



Ottawa, Monday, October 7, 2002

File No. PR-2001-056

IN THE MATTER OF a complaint filed by ACMG Management 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 subsections 30.15(4) and 30.16(1) of the *Canadian International Trade Tribunal Act* to award ACMG Management Inc. its reasonable costs incurred in preparing a response to the solicitation and in proceeding with the complaint.

## ORDER

### INTRODUCTION

In a determination made on June 5, 2002, the Canadian International Trade Tribunal (the Tribunal) awarded ACMG Management Inc. (ACMG) its reasonable costs incurred in preparing a response to the solicitation and in proceeding with the complaint.

On July 5, 2002, ACMG submitted its claim for costs to the Tribunal in the amount of \$20,738.05. This amount included \$17,878.05 for complaint costs and \$2,860.00 for bid preparation costs. The Department of Public Works and Government Services (PWGSC) sent its comments on ACMG's claim on August 15, 2002. ACMG responded to these comments on August 20, 2002.

### COMPLAINT COSTS

ACMG's complaint costs consist of \$8,510.24 in legal fees, \$1,155.04 in disbursements and \$8,212.77 in representatives' fees (all amounts include GST). The amount for representatives' fees is for the work of two of its officers, i.e. 49.5 hours at \$85.00 per hour for the president and 40.8 hours at \$85.00 per hour for a vice-president. The only claim upon which PWGSC has commented is the claim for representatives' fees.

PWGSC pointed to section 3.1 of the *Procurement Cost Guidelines* (the Guidelines)<sup>1</sup> concerning the meaning of the terms "representative" and "procurement proceeding". It submitted that an examination of the record discloses that at no point did either the president or the vice-president act as the representatives of ACMG before the Tribunal and at no point were they so identified. Throughout the proceeding, ACMG was represented by legal counsel. Moreover, PWGSC noted that the time claimed for the president and vice-president relates largely to engaging PWGSC in the course of the procurement process, seeking and

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1. In the Guidelines, "representative" is defined as "a person who represents a party to a procurement proceeding, but who is not a legal counsel". "Procurement proceeding" means "a Tribunal proceeding in respect of a complaint".

retaining legal counsel to act for ACMG before the Tribunal, and performing preparatory work for legal counsel. According to PWGSC's submission, the president and vice-president acted in their usual capacities as ACMG officers and employees and not as representatives.

PWGSC also submitted that, in these circumstances, the language of the Guidelines is conclusive and that any claims made by ACMG for the representatives' fees in respect of these two employees should be dismissed on the basis that they did not act as ACMG "representatives" for the purposes of this complaint. PWGSC further submitted that, even if it were accepted that either of these employees acted as a "representative" of ACMG, the Guidelines make it clear that only one employee may be claimed as a representative for cost purposes.

In response, ACMG pointed out that PWGSC has not challenged the bill of costs relating to the legal fees for services rendered by Flavell Kubrick LLP, disbursements and bid preparation costs. As such, it requested that the Tribunal award those costs as submitted. ACMG further submitted that, regarding the issue of representatives' fees, section 5.2.3 of the Guidelines allows a claimant to recover the costs incurred by its employees, officers or directors who acted as representatives. According to ACMG, the functions performed by these officers on its behalf were to facilitate the Tribunal proceeding. ACMG submitted that they collected evidence and prepared an initial draft of the complaint, which, it maintains, is an integral part of the Tribunal procurement proceeding. Moreover, ACMG stated there is no duplication in costs submitted on behalf of the representatives and legal counsel, since the representatives only acted as its representatives up to the date of retaining Flavell Kubrick LLP as legal counsel. As such, it submitted that the Tribunal should award the representatives' fees as requested. ACMG further stated that, should the Tribunal award costs for only one representative, it should award the president's in the amount of \$4,502.01, since he was the one who undertook the majority of the work on behalf of ACMG.

After reviewing the parties' submissions, the Tribunal notes that the only costs in dispute are the representatives' fees. In the Tribunal's view, the claims for legal fees and disbursements are reasonable and, accordingly, it will allow the full amount claimed in this regard.

However, with respect to the representatives' fees, the Tribunal notes that ACMG retained independent counsel to act on its behalf in proceeding with the complaint and that ACMG personnel who participated in the proceeding were acting in their capacity as employees, not as legal counsel or representatives. The Tribunal is of the view that, absent a situation where an in-house counsel or other 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.

### **BID PREPARATION COSTS**

ACMG claimed \$2,860.00 for bid preparation costs. The amount is for the work of two of its officers, i.e. the president who worked a total of 30 hours and a vice-president who worked a total of 3 hours on bid preparation. The Tribunal notes that PWGSC did not raise any issues with respect to these costs. The Tribunal considers them reasonable and will therefore allow the full amount claimed in this regard.

**CONCLUSION**

The Tribunal hereby awards ACMG costs in the amount of \$12,525.28. This amount includes \$2,860.00 for bid preparation costs and \$9,665.28 for legal fees and disbursements. In this regard, the Tribunal directs PWGSC to take appropriate action to ensure prompt payment.

Richard Lafontaine  
Richard Lafontaine  
Presiding Member

Susanne Grimes  
Susanne Grimes  
Acting Secretary