

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20150121**

**Docket: A-91-14**

**Citation: 2015 FCA 16**

**CORAM: PELLETIER J.A.  
GAUTHIER J.A.  
TRUDEL J.A.**

**BETWEEN:**

**SASKATCHEWAN POLYTECHNIC  
INSTITUTE**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA  
(Department of Foreign Affairs, Trade  
Development)**

**Respondent**

**and**

**AGRITEAM CANADA CONSULTING LTD.  
COLLEGE OF THE NORTH ATLANTIC**

**Respondent**

Heard at Ottawa, Ontario, on January 21, 2015.  
Judgment delivered from the Bench at Ottawa, Ontario, on January 21, 2015.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**TRUDEL J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT OF THE COURT  
(Delivered from the Bench at Ottawa, Ontario, on January 21, 2015).**

**TRUDEL J.A.**

[1] This is an application for judicial review brought by the Saskatchewan Polytechnic Institute, then the Saskatchewan Institute of Applied Science and Technology (SIAST) challenging a decision of the Canadian International Trade Tribunal (the Tribunal) rendered on January 9, 2014 (file number PR-2013-013). The Tribunal concluded that the complaint filed by SIAST in respect of a Request for Proposals (RFP) issued by the Canadian International Development Agency, now the Department of Foreign Affairs, Trade and Development (DFATD), was valid in part but that in the circumstances it was not necessary to recommend a remedy. SIAST asks that the Tribunal's decision be set aside on the basis that the Tribunal failed to properly conclude that SIAST's bid was not evaluated according to the criteria set out in the RFP documents.

[2] For the reasons that follow, we are all of the view that the application should be dismissed.

[3] The RFP was issued in August 2012. It sought proposals for professional services relating to the "Vietnam Skills for Employment Project" in Vietnam. SIAST submitted a bid in response to the RFP; on July 15, 2013, it was informed that its bid was unsuccessful. The winning bidder was Agriteam Canada Consulting Ltd. and College of the North Atlantic (Agriteam), who appeared as an intervener before the Tribunal and is a respondent to the present application. SIAST filed its complaint with the Tribunal on September 4, 2013, alleging that DFATD had not evaluated its proposal based on the criteria described in the RFP. SIAST raised four specific grounds of complaint relating to DFATD's evaluation of four of the RFP requirements.

[4] The Tribunal first determined, as a preliminary issue, that it had jurisdiction to consider SIAST's complaint. This finding is not contested before us. It went on to reject three of the four grounds of complaint, finding that the evaluators' scoring was reasonable based on the wording of the criteria and the content of SIAST's proposal. It accepted SIAST's complaint with reference to Requirement 6, which required that bidders list a number of relevant stakeholders. The Tribunal determined that the evaluation of the sub-criterion had been done with reference to factors not disclosed in the RFP and therefore was unreasonable. Nevertheless, the Tribunal declined to recommend a remedy on the basis that the unreasonable evaluation of Requirement 6 "was insignificant to the outcome of the procurement process" (Tribunal's reasons at paragraph 113). Even if SIAST had been awarded the maximum number of points under this component, its bid would not have been successful. Given that SIAST was not seriously prejudiced and that there were no allegations of bad faith, the Tribunal concluded that there was no reason to recommend a remedy.

[5] SIAST submits that the Tribunal committed a number of errors which resulted in it issuing an unreasonable decision. SIAST's proposal received zero points for Requirement 9, which outlines the minimum qualifications for the Canadian Field Project Director. SIAST argues that the Tribunal failed to properly apply the term "academic function" in light of the requirements and the context of its bid. Had it done so, it would have concluded that the bid met the criteria and that SIAST should have been awarded the maximum number of points. As for the evaluations of Requirements 1 and 5, the Tribunal deferred to the evaluators' scores, stating that they fell within an acceptable margin of discretion. SIAST submits that, given that the proposal in fact met the necessary criteria, the Tribunal should have concluded that the evaluators'

exercise of discretion was unreasonable and their explanations for the scores awarded to SIAST too few.

[6] The parties are in agreement that the standard of review for the Tribunal's decision is reasonableness. This is accurate: *Canada (Attorney General) v. Almon Equipment Limited*, 2010 FCA 193 at paragraphs 4, 33, [2011] 4 F.C.R. 203. Moreover, the Tribunal's findings in matters relating to procurement are owed significant deference given its expertise in this area: *Defence Construction (1951) Limited v. Zenix Engineering Ltd.*, 2008 FCA 109 at paragraph 20, 377 N.R. 47; *Ready John Inc. v. Canada (Public Works and Government Services)*, 2004 FCA 222 at paragraph 29, 324 N.R. 54. It should also be emphasized that our Court on this application is reviewing the Tribunal's decision, not the evaluators' scoring of the applicant's proposal. Our Court is not entitled to substitute its judgment for that of the Tribunal or the evaluators and can only set aside the Tribunal's decision if it falls outside "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 47, [2008] 1 S.C.R. 190).

[7] After carefully reviewing the record and the applicant's written and oral submissions, we have not been persuaded that the Tribunal committed a reviewable error. The gist of the applicant's submissions is that the Tribunal failed to properly weigh all of the information in the proposal. Yet this was not the Tribunal's task when investigating the complaint. Its role in this type of inquiry is to decide if the evaluation is supported by a reasonable explanation, not to step into the shoes of the evaluators and reassess the unsuccessful proposal. The Tribunal approached the complaint in the correct manner and determined whether the evaluators' conclusions were

defensible in light of the published criteria. It gave appropriate deference to the evaluators and its conclusions on each of the complaints fall within the range of acceptable outcomes. While the applicant is clearly dissatisfied with the Tribunal's findings on three of the four grounds of complaints, its task on this application was to show that the decision was unreasonable given the record before the Tribunal. This it has failed to do.

[8] Accordingly, the application will be dismissed with costs assessed at \$2500, all inclusive, for each respondent.

“Johanne Trudel”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-91-14

**STYLE OF CAUSE:** SASKATCHEWAN  
POLYTECHNIC INSTITUTE v.  
ATTORNEY GENERAL OF  
CANADA, (Department of Foreign  
Affairs, Trade Development) AND  
AGRITEAM CANADA  
CONSULTING LTD., COLLEGE  
OF THE NORTH ATLANTIC

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** JANUARY 21, 2015

**REASONS FOR JUDGMENT OF THE COURT BY:** PELLETIER J.A.  
GAUTHIER J.A.  
TRUDEL J.A.

**DELIVERED FROM THE BENCH BY:** TRUDEL J.A.

**APPEARANCES:**

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FOR THE APPLICANT

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