



Ottawa, Wednesday, January 7, 2004

File No. PR-2003-001

IN THE MATTER OF a complaint filed by Bajai 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 section 30.16 of the *Canadian International Trade Tribunal Act* awarding the Department of Public Works and Government Services, its reasonable costs incurred in relation to responding to the complaint, which costs are to be paid by Bajai Inc.

ORDER

INTRODUCTION

In a determination made on July 7, 2003, the Canadian International Trade Tribunal (the Tribunal) awarded the Department of Public Works and Government Services (PWGSC) its reasonable costs incurred in relation to responding to the complaint.

On August 25, 2003, PWGSC submitted its claim for costs to the Tribunal in the amount of \$12,200. On September 17, 2003, Bajai Inc. (Bajai) forwarded its comments regarding PWGSC's claim to the Tribunal. PWGSC did not provide further comments to the Tribunal.

COMPLAINT COSTS

PWGSC claimed \$12,200 for legal fees, which consisted of 97.6 hours at \$125 per hour for work performed by in-house counsel.

Bajai submitted that PWGSC's costs be disregarded and that PWGSC be considered non-responsive with respect to costs, as its submission was late. Bajai submitted that PWGSC was directed by the Tribunal to submit a claim on August 22, 2003, yet the submission was not made until August 25, 2003. Due to a power outage, the Tribunal's offices were closed from August 15 to August 25, 2003. Accordingly, the Tribunal accepted this submission.

Bajai also submitted that the costs requested seem to be contrary to certain guiding principles outlined in section 2.1 of the *Procurement Cost Guidelines* (the *Guidelines*), which are the following: (a) costs awarded shall not exceed those necessarily and reasonably incurred by the claimant; (b) costs are means of reimbursement only and are not intended to be a source of profit for the claimant; and (c) the assessment and taxation processes should be efficient and fair to all parties.

Bajai further submitted that PWGSC was represented by its in-house counsel, which means that his fees should be capped according to the rate specified in Appendix B, i.e. \$500 per day. According to Bajai, an examination of the time-keeping report revealed that a total of 12 days were spent in the preparation of materials related to this case and, therefore, the maximum claim should be \$6,000, i.e. 12 days at \$500.

Bajai also submitted that the time claimed by PWGSC is excessive given that its in-house counsel has 11 years of experience and a battery of public servants to assist him. Bajai also stated that, given that the in-house counsel claimed a total of 12 days, 10 of which were associated with the preparation of the Government Institution Report (GIR) and 2 with all other aspects of the complaint, which included a response to Bajai's comments on the GIR and a response to questions from the Tribunal, the total of 10 days of work to produce a GIR consisting of 16 pages of arguments appears to be excessive for a legal counsel with such experience and should be reduced. Bajai submitted that there was no real analysis of Bajai's complaint, that the arguments set out in the GIR were simple and that, most often, the same argument was repeated throughout, i.e. that Bajai's complaint was out of time.

The Tribunal is of the opinion that the total of 96.7 hours reported by PWGSC's legal counsel appears reasonable for a case of this complexity. With respect to the additional time claimed for tasks other than the preparation of the GIR, the Tribunal finds the claim reasonable. However, Appendix B of the *Guidelines* sets in-house legal fees at \$500.00 per day or, based on a 7½ hour¹ day, at \$66.66 per hour. PWGSC billed its in-house counsel at \$125.00 per hour. The Tribunal sees no reason to deviate from the *Guidelines*. Accordingly, the Tribunal allows PWGSC its costs of \$6,506.02, which represents 97.6 hours at \$66.66 per hour.

CONCLUSION

The Tribunal hereby allows PWGSC costs in the amount of \$6,506.02 for responding to the complaint and directs Bajai to take appropriate action to ensure prompt payment.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Ellen Fry
Ellen Fry
Member

Meriel V.M. Bradford
Meriel V.M. Bradford
Member

Michel P. Granger
Michel P. Granger
Secretary

1. While the *Guidelines* refer to a 7-hour day, it is accepted practice that the workday is 7½ hours.