *Procurement Cost Guidelines* (the Guidelines). It also suggested that, based on individual job functions or experience, the hourly rates claimed for the two individuals are excessive. PWGSC also points out that both GST and PST are claimed on legal fees and suggested that, since it has been acknowledged by counsel in the past that PST is not applicable to legal fees in Ontario, DRS should be penalized for knowingly making claims for costs not incurred.

With respect to disbursements, PWGSC submitted that the claim is unsupported by invoices, receipts or accounting records, that the claim for binding, if an internal cost, should be part of overhead, that GST is not payable on postage and may be applied twice in relation to the courier expense and that the Guidelines allow a claim of \$0.10/copy for in-house photocopying and not the \$0.25/copy claimed.

With respect to the claim for a service provider, PWGSC submitted that, since the Tribunal's statement of reasons in no way mentions, quotes or relies on the views expressed, the claim should be denied. At the very least, it submitted that the claim that relates to the time spent by the service provider before November 14, 2001, the date on which DRS's objection to PWGSC was denied, should not be allowed. Finally, PWGSC submitted that, according to the Guidelines, the rate applicable for service providers is \$125.00/hour.

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1. R.S.C. 1985 (4th Supp.), c. 47.

In its comments filed on July 4, 2002, DRS submitted that the hours worked and fees claimed were reasonable, given the particular circumstances of this case and in relation to the importance of this contract to DRS. In particular, DRS submitted that the rates set in 1999 by the Guidelines no longer represent a reasonable recovery rate. With respect to the two individuals whose experience and job function were questioned by PWGSC, DRS reasserted that the claims for these individuals were reasonable and justified. It acknowledged that PST was applied to the legal fees in error. DRS also submitted that the signed and certified claim forms with respect to legal fees have been sufficient in the past and conform to the requirements of the Guidelines. With respect to disbursements, DRS submitted that the claims were reasonable and incurred in the amounts claimed and, therefore, should be fully recoverable. Finally, it submitted that two hours at \$110.00/hour should be added to its claim for preparing a response to PWGSC's comments on the claim.

The Tribunal is of the view that the total number of hours claimed for legal services, namely, 245 hours, is not unreasonable, given the particular circumstances of the case. It is of the view that there is no reason to deviate from the hourly rates established in the Guidelines. Therefore, the Tribunal will allow an hourly rate of \$150.00 for the senior counsel, \$85.00 for the second counsel, \$60.00 for the articling student and \$30.00 for the legal assistant. Accordingly, it will allow legal fees, plus GST, in the amount of \$31,923.99, representing 142.1 hours at \$150.00/hour for the senior counsel, 95.3 hours at \$85.00/hour for the second counsel, 6.4 hours at \$60.00/hour for the articling student and 1.2 hours at \$30.00/hour for the legal assistant.

Regarding the disbursements claimed, the Tribunal finds that, with the exception of the charges for in-house photocopying, all other costs are reasonable and consistent with the Guidelines. The claim of \$7,362.94 for in-house photocopying is reduced to \$2,945.18 (representing \$0.10/copy plus GST) and, therefore, the total amount allowed for disbursements is \$3,372.57.

The Tribunal will not permit any additional claims beyond those already submitted. Therefore, it denies the request made by counsel on behalf of DRS to claim costs incurred in relation to the preparation and submission of DRS's response to PWGSC's comments on the claim for costs.

In consideration of the above, the Tribunal hereby awards DRS costs in the amount of \$42,385.31 for preparing and proceeding with the complaint and directs PWGSC to take appropriate action to ensure prompt payment.

Patricia M. Close  
Patricia M. Close  
Presiding Member

Richard Lafontaine  
Richard Lafontaine  
Member

Ellen Fry  
Ellen Fry  
Member

Michel P. Granger  
Michel P. Granger  
Secretary