



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## ORDER AND REASONS

File No. PR-2009-060

Argair Aerospace Limited

v.

Department of Public Works and  
Government Services

*Order and reasons issued  
Wednesday, June 9, 2010*

**TABLE OF CONTENTS**

ORDER .....i

STATEMENT OF REASONS ..... 1

    BID PREPARATION COSTS ..... 1

        Time.....1

        Hourly Rate .....2

        Disbursements.....2

        Total Claim Amount.....2

ANALYSIS .....3

    Time.....3

    Hourly Rate .....3

    Disbursements.....4

    Total Claim Amount.....4

CONCLUSION.....4

IN THE MATTER OF a complaint filed by Argair Aerospace Limited pursuant to 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, pursuant to subsection 30.15(4) of the *Canadian International Trade Tribunal Act*, awarding Argair Aerospace Limited its reasonable costs incurred in preparing its proposal for Requisition No. W8476-10-KW05.

**BETWEEN**

**ARGAIR AEROSPACE LIMITED**

**Complainant**

**AND**

**THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT SERVICES**

**Government Institution**

**ORDER**

The Canadian International Trade Tribunal hereby awards Argair Aerospace Limited \$3,235.75, which represents its reasonable costs incurred in preparing its proposal for the subject requisition, and directs the Department of Public Works and Government Services to take appropriate action to ensure prompt payment.

Pasquale Michaele Saroli  
Pasquale Michaele Saroli  
Presiding Member

Dominique Laporte  
Dominique Laporte  
Secretary

## STATEMENT OF REASONS

1. In a determination made on February 15, 2010, the Canadian International Trade Tribunal (the Tribunal), pursuant to subsection 30.15(4) of the *Canadian International Trade Tribunal Act*,<sup>1</sup> awarded Argair Aerospace Limited (Argair) its reasonable costs incurred in preparing its proposal for Requisition No. W8476-10-KW05.

2. On April 4, 2010, Argair submitted its claim for costs to the Tribunal. On April 26, 2010, the Department of Public Works and Government Services (PWGSC) filed its reply to Argair's submission. On May 4, 2010, Argair filed its response to PWGSC's reply.

### BID PREPARATION COSTS

#### Time

3. Argair submitted that its bid preparation costs encompassed the following four elements: (1) the review and analysis of Request for Proposal (RFP) documentation; (2) market research and consultation; (3) the screening of potential candidates' résumés and communications with PWGSC; and (4) the review and analysis of an earlier RFP/contract and bid proposal preparation.

4. PWGSC submitted that the solicitation at issue was made pursuant to an existing supply arrangement for which Argair was pre-qualified in a number of service categories, including the senior engineer category requested in the RFP at issue. PWGSC submitted that the RFP was only sent to holders of senior engineer supply arrangements and that the additional mandatory requirements that formed part of the RFP were not complex. It argued therefore that the time required for a pre-qualified supplier, such as Argair, to complete and submit a proposal would not have been extensive.

#### RFP Documentation Review and Analysis

5. Argair submitted that it spent █ hours on this element of its bid preparation.

6. PWGSC did not make any submission regarding this aspect of Argair's claim.

#### Market Research and Consultation

7. Argair submitted that it spent █ hours on this element of its bid preparation.

8. PWGSC submitted that there was no basis or need for any time to be spent on this element and that all the claimed time should be disallowed.

#### Screening of Potential Candidates' Résumés and Communications with PWGSC

9. Argair submitted that it spent █ hours searching for suitable candidates, as its goal was to place a candidate other than an existing, qualified resource. It submitted that a great deal of time and effort is spent in recruiting qualified candidates to fulfill PWGSC's requirements, especially in this case, given what Argair claimed were narrow and unreasonable requirements. It submitted that it had determined that there was a candidate, other than the one it proposed, who could have met the specific requirements of the RFP, but that the candidate was unable to commit to signing the "Availability of Personnel" form, guaranteeing availability to start performing the work within 30 days after contract award.

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

10. PWGSC submitted that the candidate proposed by Argair in response to the subject RFP had previously been proposed by Argair in relation to an earlier RFP for the same senior engineer service category. PWGSC claimed that this led to that particular candidate being pre-qualified as a senior engineer for all subsequent supply arrangement requirements, including the subject RFP. PWGSC submitted that any time claimed with respect to “potential candidates” should be reduced considerably, if not eliminated altogether, as, based on past practice, Argair’s most likely candidate would have been that same pre-qualified resource.

#### Review and Analysis of an Earlier RFP/Contract and Bid Proposal Preparation

11. Argair submitted that it treats each RFP separately and on its own merits. It submitted that it believes that the [redacted] hours that it spent preparing its proposal are reasonable and reflect the industry standard. It noted that, as a result of its thorough research, analysis and preparation, it was able to submit a bid that met all the requirements of the RFP.

12. PWGSC submitted that Argair’s bid in response to the subject RFP closely resembled Argair’s bid in response to the above-noted previous RFP that led to the qualification of Argair’s senior engineer. PWGSC argued that, given the similarities between the two bids, the claim of [redacted] hours was excessive and fundamentally unreasonable. It submitted that a reasonable period of time for the preparation of Argair’s bid in these circumstances should not have exceeded [redacted] hours.

#### **Hourly Rate**

13. Argair, in response to PWGSC’s arguments regarding its hourly rate, contended that the rate that PWGSC claimed should be paid is based on a long-term period of work and is not intended for services relating to shorter work periods, such as preparing its proposal. It submitted PWGSC-approved per diem schedules<sup>2</sup> and submitted that the rates included in those schedules may apply to PWGSC/Department of National Defence short-term contracts. It claimed a rate of \$[redacted] per hour.<sup>3</sup>

14. PWGSC submitted that the rate claimed by Argair did not include any justification or supporting documentation. PWGSC argued that the rate for the preparation of the bid should not exceed the rate that Argair bid for its candidates’ senior engineering services. In this regard, PWGSC submitted that a more reasonable rate would be the amount [redacted] an hour.

#### **Disbursements**

15. Argair submitted that it spent \$[redacted] to print the RFP documentation, to make copies of its bid and to send the bid by courier to PWGSC.

16. PWGSC took no issue with Argair’s claim for disbursements.

#### **Total Claim Amount**

17. Argair claimed that it spent a total of [redacted] hours to prepare its bid. It submitted that, at a rate of \$[redacted] per hour and including its disbursements of \$[redacted], its bid preparation costs amount to \$13,256.73.

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2. Argair’s response dated May 4, 2010, confidential attachments 3 and 4.

3. Argair added GST and PST and subtracted a “credit” to its hourly rate of \$[redacted] for a claimed rate of \$[redacted] per hour.

18. PWGSC countered that a reasonable basis for reimbursement would be [REDACTED] hours at \$[REDACTED] an hour, plus \$[REDACTED] in disbursements, for a total of \$1,635.73.

## ANALYSIS

19. 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.

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

21. The *Guidelines* provide as follows:

### APPENDIX A – BID PREPARATION COSTS

...

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.

22. Accordingly, the Tribunal examined Argair's claim for bid preparation costs to determine if it was properly supported.

## Time

23. The Tribunal accepts, as reasonable, Argair's submission regarding the [REDACTED] hours that it claimed to have spent reviewing and analyzing the RFP documentation. However, the Tribunal also notes that the RFP was conducted under the framework of an existing supply arrangement, which defines the marketplace and terms and conditions of participating in that marketplace for all participants, including PWGSC and, in this case, Argair. The Tribunal, therefore, accepts PWGSC's argument that Argair should not be allowed to claim costs relating to market research and consultation.

24. Regarding the screening of potential candidates' résumés, while it is conceivable that Argair may have done some screening for other qualified candidates in order to prepare a response to the solicitation, the Tribunal agrees with PWGSC that, in all likelihood, Argair's pre-qualified senior engineer candidate would have been Argair's candidate for bid purposes. Accordingly, the Tribunal considers that Argair's claim in this regard is excessive and awards Argair costs for one half of the time claimed for the screening of potential candidates' résumés and communications with PWGSC, that is, [REDACTED] hours.

25. With respect to alleged time frame associated with the review of an earlier RFP/contract and the preparation of the bid documents for the RFP at issue, the Tribunal agrees with PWGSC that the hours claimed by Argair are excessive, given the similarities between the two solicitations and the aforementioned supply arrangement marketplace framework. The Tribunal will therefore award Argair costs for [REDACTED] hours, instead of the [REDACTED] hours that it claimed, for reviewing a previous solicitation and preparing its bid documents.

## Hourly Rate

26. The Tribunal, while noting the approved labour rates included with Argair's May 4, 2010, submission, is not convinced that these rates should apply to preparing a response to a solicitation. In particular, the Tribunal is of the view that Argair has not provided adequate justification to support its

claimed rate of reimbursement. The Tribunal considers that the most relevant evidence regarding Argair's actual hourly rate [REDACTED]. The Tribunal further notes that Argair did not provide supporting documentation to justify its claim that a higher rate should apply. Thus, the Tribunal does not consider that Argair demonstrated that its claimed hourly rate of \$ [REDACTED] was one that it had applied to short-term work periods, including those relating to the preparation of a proposal. In this regard, the Tribunal accepts PWGSC's submission that the rate for the preparation of the bid should not exceed the rate bid by Argair for its candidates' senior engineering services. The Tribunal, therefore, considers the rate of \$ [REDACTED] an hour to be reasonable and appropriate in these circumstances.

### Disbursements

27. The Tribunal considers Argair's claim of \$ [REDACTED] for disbursements to be reasonable and well supported. It awards Argair \$ [REDACTED] for disbursements.

### Total Claim Amount

28. For the reasons discussed above, the Tribunal finds that the Argair's claim for bid preparation costs is to be based on [REDACTED] hours of work at \$ [REDACTED] an hour, plus \$ [REDACTED] in disbursements, for a total of \$3,235.75.

### CONCLUSION

29. Pursuant to subsection 30.15(4) of the *CITT Act*, the Tribunal hereby awards Argair costs in the amount of \$3,235.75, which the Tribunal finds representative of the reasonable costs incurred by Argair in relation to the preparation of a proposal in response to the subject solicitation, and directs PWGSC to take appropriate action to ensure the prompt payment.

Pasquale Michaele Saroli  
Pasquale Michaele Saroli  
Presiding Member