Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2010-065

Bayshore HealthCare Ltd. dba
Bayshore Home Health

Decision made
Thursday, October 7, 2010

Decision and reasons issued
Wednesday, October 13, 2010

Canada

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

BY

BAYSHORE HEALTHCARE LTD. DBA BAYSHORE HOME HEALTH

AGAINST

THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT SERVICES

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.

Serge Fréchette
Serge Fréchette
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary

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. The complaint relates to a procurement (Solicitation No. H3301-092018/A) by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of Health for the provision of nursing care services.

3. Bayshore Healthcare Ltd. dba Bayshore Home Health (Bayshore) alleges that PWGSC did not provide bidders with sufficient time to comply with the amended mandatory requirements of the Request for a Standing Offer (RFSO). Bayshore further alleges that there was insufficient time to prepare an offer that complied with the RFSO.

4. As indicated above, subsection 30.11(1) of the *CITT Act* provides that, "[s]ubject to the regulations, a potential supplier may file a complaint with 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."

5. The Tribunal must first examine whether there is a "designated contract" as defined in section 30.1 of the *CITT Act*. This section defines such a contract as ". . . a contract for the supply of goods or services that has been or is proposed to be awarded by a government institution and that is designated or of a class of contracts designated by the regulations".

6. For the purposes of the definition of "designated contract" in section 30.1 of the *CITT Act*, the *Regulations* designate any contract or class of contract concerning a procurement of goods or services or any combination of goods or services by a government institution, as described in Article 1001 of the *North American Free Trade Agreement*,[3] Article 502 of the *Agreement on Internal Trade*,[4] Article I of the *Agreement on Government Procurement*,[5] Article Kbis-01 of Chapter K*bis* of the *Canada-Chile Free Trade Agreement*[6] or Chapter 14 of the *Canada-Peru Free Trade Agreement*.[7]

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1. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].
2. S.O.R./93-602 [*Regulations*].
3. *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 (entered into force 1 January 1994) [*NAFTA*].
4. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <http://www.ait-aci.ca/index_en/ait.htm> [*AIT*].
5. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm> [*AGP*].
6. *Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile*, 1997 Can. T.S. No. 50 (entered into force 5 July 1997) [*CCFTA*]. Chapter K*bis*, entitled "Government Procurement", came into effect on September 5, 2008.
7. *Free Trade Agreement between Canada and the Republic of Peru*, online: Department of Foreign Affairs and International Trade <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/peru-perou/chapter-chapitre-14.aspx> (entered into force 1 August 2009) [*CPFTA*].

7. The Tribunal notes that the procurement at issue is for the provision of nursing care services, services that are classified as a subset of Class "G001: Health Care Services", under Group G of the Common Classification System, which covers all classes of "Health and Social Services".[8] The Tribunal further notes that, on its complaint form, Bayshore classified the services procured as "G001A: Nursing Care Services", thereby acknowledging that the procurement at issue is for the provision of services classified as health care services under the Common Classification System. As such, the Tribunal considers that this procurement is for health services.

8. The Tribunal is therefore of the view that, for the following reasons, none of the trade agreements apply:

- Paragraph 1(e) of Annex 502.1B of the *AIT* excludes "health services" from coverage;
- Annex 1001.1b-2 of *NAFTA*, Annex Kbis-01.1-4 of the *CCFTA* and Annex 1401.1-4 of the *CPFTA*, which all use the Common Classification System for classifying services, exclude all classes of services under Group G, "Health and Social Services"; and
- Annex 4 of Canada's Appendix 1 to the *AGP*, which provides a listing of services that Canada offers for coverage, does not include any health services.

9. Given that none of the trade agreements apply to the procurement at issue, 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" as this term is defined above.

DECISION

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

Serge Fréchette
Serge Fréchette
Presiding Member

8. http://www.sice.oas.org/trade/nafta/chap-105.asp.