



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

ORDER AND REASONS

File Nos. PR-2007-053 and
PR-2007-054

Serco Facilities Management Inc.

v.

Defence Construction Canada

*Order and reasons issued
Friday, May 9, 2008*

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IN THE MATTER OF two complaints filed by Serco Facilities 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 decision of the Canadian International Trade Tribunal, made pursuant to subsection 30.15(4) of the *Canadian International Trade Tribunal Act*, awarding Serco Facilities Management Inc. its reasonable costs incurred in preparing its proposals for Solicitation Nos. GB18826 and GB18829;

AND FURTHER TO a decision of the Canadian International Trade Tribunal, made pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*, awarding Serco Facilities Management Inc. its reasonable costs incurred in preparing and proceeding with the complaints;

AND FURTHER TO the Canadian International Trade Tribunal's preliminary indication of the amount of its cost award.

BETWEEN

SERCO FACILITIES MANAGEMENT INC.

Complainant

AND

DEFENCE CONSTRUCTION CANADA

**Government
Institution**

ORDER

The Canadian International Trade Tribunal hereby awards Serco Facilities Management Inc. \$5,743.14, which represents its reasonable costs incurred in preparing its proposals for the subject solicitations, and directs Defence Construction Canada to take appropriate action to ensure prompt payment.

In addition, the Canadian International Trade Tribunal hereby confirms its preliminary indication of the amount of its cost award by awarding Serco Facilities Management Inc. costs in the amount of \$2,400 for preparing and proceeding with the complaints and directs Defence Construction Canada to take appropriate action to ensure prompt payment.

Ellen Fry
Ellen Fry
Presiding Member

Hélène Nadeau
Hélène Nadeau
Secretary

STATEMENT OF REASONS

BACKGROUND

1. In a determination made on December 18, 2007, under subsection 30.14(2) of the *Canadian International Trade Tribunal Act*,¹ the Canadian International Trade Tribunal (the Tribunal) determined that the complaints filed by Serco Facilities Management Inc. (Serco) on September 19, 2007 were valid. Pursuant to subsection 30.15(4) of the *CITT Act*, it awarded Serco an amount equal to the costs that it reasonably incurred in preparing its proposals for Solicitation Nos. GB18826 and GB18829.

2. On January 17, 2008, Defence Construction Canada (DCC) filed an application for judicial review of the Tribunal's determination with the Federal Court of Appeal (FCA) and requested that the Tribunal stay its consideration of Serco's bid preparation costs until after the FCA had rendered its decision. The Tribunal denied this request. On January 17, 2008, Serco submitted its initial arguments and claim for bid preparation costs. DCC responded on January 28, 2008, and Serco filed its comments on DCC's response on February 4, 2008.

3. In its determination of December 18, 2007, the Tribunal also awarded Serco, pursuant to section 30.16 of the *CITT Act*, its reasonable costs incurred in preparing and proceeding with the complaints, which costs were to be paid by DCC. The Tribunal's preliminary indication of the level of complexity for these complaint cases was Level 2, and its preliminary indication of the amount of the cost award was \$2,400. The Tribunal indicated in its determination that, if any party disagreed with the preliminary indication of the level of complexity or the preliminary indication of the amount of the cost award, it could make submissions to the Tribunal. The Tribunal reserved jurisdiction to establish the final amount of the award.

BID PREPARATION COSTS

4. In determining the amount to award for bid preparation costs, the Tribunal considered its *Procurement Cost Guidelines (November 1999)* (the *Guidelines*), which provide, as a guiding principle, that costs awarded shall not exceed those necessarily and reasonably incurred by the claimant.

5. Bid preparation costs are the direct and indirect costs incurred by a claimant in preparing a proposal for a designated contract.

6. The *Guidelines* provide as follows:

...

APPENDIX A – BID PREPARATION COSTS

1.0 General

1.1 Bid preparation costs are the direct and indirect costs incurred by a claimant in preparing a bid for a designated contract that was the subject of the complaint and may include:

- (a) **technical costs** - incurred specifically in connection with bid preparation, including system and concept formulation studies and the development of engineering and production engineering data; and

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

(b) **administrative costs** - incurred in connection with the preparation of the technical proposal documents and the technical and non-technical effort for the preparation and publication of cost data and other administrative data necessary to support a complainant's bid.

1.2 All bid preparation costs claimed, whether direct or indirect, must be supported. Copies of invoices, receipts, timecards and other documentation necessary to support a claim are to be submitted when the claim is filed.

...

6.0 Profit

6.1 Profit must not be included in any form as part of a claim for bid preparation costs.

...

7. The parties' submissions focussed on the single hourly wage rate claimed by Serco for all its employees and the amount of work performed by Serco in its capacity as a bidder, as opposed to the work that it may have performed under a separate contract with the Department of Public Works and Government Services (PWGSC).²

Base Hourly Rate

8. Serco submitted its bid preparation costs based on a "blended" rate of \$---/hour for all employees that worked on either project. It submitted that this rate was based on its standard rate used for contract work and was compiled using the following components:

- site visits
- preparation of estimates
- gathering of material quotes
- contract administration time
- financial administration time (certified cheques for bid bonds)
- bid amount reviews

9. DCC, on the other hand, noted that the *Guidelines* provide that "...[p]rofit must not be included..." It submitted that Serco's own submission is that its \$---/hour cost is based on the "standard rate [that it uses] for the contract work". DCC submitted that it is reasonable to believe that Serco earns a profit doing its "contract work" and that, therefore, an award based on \$---/hour would result in a profit to Serco. It claimed that the hourly rate should be reduced to remove the profit and all other non-allowable costs identified in the *Guidelines*.

10. DCC also noted that the blended rate included the time charged by both professionals and administrative and clerical staff and that Serco provided no information on the various rates that were "blended", or the manner in which they were "blended", to derive this figure. It claimed that, since Serco's standard rate for contract work for its professional staff is \$---/hour, Serco was claiming an inflated, profit-heavy cost of \$---/hour for the time of its administrative and clerical staff.

2. In 1997, Serco was awarded a five-year contract by PWGSC to provide operations and maintenance services at Canadian Forces Base 5 Wing Goose Bay, in which Serco was responsible for the provision of year-round, non-core base support activities. In February 2003, Serco was awarded an additional 11-year operations and maintenance contract by PWGSC.

11. The Tribunal will consider two issues: (1) the make-up, including profit, of the blended rate of \$---/hour; and (2) the appropriateness of charging the same rate for different categories of employees.

12. Regarding profit, it is clear that profit is not contemplated under the *Guidelines*. It is also clear to the Tribunal that Serco's "standard rate" for "contract work" would include an element of profit. The Tribunal notes that, although DCC raised the issue of the incorporation of profit in this overall "blended rate", Serco chose not to address this issue in its final comments of February 4, 2008.

13. It is also clear to the Tribunal that the "blended rate" encompasses a number of different work categories and classifications, ranging from project managers and estimators to financial and administrative support. It is reasonable to assume that employees working in these different areas would receive different levels of financial compensation. Given the limited amount of information provided by Serco, the Tribunal is unable to determine how the "blended rate" was established. Serco only provided a breakout of the number of hours worked by each employee and within which overall classification group that employee fell—either as a "project manager and estimator" or in "contract/financial administration".

14. Given the lack of information submitted by Serco, the Tribunal considered an alternate source of information regarding the make-up of hourly wages in Labrador. It referred to Statistics Canada's "Average hourly wages of employees by selected characteristics and profession, unadjusted data, by province" in which, in Labrador, employees in occupations categorized as "business, financial and administrative" earned an average of \$17.44/hour and those in "management occupations" earned an average of \$26.93/hour.³ Using this as a base, the Tribunal will allow an additional 50 percent per hour for each employee to account for other allowable direct and indirect costs to arrive at a rate of \$40.39/hour for its project managers and estimators and \$26.16/hour for contract/financial administration personnel.

Hours Claimed

15. Serco submitted that its employees performed the following work:

Task	GB18826	GB18829
Site visits and estimate completed by project manager and estimators. This includes obtaining quotes for material (windows and hardware)	23.5 hours	
Site visits and estimate completed by project manager and estimators. This includes review of structural, electrical and mechanical components		105.0 hours
Contract administration time for review of contractual requirements and compilation of all potential documents, extensive review of estimate to ensure all components included, and collation and distribution of tender documents	4.0 hours	4.0 hours
Financial administration time for processing and obtaining certified cheque from financial institution	1.5 hours	1.5 hours
Total	29.0 hours	110.5 hours

3. See www40.statcan.ca/101/cst01/labr69b.htm?sdi=labrador%20hourly%20wage.

16. DCC submitted that the same individuals who worked under the PWGSC contract in the preparation of the solicitations and during the bidding period were also preparing proposals in response to the solicitations. DCC submitted that one of the employees was even working for both sides on the same day. It submitted that Serco has failed to provide any assurance that the 126 hours⁴ of work that it claimed for its “project managers and estimators” was performed by Serco the bidder and not Serco under the PWGSC contract.

17. Regarding this issue, the Tribunal noted the following, in its determination of December 18, 2007:

...

30. The following relevant facts of the cases are not in dispute:

- Under its PWGSC contract, Serco assisted DND in the preparation of the drawings, specifications and contract value estimates for both solicitations.

...

18. In other words, the Tribunal accepted the submissions from both parties that Serco, under the PWGSC contract, had performed work relating to the design, engineering and cost estimate necessary for the development of the competitive solicitations. However, the evidence is not sufficient to support the conclusion that the particular work now claimed by Serco as part of its compensation claim was double-counted or had been performed by Serco under the PWGSC contract rather than as a bidder for the solicitations in issue, as was alleged by DCC.

19. In addition, in serving under the PWGSC contract as a technical assistant or as the design authority for the solicitations in question, Serco could well be responsive to requirements that are different from those of a prospective bidder for the solicitations in issue. Accordingly, the Tribunal will allow all hours claimed by Serco.

20. Based on the foregoing analysis and the calculations set out in the appendix to this order, the Tribunal awards Serco \$5,743.14 for its bid preparation costs.

COMPLAINT COSTS

21. Noting that there have been no submissions contesting the preliminary indication of the level of complexity or the preliminary indication of the amount of the cost award, the Tribunal confirms its preliminary indications and awards Serco its costs in the amount of \$2,400 for preparing and proceeding with the complaints.

4. On page 1 of its January 17, 2008 submission, Serco claimed the amounts listed in the table found above (i.e. 128.5 hours for its project managers and estimators and 11.0 hours for contract and financial administration). However, in providing the supporting documentation, Serco provided information that showed that 126.0 hours of “project manager and estimator” work and 25.0 hours for “contract/financial support” work had been performed for these two solicitations.

CONCLUSION

22. The Tribunal hereby awards Serco \$5,743.14, which represents its reasonable costs incurred in preparing its proposals for the subject solicitations, and directs DCC to take appropriate action to ensure prompt payment.

23. In addition, the Tribunal hereby confirms its preliminary indication of the amount of its cost award by awarding Serco costs in the amount of \$2,400 for preparing and proceeding with the complaints and directs DCC to take appropriate action to ensure prompt payment.

Ellen Fry
Ellen Fry
Presiding Member

APPENDIX

Table 1: Hours Allowed

Employee	Group	Hours Claimed	Hours Allowed
-----	Project manager and estimator	-----	-----
-----	Project manager and estimator	-----	-----
-----	Project manager and estimator	-----	-----
-----	Project manager and estimator	-----	-----
	TOTAL	126.0	126.0
-----	Contract/financial administration	-----	-----
-----	Contract/financial administration	-----	-----
-----	Contract/financial administration	-----	-----
-----	Contract/financial administration	-----	-----
-----	Contract/financial administration	-----	-----
-----	Contract/financial administration	-----	-----
	TOTAL	25.0	25.0

Table 2: Wage Allowed

Employee	Wage Claimed per Hour (\$)	Wage Allowed per Hour (\$)
-----	-----	40.39
-----	-----	40.39
-----	-----	40.39
-----	-----	40.39
-----	-----	26.16
-----	-----	26.16
-----	-----	26.16
-----	-----	26.16
-----	-----	26.16
-----	-----	26.16

Table 3: Cost Allowed

Group	Hours Allowed	Wage Allowed per Hour (\$)	Extended Cost (\$)
Project manager and estimator	126.0	40.39	5,089.14
Contract/financial administration	25.0	26.16	654.00
		TOTAL	5,743.14