



Ottawa, Wednesday, January 15, 2003

File No. PR-2002-003

IN THE MATTER OF a complaint filed by Polaris Inflatable Boats (Canada) Ltd. 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 Polaris Inflatable Boats (Canada) Ltd. its reasonable costs incurred in relation to preparing and proceeding with the complaint.

## ORDER

### INTRODUCTION

In a determination made on September 3, 2002, the Canadian International Trade Tribunal (the Tribunal) awarded Polaris Inflatable Boats (Canada) Ltd. (Polaris) its reasonable costs incurred in relation to preparing and proceeding with the complaint.

On October 17, 2002, Polaris submitted its claim for costs to the Tribunal in the amount of \$16,302.00. On November 8, 2002, the Department of Public Works and Government Services (PWGSC) forwarded its comments regarding Polaris's cost claim to the Tribunal. On November 25, 2002, Polaris provided further comments to the Tribunal.

### COMPLAINT COSTS

Polaris claimed \$16,173.12 in employee costs and \$128.88 in disbursements. The employee costs consist of 113 hours at \$125.00 per hour for work performed by the President of Polaris and include \$2,048.12 for GST and PST.

PWGSC submitted that the costs claimed by Polaris were excessive and out of proportion with the complexity of the matter. PWGSC submitted that, over the past four years, Polaris has gained considerable experience regarding the complaint process at the Tribunal and, thus, should be able to proceed with a complaint on a more efficient basis, thereby reducing the number of hours required by Polaris's representative. PWGSC also alleged that 54 hours of the time claimed preceded the initiation of the complaint procedure and, thus, should be disallowed.

PWGSC also submitted that the hourly rate claimed by Polaris was excessive. PWGSC stated that, according to the *Procurement Cost Guidelines*, the hourly rate for an employee acting as a "representative" should be based on experience representing a complainant in a procurement proceeding, not years of employment. Accordingly, PWGSC submitted that the President of Polaris has less than five years' experience as a representative. Finally, PWGSC submitted that Polaris may not claim GST and PST with respect to in-house photocopying and submitted that Polaris's claim for disbursements should be reduced by \$12.61.

In response to PWGSC's comment that the time claimed by the President of Polaris was excessive, Polaris stated that the number of hours claimed actually represents less time than was taken in related meetings and discussions. Polaris also stated that, in two previous claims, the President of Polaris was able to benefit from many hours of support from Polaris's vice-president and managing director, who were not available to the same extent in this case.

With respect to PWGSC's statement that the cost claim incorrectly included a claim for time relating to bid preparation and the procurement process, Polaris deleted a total of 23 hours relating to the formulation of the proposed inspection plan, the consultation relating to drawing systems and the evaluation of costing. Polaris also submitted that the initial review of the solicitation package, together with its subsequent communications with PWGSC, formed part of the preparation and base that lead to a formal complaint.

In response to PWGSC's claim that the hourly rate was excessive, Polaris submitted that paragraph 5.4.5 of the *Procurement Cost Guidelines* reads that the "hourly rate applicable to a representative will be based on the number of completed years which that person has been acting as a representative. Years shall be calculated to the date on which the relevant complaint was filed with the Tribunal". The President of Polaris stated that, since the company's inception in 1986, he has been the President and, as such, has been its senior representative for 16 years.

After reviewing the cost claim submitted by Polaris, including the adjustments submitted with its final comments, the Tribunal notes that the time spent by Polaris's senior representative prior to April 10, 2002, amounting to 54 hours, appears to relate to the review and evaluation of the solicitation package and does not relate directly to the complaint. In fact, Polaris became aware of its grounds of complaint on April 5, 2002. Accordingly, the Tribunal is of the view that only the hours claimed for April 10, 2002, and later can be considered part of the complaint costs. Thus, the Tribunal accepts 59 hours of time by the President of Polaris as relating to complaint costs.

Polaris has claimed a rate of \$125.00 per hour for its president acting as a representative, which is consistent with the hourly rate allowed for Polaris in previous proceedings before the Tribunal. However, given that these costs represent internal costs only and did not represent a sale of services, GST and PST do not apply. Accordingly, GST and PST are not allowed as part of this claim, and the Tribunal awards representative's costs of \$7,375.00.<sup>1</sup> In addition, Polaris may not claim GST and PST with respect to in-house photocopying and, thus, the amount of \$12.61 claimed for GST and PST for in-house photocopying is disallowed. Otherwise, the disbursements claimed appear reasonable under the circumstances, and the Tribunal allows the full amount claimed less the GST and PST claimed for photocopies, or \$116.27.

## CONCLUSION

The Tribunal hereby awards Polaris costs in the amount of \$7,491.27 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

Michel P. Granger  
Michel P. Granger  
Secretary

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1. 59 hours at \$125.00 per hour = \$7,375.00.