



Ottawa, Tuesday, March 2, 2004

File No. PR-2003-039

IN THE MATTER OF a complaint filed by Goodfellow Cleaners under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47;

AND FURTHER TO an award made pursuant to section 30.16 of the *Canadian International Trade Tribunal Act* of Goodfellow Cleaners' reasonable costs incurred in preparing and proceeding with the complaint.

ORDER

In a determination made on November 12, 2003, the Canadian International Trade Tribunal (the Tribunal), pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*,¹ awarded Goodfellow Cleaners (Goodfellow) its reasonable costs incurred in preparing and proceeding with the complaint.

On December 10, 2003, Goodfellow submitted to the Tribunal its claim for costs in the amount of \$10,925. That amount represents a service provider's fees for 95 hours of work at \$100/hour, plus appropriate taxes, for which an invoice was submitted. The Department of Public Works and Government Services (PWGSC) filed comments on Goodfellow's claim on December 24, 2003. On January 22, 2004, Goodfellow provided its final comments to the Tribunal.

PWGSC submitted that, on November 21, 2003, the Tribunal issued draft cost guidelines to update the 1999 *Procurement Cost Guidelines* (the *Guidelines*) and that these guidelines were to take effect on January 1, 2004. PWGSC submitted that, given the Tribunal's declaration of intent on the matter of cost awards, costs in this matter should be awarded on a basis consistent with the principles set out in the draft guidelines.

In the alternative, PWGSC submitted that the cost claim submitted by Goodfellow is inconsistent with the *Guidelines*, is excessive and out of proportion with the complexity of the matter. PWGSC submitted that the amount claimed by Goodfellow represents the amount billed to it by TBP & Associates Inc. (TBP), as described in the invoice attached to the cost claim. PWGSC argued that there is no indication in the cost claim as to whether TBP is a legal firm, nor is there any indication of the degree of experience that TBP has in representing clients before the Tribunal in procurement matters. PWGSC submitted that TBP claims 65 hours for the preparation of the complaint and an additional 30 hours for the preparation of a response to the Government Institution Report (GIR). It submitted that, given the lack of complexity of the procurement, the issues and the procedure for this complaint, this hourly total cannot be justified. Moreover, PWGSC argued that the total claim of \$10,925.00 for a complaint of this level of complexity is excessive, unrealistic and inconsistent with recent cost awards made by the Tribunal. In this respect, PWGSC notes the amount of \$2,573.08 awarded for costs in *Antian*,² a case of greater complexity than the case at issue.

1. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].

2. *Re Complaint Filed by Antian Professional Services Inc.* (2 April 2003), PR-2002-051 (CITT).

In response to PWGSC's comments, Goodfellow submitted that TBP has experience relating to federal government procurement and procurement-related acquisitions. It also submitted that its claim for costs includes Form III, "Summary of Expert Witness's and Other Service Provider's Fees", rather than Form II, "Summary of Representative's Fees", and that, according to the *Guidelines*, its representatives would be entitled to \$125/hour; however, it has only claimed \$100/hour. Goodfellow submitted that, contrary to what is alleged by PWGSC, this complaint was not a simple matter and that the costs incurred in this case are well within the range of what the Tribunal has allowed in previous cases with similar levels of complexity. In response to PWGSC's attempts to have the Tribunal apply the new complaint cost guidelines, Goodfellow submitted that this information should be disregarded as being irrelevant to this case.

Regarding the matter of which cost guidelines should apply to Goodfellow's claim for costs, the Tribunal wishes to emphasize that it is not bound to follow either the new or the old guidelines. As a matter of record, however, the new guidelines were not in effect at the time that this complaint was filed and, therefore, the Tribunal will not refer to them in relation to this cost claim. As indicated in the Tribunal's letter accompanying its determination in this case, the Tribunal will refer in this decision to the *Guidelines*.

The definition of "service provider", as provided in the *Guidelines* is "a legal counsel, articling student, representative, expert witness or other person who provided services to a claimant in a procurement proceeding". It is clear to the Tribunal that TBP provided a service to Goodfellow in this procurement proceeding, as evidenced by the invoice attached to the claim for costs. The Tribunal is of the opinion that the services of TBP correctly fall under the category of service provider. However, the Tribunal does not accept Goodfellow's position that the fees are reasonable and consistent with the *Guidelines*. The Tribunal finds that the 45 hours spent reviewing the solicitation documents and information, including the Request for Proposal, and consulting with Goodfellow regarding the procurement are unreasonable, taking into account the relatively small volume of relevant documentation to review and given that the two representatives from TBP are experienced specialists in such matters. Consequently, the Tribunal is of the view that no more than 15 hours was sufficient to carry out these activities when combined with the hours claimed for the preparation of the complaint, the related research and the reply to the GIR. The Tribunal, therefore, allows the amount of \$7,475, which represents 65 hours at \$100/hour, plus appropriate taxes.

The Tribunal hereby allows Goodfellow costs in the amount of \$7,475 for preparing and proceeding with the complaint and directs PWGSC to take appropriate action to ensure prompt payment.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary