



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2011-004

D. Chaaban

*Decision made
Thursday, May 5, 2011*

*Decision and reasons issued
Friday, May 20, 2011*

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

D. CHAABAN

AGAINST

THE 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.

Stephen A. Leach
Stephen A. Leach
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. 21807-11-0002) by the Correctional Service of Canada (CSC) for the provision of dental services at various institutions in British Columbia.

3. Dr. D. Chaaban alleged that CSC improperly rejected his proposal and failed to observe the principles of procedural fairness in conducting the procurement process at issue. According to Dr. Chaaban, the Request for Proposal did not provide any direction or clear instructions on how the form “Appendix ‘B’ Certifications” was to be signed and, more specifically, did not mention that each certification required a signature. In addition, Dr. Chaaban submitted that CSC provided him with faulty instructions with respect to the signature of the certifications.

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 Kbis of the *Canada-Chile Free Trade Agreement*⁶ or Chapter 14 of the *Canada-Peru Free Trade Agreement*.⁷

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 Kbis, entitled “Government Procurement”, came into effect on September 5, 2008.

7. The Tribunal notes that the procurement at issue is for the provision of dental services and that, according to the Notice of Proposed Procurement included with the complaint, the services are classified as a subset of “G009 Other Health Services”, under Category G of the Common Classification System.⁸ Category G of the Common Classification System is entitled “Health and Social Services”. Thus, dental services are a subset of the broader category of health services. As such, the Tribunal considers that this procurement is for health services.

8. Annex 1001.1b-2 of *NAFTA*, Annex Kbis-01.1-4 of the *CCFTA* and Annex 1401.1-4 of the *CPFTA*, which use the Common Classification System for classifying services, exclude all classes of services under Category G, “Health and Social Services”, from their respective coverage.

9. Paragraph 1(a) of Annex 502.1B of the AIT excludes from coverage “. . . services that may, under the applicable laws of the Party issuing the tender, only be provided by the following licensed professionals: medical doctors, dentists, nurses, pharmacists, veterinarians, engineers, land surveyors, architects, accountants, lawyers and notaries . . .”. In addition, paragraph 1(e) of Annex 502.1B of the AIT specifically excludes coverage for health services and social services.

10. 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.

11. The Tribunal finds that health services are not subject to any of the trade agreements mentioned above. For this reason, the solicitation in question is not for the procurement of goods or services covered in these trade agreements. 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” as this term is defined above.

DECISION

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

Stephen A. Leach
Stephen A. Leach
Presiding Member

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*].

8. <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/texte/chap10b.aspx?lang=en>.