

Federal Court of Appeal



Cour d'appel fédérale

Date: 20210520

Docket: A-214-20

Citation: 2021 FCA 97

[ENGLISH TRANSLATION]

**CORAM: BOIVIN J.A.
DE MONTIGNY J.A.
LOCKE J.A.**

BETWEEN:

J.A. LARUE INC.

Applicant

and

**DEPARTMENT OF PUBLIC WORKS AND
GOVERNMENT SERVICES**

Respondent

Heard by online videoconference organized by the registry on May 17, 2021.

Judgment delivered at Ottawa, Ontario, on May 20, 2021.

REASONS FOR JUDGMENT BY:

LOCKE J.A.

CONCURRED IN BY:

**BOIVIN J.A.
DE MONTIGNY J.A.**

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REASONS FOR JUDGMENT

LOCKE J.A.

[1] The applicant, J. A. Larue Inc. (Larue), is seeking to have the decision of the Canadian International Trade Tribunal (CITT) concerning its complaint against the respondent, the Department of Public Works and Government Services (PWGSC), set aside. In its decision

(No. PR-2020-004, dated August 7, 2020 – the Decision), the CITT determined that the complaint was not valid.

[2] Larue's complaint concerned a request for proposals to purchase snow blowers by PWGSC. Larue, one of the bidders, alleged that the successful bid by Fresia S.p.A. (Fresia) should have been rejected by PWGSC because the information that Fresia had provided did not establish that its snow blowers had the power required as per the request for proposals. More specifically, Larue submitted that Fresia's snow blowers had only one engine; that that engine had to maintain simultaneously (i) a certain speed and (ii) a certain snow-blowing capacity; and that, to meet those two requirements, Fresia relied on the sheets used to calculate the power needed to meet each requirement. Those calculation sheets did not account for certain resistance factors to which snow blowers are normally subjected during use. Larue alleges that Fresia's calculations did not demonstrate that the snow blowers had the required power to (i) resist the ground friction against the snow blower head while in work mode and maintain its speed, (ii) operate the snow blower's ribbon conveyor, and (iii) run the cooling fan.

[3] Larue adds that the evaluators of the bids acted unfairly by seeking additional information that was not included in the file in order to, in Larue's opinion, validate Fresia's position on the power of its snow blowers.

[4] Lastly, Larue is disputing PWGSC's submission that Fresia's statement of compliance with an SAE standard was sufficient to meet the snow-blowing capacity requirement.

[5] Larue acknowledges that the applicable standard of review in this case is reasonableness. It also acknowledges that the CITT cannot substitute its judgment for that of the PWGSC evaluators unless certain conditions are met. The CITT indicates the following at paragraph 26 of the Decision:

When considering whether bids are evaluated and contracts awarded in keeping with [the applicable] provisions, the Tribunal applies the standard of reasonableness, typically according a great deal of deference to an evaluation panel with respect to its evaluation of proposals. The Tribunal does not, therefore, generally substitute its judgment for that of the evaluators, unless the evaluators have not applied themselves in evaluating a bidder's proposal, have ignored vital information provided in a proposal, have based their information on undisclosed criteria or have otherwise not conducted the evaluation in a procedurally fair way. The government institution's determination will be considered reasonable if it is supported by a tenable explanation, regardless of whether or not the Tribunal itself finds that explanation compelling.

[6] The CITT considered Larue's submissions and noted that bidders were required to demonstrate that their bids met the requirements of the request for proposals.

[7] However, the CITT stated that it was satisfied with the information that Fresia had provided in support of its bid. The CITT was of the opinion that PWGSC's decision as to the compliance of Fresia's bid was reasonable. The CITT noted that the Technical Evaluation Matrix set out in the request for proposals did not specify the omitted resistance factors at issue and that it was therefore reasonable for PWGSC not to include them in its evaluation. Furthermore, the CITT found that, in the absence of indications that would call into question the information provided by Fresia, PWGSC was entitled to rely on that information.

[8] Clearly, Larue would have wanted PWGSC or the CITT to find Fresia in default for having failed to include certain details concerning the operation of its snow blowers in its bid. Nevertheless, the CITT was correct in noting that those details were unnecessary for the evaluation of the bid. In fact, as indicated in *Heiltsuk Horizon Maritime Services Ltd. v. Atlantic Towing Limited*, 2021 FCA 26, at paragraph 140, it would be unreasonable and unfair to expect a bidder to provide information that is not required in a request for proposals.

[9] It is not false to state that Fresia could have more clearly demonstrated the compliance of its bid by providing more details on the features of the snow blowers, particularly regarding the ground friction against the head while in work mode or the power required by the ribbon conveyor. I would add that perhaps the request for proposals could have even been more specific in its requirements. However, those were not the issues that the CITT had to consider. On the basis of the record as presented, I am not prepared to find that it was unreasonable for the CITT to accept that Fresia's bid was compliant. The CITT is a specialized tribunal. I note that the resistance factors at issue require a certain amount of power. However, it would be speculation for this Court to determine the precise power required in this case. In my view, it was open to the CITT to find that the power losses caused by these resistance factors were not sufficient to result in Fresia's snow blowers being non-compliant with the request for proposals.

[10] With regard to Fresia's compliance with the SAE standard, the CITT found that this was only one of the many elements that PWGSC considered and upon which its decision is based.

[11] As for the evaluators searching for additional information on the Internet to validate Fresia's position, the CITT noted that that information was obtained after the evaluation that led

to the awarding of the contract to Fresia. The CITT concluded that the information had no impact on PWGSC's decision.

[12] In my view, the CITT properly considered Larue's submissions and reasonably found that its complaint had to be dismissed. I note no breach of procedural fairness or flaws in the justification, transparency or intelligibility of the impugned Decision. Moreover, I note no inconsistency in the reasons that could render the Decision unreasonable. I find that the CITT's conclusion is one of the possible, acceptable outcomes which are defensible in respect of the facts and law in this case.

[13] For these reasons, I would dismiss the application for judicial review, with costs.

"George R. Locke"

J.A.

"I agree.
Richard Boivin J.A."

"I agree.
Yves de Montigny J.A."

Certified true translation
Melissa Paquette, Jurilinguist

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-214-20

STYLE OF CAUSE: J.A. LARUE INC. v.
DEPARTMENT OF PUBLIC
WORKS AND GOVERNMENT
SERVICES

PLACE OF HEARING: BY ONLINE
VIDEOCONFERENCE

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CONCURRED IN BY: BOIVIN J.A.
DE MONTIGNY J.A.

DATED: MAY 20, 2021

APPEARANCES:

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