

CANADIAN INTERNATIONAL TRADE TRIBUNAL

PROCUREMENT COST GUIDELINES

1.0 INTRODUCTION

1.1 The *Canadian International Trade Tribunal Act* (the CITT Act) provides that the Canadian International Trade Tribunal (the Tribunal) may award costs in procurement proceedings. Specifically, the Tribunal may:

- award a complainant its reasonable costs incurred in preparing a response to a solicitation for a designated contract; and
- award to a party the costs of, and incidental to, any procurement proceeding, on a final or interim basis and the costs may be fixed at a sum certain or may be taxed.

1.2 These guidelines have been adopted by the Tribunal to provide guidance to parties seeking to recover bid preparation costs and/or the costs of participating in a procurement proceeding. These guidelines will be used by the Tribunal and by taxation officers appointed by the Tribunal from time to time in assessing or taxing, as appropriate, parties' claims for costs.

1.3 These guidelines do not limit or detract from discretion of the Tribunal or any taxation officer appointed by the Tribunal.

2.0 GUIDING PRINCIPLES

2.1 These guidelines are intended to implement the following principles:

- (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;
- (c) the assessment and taxation processes should be efficient and fair to all parties;
- (d) the assessment and taxation processes must be sufficiently flexible to ensure that costs are awarded taking into account the particular circumstances of a procurement proceeding and the nature and value of a party's participation in that proceeding; and
- (e) the assessment and taxation processes must take into account financial assistance from government or other sources.

3.0 INTERPRETATION

3.1 In these guidelines the following words or expressions have the following meanings:

- (a) "articling student" means a person who has completed a Bachelor of Laws degree or comparable degree and is working as a student-at-law under the supervision of legal counsel;
- (b) "bid" means a response to a solicitation by a government institution for proposals with respect to a designated contract;

- (c) “bid preparation costs” means the costs, direct or indirect, incurred by a claimant in preparing its bid, as further described in section 4.0 and Appendix A to these guidelines;
- (d) “claimant” means a person to whom costs have been awarded by the Tribunal;
- (e) “complaint” means a complaint filed pursuant to subsection 30.11(1) of the CITT Act;
- (f) “complaint costs” are the costs associated with a claimant’s participation in a procurement proceeding, as further described in section 5.0 of these guidelines;
- (g) “expert witness” means a person who is considered by the Tribunal to be a qualified expert and has filed or given expert evidence in his or her name in a procurement proceeding;
- (h) “legal assistant” means a qualified law clerk or paralegal;
- (i) “legal counsel” means a person who is a member in good standing of any provincial, territorial, state or other bar recognized by the Tribunal;
- (j) “procurement proceeding” means a Tribunal proceeding in respect of a complaint;
- (k) “reasonable” in relation to costs and disbursements means costs and disbursements which, in nature and amount, do not exceed those which would be incurred by an ordinarily prudent person in the conduct of a competitive business and are of a type generally recognized as normal and necessary for the conduct of such business or the performance of the work undertaken;
- (l) “representative” means a person who represents a party to a procurement proceeding, but who is not a legal counsel;
- (m) “respondent” means a person who will pay the costs awarded by the Tribunal;
- (n) “service provider” means a legal counsel, articling student, representative, expert witness or other person who provided services to a claimant in a procurement proceeding; and
- (o) “taxation officer” means a person appointed by the Tribunal pursuant to subsection 30.16(2) of the CITT Act to assess claims for complaint costs.

4.0 BID PREPARATION COSTS

4.1 General

4.1.1 A claimant may recover bid preparation costs which the Tribunal considers to be reasonable.

4.1.2 In support of its claim for bid preparation costs, a claimant shall file with the Tribunal within 30 days of being notified that it has been awarded its bid preparation costs:

- a brief narrative summary of the work undertaken to prepare the bid; and
- detailed and itemized schedules of the costs incurred, along with supporting documentation, which may include things such as time sheets, accounting records or such other documents necessary to support a claim, such schedules being prepared having regard to Appendix A to these guidelines.

4.1.3 The Tribunal may request further documentation or submissions to substantiate a claim.

4.1.4 The Tribunal shall forthwith after receiving a claim under paragraph 4.1.2 and any additional documentation or submissions under paragraph 4.1.3, send copies thereof to the respondent.

4.1.5 Within 20 days after receiving documents sent pursuant to paragraph 4.1.4, the respondent shall file its response, if any, with the Tribunal and the Tribunal shall forthwith provide a copy thereof to the claimant.

4.1.6 Subject to the need for additional information, the Tribunal shall, as soon as is practicable following receipt of the respondent's submission under paragraph 4.1.5, advise the parties which costs and what amount have been allowed.

5.0 COMPLAINT COSTS

5.1 Taxation

5.1.1 Unless the Tribunal directs otherwise, all awards of complaint costs will be taxed. Where the Tribunal awards a party its complaint costs in a procurement proceeding, the Tribunal shall, within 20 days of that award, appoint a taxation officer and notify the claimant and respondent accordingly.

5.2 Recoverable Costs

5.2.1 A claimant may recover complaint costs which are considered to be reasonable. A claimant seeking to recover such costs shall provide the Tribunal with a bill of costs prepared in accordance with these guidelines.

5.2.2 Where a claim is unreasonable or departs from these guidelines, the taxation officer may reduce the claim to a level that the taxation officer considers reasonable. A claimant or respondent who believes that circumstances exist which warrant a departure from these guidelines shall file with the Tribunal a brief written submission indicating the specific departure requested and explaining why the guidelines should not be followed.

5.2.3 Costs will not generally be recoverable in respect of employees, officers or directors of a claimant who, acting in their usual capacity as employees, officers or directors, expended time in connection with a claimant's participation in a procurement proceeding. However, where one of a claimant's employees, officers or directors acts as the claimant's counsel or representative, the claimant may recover its costs in accordance with paragraph 5.2.1 and Appendix B of these guidelines.

5.3 Bill of Costs

5.3.1 A claimant shall file a bill of costs with the Tribunal within 30 days of being notified that it has been awarded its complaint costs. The amounts claimed shall be recorded on summary sheets, in Form I (for legal counsel, articling students and legal assistants), Form II (for representatives) and Form III (for expert witnesses and other service providers), together with invoices and receipts necessary to support those costs.

5.3.2 A taxation officer may request further documentation or submissions to substantiate a claim. For example, if the claimant is claiming costs for fees paid by it to a service provider which were calculated on an hourly or daily basis, a taxation officer may request the claimant to submit that service provider's records. Such records should contain at least the following information: the date on which work was done, the amount of time spent on the work and a brief description of that work.

5.3.3 All documents filed by a claimant pursuant to paragraphs 5.3.1 and 5.3.2 shall forthwith be sent to the respondent by the Tribunal.

5.3.4 Within 20 days after receiving documents sent pursuant to paragraph 5.3.3, the respondent shall file its response or supplementary response, as appropriate, with the Tribunal, and the Tribunal shall forthwith send a copy thereof to the claimant.

5.3.5 Subject to the need for additional information, the taxation officer shall, as soon as is practicable following receipt of the respondent's submission under paragraph 5.3.4, advise the parties which costs and in what amount have been allowed.

5.4 Fees

General

5.4.1 Fees as billed to a claimant by a service provider will normally be recoverable, provided they are: (a) based on the current allowable daily or hourly rates which are set out in Appendix B; and (b) for a time which is reasonable in the circumstances.

5.4.2 In judging whether or not the time expended by a service provider is reasonable, a taxation officer may consider any relevant factor, including:

- (a) the extent and nature of a service provider's participation in a procurement proceeding and the complexity of the issues to which that participation related;
- (b) the duplication of tasks among service providers; and
- (c) the experience of the service provider.

Hourly and Daily Rates

5.4.3 Appendix B sets out hourly and daily rates for service providers. Appendix B will be updated from time to time taking into account inflation and other relevant factors.

5.4.4 The hourly rate applicable to a particular legal counsel will be based on that counsel's completed years as a practising lawyer. Years as a practising lawyer shall be calculated to the date on which the relevant complaint was filed with the Tribunal.

5.4.5 The hourly rate applicable to a representative will be based on the number of completed years which that person has been acting as a representative. Years shall be calculated to the date on which the relevant complaint was filed with the Tribunal

Applicable Time Increments

5.4.6 A claimant must use the applicable time increments set out in Appendix B.

5.4.7 In the case of rates expressed in daily increments in Appendix B (i.e. those for in-house legal counsel, articling students, legal assistants and representatives), a day shall consist of at least seven full hours' work on a procurement proceeding. If more or less than seven hours are worked in a day, then the claimant shall, as appropriate, increase or reduce its claim for that day on a *pro rata* basis, rounding out time worked to the nearest hour.

5.5 Disbursements

General

5.5.1 Subject to these guidelines, reasonable disbursements incurred in connection with a claimant's participation in a procurement proceeding are recoverable.

5.5.2 A claimant shall file an Affidavit of Disbursements in Form IV and attach thereto a summary statement of disbursements in Form V.

5.5.3 Disbursements made by the in-house legal counsel, articling students, legal assistants, representatives and expert witnesses of a claimant will generally be allowed in the same manner as disbursements incurred by "outside" service providers.

5.5.4 A claimant shall file receipts for all disbursements claimed. Where receipts are not available, a claimant shall file other evidence of disbursements. Receipts should be photocopied legibly onto numbered pages with a different series of pages for each legal/consulting firm, company, organization or individual that made the disbursements.

Travel, Accommodation and Meals

5.5.5 Disbursements for accommodation and meals will generally be allowed only in connection with hearings or meetings which take place at a distance greater than 50 kilometres from the regular place of work of the person who makes those disbursements.

5.5.6 Reasonable disbursements for hotels will normally be allowed. In respect of meals, the amounts set out in Appendix B will be allowed. Receipts will not be required for meals.

5.5.7 Disbursements for inter-city travel will generally be allowed for the most reasonable means of transportation. Automobile travel will be compensated at the rate set out in Appendix B. In respect of air travel, it is expected that persons purchase the least expensive available ticket. Penalty fees reasonably incurred because of a change in a person's return schedule will be allowed. Generally, disbursements in excess of economy fares will not be allowed.

5.5.8 Disbursements for intra-city travel, such as taxi fares and parking expenses, shall be recoverable provided they are reasonable.

Photocopying and Other Disbursements

5.5.9 Disbursements for photocopies made on the claimant's photocopying equipment shall be allowed at the rate set out in Appendix B. Photocopies made using an outside photocopying service are also recoverable.

Other

5.5.10 Any other reasonable disbursements may be allowed in the taxation officer's sole discretion.

6.0 FINANCIAL ASSISTANCE, GST, PST AND COSTS OF THE TAXATION

6.1 In its affidavit of disbursements, a claimant shall indicate whether or not it has received or will receive financial assistance from any government in connection with its participation in a procurement proceeding. This does not include general fund-raising revenues or other support of a general nature.

6.2 If a claimant has received or will receive financial assistance in connection with its participation in a procurement proceeding, then the amount of costs taxed by the taxation officer shall be reduced by that amount.

6.3 In its Affidavit of Disbursements, the claimant shall indicate whether or not it is entitled to a rebate in connection with the GST or PST, the extent of the rebate and the basis of its eligibility. The taxation officer shall take that information into account when assessing the tax payable on the costs claimed.

FORM I - SUMMARY OF LEGAL FEES

File No. PR- ____ - ____

Name of Counsel/Articling Student/Legal Assistant: _____

Is the individual a salaried employee of the claimant? ____ yes ____ no

If not, indicate the name of employer: _____

Nature of Fees (check one): ____ Articling Student ____ Legal Assistant ____ Legal Counsel (complete further questions)

Completed Years Practising: _____

Has the legal counsel practised continually since his or her call? ____ yes ____ no

If not, provide details on a separate sheet.

Year of Call: _____

SERVICE*	HOURS REQUESTED (use quarter-day increments for in-house services)	RATE REQUESTED (use appropriate hourly or daily rate in Appendix B)	FEE CLAIMED (hours x rate)	TOTAL FEES CLAIMED (fees + GST + PST)
TOTAL				

*e.g. Preparation of complaint, comments on Government Institution Report, draft arguments, report, motions, etc.

We certify that the above information is true and accurate.

Date: _____

Signature of Legal Counsel: _____

Date: _____

Signature of Claimant: _____

FORM II - SUMMARY OF REPRESENTATIVE'S FEES

File No. PR- ____ - ____

Name of Representative: _____

Is the individual an employee of the claimant? _____ yes _____ no

If not, indicate the name of employer: _____

Completed years acting as a representative: _____ (deduct appropriate periods of time if individual was not acting continually as a representative)

Date on which first began offering services as a representative: _____

SERVICE*	HOURS REQUESTED (use quarter-day increments for in-house services)	RATE REQUESTED (use appropriate hourly or daily rate in Appendix B)	FEE CLAIMED (hours x rate)	TOTAL FEES CLAIMED (fees + GST + PST - credit)
TOTAL				

* e.g. Review, cite, consult with claimant, prepare report and/or evidence, etc.

We certify that the above information is true and accurate.

Date: _____

Signature of Representative: _____

Date: _____

Signature of Claimant: _____

FORM III - SUMMARY OF EXPERT WITNESS'S AND OTHER SERVICE PROVIDER'S FEES

File No. PR-____-____

Name of Expert Witness/Service Provider: _____

Is the expert witness/service provider an employee of the claimant? _____ yes _____ no

SERVICE*	HOURS REQUESTED (use quarter-day increments for in-house services)	RATE REQUESTED (use appropriate hourly or daily rate in Appendix B)	FEE CLAIMED (hours x rate)	TOTAL FEES CLAIMED (fees + GST + PST - credit)
TOTAL				

* e.g. Preparation of complaint, comments on Government Institution Report, draft arguments, report, motions, etc.

We certify that the above information is true and accurate.

Date: _____

Signature of Expert
Witness/Service Provider: _____

Date: _____

Signature of Claimant: _____

FORM IV - AFFIDAVIT OF DISBURSEMENTS

IN THE MATTER OF:

THE TAXATION OF COSTS AWARDED TO
(name of the claimant)

in File No. PR-____ - ____

AFFIDAVIT

I, (name) of the (name of the municipality) in the Province of (name), make oath and say as follows:

1. I am (position, i.e. officer or legal counsel) of the claimant (name) in this proceeding and, as such, have knowledge of the matters to which I hereinafter depose.
2. Attached to this my Affidavit as Exhibit "A" (is / are) (x number of) form(s) setting out the disbursement claims of (name of the claimant) which (has / have) been prepared in accordance with the Canadian International Trade Tribunal Procurement Cost Guidelines.
3. To the best of my knowledge and belief, the disbursement claims of (name of the claimant) submitted herewith, and all the documentation in support, represent disbursements necessarily and reasonably incurred for the purpose of this proceeding.

(insert the following two paragraphs if applicable)

4. The claimant (has or will) receive(d) the following government financial assistance in direct connection with its participation in this proceeding: (amount of financial assistance)
5. The claimant is entitled to a rebate in connection with the GST to the extent of ____ percent, based on (provide detailed explanation). The claimant's GST registration number is _____. (Insert a similar paragraph if a credit is available under the applicable PST regime.)

SWORN BEFORE ME at)
 the City of)
 in the Regional Municipality) _____
 of) (signature of Affiant)
 in the Province of)
 this day of 199 .)

Commissioner for taking oaths

FORM V - SUMMARY STATEMENT OF DISBURSEMENTS

File No. PR- ____ - ____

Claimant: _____

NATURE OF DISBURSEMENTS	RECEIPT PAGE REFERENCE (see paragraph 5.5.4)	COSTS CLAIMED (excluding GST and PST)	GST and PST	TOTAL COSTS CLAIMED (costs + GST + PST - credit)
In-house photocopies (\$0.10/copy)				
Other photocopies				
Printing				
Binding				
Long distance (telephone/facsimile)				
Courier				
Postage				
Transcripts				
Air travel (list each traveller separately)				
1.				
2.				
Inter-city train or bus (list each traveller separately)				
1.				
2.				
TOTAL				

FORM V - SUMMARY STATEMENT OF DISBURSEMENTS (cont'd)

File No. PR- ____ - ____

Claimant: _____

NATURE OF DISBURSEMENTS	RECEIPT PAGE REFERENCE (see paragraph 5.5.4)	COSTS CLAIMED (excluding GST and PST)	GST and PST	TOTAL COSTS CLAIMED (costs + GST + PST - credit)
Inter-city car travel (list each trip separately)				
1.				
2.				
3.				
4.				
Intra-city car travel (list each trip separately)				
1.				
2.				
3.				
4.				
Parking				
Intra-city taxi/bus/train				
Accommodation (list each traveller separately)				
1.				
2.				
3.				
TOTAL				

FORM V - SUMMARY STATEMENT OF DISBURSEMENTS (cont'd)

File No. PR- ____ - ____

Claimant: _____

OTHER DISBURSEMENTS (specify)	RECEIPT PAGE REFERENCE (see paragraph 5.5.4)	COSTS CLAIMED (excluding GST and PST)	GST and PST	TOTAL COSTS CLAIMED (costs + GST + PST - credit)
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
TOTAL				

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
- (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.

1.3 In the case of a claim for bid preparation costs by a claimant whose practice is to follow a consistent cost accounting practice of charging this type of cost directly to contracts, such charges may be accepted as direct costs for purposes of the claim.

1.4 A complainant whose normal practice is to account for bid preparation costs as indirect costs will be permitted to convert those expenditures to direct costs for purposes of its claim.

2.0 Direct Costs

2.1 The following are categories of direct costs which may be allowed:

- (a) **material cost** - the cost of materials which can be specifically identified and measured as having been used in the preparation of the bid and which is so identified and measured in the complainant's cost accounting system;
- (b) **labour cost** - that portion of gross wages or salaries incurred for work which can be specifically identified and measured as having been performed in the preparation of the bid and which is so identified and measured in the complainant's cost accounting system; and
- (c) **other costs** - direct costs not falling within (a) or (b) above, but which can be specifically identified and measured as having been incurred in connection with the preparation of the bid and which are so identified and measured in the complainant's cost accounting system.

3.0 Indirect Costs

3.1 Indirect costs are those which have been incurred in connection with the preparation of a bid and may include:

- (a) general and administrative expenses, including remuneration of executive and corporate officers, office wages and salaries, and expenses such as stationery, office supplies, postage and other necessary administrative and management expenses.

- (b) Canada Pension Plan contributions, unemployment insurance premiums, contributions to such things as private pension plans, health plans and other benefits (the complainant's contribution only).
- (c) service expenses which are expenses of a general nature for items such as electricity and heat and expenses incurred for the operation and maintenance of assets and facilities;
- (d) fixed/period charges which are recurring charges such as property taxes, rentals and a reasonable provision for depreciation;
- (e) indirect materials and supplies; and
- (f) indirect labour.

4.0 Allocation of Indirect Costs

4.1 The amount of any indirect cost claimed shall be reasonably proportionate to the work expended in preparing the bid. In assessing the reasonableness of any amount claimed, the Tribunal will consider all relevant factors, including the work undertaken by the claimant in preparing the bid and the size or significance of the bid in financial or other terms, relative to the size of the overall operations of the claimant.

4.2 Any amount claimed as a direct cost, whether salary, material or other, shall not be claimed as an indirect cost and should be specifically accounted for and, if necessary, removed from any amount claimed as part of an indirect cost.

5.0 Non-Allowable Costs

5.1 The following costs are considered non-recoverable costs for the purposes of any claim for bid preparation costs:

- (a) entertainment expenses;
- (b) fines and penalties;
- (c) provisions for contingencies;
- (d) losses on other contracts;
- (e) losses on investments, bad debts and expenses for their collection;
- (f) federal and provincial income taxes, surtaxes and/or special expenses in connection therewith;
- (g) legal, accounting and consulting fees in connection with financial re-organization, security issues, capital stock issues, obtaining of patents and licenses and prosecution of other claims against the Crown;
- (h) allowances for interest on invested capital, bonds, debentures, bank or other loans together with related bond discounts and finance charges;
- (i) amortization of unrealized appreciation of assets;
- (j) depreciation of assets paid for by the Crown; and
- (k) expenses and depreciation of excess facilities.

6.0 Profit

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

APPENDIX B

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

Expert Witness's/Service Provider's Fees

\$125/hr.

Representative's Fees - Hourly Rates

Provider of Services	Completed Years	Hourly Rate
Representative	0 - 5	\$85
Intermediate Representative	6 - 9	\$100
Senior Representative	9+	\$125

In-House Fees - Daily Rates

Provider of Services	Daily Rate
Legal Counsel	\$500
Articling Student	\$150
Representative	\$400
Legal Assistant	\$100

Disbursements

Travel by Automobile	\$0.35/km
Meals	\$48.00/day (\$8.80 breakfast/\$9.40 lunch/\$25.00 dinner)
In-House Photocopies	\$0.10/copy