



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2017-043

CrossHealth Solutions Inc.

*Decision made
Thursday, December 7, 2017*

*Decision and reasons issued
Friday, December 8, 2017*

IN THE MATTER OF a complaint filed pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C., 1985, c. 47 (4th Supp.).

BY

CROSSHEALTH SOLUTIONS INC.

AGAINST

CORRECTIONAL SERVICE OF CANADA

DECISION

Pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal has decided not to conduct an inquiry into the complaint.

Jean Bédard

Jean Bédard
Presiding Member

STATEMENT OF REASONS

1. Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,² a potential supplier may file a complaint with the Canadian International Trade Tribunal (the Tribunal) concerning any aspect of the procurement process that relates to a designated contract and request the Tribunal to conduct an inquiry into the complaint. Subsection 30.13(1) of the *CITT Act* provides that, subject to the *Regulations*, after the Tribunal determines that a complaint complies with subsection 30.11(2) of the *CITT Act*, it shall decide whether to conduct an inquiry into the complaint.

2. On December 6, 2017, CrossHealth Solutions Inc. (CrossHealth) filed a complaint with the Tribunal regarding a Request for Proposal (RFP) (Solicitation No. 21833-17-0056/B) issued on September 20, 2017, by Correctional Service of Canada (CSC) for the services of a general practitioner physician at its Mountain Institution medical clinic.

3. CrossHealth was the successful bidder, but it now complains that CSC is attempting to impose scheduling conditions on the clinic work it is required to perform contrary to information provided to it by CSC representatives during the procurement process. It requests as relief that the Tribunal recommend that CSC either allow CrossHealth to perform the contract according to its preferred schedule or renegotiate the contract on new terms.

4. As indicated above, the *CITT Act* provides that, in order for the Tribunal to be able to hear a complaint, it must concern a “procurement process that relates to a designated contract”. Therefore, the Tribunal must first examine whether this RFP relates to a “designated contract”. A procurement process relates to a designated contract if it concerns a contract for goods or services covered by a trade agreement identified in subsection 3(1) of the *Regulations*, of which there are currently 11. Coverage is determined by whether the procuring government entity is listed in the trade agreement, whether the monetary value of the goods or services procured meets a specified threshold, and whether the class of goods or services procured is included or excluded in the text of the trade agreement. For the Tribunal to have jurisdiction over a complaint, all of these conditions must be met.

5. The Tribunal lacks jurisdiction to hear this complaint because the type of services procured are not covered under any trade agreement. CrossHealth asserts that its complaint “is made under the trade agreements”, but does not identify which one applies or provide any evidence or citation in support. The Tender Notice for the RFP published on buyandsell.gc.ca, the government’s official electronic tendering service, states that no trade agreement applies.³ It identifies the Goods and Services Identification Number (GSIN) for the services as “G009E: Medical/Dental Clinic Services” under Category G of the Common Classification System.⁴ Category G of the Common Classification System is entitled “Health and Social Services”. GSIN codes with the prefix G0 are “Health Services”.⁵ Thus, physician services at a medical clinic are a subset of the broader category of Health Services.

1. R.S.C., 1985, c. 47 (4th Supp.) [*CITT Act*].

2. S.O.R./93-602 [*Regulations*].

3. Correctional Service of Canada, Tender Notice (11 October 2017), Solicitation No. 21833-17-0056/B, online at: <https://buyandsell.gc.ca/procurement-data/tender-notice/PW-17-00798687>.

4. *Ibid.*

5. Public Works and Government Services Canada, GSIN Codes, Health Services, online at: <https://buyandsell.gc.ca/procurement-data/goods-and-services-identification-number/gsin/G0>.

6. None of the 11 trade agreements currently recognized under subsection 3(1) of the *Regulations* covers Health Services, a category which includes more specifically physician services at a medical clinic. Annex 1001.1b-2 of the *North American Free Trade Agreement*,⁶ Annex Kbis-01.1-4 of the *Canada-Chile Free Trade Agreement*,⁷ Annex 1401.1-4 of the *Canada-Peru Free Trade Agreement*,⁸ Section B.G to Annex 5 of the Schedule of Canada to Chapter 16 of the *Canada-Panama Free Trade Agreement*,⁹ Section B.G to Annex 1401-4 of the Schedule of Canada to Chapter 14 of the *Canada-Colombia Free Trade Agreement*,¹⁰ and Section B.G to Annex 17.4 of Chapter 17 of the *Canada-Honduras Free Trade Agreement*,¹¹ which all use the Common Classification System for classifying services, each exclude all classes of services under Category G, “Health and Social Services”, from their respective coverage. Likewise, subparagraph 11(h)(ii) of Article 504 of the *Canadian Free Trade Agreement* expressly excludes “health services” from coverage.¹²

7. Further, Health Services is not identified in the positive list of covered services in each of Annex 10-4 of the Schedule of Canada to Chapter 10 of the *Canada-Ukraine Free Trade Agreement*,¹³ Annex 14-C of the Schedule of Canada to Chapter 14 of the *Canada-Korea Free Trade Agreement*,¹⁴ Annex 19-5 of the market access schedule of Canada to the *Canada-European Union Comprehensive Economic and Trade Agreement*,¹⁵ and Annex 4 of Canada’s Appendix 1 to the *Revised Agreement on Government Procurement*.¹⁶

-
6. *North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2, online: Global Affairs Canada <<http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/fta-ale/index.aspx?lang=eng>> (entered into force 1 January 1994).
 7. *Canada-Chile Free Trade Agreement*, online: Global Affairs Canada <<http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/chile-chili/fta-ale/index.aspx?lang=eng>> (entered into force 5 July 1997).
 8. *Canada-Peru Free Trade Agreement*, online: Global Affairs Canada <<http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/peru-perou/fta-ale/index.aspx?lang=eng>> (entered into force 1 August 2009).
 9. *Canada-Panama Free Trade Agreement*, online: Global Affairs Canada <<http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/panama/fta-ale/index.aspx?lang=eng>> (entered into force 1 April 2013).
 10. *Canada-Colombia Free Trade Agreement*, online: Global Affairs Canada <<http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/colombia-colombie/fta-ale/index.aspx?lang=eng>> (entered into force 15 August 2011).
 11. *Canada-Honduras Free Trade Agreement*, online: Global Affairs Canada <<http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/honduras/fta-ale/index.aspx?lang=eng>> (entered into force 1 October 2014).
 12. *Canadian Free Trade Agreement*, online: Internal Trade Secretariat <<https://www.cfta-alec.ca/wp-content/uploads/2017/06/CFTA-Consolidated-Text-Final-Print-Text-English.pdf>> (entered into force 1 July 2017).
 13. *Canada-Ukraine Free Trade Agreement*, online: Global Affairs Canada <<http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ukraine/text-texte/toc-tdm.aspx?lang=eng>> (entered into force 1 August 2017).
 14. *Canada-Korea Free Trade Agreement*, online: Global Affairs Canada <<http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/korea-coree/fta-ale/index.aspx?lang=eng>> (entered into force 1 January 2015).
 15. *Canada-European Union Comprehensive Economic and Trade Agreement*, online: Global Affairs Canada <<http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/toc-tdm.aspx?lang=eng>> (entered into force provisionally 21 September 2017).
 16. *Revised Agreement on Government Procurement*, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.htm> (entered into force 6 April 2014).

8. Based on the above, the Tribunal concludes, consistent with its findings in prior cases,¹⁷ that the procurement of health services (which includes physician services at a medical clinic) is not subject to any of the trade agreements identified in subsection 3(1) of the *Regulations*. Therefore, the Tribunal lacks the jurisdiction to initiate an inquiry into the complaint, since it concerns a procurement process that does not relate to a “designated contract”.

DECISION

9. Pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal has decided not to conduct an inquiry into the complaint.

Jean Bédard

Jean Bédard
Presiding Member

17. See *D. Chaaban* (5 May 2011), PR-2011-004 (CITT).