



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## DECISION AND REASONS

File No. PR-2021-033

Veteran Care Canada

*Decision made  
Monday, August 9, 2021*

*Decision and reasons issued  
Wednesday, August 25, 2021*

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**

**VETERAN CARE CANADA**

**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.

Peter Burn

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Peter Burn

Presiding Member

## STATEMENT OF REASONS

### OVERVIEW

[1] Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,<sup>2</sup> a potential supplier may file a complaint with the Canadian International Trade 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. 51019-184018/C) by the Department of Public Works and Government Services (PWGSC), on behalf of the Department of Veterans Affairs, for the provision of rehabilitation and vocational assistance services to eligible veterans, their spouses or common-law partners and survivors.

[3] The solicitation was issued on October 29, 2020. Several amendments were issued. The closing date of submission of bids to PWGSC was December 18, 2020.<sup>3</sup>

[4] It is unclear when Veteran Care Canada (Veteran Care) submitted its proposal to PWGSC. The timing of Veteran Care's proposal submission is not at issue in this complaint.

[5] On January 28, 2021, PWGSC requested additional information, asking Veteran Care to demonstrate compliance with certain mandatory criteria as specified in the Request for Proposals (RFP).

[6] On February 4, 2021, Veteran Care provided additional information in a format that it submits was recommended by PWGSC. Veteran Care alleges that it was subsequently disqualified for not having provided the required information in another format (namely, a client reference letter).

[7] On June 30, 2021, PWGSC emailed Veteran Care, notifying it that its proposal was non-compliant with the mandatory requirements under the RFP.

[8] On July 2, 2021, Veteran Care replied to PWGSC by email, requesting a debrief regarding the reasons its proposal was rejected.

[9] On July 29, 2021, PWGSC emailed Veteran Care providing further information regarding the reasons its proposal was rejected.

[10] On August 6, 2021, Veteran Care filed the present complaint with the Tribunal.

[11] On August 9, 2021, the Tribunal decided not to conduct an inquiry into the complaint.

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

<sup>2</sup> SOR/93-602 [*Regulations*].

<sup>3</sup> Online: <<https://buyandsell.gc.ca/procurement-data/tender-notice/PW-STJ-002-4532>>.

## ANALYSIS

[12] Pursuant to paragraph 7(1)(b) of the *Regulations*, the Tribunal can, among other things, only hear a complaint if it concerns a procurement process relating to a designated contract. A “designated contract” is defined in subsection 3(1) as any contract or class of contract concerning a procurement of goods or services or any combination of goods or services, as described in Article II of the Revised Agreement on Government Procurement,<sup>4</sup> in Article *Kbis*-01 of Chapter *Kbis* of the Canada-Chile Free Trade Agreement (CCFTA),<sup>5</sup> in Article 1401 of Chapter Fourteen of the Canada-Peru Free Trade Agreement (CPFTA),<sup>6</sup> in Article 1401 of Chapter Fourteen of the Canada-Colombia Free Trade Agreement (CCOFTA),<sup>7</sup> in Article 16.02 of Chapter Sixteen of the Canada-Panama Free Trade Agreement (CPAFTA),<sup>8</sup> in Article 17.2 of Chapter Seventeen of the Canada-Honduras Free Trade Agreement (CHFTA),<sup>9</sup> in Article 14.3 of Chapter Fourteen of the Canada-Korea Free Trade Agreement (CKFTA),<sup>10</sup> in Article 19.2 of Chapter Nineteen of the Comprehensive Economic and Trade Agreement (CETA),<sup>11</sup> in Article 504 of Chapter Five of the Canadian Free Trade Agreement (CFTA),<sup>12</sup> in Article 10.2 of Chapter Ten of the Canada-Ukraine Free Trade Agreement (CUFTA)<sup>13</sup> or in Article 15.2 of Chapter Fifteen of the Trans-Pacific Partnership Agreement (TPP).<sup>14</sup>

[13] The Tender Notice for the RFP identifies the Goods and Services Identification Number (GSIN) for the procured services as “G009G: Health and Welfare Services” and indicates that no

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<sup>4</sup> Revised Agreement on Government Procurement, online: World Trade Organization <[http://www.wto.org/english/docs\\_e/legal\\_e/rev-gpr-94\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.htm)> (entered into force 6 April 2014).

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> 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).

<sup>9</sup> 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).

<sup>10</sup> 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).

<sup>11</sup> Comprehensive Economic and Trade Agreement, online: Global Affairs Canada <<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/index.aspx?lang=eng>> (provisionally entered into force 21 September 2017).

<sup>12</sup> 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).

<sup>13</sup> 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).

<sup>14</sup> The TPP is incorporated by reference into the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, online: Global Affairs Canada <<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptpgp/index.aspx?lang=eng>> (entered into force 30 December 2018).

trade agreements apply to the procurement. While not determinative, this indication is consistent with the Tribunal's own analysis of the RFP and of the services covered by the relevant trade agreements.

[14] The Government of Canada's electronic tendering service indicates that GSIN category "G009G: Health and Welfare Services" falls under GSIN category "G – Health and Social Services". Upon reviewing the RFP, the Tribunal finds that the services to be procured are consistent with the services listed under the "Health and Social Services" category in both the United Nations Provisional Central Product Classification and the Common Classification System.

[15] Each of the trade agreements includes a positive or a negative list of services that are covered or not covered. In each of the lists, health-related services are identified as not covered under the trade agreement.

[16] All classes of services under the "Health and Social Services" category are excluded from coverage under Article *Kbis*-01 of Chapter *Kbis* and Annex *Kbis*-01.1-4 of the CCFTA, Article 1401 of Chapter Fourteen and Annex 1401.1-4 of the CPFTA, Article 16.02 of Chapter Sixteen and Annex 5 of the Schedule of Canada to Chapter 16 of the CPAFTA, Article 1401 of Chapter Fourteen and Annex 1401-4 of the Schedule of Canada to Chapter 14 of the CCOFTA, and Article 17.2 of Chapter Seventeen and Annex 17.4 of the CHFTA. Likewise, subparagraph 11(h)(ii) of Article 504 of the CFTA expressly excludes health services from coverage.

[17] Furthermore, the "Health and Social Services" category is not identified in the list of covered services in any of Article 10.2 of Chapter Ten and Annex 10-4 of the Schedule of Canada to the CUFTA, Article 14.3 of Chapter Fourteen and Annex 14-C of the CKFTA, Article 19.2 of Chapter Nineteen and Annex 19-5 of the CETA, Article 15.2 of Chapter Fifteen and the Schedule of Canada to Annex 15-A of the TPP, or Article II and Canada's Annex 5 to Appendix 1 to the Revised Agreement on Government Procurement.

[18] The Tribunal concludes that the procurement of health and social services is not covered under any of the trade agreements identified in subsection 3(1) of the *Regulations*. The Tribunal therefore finds that it does not have jurisdiction to initiate an inquiry into the complaint, since it concerns a procurement process that does not relate to a "designated contract" as required under paragraph 7(1)(b).

## DECISION

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

Peter Burn  

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Peter Burn  
Presiding Member