



Ottawa, Thursday, September 25, 1997

File No.: PR-96-035

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

AND IN THE MATTER OF a decision to conduct an inquiry into the complaint under subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

ORDER

INTRODUCTION

In a determination made on June 5, 1997, the Canadian International Trade Tribunal (the Tribunal), pursuant to subsections 30.15(4) and 30.16(1) of the *Canadian International Trade Tribunal Act*,¹ awarded Accutel Conferencing Systems Inc. (Accutel) its reasonable costs incurred in relation to preparing a response to the solicitation and in relation to filing and proceeding with its complaint.

On June 23, 1997, the Department of Public Works and Government Services (the Department) wrote the Tribunal stating its intention to comply fully with the Tribunal's recommendation. On July 4, 1997, Accutel submitted to the Tribunal its claim for complaint costs and response preparation costs in the amount of \$43,638.44. The Department sent comments on Accutel's claim on July 16, 1997. On July 24, 1997, Accutel responded to these comments.

COMPLAINT COSTS

Accutel has claimed \$20,939.00 for legal fees incurred by it in pursuing its complaint and \$1,203.44 for disbursements relating to the legal services rendered. The Tribunal, having considered the complexity of the case and the degree of experience and skill of counsel for Accutel, is of the view that the number of hours claimed, namely, 103 hours, is reasonable in the circumstances. The Tribunal is not, however, persuaded that counsel's experience in government procurement combined with his completed years as a practising lawyer warrants a higher hourly rate than that established by the *Procurement Costs Guidelines* (the Guidelines). The Guidelines set an hourly rate of \$125.00 to \$150.00 for counsel with 13 to 20 completed years as a practising lawyer. Counsel has completed 16 years. Given that counsel has some relevant experience in government procurement, the Tribunal is prepared to award an hourly rate at the higher end of the tariff, namely, \$150.00. However, the Tribunal does not believe that counsel's experience in government procurement merits awarding an hourly rate in excess of the tariff, particularly since counsel's experience in government procurement has not involved actual procurement review proceedings per se. Accordingly, the total amount allowed for legal fees is \$15,450.00, plus GST in the amount of \$1,081.50. The disbursements relating to the provision of legal services in the amount of \$1,198.10, which includes GST, are also allowed as claimed.

Accutel has also claimed internal costs of \$4,396.50 for pursuing the complaint and related disbursements of \$1,360.75, specifically, expenses in respect of travel, accommodation and long distance calls and other costs. With respect to internal personnel time, the Tribunal notes that Accutel retained

1. R.S.C. 1985, c. 47 (4th Supp.).

independent counsel to act on its behalf in pursuing the complaint before the Tribunal and that Accutel personnel who participated in the proceedings were acting in their capacity as employees, not as legal counsel or representatives. The courts have found that, absent a situation where an in-house counsel or other employee represents a litigant in a proceeding, the power to award costs does not include the power to compensate a litigant for the time spent by its employees in connection with the proceeding.² Similarly, the courts have not generally awarded a litigant its disbursement costs incurred in association with its employees' participation in a proceeding unless associated with an employee's attendance and/or appearance as a witness at a hearing in a proceeding.³ Accordingly, the Tribunal does not award these expenditures.

BID PREPARATION COSTS

Accutel has claimed personnel costs for preparing its response to this solicitation and for clarifying its bid at the request of the Department in the amount \$8,206.50. It has also claimed \$2,436.08⁴ for related disbursements. The Department submits that Accutel did not receive the tender documentation until November 18, 1996, and, therefore, should not be entitled to bid preparation costs incurred prior to this date. The amount of the claim accounting for the period before November 18, 1996, is \$456.00 (19 hours @ \$24.00 per hour). The Department also takes issue with Accutel's claims for travel, long distance calls and facsimile expenses. Taking into account the Department's submissions, as well as Accutel's response, and in applying the cost principles laid out in the Guidelines, the Tribunal is prepared to award these costs as claimed except for a reduction of \$456.00 relating to internal time incurred prior to November 18, 1996, and a reduction of \$233.50 for travel expenses and meals. The Guidelines stipulate that air fares will generally only be reimbursed at economy class rates. Accordingly, Accutel's claim for two return business class fares from Ottawa to Toronto has been reduced by \$200.00 to reflect economy class rates.

CONCLUSION

The Tribunal hereby awards Accutel costs in the amount of \$17,734.94 in relation to proceeding with its complaint and costs in the amount of \$9,986.58 in relation to preparing a response to this solicitation and directs the Department to take appropriate action to ensure prompt payment.

Arthur B. Trudeau

Arthur B. Trudeau
Member

Susanne Grimes

Susanne Grimes
Acting Secretary

2. See, for example, *Energy Absorption Systems Inc. v. Y. Boissonneault & Fils Inc.*, unreported, Federal Court of Canada - Trial Division, Court File No. T-2263-86, January 30, 1991; and *Wellcome Foundation Ltd. v. Apotex Inc.* (1992), 52 F.T.R. 241.

3. See, for example, *Aerlinte Eireann Teoranta v. Canada*, unreported, Federal Court of Canada - Trial Division, Court File No. T-1250-80, December 14, 1993; and *Bayliner Marine Corp. v. Doral Boats Ltd.* (1987), 15 C.P.R. (3rd) 201 at 208.

4. Accutel agreed to a reduction of \$23.50 reflecting allowable rates for meals.