



Procedure no. 2019-MR-05:	Procedure for Receiving and Examining Complaints Filed in the Course of the Tendering or Awarding Process for a Public Contract
Approved: Resolution no.	CC-190522-MR-0186

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NOTE: The masculine gender, when used in this document, refers to both women and men. No discrimination is intended.

1.0 Reference framework

This procedure is established in accordance with the *Act respecting contracting by public bodies* (CQLR, c. 65.1) (hereinafter referred to as the “LCOP”) and its regulations and the *Act respecting the Autorité des marchés publics* (CQLR, c. A-33.2.1) (hereinafter referred to as the “LAMP”).

2.0 Objectives

- 2.1 Provide equitable resolution of complaints filed with the Sir Wilfrid Laurier School Board (hereinafter referred as the “School Board”) in the course of the tendering or awarding process for a public contract;
- 2.2 Inform the public of the procedure for filing and examining complaints.

3.0 Application

In this procedure, the complaint examination process is divided into three categories:

- 3.1. Complaints filed in the course of the tendering process for a public contract involving an expenditure equal to or above the applicable public tender threshold;
- 3.2. Complaints concerning a contract involving an expenditure equal to 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;
- 3.3. Complaints concerning the tendering or awarding process for a public contract other than the complaints referred to in sections 3.1 and 3.2 of this procedure.

4.0 Definitions

- 4.1. **Complaint:** Action aimed at denouncing a decision or condition that is not compliant with the normative framework during the tendering or awarding process for a public contract.
- 4.2. **Normative framework:** Legislative and regulatory framework to set standards concerning the main elements of the contract management policies and an 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 that has expressed its 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 capable of carrying out the contract following 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, par. 2, LCOP).

5.0 Complaint examination monitor

- 5.1 The complaint must be submitted electronically to the Complaint Examination Monitor at rarc@swlauriersb.qc.ca . This person is also the Contract Rules Compliance Monitor.
- 5.2 Should the Complaint Examination Monitor be absent or unable to act, the Complaint Examination Monitor Substitute is the Secretary General.

6.0 General provisions

6.1 Application

This procedure applies to contracts involving a public expenditure and to public-private partnership contracts.

6.2 Protection against reprisals

Complaints in compliance with this procedure must be filed without the fear of reprisals from the School Board.

Section 51 of the LAMP expressly stipulates that it is forbidden to take 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 “Authority”) or to threaten to take a reprisal against a person or partnership so that this person or partnership will abstain from filing a complaint with the Authority. A person or partnership that considers has been a victim of a reprisal may file a complaint with the Authority. The Authority shall 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 Authority must inform the Complainant of its findings and, if applicable, its recommendations.

6.3 Preserving recourse rights

To preserve the rights to recourse with the Authority in accordance with the provisions of sections 37, 38, 39 and 41 of the LAMP, all complaints must be filed with the School Board in compliance with this procedure.

6.4 Withdrawing a complaint

In the case of a complaint concerning an ongoing public tender, enterprise qualification process or certification process of goods, the complaint must absolutely be withdrawn before the established deadline for filing a complaint.

For this purpose, the Complainant must send an email to the School Board at rarc@swlauriersb.qc.ca indicating the reasons for withdrawing the complaint.

After receiving this email, the School Board will enter the complaint withdrawal date in the electronic tendering system (hereinafter referred to as “SEAO”).

In the case of a complaint concerning the awarding process for a contract entered into by mutual agreement pursuant to subparagraph 4 of the first paragraph of section 13 of the LCOP for which an enterprise wishes to express its interest in carrying out the contract, the enterprise may withdraw the documents it submitted in accordance with the notice of intention without compromising its right to present a new document within the established deadline.

6.5 Dismissing a complaint

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

- The complaint does not meet all conditions for admissibility.
- The Complainant is pursuing or has pursued a judicial remedy based on the same facts as those set out in the complaint.

6.6 Rendering a decision or taking action

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

7.0 Complaints concerning the tendering process for a contract involving an expenditure equal to or above the threshold of a public tender, an ongoing call for tender, a certification process of goods or an enterprise qualification process

7.1. Filing a complaint and verifying interest

- 7.1.1. Complaints must be filed electronically using the form provided by the Authority for this purpose (hereinafter referred as the “AMP Form”).
- 7.1.2. Complaints must be filed electronically with the Complaint Examination Monitor, at rarc@swlauriersb.qc.ca , and transmitted simultaneously to the Authority for information purposes.
- 7.1.3. Complaints must be filed and indicated on the SEAO within the deadline for filing complaints, i.e., a period corresponding to half the timeframe for receiving tenders but which may not be less than ten (10) days, in accordance with the LCOP and its regulations.
- 7.1.4. The School Board will publish without delay on the SEAO the date on which a complaint was received after having ascertained the Complainant’s interest. An acknowledgement of receipt will be sent to the Complainant.

7.2. Analyzing admissibility

- 7.2.1. Admissibility conditions of complaints:
 - 7.2.1.1. Complaints must be filed in accordance with section 7.1 of this procedure.
 - 7.2.1.2. Complaints should relate to one of the following:
 - An ongoing call for tender
 - A certification process of goods
 - An enterprise qualification process
 - 7.2.1.3. Complaints must establish that the tender documents include:
 - Conditions that do not ensure the honest and fair treatment of tenderers, or;
 - Conditions that do not allow tenderers to compete although they are qualified to meet the stated procurement requirements, or;
 - Conditions that are not compliant with the normative framework.

7.3. Examining complaints and rendering a decision

- 7.3.1. The Complaint Examination Monitor will analyze the complaint based on the points raised by the Complainant in the AMP Form concerning the documents of the specific tendering process. To proceed with this analysis, the Complaint Examination Monitor must comply with the following conditions set out in the LCOP regulations:¹
- 7.3.1.1. A complaint concerning a public call for tenders must be filed with the School Board not later than the complaint filing deadline indicated on the SEAO;
 - 7.3.1.2. Such a complaint may pertain only to the content of the tender documents made available at least two (2) days before the deadline;
 - 7.3.1.3. When the Complaint Examination Monitor receives a first complaint, the School Board must make an entry to that effect on the SEAO without delay, after having ascertained the Complainant's interest;
 - 7.3.1.4. The Complaint Examination Monitor must send its decision to the Complainant electronically after the complaint filing deadline but not later than three (3) days before the established tender closing date. If necessary, the Monitor shall defer the tender closing date;
 - 7.3.1.5. The Complaint Examination Monitor must also, if applicable, inform the Complainant of his 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 (3) days of receiving the decision;
 - 7.3.1.6. Should the Complaint Examination Monitor receive two or more complaints concerning the same public call for tenders, he must send all his decisions at the same time;
 - 7.3.1.7. When the Complaint Examination Monitor sends his decision concerning a complaint filed with him, the School Board must make an entry to that effect in the SEAO 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 (7) days to remain from the date its decision is sent;
 - 7.3.1.9. If, two (2) days before the tender closing date, the School Board has not indicated on the SEAO that the Complaint Examination Monitor has sent his decision on a complaint, the SEAO must, without delay, defer the tender closing date by four (4) days;
 - 7.3.1.10. If the deferred date falls on a statutory holiday, the date must again be deferred to the second next working day. If the day preceding the deferred date is not a working day, this date must again be deferred to the next working day.

¹ Regulation respecting certain supply contracts of public bodies (sections 9.3 to 9.9), Regulation respecting certain service 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 Filing a complaint with the Authority

7.4.1 If the Complainant is not satisfied with the decision, he may file a complaint with the Authority. In this case, the complaint must be filed within three (3) days of 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, he may file a complaint with the Authority. In this case, the complaint must be filed with the Authority not later than the tender closing date in accordance with section 39 of the LAMP.

8.0 Complaints concerning a contract involving an expenditure equal to or above the public tender threshold provided for in section 10 of the LCOP entered into by mutual agreement pursuant to subparagraph 4 of section 13 of the LCOP

8.1. If the School Board published a notice of intention

The enterprise must express its interest electronically to the Complaint Examination Monitor at rarc@swlauriersb.qc.ca within the deadline for submitting documents, as indicated in the notice of intention.

The School Board shall transmit electronically its decision to maintain or not its intention to enter into a contract by mutual agreement to the enterprise that has expressed its interest, in accordance with subparagraph 5 of the first paragraph of section 13.1 of the LCOP.

The School Board must send its decision electronically at least seven (7) days before the projected contract date. If needed, the projected contract date shall be deferred by the number of days required to ensure compliance with this timeframe.

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 indicated in the notice of intention.

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

If the School Board did not publish, at least fifteen (15) days before the projected contract date, a notice of intention on the SEAO in accordance with section 13.1 of the LCOP allowing any enterprise to express its interest in carrying out the contract, the Complainant may file a complaint in accordance with the procedure provided for in section 42 of the LAMP.

8.3 Filing a complaint with the Authority

If the Complainant is not satisfied with the decision, he may file a complaint with the Authority. The complaint must be filed within three (3) days of receiving the decision, in accordance with section 38 of the LAMP.

If the Complainant has not received a decision three (3) days before the projected contract date, he may file a complaint with the Authority. The complaint must be filed with the Authority not later than one day before the projected contract date entered in the SEAO, in accordance with section 41 of the LAMP.

9.0 Complaints concerning the tendering or awarding process for a public contract other than complaints referred to in sections 7 and 8 of this procedure

9.1. Filing complaints and expressing interest

9.1.1. Complaints must be filed electronically using the form provided by the School Board.

9.1.1.1. Complaints concerning a public tendering process must be filed using the form provided by the Authority.

9.1.2. Complaints must be sent electronically to the Complaint Examination Monitor, at rarc@swlauriersb.qc.ca.

9.1.3. Complaints must be filed not later than:

9.1.3.1. The working day corresponding to at least half the timeframe for receiving tenders, in the case of complaints concerning a public tendering process or an invitation to tender;

9.1.3.2. The working day prior to the awarding of the contract, in the case of complaints concerning a contract entered into by mutual agreement.

9.2. Analyzing admissibility

9.2.1. Admissibility conditions of complaints:

9.2.1.1. Complaints must be filed in accordance with the provisions of section 9.1 of this procedure.

9.2.1.2. Complaints should concern one of the following:

- An ongoing call for tender or invitation to tender
- A contract to be entered into by mutual agreement

9.2.1.3. Complaints must establish that the tendering or awarding process includes:

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 that are not compliant with the normative framework.

9.3. Examining complaints and rendering a decision

9.3.1. The Complaint Examination Monitor will analyze the complaint based on the points raised by the Complainant in the form provided by the School Board for the specific tendering or awarding process.

9.3.2. The Complaint Examination Monitor must examine the complaint fairly and equitably in accordance with the contract management policies and, for this purpose, 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 its representative interested in participating in the tendering process for a public contract may file a complaint concerning the process based on the fact that the tender documents include conditions 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 Complaint Examination Monitor must submit his decision to the Complainant within a reasonable timeframe considering the circumstances. The decision shall be final.

10.0 Other provisions

10.1. The deadlines and references indicated in this procedure and resulting from legislative or regulatory provisions shall be automatically modified through a legislative or regulatory amendment upon its entry into force.

10.2. This procedure comes into effect on May 25, 2019.