



Ottawa, Monday, March 1, 2004

File No. PR-2002-074

IN THE MATTER OF a complaint filed by Consortium Genivar — M3E — Université d'Ottawa 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 30.16(1) and (2) of the *Canadian International Trade Tribunal Act* awarding Consortium Genivar — M3E — Université d'Ottawa its reasonable costs incurred in preparing and proceeding with the complaint.

ORDER

In its determination made on August 11, 2003, pursuant to subsections 30.16(1) and (2) of the *Canadian International Trade Tribunal Act*,¹ the Canadian International Trade Tribunal (the Tribunal) awarded Consortium Genivar — M3E — Université d'Ottawa (the Consortium) its reasonable costs incurred in preparing and proceeding with the complaint.

On September 10, 2003, the Consortium submitted to the Tribunal its claim for costs in the amount of \$52,559.74. The Canadian International Development Agency (CIDA) filed comments on the Consortium's claim on October 23, 2003. The Consortium responded to those comments on November 3, 2003.

The Consortium claimed \$38,858.33, QST and GST included, in legal costs for 307.40 hours. This amount represents 61.9 hours at \$200.00/hour for the lead counsel, 28 hours at \$100.00/hour for a second counsel, 216.5 hours at \$85.00/hour for two junior counsel and 1 hour at \$200.00/hour for a senior counsel. The Consortium also claimed \$1,816.32, QST and GST included, for disbursements relating to legal services. It also claimed \$11,584.66 for the services of the Consortium's representative, representing 176.25 hours (increased by 25 percent) at \$57.14/hour, QST and GST not included, and \$530.48, QST and GST included, for in-house disbursements.

CIDA maintained that the Consortium's claim for costs incurred in preparing and proceeding with the complaint is unreasonable and unjustified in light of the nature of the complaint, its degree of complexity and its filing date. CIDA argued that the Consortium cannot claim disbursements incurred throughout the whole process of preparing the complaint, since the complaint had already been elaborately set out under CIDA's internal remedy mechanism prior to the initiation of the procedure before the Tribunal. CIDA also contended that proceeding with the complaint would not have required the work of five counsel for that many hours; therefore, the claim far exceeds what is generally recognized as normal and necessary for proceeding with such a complaint.

With regard to the costs claimed by the Consortium's representative, CIDA submitted that he ceased to act as the Consortium's representative the moment that legal counsel was retained on

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

April 25, 2003, and that their fees cannot be cumulated. CIDA asked the Tribunal to take into account only the 6.5 days claimed by the Consortium's representative, which represent the period before it retained legal counsel.

CIDA contended that paragraph 5.2.3 of the Tribunal's *Procurement Cost Guidelines* (the *Guidelines*) states that an in-house representative can claim an amount of \$400 a day for services. According to CIDA, there is no provision anywhere in the *Guidelines* for an increase of that amount under any circumstances. However, CIDA recognized that the period for the provision of services by the Consortium's representative must be rounded to a quarter-day increment, if necessary, as indicated in Form II of the *Guidelines*. CIDA confirmed its intention to assume the costs relating to the preparation of the complaint that the Tribunal will have determined reasonable. However, CIDA asked the Tribunal to take into account the fact that the Consortium's representative had already worked on this complaint and set it out elaborately under CIDA's internal remedy mechanism and, therefore, well before filing a complaint with the Tribunal.

CIDA argued that, with regard to the fees claimed for legal services, it is completely opposed to that claim since it appears unreasonable in light of the *Guidelines*. First, CIDA contended that only two legal counsel for whom a claim is made filed with the Tribunal a notice of representation on behalf of the Consortium, a first on May 9, 2003, and a second on May 27, 2003. Having said that, CIDA notes that three other counsel worked on the file, despite the fact that the Consortium's representative had already set out the complaint under CIDA's internal remedy mechanism.

CIDA submitted that the complaint was not so complex that it required the work of five legal counsel; it submitted that such a case requires instead the work of one or two counsel. CIDA is of the opinion that the work performed by its legal counsel after the Consortium's representative had completed the initial work on the complaint could not have amounted to the 307.5 hours claimed. In CIDA's view, that amount seems exorbitant, unreasonable and unjustified. CIDA submitted that, according to the *Guidelines*, only the services of the two legal counsel who filed their notices of representation with the Tribunal must be taken into account when determining the reasonable costs that CIDA must reimburse.

The Consortium emphasized that the claim for costs is reasonable and justified given the nature of the complaint. The Consortium submitted that this complaint raised different issues of fact and law, the complexity of which justified the work performed by many counsel during the number of hours claimed. According to the Consortium, CIDA confirmed the complexity of this case in its letter dated April 29, 2003, when it stated the following:

Therefore, after having reviewed the complaint and the pertinent facts, it appears that this case raises complex issues of fact and law and that it requires a major gathering of information.

[Translation]

With regard to the services provided by the Consortium's representative, the Consortium contended that it was necessary that its representative be able to act as such throughout the complaint, before the Tribunal as well as the Consortium's legal counsel, given the complexity of the facts that were presented.

With regard to the 25 percent increment claimed by the Consortium's representative, the Consortium refers to Form II, "Summary of Representative's Fees", of the *Guidelines* and argues that it provides for such an increase.

With regard to the fees claimed for its legal counsel, the Consortium submits that those must be fully reimbursed, since they are justified and reasonable, given the complexity of the complaint, in particular the issues raised by CIDA in its Government Institution Report, and the preliminary issue presented by CIDA concerning the Tribunal's jurisdiction. Furthermore, the Consortium contends that the services rendered by legal counsel relating to the Consortium's comments on the Government Institution Report were the result of a major effort in order to provide the Tribunal with a comprehensive picture of the case.

First, the Tribunal is of the view that the complaint raised complex issues. However, the Tribunal is of the opinion that certain aspects of the Consortium's claim for costs are excessive with regard to the number of hours claimed by its in-house representative. Specifically, the Tribunal does not accept the Consortium's increment of 25 percent with regard to all the hours of work on the complaint. The *Guidelines* do not provide for this possibility. Form II of the *Guidelines* indicates that the claims must be made in quarters of a working day, that is, in increments of 1.875 hours per working day of 7.5 hours.

With regard to the claim for costs relating to the legal services, representing 307.4 hours, the Tribunal is of the opinion that this number of hours is not justified. The Tribunal therefore reduces by 4 hours the claim for the lead counsel and by 43.5 hours the claim for the two junior counsel. According to the Tribunal, those hours of work did not relate to preparing and proceeding with the complaint. Rather, they related to tasks involving either the judicial review of the Tribunal's determination or other actions before the Federal Court of Canada, or the preparation of the bill of costs that the Tribunal does not include for the purpose of calculating the cost of preparing and proceeding with the complaint. The Tribunal also does not authorize the claim for costs for one senior counsel regarding a request for information under the *Access to Information Act*.² The Tribunal is of the opinion that there is no need to depart from the hourly rates set out in the *Guidelines*. Consequently, the Tribunal authorizes an hourly rate of \$200.00 for the lead counsel, \$85.00 for the second counsel and \$60.00 for each of the two junior counsel. It therefore authorizes legal fees in the amount of \$27,991.00, QST and GST included, which represents 57.9 hours at \$200.00/hour for the lead counsel, 28 hours at \$85.00/hour for a second counsel and 173 hours at \$60.00/hour for the two junior counsel. The disbursements of \$1,816.32, QST and GST included, for fees relating to legal services incurred with respect to the complaint, seem reasonable to the Tribunal and, consequently, that amount is authorized.

With regard to the claim for costs by the Consortium's in-house representative, the Tribunal is of the opinion that those costs must be limited to those incurred before April 26, 2003, that is, until the moment when the documents sent by the Tribunal on April 24, 2003, were analyzed, which represents 48.5 hours, since the record shows that the Consortium had, as of April 25, 2003, retained legal counsel to act on its behalf. This means that the complaint costs incurred on March 26, 2003, for in-house photocopies, in the amount of \$236.40, and the travel costs for April 5, 2003, in the amount of \$101.50, are, in the Tribunal's view, the only costs reimbursable in accordance with the *Guidelines*. Consequently, the Tribunal awards the Consortium an amount of \$2,771.29 for the hours of work of its in-house representative and an amount of \$337.90 for incidental expenses, these costs having been incurred before April 25, 2003. The QST and GST are not chargeable on those two amounts. The Tribunal therefore disallows the claim for all the costs incurred as of April 25, 2003, by the Consortium's in-house representative.

2. R.S.C. 1985, c. A-1.

In light of the foregoing, the Tribunal hereby awards the Consortium the amount of \$32,916.51 for its reasonable costs incurred in preparing and proceeding with the complaint and directs CIDA to take appropriate action to ensure prompt payment.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Pierre Gosselin
Pierre Gosselin
Member

Patricia M. Close
Patricia M. Close
Member

Michel P. Granger
Michel P. Granger
Secretary