Federal Court of Appeal | Cour d'appel fédérale

Date: 20170809

Docket: A-359-16

Citation: 2017 FCA 165

CORAM: **WEBB J.A.**
DE MONTIGNY J.A.
GLEASON J.A.

BETWEEN:

FRANCIS H.V.A.C. SERVICES LTD.

Applicant

and

MINISTER OF PUBLIC WORKS AND GOVERNMENT SERVICES AND MODERN NIAGARA OTTAWA INC.

Respondents

Heard at Ottawa, Ontario, on May 11, 2017.

Judgment delivered at Ottawa, Ontario, on August 9, 2017.

REASONS FOR JUDGMENT BY: DE MONTIGNY J.A.

CONCURRED IN BY: WEBB J.A.
GLEASON J.A.

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REASONS FOR JUDGMENT

DE MONTIGNY J.A.

[1] This is an application for judicial review in respect of a decision of the Canadian International Trade Tribunal (the CITT) dated September 2, 2016 which determined that Francis H.V.A.C. Services Ltd.'s (the applicant or Francis Ltd.) complaint regarding the procurement process followed by the respondent Minister of Public Works and Government Services Canada

(PWGSC) was not valid pursuant to subsection 30.14(2) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985, c. 47 (4th Supp.) (the Act).

[2] At issue in this application is whether the CITT erred in finding that the second respondent, Modern Niagara Ottawa Inc. (MNO), had the necessary security clearance to meet the terms of a Request for Proposal (RFP) at the time of bid closing. This matter also raises the question of whether the CITT erred in finding that PWGSC did not offend the rule against bid repair when it corrected MNO's calculation errors and verified MNO's security status after the bid closing date.

[3] Having carefully considered the record and the submissions of the parties, and taking into account the deferential standard of reasonableness to be applied when reviewing decisions of the CITT, I would dismiss this application for the following reasons.

I. Background

[4] On February 5, 2016, PWGSC issued an RFP for the provision of maintenance services in respect of heating, ventilation, air conditioning (HVAC), commercial refrigeration and boiler equipment at the Department of National Defence's Connaught Range location in Ottawa, Ontario. It called for the award of a single contract for these services to the responsive bidder with the lowest evaluated price. The closing date for the bid was slated for March 21, 2016.

[5] Francis Ltd. has operated in the heating and ventilation industry in the greater Ottawa area since 1992. In March 2016, it responded to the RFP, and was later informed by PWGSC on

April 7, 2016 that it was the successful bidder. A contract was thus formed between Francis Ltd. and Her Majesty the Queen in Right of Canada.

[6] On April 11, 2016, PWGSC communicated with Francis Ltd. seeking to terminate that contract by mutual consent. The explanation given by PWGSC was to the effect that Francis Ltd. was not the lowest bidder, but rather, the second lowest. Francis Ltd. was also informed that the respondent MNO, to whom the contract was ultimately awarded, was initially found to be non-compliant with the RFP requirements, but after re-assessment by PWGSC, was deemed to have submitted a responsive bid. It was later revealed that this was due to an error regarding the identity of MNO as bidder, which in turn led to confusion surrounding the status of MNO's Facility Security Clearance.

[7] MNO submitted its bid under a business name, Modern Niagara Building Services (MNBS). It carries on business in and around Ottawa in the fields of mechanical contracting, electrical contracting, building controls, and maintenance services in respect of heating, ventilation and air conditioning equipment. It is a subsidiary of Modern Niagara Group Inc., a national company that began as a plumbing service business in Ottawa over 56 years ago.

[8] MNO came into being in January 2016 through the amalgamation of several pre-existing corporations, including one also bearing the name Modern Niagara Ottawa Inc. (the former MNO). The registered office of MNO is the same as that of the former MNO; four of the five administrators/directors are also the same.

[9] The record shows that the former MNO had a valid Facility Security Clearance of Top Secret as of July 23, 2015, and that MNO had the same Facility Security Clearance on June 30, 2016 (Appeal Book, Vol. 2, Tab 11, at pp. 524-525). It is unclear on the record before us, however, whether MNO held such a clearance at the time of bid submission, as required by section 6.1 of the RFP.

[10] On April 22, 2016, Francis Ltd. filed its complaint with the CITT, alleging that the contract that had been awarded to it was improperly cancelled and then awarded to another bidder after "bid repair" and without an intervening solicitation. It sought the cancellation of the contract awarded to MNO and restoration of the contract to it, or in the alternative, the re-opening of the bid process, together with compensation for its losses. The CITT decided to conduct an inquiry into the complaint in accordance with subsection 30.13(1) of the Act, which resulted in the decision under review.

II. The impugned decision

[11] Before the CITT, Francis Ltd. argued that MNO, being the entity that was ultimately awarded the contract, was not compliant with the security requirements of the RFP at the time of bid closing. Francis Ltd. contended that, in re-evaluating the status of its security clearance, PWGSC improperly allowed MNO to engage in bid repair. Further, as MNO submitted its bid under its registered business name, Francis Ltd. submitted that it was unclear at the time of bid closing whether MNO had the requisite clearance level as set out in the RFP. Francis Ltd. also submitted that since MNBS is a business name, MNBS had no capacity to submit a bid, and that the business name was not registered to the post-amalgamation entity. It also pointed to the fact

that revisions were made to the initial bid which were left unsigned by MNO, another allegation in support of its bid repair claim.

[12] Relying on its own jurisprudence, the CITT first noted that evaluators are afforded a great deal of deference when complaints are launched into the reasonableness of their bid evaluations. It then went on to determine that MNBS was a "potential supplier" in keeping with sections 30.1 and 30.11 of the Act, which has been interpreted as being an entity that is in a position to fulfill the terms of the contract. The CITT found that although the name MNBS had been registered to the former MNO, its use by MNO did not cause any uncertainty over the identity of the bidder and it did not contravene any of the RFP requirements. Accordingly, the CITT accepted that the business name MNBS was intended to identify MNO as the bidder.

[13] Second, the CITT noted PWGSC's acknowledgement that it erred in its initial evaluation of MNBS' security clearance status, and thus had to proceed to a re-assessment in order to correct its mistake. It saw no reason to conclude that the security clearance granted to MNO was not specific to it, and determined that both PWGSC and its internal body responsible for the issuance of security clearances, the Canadian Industrial Security Directorate (the CISD), were aware of the amalgamation with the predecessor company. The CITT consequently determined that the amalgamation was considered in granting the requisite security clearance to MNO. It thus found that PWGSC reasonably met its obligations in concluding that MNO held the requisite security clearance on the submission of its bid.

[14] Finally, the CITT considered Francis Ltd.'s allegations that PWGSC permitted MNBS to engage in bid repair both with respect to its security clearance and the revisions to its financial bid. On the first issue, the CITT noted that it is incumbent upon contracting authorities to take appropriate steps to correct errors upon their discovery in a bid evaluation process. It also held that the RFP did not require proof of compliance with the security clearance requirement, but rather, merely that the Contractor/Offeror hold a valid Facility Security Clearance at all times during performance of the Contract/Standing Offer (see section 7.3 of the RFP, Application Record, Vol. 1, Tab E-3 at p. 100). It noted that, had PWGSC continued its contractual relationship with Francis Ltd. upon being notified of its mistake, it would have been in direct contravention of section 4.2 of the RFP providing that the contract be awarded to the lowest responsive bidder (Application Record, Vol. 1, Tab E-3 at p. 95). In so doing, PWGSC would have also been in violation of the applicable trade agreements which require that contracts be awarded pursuant to the terms set out in the tender documents. The CITT could thus not ground a finding of bid repair on the security clearance front.

[15] As for the question of whether corrections to the initial bid following the closing date are a further indicator of bid repair, the CITT determined that these revisions were initiated by PWGSC and were only made to adjust calculation errors. It cited its own jurisprudence to state that contracting authorities may seek clarifications to better understand the contents of a bid. The CITT explained that although new information may not be considered at the close of a procurement process, explanations may always be sought. As the revisions undertaken by PWGSC did not constitute a new bid, but rather, corrections to certain portions of a financial bid already signed and submitted, the CITT found that they did not require signature from MNO.

[16] The CITT thus determined, in light of the circumstances, that Francis Ltd.'s complaint was not valid pursuant to subsection 30.14(2) of the Act. Despite this finding, it found that the parties should bear their own costs, given PWGSC's conduct in the matter.

III. Issues

[17] In my view, this application for judicial review raises two issues:

A. Did the CITT make a reviewable error in failing to find bid repair, with respect to the security clearance check or the financial revisions?

B. Did the CITT make a reviewable error in determining that the revisions to MNO's initial bid did not require a signature?

[18] Questions involving whether an RFP was conducted in accordance with published requirements are "at the core of the CITT's expertise" and thus review of such determinations is to be conducted under the deferential reasonableness standard of review (*CGI Information Systems and Management Consultants Inc. v. Canada Post Corporation*, 2015 FCA 272 at para. 59, citing *Siemens Westinghouse Inc. v. Canada (Minister of Public Works and Government Services)*, 2001 FCA 241, at paras. 21-22, [2002] 1 F.C. 292). This is indeed consistent with the jurisprudence of the Supreme Court, according to which the reasonableness standard is presumed to apply when reviewing a tribunal's decision involving the interpretation of its own statute or statutes closely connected to its functions (see *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47 at para. 22, [2016] 2 S.C.R. 293; *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16 at para. 46, [2015] 2 S.C.R. 3). It is thus well-settled that the standard of reasonableness applies to these determinations, and that a reviewing court

owes a high degree of deference to the tribunal (see also *Canada (Attorney General) v. Almon Equipment Limited*, 2010 FCA 193 at paras. 31-33, 405 N.R. 91).

[19] Counsel for Francis Ltd. submits that, despite the foregoing well-established line of authority, the standard of correctness should be applied to the CITT's analysis of bid modification, and relies for this proposition on *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29 at para. 91, [2016] 1 S.C.R. 770 [*Wilson*]. This argument is wholly without merit, for at least two reasons. First, the question at issue in *Wilson* was a pure question of statutory interpretation. This is much different from the question at issue here, which is a mixed question of fact and law calling for an assessment of the particular circumstances leading to the cancellation of the contract initially awarded to Francis Ltd. and to the subsequent acceptance of MNO's bid. Second, the reasoning upon which counsel relies is that of the dissenting judges in *Wilson*. The majority in *Wilson* firmly held that the decisions of labour adjudicators or arbitrators interpreting statutes or agreements within their expertise attract a reasonableness standard.

[20] Accordingly, there is no reason to depart from the reasonableness standard in the present case. In keeping with the principles laid out in *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47, [2008] 1 S.C.R. 190, my focus will therefore be to look into the "justification, transparency and intelligibility within the decision-making process", and to determine whether the decision of the CITT falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law".

IV. Analysis

A. *Did the CITT make a reviewable error in failing to find bid repair, with respect to the security clearance check or the financial revisions?*

[21] Counsel for Francis Ltd. argues that MNBS engaged in bid repair in revising its pricing, which amounted to a nearly two-thirds reduction in the original amounts tendered. Francis Ltd. says that allowing MNBS to amend its tender after the tendering process had closed not only offends the principle of fairness which must govern the procurement process, but also a number of trade agreements. For the applicant, the revisions undertaken by PWGSC were not merely to gain a "better understanding of the contents of a bid", as found by the CITT at paragraph 49 of its reasons, but rather constituted a wholesale re-write of the bid.

[22] I agree that there is no doubt that bidders cannot make material corrections or amend their bids after the bid's closing date. The requirements found in an RFP must be met at the time of bid closing, and a procurement entity is not entitled to consider information submitted after that date. "Bid repair", as it has come to be known, is considered to be an indirect way of allowing a late bid. The rationale behind the rule against bid repair is easy to understand: allowing a bid to be modified or altered after the fact would undermine the bidding process itself, as it would allow a change to be made to a bid at a time when the bids of others are known or could be known (see Anne C. McNeely, *Canadian Law of Competitive Bidding and Procurement*, (Aurora, On: Canada Law Book, 2010), as quoted in *Asphalte ABC Rive-Nord Inc. v. Canada (Attorney General)*, 2013 FC 1287 at para. 56, 445 F.T.R. 119).

[23] In the case at bar, MNO did not submit any new information after the bid closing date of March 21, 2016. Rather, it was PWGSC that corrected MNO's mathematical errors on its own initiative. The bid contained 23 individual tables, one for each building included in the RFP. Every individual table broke down the unit price by individual HVAC unit and by year, with subtotals set out by year at the bottom (see section 6.2.1.1 of the RFP, Application Record, Vol. 1, Tab E-3 at pp. 145-155). The bid also contained another table entitled "Summary of Pricing Schedule 1" (the Summary Table) which added the subtotals from each of the 23 tables, divided the annual totals into quarterly amounts, and used the quarterly amounts to calculate the five year total price (see section 6.2.1.2 of RFP, Application Record, Vol. 1, Tab E-3 at p. 156).

[24] It is clear from a review of MNO's bid that it contained the correct prices on all of the individual HVAC units. However, there were errors in adding the subtotals for three of the 23 tables which were easily discoverable by calculating the individual prices by year and comparing them to the subtotals. There was also an error in the Summary Table, as it tallied the annual subtotals but did not divide them by four, resulting in the quarterly amounts actually constituting annual amounts. Again, this was easily discoverable by adding the annual subtotals and comparing them to the amounts in the Summary Table.

[25] It is clear from the foregoing that it was PWGSC that discovered the errors and corrected them, not MNO. PWGSC did not use any information that was not already included in the bid. Indeed, PWGSC was entitled to correct any mathematical error on its own and enter into a contract based on MNO's unit prices. It was only as a matter of courtesy that PWGSC sought clarification and confirmation from MNO to ensure that its mathematical corrections accurately

reflected the actual content of the bid. In doing so, PWGSC was not inviting MNO to engage in bid repair or to come up with a revised bid based on either new information or a modification of its initial proposal, but rather merely sought to confirm that the corrected numbers were accurate.

[26] The case law relied upon by the applicant in support of its bid repair claim is readily distinguishable from the facts at bar. In *Vachon Construction Ltd. v. Cariboo (Regional District)* (1996), 136 D.L.R. (4th) 307, 24 B.C.L.R. (3d) 379 (C.A.) [*Vachon*], the bid amount in numbers and in words were not the same. In that case, the British Columbia Court of Appeal found that the bid itself was invalid as an offer which is uncertain as to price, which, as a matter of contract law, cannot form the basis of a binding contractual relationship. The Court in *Vachon* also found that the bid could not be corrected after the close of tenders by allowing the bidder to opt for the lower amount, as this would clearly amount to bid repair. This is to be contrasted with MNO's bid, because there is no ambiguity regarding the unit prices; the errors only involve calculations based on these unit prices, and there was no need for new information to correct the mathematical inaccuracies.

[27] *Vachon* was followed by the Ontario Court of Appeal in *Maystar General Contractors Inc. v. Newmarket (Town)*, 2009 ONCA 675, [2009] O.J. No. 3939 [*Maystar*]. In that case, there was again uncertainty as to price. According to the bid, the stipulated price was $33,000,528.00, the GST was $2,346,960.00 and the total cost (stipulated price + GST) was $35,874,960.00. These figures were clearly inconsistent and led the Court to conclude that the price was therefore uncertain:

> The application judge found that the price was uncertain and therefore that the bid was non-compliant and incapable of forming the basis of a contract. I agree. The

> stipulated price, set out in words and in numbers, was $33,000,528.00. However, the G.S.T. amount of $2,346,960.00 was not 7% of $33,000,528.00 but 7% of $33,528,000.00, a figure not shown in the document; and the total cost of the work was $35,874,960.00, which is the total of the GST of $2,346,960.00 plus $33,528,000.00. Because the G.S.T. and the total cost of the work both reflect a stipulated price that is different from the one shown, it is not possible to know which price Bondfield intended.
>
> *Maystar* at para. 27

[28] Given the uncertainty in the price, the Court found that allowing the bidder to clarify this irregularity would alter the bid in such a way that was not permitted by the bid's terms. Again, this situation differs from that under review. Here, it is entirely possible to ascertain the price MNO bid because the only figures that are of relevance are the unit prices; the errors in calculation are just that, and do not cast doubt on the total bid price.

[29] In light of the foregoing, I am of the view that the CITT could reasonably find that MNO did not engage in bid repair by confirming the revisions made by PWGSC with respect to the financial aspect of the bid. For this same reason, it cannot be said that PWGSC considered any new information not initially included in the bid. As such, PWGSC merely sought confirmation from MNO that its corrected numbers accurately reflected the initial bid.

[30] The applicant also submits that the CITT erred in finding that MNBS had the necessary security clearance to meet the terms of the RFP at the time of bid closing. The required security clearance relied upon by the representative of MNO was dated July 23, 2015, and there was never an explanation provided by PWGSC as to how the security clearance held by the former MNO came to be transferred to MNO. Moreover, Francis Ltd. says that MNO could not write to PWGSC after its bid was rejected to claim that it held security clearance, as this amounts to bid

repair. It further submits that if PWGSC somehow became satisfied as to MNO's security clearance status, it was incumbent upon PWGSC to provide some documentation as to how it arrived at that conclusion without bid repair.

[31] The relevant provisions of the RFP with respect to security clearance are sections 6.1 and 7.3, which read as follows:

> **6.1 Security Requirement**
>
> 1. **<u>At the date of bid closing the following conditions must be met:</u>**
>
> (a) the Bidder must hold a valid organization security clearance as indicated in Part 7 – Resulting Contract Clauses;
>
> (b) the Bidder's proposed individuals requiring access to classified or protected information, assets or sensitive work site(s) must meet the security requirement as indicated in Part 7 – Resulting Contract Clauses;
>
> (c) the Bidder must provide the name of all individuals who will require access to classified or protected information, assets or sensitive work sites;
>
> […]
>
> **7.3 Security Requirement**
>
> **7.3.1** The following security requirement (SCRL and related clauses) applies and form part of the Contract.
>
> 1. The Contractor/Offeror must, at all times during the performance of the Contract/Standing Offer, hold a valid Facility Security Clearance at the level of **SECRET**, issued by the Canadian Industrial Security Directorate (CISD), Public Works and Government Services Canada (PWGSC).
>
> 2. The Contractor/Offeror personnel requiring access to sensitive work site(s) must **EACH** hold a valid personnel security screening at the level of **SECRET**, granted or approved by CISD/PWGSC.
>
> 3. Subcontracts which contain security requirements are **NOT** to be awarded without the prior written permission of CISD/PWGSC.
>
> 4. The Contractor/Offeror must comply with the provisions of the:

> (a) Security Requirements Check List and security guide (if applicable), attached at Annex B
>
> (b) Industrial Security Manual (Latest Edition).
>
> See RFP, Application Record, Vol. I, Tab E-3 at pp. 98 and 100 [bold and underlining in the original]

[32] It is clear from these provisions that the RFP did not require bidders to provide any evidence that they possessed a Facility Security Clearance. Section 6.1 only requires bidders to hold a valid security clearance at the date of bid closing. It was therefore PWGSC's responsibility to confirm whether bidders had met this requirement. When MNO advised PWGSC that it had a Facility Security Clearance of Top Secret and attached a Security Status Report dated July 23, 2015, PWGSC had an obligation to determine whether MNO had the required clearance at bid closing.

[33] I agree with counsel for PWGSC that disqualifying a compliant bidder based on PWGSC's own error would be antithetical to a fair procurement process. PWGSC could not turn a blind eye to MNO's representations. Once the mistake relating to the security clearance was discovered, MNO emerged as the bidder with the lowest evaluated price. PWGSC thus had an obligation to rectify its error by cancelling the contract award to Francis Ltd. and issuing a new contract to MNO. Pursuant to section 4.2 of the RFP, "[t]he responsive bid with the lowest evaluated price will be recommended for award of a contract" (Application Record, Vol. 1, Tab E-3 at p. 95). Had PWGSC continued its contractual relationship with Francis Ltd. in these circumstances, PWGSC would have been knowingly contravening that provision. The CITT determined as much, and I see no basis upon which to interfere with its finding (Reasons at para. 43).

[34] MNO did not engage in bid repair when it provided the security clearance confirmation dated July 23, 2015, and PWGSC did not go beyond the bid by confirming this information with the CISD. As a matter of fact, MNO's bid did not change as a result of the information provided to PWGSC; the only thing that changed is the result of PWGSC's security clearance check, which came about as a consequence of correcting a mistake in the organization's name and assessing the actual bidder on the basis of the correct entity's record.

[35] The only real issue with respect to security clearance, it seems to me, is whether MNO truly held the required security clearance at the time of bid closing. There is no direct evidence to this effect on the record. All we have is the security clearance confirmation dated July 23, 2015 (Application Record, Vol. II, Tab E-11 at p. 525), which pertains to the former MNO, as well as a confirmation by email from the CISD dated April 7, 2016 (Application Record, Vol. 1, Tab E-16 at p. 565) that MNO had a Facility Security Clearance of Top Secret.

[36] Had PWGSC only relied on the security clearance of July 23, 2015 to award the contract to MNO, it would clearly have been in error. But it did verify MNO's security status on April 7, 2016, and was advised by the CISD that MNO had the required clearance status. Again, we have no direct evidence that the CISD took into account the post-amalgamation status of MNO to come to its conclusion; we do, however, have a letter to the CITT dated July 11, 2016 from Mr. Roy Chamoun, counsel to PWGSC, where he states the following:

> PWGSC submits that, as required, Modern Niagara Ottawa Inc. had advised the Canadian Industrial Security Directorate (CISD) of the amalgamation of January 1, 2016. This information was considered by CISD and a determination was made that the latest corporate structure of Modern Niagara Ottawa Inc., bearing corporation number 001942170, referred to as MNO #2 in the Complainant's Comments, holds a Facility Security Clearance at the Top Secret Level.
>
> Application Record, Vol. II, Tab E-12 at p. 526

[37] The CITT considered this issue and chose to believe the genuineness of that information. At paragraph 35 of its reasons, it states:

> The Tribunal finds no reason to conclude that the security clearance granted to MNO was not specific to Ontario Corporation No. 1942170. PWGSC and CISD were aware of the amalgamation of the predecessor company (Ontario Corporation No. 1847249), and this information was considered in the granting of a security clearance to post-amalgamation MNO (Ontario Corporation No. 1942170).

[38] There is no reason to believe that counsel for PWGSC was untruthful in its submissions to the CITT or tried in any way to mislead the tribunal. Moreover, the applicant did not try to impugn its good faith or to file any contrary evidence. In these circumstances, the CITT could reasonably rely on PWGSC's representations and come to the conclusion, based on Mr. Chamoun's letter and on surrounding circumstances, that PWGSC had met its obligations in determining that MNO had the required security clearance on the bid closing date. Such a finding falls squarely within the expertise and core jurisdiction of the CITT and it is entitled to a high degree of deference.

[39] To this, I would only add that Francis Ltd.'s true challenge appears to be to the CISD's decision to grant a security clearance to MNO after its amalgamation. However, neither the CITT nor this Court is seized with this question, and it would therefore be inappropriate to answer or to

even speculate into the reasonableness of this conclusion as it is beyond the scope of the current judicial review proceeding.

B. *Did the CITT make a reviewable error in determining that the revisions to MNO's initial bid did not require a signature?*

[40] Francis Ltd. also submits that the revisions made to MNO's original bid actually constituted, in fact and in law, a full new bid. As such, it says the amendments had to be signed in order to be responsive. As they were not, it claims that the second bid comprising the new pricing was not valid, making Francis Ltd. the lowest responsive bidder.

[41] This argument is totally without merit. MNO did not submit a completely new bid document, but merely incorporated into its original, signed bid, the corrected totals PWGSC had calculated.

[42] It was entirely reasonable for the CITT to find that the revisions MNO submitted "did not require a signature" and that they did not constitute "a new or full bid" (Reasons at para. 51).

[43] Francis Ltd. also makes the argument that the bid for the contract awarded to MNO was made in the name of MNBS, which is not a legal entity but only a business name. Since MNBS was registered to the former MNO, it says that the bid was therefore made in the name of an entity that no longer existed and the business name was accordingly no longer legally registered.

[44] Again, this is a fallacious argument. As noted by the CITT, the lack of registration of the business name did not cause any uncertainty over the identity of the bidder or contravene any requirements of the RFP. Not only was it clear from the record that PWGSC accepted that the business name "MNBS" was intended to identify MNO as the bidder, but this information was also publicly available. Moreover, an amalgamated corporation possesses all the property, rights, privileges and franchises of the amalgamating corporations pursuant to section 179 of Ontario's *Business Corporations Act*, R.S.O. 1990, c. B-16.

V. Conclusion

[45] For all of these reasons, I propose that this application for judicial review be dismissed, with costs in the all-inclusive amount of $1,500.00 for each of the respondents.

"Yves de Montigny"

J.A.

"I agree
Wyman W. Webb J.A."

"I agree
Mary J.L. Gleason J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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