



Ottawa, Friday, June 13, 2003

File No. PR-2002-038

IN THE MATTER OF a complaint filed by Les Entreprises P. Cormier pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47;

AND FURTHER TO a decision made pursuant to subsection 30.16(1) of the *Canadian International Trade Tribunal Act* to award Les Entreprises P. Cormier its reasonable costs incurred in preparing and proceeding with the complaint.

ORDER

INTRODUCTION

In a determination made on February 17, 2003, the Canadian International Trade Tribunal (the Tribunal) awarded Les Entreprises P. Cormier (EPC) its reasonable costs incurred in preparing and proceeding with the complaint.

On March 18, 2003, EPC submitted to the Tribunal its claim for costs in the amount of \$9,241.19. On April 14, 2003, the Department of Public Works and Government Services (PWGSC) filed comments on EPC's claim. EPC faxed a reply to these comments on May 2, 2003.

COMPLAINT COSTS

EPC's complaint costs consist of \$5,197.21 for representative's fees, \$252.76 for disbursements and \$3,791.22 for lost profits. The amount for the representative's fees includes work performed by one of EPC's employees, that is, 11.30 days at \$400 per day.

PWGSC submitted that EPC's claim for costs deals with costs for preparing the bid, lost profits and costs incurred in relation to the complaint. According to PWGSC, EPC's claim for lost profits, for costs incurred in preparing the bid and for the representative's fees with respect to the preparation of the bid should be denied. In accordance with the Tribunal's decision, PWGSC submitted that only the reasonable costs incurred in preparing and proceeding with the complaint are recoverable.

For example, PWGSC maintained that the costs incurred in preparing the claim, as specified in Note G of section V of the claim, "Cost Details" [translation], are not recoverable. It cited a previous order issued in a case involving Hewlett-Packard (Canada) Ltd.¹ in which the Tribunal determined that the costs claimed for the preparation of the claim for costs were not recoverable, as these costs related to activities other than those incurred in preparing and proceeding with the complaint.

PWGSC submitted that the claim for disbursements relating to the preparation of the bid, i.e. \$31.98 to obtain the bid from MERX, \$112.08 for kilometrage and \$61.19 for visits to suppliers and the inspection of a sample, should be denied. It also submitted that the costs for photocopies should be reduced by half in order to take into account the costs for photocopies relating to the preparation of the bid, which are not

1. *Re Complaint Filed by Hewlett-Packard (Canada) Ltd.* (31 March 2003), PR-2001-040R (CITT).

recoverable. Furthermore, PWGSC submitted that the costs relating to courier services are not supported by receipts, as provided for in section 5.5.4 of the *Procurement Compensation Guidelines*² and should, therefore, be denied.

With respect to costs claimed in relation to preparing and proceeding with the complaint, PWGSC submitted that the costs in the amount of \$1,425, which are specified in Note F (time spent in-house to examine and prepare a complaint) of section V of the claim, "Cost Details", less the taxes that are included, are the only costs claimed that relate to preparing and proceeding with the complaint.

EPC responded that a portion of the contract should not have been allowed and retained by PWGSC and that this had injured EPC and other suppliers. The claim for lost profits relates to that portion of the contract that will no longer be "reissued". Furthermore, EPC submitted that the costs relating to the preparation of the bid should be considered since, if PWGSC had acted properly in the present case, this situation could have been avoided. The reasonable costs incurred in preparing and proceeding with the complaint should necessarily include the time spent to examine and prepare the claim.

The Tribunal notes that EPC filed a claim for lost profits and for costs incurred in relation to the bid and to preparing and proceeding with the complaint, plus GST and QST.

The Tribunal notes that, in its decision of February 17, 2003, it recommended that the contract be terminated and that a new solicitation be issued and did not award EPC compensation for lost profits. Consequently, it does not award costs in this regard.

The Tribunal also awarded EPC its reasonable costs incurred in **preparing and proceeding with the complaint**, and nothing more. In that context, only those costs will be awarded.

In this regard, the Tribunal is of the opinion that only the costs that are specified in the summary of representative's fees and that directly relate to preparing and proceeding with the complaint are recoverable. Thus, the costs for the time spent by EPC to examine and prepare a complaint (3.56 days at \$400 per day, i.e. \$1,425), which are specified in Note F of section V of the claim, "Cost Details", are the only representative's fees that can be claimed, excluding all taxes. The Tribunal noted EPC's argument that supports awarding the reasonable costs incurred in examining and preparing the claim. It is of the opinion that the costs relating to the preparation of the claim are not costs relating to the proceedings pursuant to subsection 30.16(1) of the *Canadian International Trade Tribunal Act* and, consequently, does not award those costs.

The costs incurred by EPC in preparing and proceeding with the complaint, that are specified in the summary statement of disbursements, are recoverable. Thus, the Tribunal is of the opinion that the amount claimed for photocopies, long-distance calls and courier services is reasonable. Therefore, it orders that the amount of \$43.70 for disbursements, less the taxes associated with in-house photocopies, be awarded to EPC.

2. Revised by the Tribunal in June 2001.

CONCLUSION

The Tribunal hereby awards EPC costs in the amount of \$1,468.70 for preparing and proceeding with the complaint. It directs PWGSC to take appropriate action to ensure prompt payment.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary