



Ottawa, Thursday, March 1, 2001

File No.: PR-99-034

IN THE MATTER OF a complaint, in relation to Solicitation No. W8483-6-EFAA, filed by MIL Systems (a Division of Davie Industries Inc.) and Fleetway Inc. under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47;

AND IN THE MATTER OF a determination made pursuant to subsection 30.16(1) of the *Canadian International Trade Tribunal Act*, awarding MIL Systems (a Division of Davie Industries Inc.) and Fleetway Inc. their reasonable costs incurred in relation to filing and proceeding with this complaint.

ORDER

In a determination made on March 6, 2000, the Canadian International Trade Tribunal (the Tribunal) awarded MIL Systems (a Division of Davie Industries Inc.) and Fleetway Inc. (MIL and Fleetway) their reasonable costs incurred in relation to filing and proceeding with their complaint.

On April 6, 2000, MIL and Fleetway submitted to the Tribunal their claim for costs in the amount of \$194,427. The Department of Public Works and Government Services (the Department) submitted comments on MIL and Fleetway's claim on May 8, 2000. On May 19, 2000, MIL and Fleetway submitted their response to the Department's comments. The Tribunal has held the claim for costs in abeyance until the completion of a challenge of the Tribunal's decision in the Federal Court of Canada.

COMPLAINT COSTS

MIL and Fleetway (the complainant) have claimed \$133,772 for legal fees, \$40,679 in expert witness/service provider's fees and \$19,976 for disbursements relating to their costs of filing and proceeding with the complaint. Having considered the parties' submissions, the complexity of the case and the degree of experience and skill of counsel for MIL and Fleetway, the Tribunal is of the view that the number of hours claimed, namely, 99.6 hours for counsel with 20+ years practising, 2.4 hours for counsel with 13 - 20 years practising, 424.5 hours for counsel with 8 - 12 years practising, 23.8 hours for counsel with 0 - 3 years practising, 91.3 hours for an articling student and 1.4 hours for a legal assistant, for a total of 643 hours is, although high, carefully accounted for in detail and reasonable in the circumstances. However, the Tribunal is not persuaded that the case warrants higher hourly rates than those established by the *Procurement Costs Guidelines* (the Guidelines). The Guidelines set hourly rates as follows:

Legal Fees - Hourly Rates

Provider of Legal Services	Completed Years Practising	Hourly Rate
Legal Assistant	-	\$30
Articling Student	-	\$60
Legal Counsel	1 - 3	\$60 - \$85
Legal Counsel	4 - 7	\$85 - \$100
Legal Counsel	8 - 12	\$100 - \$125
Legal Counsel	13 - 20	\$125 - \$150
Legal Counsel	20+	\$150 - \$200

Given that MIL and Fleetway, in this case, paid for legal services at a rate higher than that allowed, the Tribunal is prepared to award hourly rates at the higher end of the scale. Accordingly, the total amount allowed for legal fees is \$80,884, plus GST in the amount of \$5,662.

MIL and Fleetway have claimed expert witness/service provider's fees (Tribunal Form III – Summary of Expert Witness's and Other Service Provider's Fees) in the amount of \$40,679, including GST where applicable. This total takes into account the conversion of one expert's fees from U.S. to Canadian currency. The Department submitted that there was a considerable amount of duplication of work by the legal staff and experts who worked on behalf of the complainant. The complainant submitted that the allocation of resources, in this case, was done in such a manner as to reduce costs and that there was no overlap or excess time for research or any other matter. The different service providers brought different experience perspectives. Given the complexity of the case, the Tribunal finds the number of hours claimed, 151.5, reasonable in the circumstances and will allow the total hours claimed. However, the Tribunal does not believe that the circumstances of this case merit awarding an hourly rate in excess of the rate that is established at \$125 per hour. Accordingly, the total amount allowed for expert witness/service provider's fees is \$19,511, including GST as applicable.

The Department suggests that the disbursements claimed for photocopying and faxes are excessive and that the claim for clerical overtime is unsupported. The complainant submitted that these disbursements do not represent internal overhead, but rather direct disbursements, and that the Department has simply made bald allegations with no support. The Tribunal will allow the disbursements relating to the claim in the amount of \$19,976, which includes GST as applicable, as claimed.

CONCLUSION

The Tribunal hereby awards MIL and Fleetway costs in the amount of \$126,033 in relation to filing and proceeding with their complaint and directs the Department to take appropriate action to ensure prompt payment.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary