

Federal Court of Appeal



Cour d'appel fédérale

Date: 20121205

**Docket: A-45-12
A-46-12**

Citation: 2012 FCA 318

**CORAM: BLAIS C.J.
EVANS J.A.
GAUTHIER J.A.**

BETWEEN:

ALMON EQUIPMENT LIMITED

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on December 5, 2012.

Judgment delivered from the Bench at Ottawa, Ontario, on December 5, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

EVANS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario, on December 5, 2012)

EVANS J.A.

[1] Almon Equipment Ltd. bid in response to two Requests for Proposals (RFP) issued in early August 2011 by Public Works and Government Services Canada (PWGSC) for the supply of services at Canadian Forces Base Trenton (CFB Trenton). One RFP concerned the anti-icing and

de-icing of aircraft, and snow clearing (the de-icing contract). The other concerned the recovery of glycol, the chemical used in de-icing.

[2] On August 19, 2011, Almon complained about the terms of the RFPs to the Canadian International Trade Tribunal (CITT), pursuant to subsection 30.11(1) of the *International Trade Tribunal Act*, R.S.C. 1985, (4th Supp.), c. 47. PWGSC subsequently advised Almon that it had not been awarded either contract because it did not comply with requirements in the RFPs.

[3] The question to be decided by the CITT in respect of the glycol recovery RFP was whether its requirements breached the applicable trade agreements by exceeding what was necessary to ensure that the contract was fulfilled. The question to be decided about the de-icing RFP was whether its terms breached Article 504(3) of the *Agreement on Internal Trade*, (1995) 129 *Can. Gaz. I*, 1323 (AIT), which prohibits bias for or against suppliers of services. Almon also alleged a breach of Article 506(5) of the AIT because insufficient time was allowed for the preparation of bids, including the acquisition of specified equipment.

[4] In decisions issued in January 2012, the CITT rejected Almon's complaints. It noted that, as the purchaser of services, PWGSC had the right to define its procurement requirements in light of its legitimate operational needs. It held that the circumstances surrounding the services in question justified the stringent requirements in the RFPs relating to the experience of the personnel to be used by the contractor. The CITT noted in respect of the de-icing RFP that aircraft operate from CFB Trenton in bad weather and, in respect of the glycol recovery RFP, that the Base occupied an environmentally sensitive location near the Bay of Quinte.

[5] The CITT had not accepted for further inquiry Almon's complaint that a truck with a 75-foot boom was not necessary for de-icing because it had used a shorter boom when it held the contract a few years earlier. The CITT held that the appropriateness of terms in an RFP cannot be determined by those in previous RFPs.

[6] The CITT found no sufficient evidence that the terms of the RFPs were discriminatory, impossible to meet, or otherwise unreasonable. In addition, it rejected Almon's argument that, in the circumstances, bidders did not have sufficient time to prepare bids.

[7] Almon has made two applications for judicial review requesting the Court to set aside these decisions of the CITT. Court File No. A-45-12 relates to the CITT's decision in the de-icing RFP. Court File No. A-46-12 relates to the CITT's decision in the glycol recovery RFP. The Court heard the applications together. These reasons cover both applications and copies will be inserted into each file.

[8] The CITT fully set out the relevant facts in its reasons for the decisions. It is common ground that the decisions in this case are subject to review for unreasonableness because they involve applications of the law to the facts.

[9] Almon has not satisfied us that either decision is unreasonable. For the most part, it merely repeated the arguments rejected by the CITT. The CITT's thorough reasons provide sufficient justification for the decisions, which fall within the range of possible outcomes reasonably open to it on the facts and the applicable law.

[10] We note, in particular, the absence of specific evidence in the affidavit filed on behalf of Almon by Mr Ally. For example, he adduced no specific evidence to prove that trucks with 75-foot booms could not readily be obtained, or that Almon asked PWGSC for additional time to attempt to acquire one.

[11] We would only add that we agree with the CITT that the fact that one bidder is better able than another to meet the specifications of an RFP does not in itself necessarily mean that the requirements of the RFP are biased in favour of that bidder. We also agree that the purchaser of goods or services has the right to determine the requirements needed for bidders to meet its legitimate operational requirements, subject to the limits imposed by the applicable trade agreements to ensure fair competition in public procurement.

[12] For these reasons, the applications for judicial review will be dismissed with costs.

“John M. Evans”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-45-12 and A-46-12

STYLE OF CAUSE: ALMON EQUIPMENT LTD v AGC

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: December 5, 2012

REASONS FOR JUDGMENT OF THE COURT BY: BLAIS C.J., EVANS, GAUTHIER
JJ.A.

DELIVERED FROM THE BENCH BY: EVANS J.A.

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