



MANAGEMENT FRAMEWORK

PROCEDURE FOR RECEIVING & EXAMINING COMPLAINTS FILED IN THE COURSE OF THE TENDERING OR AWARDING PROCESS FOR A PUBLIC CONTRACT

Procedure for Receiving & Examining Complaints Filed in the Course of the Tendering or Awarding Process for a Public Contract

Where the word “unit” appears, it may apply to any administrative units, such as schools, centres, and departments. Where the term “Director” or “Director of” is used, it is taken to mean “a” or “the” administrator responsible for the department or function.

1. PURPOSE

The present management framework is established to:

- Provide equitable resolution of complaints filed with the New Frontiers School Board (hereinafter referred as the “School Board”) in the course of the tendering or awarding process;
- Inform the public of the procedure for filing and examining complaints.

2. REFERENCE FRAMEWORK

- *Act Respecting Contracting by Public Bodies (CQLR, c. 65.1)* (hereinafter referred to as “LCOP”) and regulations established within the framework of the law
- *Act Respecting the Autorité des marchés publics (CQLR, c. a-33.2.1)* (hereinafter referred to as “LAMP”)

3. SCOPE

This management framework applies to:

- Complaints filed in the course of the tendering process for a public contract involving an expenditure equal or above the applicable public tender threshold;
- Complaints against a contract involving an expenditure equal or above the public tender threshold in accordance with section 10 of the LCOP entered into by mutual agreement pursuant to subparagraph 4 of section 13 of the LCOP if the School Board considers it will be able to prove, in accordance with the principles set out in section 2 of the LCOP, that a public call for tenders would not serve the public interest;
- Complaints against the tendering or awarding process for a public contract other than those referred to in sections 3.1 and 3.2 of the present procedure.

4. DEFINITIONS

- 4.1. **Complaint:** Action to denounce a decision or condition not compliant with the normative framework against the tendering or awarding process for a public contract;
- 4.2. **Normative framework:** Legislative and regulatory framework to set standards for main aspect of the management policies and administrative framework to determine internal rules in this matter;
- 4.3. **Complainant:** Enterprise or group of enterprises or their representative interested in participating in the tendering process or who have manifested their interest in carrying out the contract following publication of a notice of intention;
- 4.4. **Interested party:** Enterprise or group of enterprises capable of participating in the tendering process or carrying out the contract following the publication of the notice of intention;
- 4.5. **Enterprise:** Legal person established for a private interest, a general, limited or undeclared partnership or a natural person who operates a sole proprietorship (section 13.1 art. 2 LCOP).

5. OPERATIONAL STRUCTURE

5.1. Complaint Examination

- 5.1.1. Complaints must be submitted electronically to the Contract Rules Compliance Monitor. The Contract Rules Compliance Monitor can be contacted at rarc@nfsb.qc.ca

6. GENERAL PROCEDURES

6.1. Protection against reprisals

Complaints in compliance with the present procedure must be filed without the fear of reprisals from the School Board. *Section 51 of the LAMP* stipulates specifically that it is forbidden to make a reprisal in any manner, whatsoever, against a person or partnership that files a complaint with the Autorité des marchés publics (hereinafter referred as the “AMP”) or to threaten to make a reprisal against a person or partnership so that he or she will abstain from filing a complaint with the AMP. A person or partnership who believes himself, herself or itself to be a victim of a reprisal may file a complaint with the AMP so that the AMP may determine if the complaint is substantiated and make any recommendations it considers appropriate to the chief executive officer of the School Board. When the examination is concluded, the AMP informs the complainant of its findings and, if applicable, its recommendations.

6.2. Preservation of Right to Recourse

In order to preserve the right to recourse with the AMP, in accordance with the provisions provided by sections 37, 38, 39 and 41 of the LAMP, a complaint must be filed with the School Board in compliance with the present procedures.

6.3. Withdrawal of a Complaint

In the case of a complaint against an ongoing public tender or certification process of goods or enterprise qualification process, the withdrawal of a complaint must be sent before the deadline for filing a complaint.

6.3.1. For this purpose, the Complainant must send an email to the School Board at secgen@nfsb.qc.ca and indicate the reasons for the withdrawal of complaint.

6.3.2. Once the email is received, the School Board will enter the date of the complaint withdrawal in the electronic tendering system (hereafter referred as “ETS”).

6.3.3. In the case of a complaint against a contract entered into by mutual agreement, pursuant to *subparagraph 4 of first paragraph of section 13 of the Loi sur les contrats des organismes publics (LCOP)*, for which an enterprise wishes to express its interest in carrying out the contract, the enterprise may withdraw its demonstration document without compromising their right to present a new document within the deadline.

6.4. Dismissal of a Complaint

In the case of a complaint against an ongoing public tender or certification process of goods or enterprise qualification process, the School Board will dismiss a complaint for one of the following reasons:

- The complaint does not include the required criteria for admissibility;
- The Complainant applies or has applied for a court ruling, which includes the same evidence as the one presented.

6.5. Decision or Action

In the case of a complaint against an ongoing public tender or certification process of goods or enterprise qualification process, the School Board will amend by Addendum the documents involved in the complaint if it deems it necessary following a thorough analysis of the complaint.

7. PROCEDURES FOR COMPLAINTS AGAINST A CONTRACT INVOLVING AN EXPENDITURE EQUAL OR ABOVE THE THRESHOLD OF A PUBLIC TENDER, AN ONGOING CALL FOR TENDER, THE CERTIFICATION PROCESS OF GOODS OR AN ENTERPRISE QUALIFICATION PROCESS

7.1. Complaint Filing and Verification of Required Interest

7.1.1. A complaint must be filed electronically with the AMP using the form it determined for use (hereafter referred as the “AMP Form”);

7.1.2. A complaint must be filed electronically with the Contract Rules Compliance Monitor. The Complaint must be transmitted simultaneously to the AMP for information purposes;

7.1.3. A complaint must be filed no later than the deadline for filing complaints provided for and in accordance with the LCOP and its regulations, a period corresponding to half the time for receiving tenders but which may not be less than ten (10) days;

7.1.4. The School Board will make an entry to that effect on the ETS, without delay, including the time the complaint was filed, after having ascertained the Complainant’s interest. An acknowledgement of receipt will be sent to the Complainant.

7.2. Admissibility Analysis

7.2.1. Admissibility conditions of a complaint:

7.2.1.1. A complaint should be filed in accordance with the provisions of section 7.1 of the present management framework;

7.2.1.2. A complaint should refer to one of the following:

7.2.1.2.1. Ongoing call for tender;

7.2.1.2.2. Certification process of goods;

7.2.1.2.3. Enterprise qualification process.

- 7.2.1.3. Complaint must establish that the tender documents include:
 - 7.2.1.3.1. Conditions that do not ensure the honest and fair treatment of tenderers or;
 - 7.2.1.3.2. Conditions that do not allow tenderers to compete although they are qualified to meet the stated procurement requirements or;
 - 7.2.1.3.3. Conditions not compliant with the normative framework.

7.3. Examination of Complaint and Decision

- 7.3.1. The Contract Rules Compliance Monitor will analyze the issue the Complainant raised and indicated on the AMP form in relation to the documents involved for a specific tender process. In order to proceed with this analysis, the Contract Rules Compliance Monitor must comply with the following conditions provided by the LCOP and regulations¹:
 - 7.3.1.1. The complaint about a call for tenders must be filed with the public body not later than the complaint filing deadline indicated on the ETS;
 - 7.3.1.2. The complaint may pertain only to the content of the tender documents available not later than two days before the deadline;
 - 7.3.1.3. On receiving a first complaint, the School Board must make an entry to that effect on the ETS, after having ascertained the Complainant's interest;
 - 7.3.1.4. The Contract Rules Compliance Monitor must send the Complainant its decision electronically after the complaint filing deadline but not later than three days before the tender closing date it has determined. If necessary, the Compliant Examination Monitor must defer the tender closing date;
 - 7.3.1.5. The Contract Rules Compliance Monitor must also, if applicable, inform the Complainant of their right to file a complaint under section 37 of the Act to facilitate oversight of public bodies' contracts and to establish the Autorité des marchés publics (2017, chapter 27) within three days after receiving the decision;
 - 7.3.1.6. If the Contract Rules Compliance Monitor has received two or more complaints about the same call for tenders, it must send both or all of its decisions at the same time;
 - 7.3.1.7. The Contract Rules Compliance Monitor must, when sending his or her decision about a complaint filed with him or her, make an entry to that effect in the ETS without delay;
 - 7.3.1.8. The School Board must defer the tender closing date by the number of days needed to allow a minimum period of seven days to remain from the date its decision is sent;
 - 7.3.1.9. If two days before the tender closing date, the School Board has not indicated on the ETS that it has sent its decision on a complaint, the system operator must, without delay, defer the tender closing date by four days;
 - 7.3.1.10. If the deferred date falls on a holiday, it must again be deferred to the second next working day. If the day preceding the deferred date is not a working day, that date must be deferred to the next working day;

¹ Regulation respecting certain supply contracts of public bodies (sections 9.3 to 9.9), Regulation respecting construction contracts of public bodies (sections 12.1 to 12.7), Regulation respecting contracting by public bodies in the field of information technologies (sections 13.1 to 13.7).

7.4. Complaint Filed with the AMP

If not satisfied with the decision, the Complainant can file a complaint with the AMP. In that case, the complaint must be filed not later than three (3) days after receiving the decision in accordance with Section 37 of the LAMP. If the Complainant has not received a decision three (3) days before the tender closing date, a complaint may be filed with the AMP. In that case, the complaint must be filed with the AMP, not later than the tender closing date in accordance with Section 39 of the LAMP.

8. PROCEDURES FOR COMPLAINTS AGAINST A CONTRACT INVOLVING AN EXPENDITURE EQUAL OR ABOVE THE PUBLIC TENDER THRESHOLD IN ACCORDANCE WITH SECTION 10 OF THE LCOP ENTERED INTO BY MUTUAL AGREEMENT PURSUANT TO SUBPARAGRAPH 4 OF SECTION 13 OF THE LCOP IF THE SCHOOL BOARD CONSIDERS IT WILL BE ABLE TO PROVE, IN ACCORDANCE WITH THE PRINCIPLES SET OUT IN SECTION 2 OF THE LCOP, THAT A PUBLIC CALL FOR TENDERS WOULD NOT SERVE THE PUBLIC INTEREST

8.1. If the School Board Published a Notice of Intention

- 8.1.1. The enterprise must express its interest electronically to the Contract Rules Compliance Monitor, not later than the enterprise demonstration closing date.
- 8.1.2. The School Board will transmit electronically its decision to maintain or not its intention to enter into a contract by mutual agreement to the enterprise that manifested its interest under subparagraph 5 of the first paragraph of section 13.1 of the LCOP.
- 8.1.3. The School Board must send its decision electronically at least seven (7) days before the projected contract date. If needed, the projected contract date must be deferred by the number of days needed to ensure compliance with that minimum period.
- 8.1.4. The School Board will proceed with a public call for tenders if, after analysis, it deems that at least one enterprise has expressed its interest and has demonstrated that it will be able to carry out the contract in accordance with the needs and obligations expressed in the notice of intention.
- 8.1.5. If the School Board decides to proceed with the conclusion of a contract entered into by mutual agreement, the enterprise that has expressed its interest may file a complaint under Section 38 of the LAMP.

8.2. If the School Board did not Publish a Notice of Intention

- 8.2.1. If the School Board has not published a notice of intention in the ETS at least 15 days before entering into a contract by mutual agreement under Section 13.1 of the LCOP allowing any enterprise to express its interest in carrying out the contract, then the Complainant may file a complaint in accordance with the procedure provided in Section 42 of the LAMP.

8.3. Complaint Filed with the AMP

- 8.3.1. If not satisfied with the decision, the Complainant can file a complaint with the AMP. In that case, the complaint must be filed no later than three (3) days after receiving the decision in accordance with Section 38 of the LAMP.
- 8.3.2. If the Complainant has not received a decision three (3) days before the projected contract date, then the Complainant may file a complaint with the AMP. In that case, the complaint must be filed with the AMP, no later than one day before the projected contract date indicated in the ETS under Section 41 of the LAMP.

9. PROCEDURES FOR COMPLAINTS AGAINST THE TENDERING OR AWARDING PROCESS FOR A PUBLIC CONTRACT OTHER THAN THOSE REFERRED TO IN SECTIONS 7 AND 8 OF THE PRESENT PROCEDURE

9.1. Complaint Filing and Expression of Required Interest

- 9.1.1. The complaint must be filed electronically using the form determined by the School Board.
 - 9.1.1.1. In the event of a complaint concerning the tendering process, the complaint must be filed on the form provided by the AMP;
- 9.1.2. A complaint must be filed electronically with the Contract Rules Compliance Monitor;
- 9.1.3. The complaint must be filed no later than:
 - 9.1.3.1. The working day corresponding to at least half the time for receiving tenders, for a complaint concerning the tendering process or invitation;
 - 9.1.3.2. The working day prior to the awarding of the contract, for a complaint concerning a contract entered into by mutual agreement.

9.2. Admissibility Analysis

9.2.1. Admissibility conditions of a complaint:

9.2.1.1. A complaint should be filed in accordance with the provisions of section 9.1 of the present procedure;

9.2.1.2. A complaint should refer to one of the following:

- Ongoing call for tender or invitation;
- A contract to be entered into by mutual agreement;

9.2.1.3. Complaint must establish that the tendering or awarding process include:

9.2.1.3.1. Conditions that do not ensure the honest and fair treatment of tenderers or;

9.2.1.3.2. Conditions that do not allow tenderers to compete although they are qualified to meet the stated procurement requirements or;

9.2.1.3.3. Conditions not compliant with the normative framework.

9.3. Examination of Complaint and Decision

9.3.1. The Contract Rules Compliance Monitor will analyze the issue raised by the Complainant and indicated on the AMP form in relation to a specific tendering or awarding process;

9.3.2. The Contract Rules Compliance Monitor must examine complaint fairly and equitably under the management policies, and to that end, take any action deemed necessary;

9.3.2.1. In the case of an ongoing public call for tenders, only an enterprise or group of enterprises or their representative interested in participating in the awarding process for a public contract may file a complaint about conditions in the tender documents that do not ensure the honest and fair treatment of tenderers, do not allow tenderers to compete although they are qualified to meet the stated procurement requirements, or are otherwise not compliant with the normative framework;

9.3.3. The Contract Rules Compliance Monitor must submit his or her decision to the Complainant within a reasonable period of time in view of the circumstances and decision will be final.

10. FINAL PROVISIONS

10.1. The present management framework implements the applicable provisions of the *Act Respecting Contracting by Public Bodies*, the *Act Respecting the Autorité des marchés publics*, and any corresponding regulations, therefore, must be interpreted accordingly. In the case of a contradiction between the present management framework and the Act(s), the latter will prevail;

10.2. The delays indicated in the present procedure and resulting from legislative or regulatory provisions will be modified automatically through a legislative or regulatory amendment upon its entry into force;

10.3. Use of the masculine tense (*not applicable in the English version*);

10.4. The present management framework comes into force on May 25, 2019.

End.