

## PROCEDURE TO FILE A COMPLAINT IN THE COURSE OF TENDERING OR AWARDING A PUBLIC CONTRACT

### Legal framework

In accordance with section 21.0.3 of the Act respecting contracting by public bodies (hereinafter ARCPB), the School Board has the obligation to provide equitable resolution of complaints filed in the course of the tendering or awarding a public contract and to establish a procedure for receiving and examining such complaints.

This procedure applies only to the following situations:

- A. You wish to file a complaint about an ongoing public call for tenders the process for the certification of goods, or the process for the qualification of suppliers for one or more of the following reasons:
  - The tender documents contain conditions that do not ensure the honest and fair treatment of tenderers;
  - The tender documents contain conditions that do not allow you to compete although you are qualified to meet the stated needs;
  - The tender documents do not otherwise comply with the normative framework.
- B. You wish to express your interest in carrying out a contract for which the School Board intends to enter into this contract by mutual agreement pursuant to section 13(4) of the ARCPB.

Any complaint or request made according to this procedure as well as any complaint to the *Autorité des marchés publics* (AMP) can be submitted without any fear of reprisal by the School Board.

### A. Complaints about an ongoing public call for tenders, the process for the certification of goods, or the process for the qualification of suppliers

#### Prior verifications

1. For information or details on tender documents, please send a request to the contact person identified in the notice published on the electronic tendering system (Système électronique d'appel d'offres - SEAO).
2. Before filing a complaint, please communicate with the contact person identified on the SEAO to ensure that this is the appropriate action.

#### Submitting a complaint

3. The form prescribed by the AMP must be filled by the complainant and electronically sent to the School Board at the following address: [plaintes.contratspublics@lbpsb.qc.ca](mailto:plaintes.contratspublics@lbpsb.qc.ca), to the attention of the Director of Legal Services. This form is available at the following address: <https://www.amp.gouv.qc.ca/porter-plainte/plainte-organisme-public>.
4. The form must be received by the School Board, duly filled and signed, by the deadline indicated on the SEAO.
5. The complainant must simultaneously forward a copy of the complaint to the AMP (for information purposes only) by using the address indicated on the complaint form.

6. Only a person or an enterprise interested in participating in the tendering process, or their representative, may file a complaint. In case of doubt, the School Board may ask you to provide additional explanations to determine your interest in the tendering process and will immediately notify you of its refusal to process your complaint if it thinks that you don't have the required interest.

#### Processing of the complaint

7. The School Board indicates on the SEAO the date on which it received the first complaint about an awarding process from a complainant with the required interest.
8. The School Board verifies whether the admissibility requirements of the complaint are met (Appendix A) and, if so, proceeds with its analysis.
9. If needed, the person responsible for processing the complaint may communicate with the complainant for further information.

#### School Board Decision

10. The School Board electronically sends its decision with the reasons supporting it to the complainant, after the deadline for receipt of complaints, but no later than 3 days before the deadline for receipt of tenders indicated in the SEAO.
11. The School Board ensures that a time period of at least 7 days will be granted between the date on which the decision is sent and the deadline for receipt of tenders and defers it by the number of days needed to ensure compliance with that minimum period.
12. If the School Board receives more than one complaint for the same process, its decisions are sent to the complainants at the same time.
13. The School Board immediately indicates on the SEAO that its decision has been forwarded to the complainant(s).
14. When it considers that the complaint is founded, the School Board modifies the tender documents and publishes an addendum to this end on the SEAO.
15. The School Board informs the complainant of his right to file a complaint with the AMP within 3 days after receiving the decision, pursuant to section 37 of the Act respecting the *Autorité des marchés publics*.

#### Waiver and withdrawal of the complaint

16. The complainant may withdraw his complaint by sending an e-mail to the following address: [plaintes.contratspublics@lbpsb.qc.ca](mailto:plaintes.contratspublics@lbpsb.qc.ca). If the date of the complaint had been entered by the School Board into the SEAO, the School Board indicates the date of withdrawal in the SEAO and, where applicable, the date of receipt of the second complaint received from a complainant with the required interest.

#### Complaint with the AMP

17. A complainant who disagrees with the School Board's decision may file a complaint with the AMP under section 37 of the Act respecting the *Autorité des marchés publics* within 3 days after

receiving the decision.

18. A complainant who, three days before the deadline for receipt of tenders, has not received the decision of the School Board may file a complaint with the AMP under section 39 of the Act respecting the *Autorité des marchés publics*. The complaint must be received by the AMP no later than the deadline for receipt of tenders indicated on the SEAO.

**B. Expression of interest in carrying out a contract for which the School Board intends to enter into this contract by mutual agreement under subparagraph 4 of the first paragraph of section 13 of the Act respecting contracting by public bodies**

Notice of intention

1. The School Board publishes a notice of intention on the SEAO at least 15 days before entering into the contract by mutual agreement under section 13(4) of the Act respecting contracting by public bodies in order to allow any enterprise to express its interest in carrying out the contract.
2. The notice of intention states:
  - the name of the enterprise with which the School Board intends to enter into the contract;
  - a detailed description of the School Board's needs and of the obligations under the contract;
  - the projected contract date;
  - the reasons invoked for entering into the contract by mutual agreement despite the fact that it involves an expenditure equal to or above the public tender threshold;
  - the address at which and deadline by which an enterprise may express by email its interest and demonstrate that it is capable of carrying out the contract.

Submitting an expression of interest

3. The enterprise states in writing and with details the reasons why it considers it is capable of carrying out the contract in accordance with the needs and obligations described in the notice of intention published on the SEAO by the School Board.
4. The expression of interest must be signed by a duly authorized representative of the enterprise and must be submitted with all supporting documents that the complainant deems appropriate.
5. The expression of interest and the supporting documents, if any, must be sent by email to the School Board to the following address: [plaintes.contratspublics@lbpsb.qc.ca](mailto:plaintes.contratspublics@lbpsb.qc.ca), to the attention of the Director of Legal Services, by the deadline indicated on the SEAO.

Processing of the expression of interest

6. The School Board ensures that the admissibility conditions (Appendix B) are met and, if so, assesses the enterprise's ability to carry out the contract in accordance with the School Board's needs and the obligations described in the notice of intention.
7. If needed, the person responsible for processing the express of interest may communicate with the enterprise for further information.

School board decision

8. The School Board electronically sends to the enterprise(s) its decision as to whether or not it still

intends to enter into the contract by mutual agreement, as well as the reasons supporting it, and ensures that a minimum period of 7 days will be granted between the date on which the decision is sent and the date on which the contract is to be signed.

9. The School Board makes a public call for tenders when it considers that at least one enterprise has demonstrated that it is capable of carrying out the contract according to the needs and obligations set out in the notice of intention.
10. The School Board informs the enterprise of its right to file a complaint with the AMP within 3 days after receiving the decision, in accordance with section 38 of the Act respecting contracting by public bodies.

#### Complaint to the AMP

11. A complainant who disagrees with the School Board's decision may file a complaint with the AMP under section 38 of the Act respecting the Autorité des marchés publics within 3 days after receiving the decision.
12. A complainant who, three days before the projected contract date, has not received the decision of the School Board may file a complaint with the AMP pursuant to section 41 of the Act respecting the Autorité des marchés publics. The complaint must be received by the AMP no later than one day before the projected contract date indicated in the SEAO.

#### **Entry into force**

This procedure comes into force on May 27, 2019.

Dorval, May 27, 2019



Michael Chechile  
Director General  
Lester-B.-Pearson School Board

## APPENDIX A

### **Conditions of admissibility of a complaint about an ongoing public call for tenders, the process for the certification of goods, or the process for the qualification of suppliers:**

To be admissible, a complaint must meet each of the following conditions:

- Relate to a public contract under paragraph 1 (1<sup>o</sup>) a) or paragraph 2 (1<sup>o</sup>) of section 20 of the Act respecting the *Autorité des marchés publics*;
- Relate to an ongoing public call for tenders, the process for the certification of goods, or the process for the qualification of suppliers whose tender documents would include:
  - conditions that do not ensure the honest and fair treatment of tenderers or
  - conditions that do not allow an enterprise to bid, even though it is qualified to meet the needs or
  - conditions that are not otherwise in conformity with the normative framework.
- Pertain only to the content of the tender documents that are available on the SEAO no later than 2 days before the deadline for receiving complaints indicated on the SEAO;
- Be sent electronically to the following address [plaintes.contratspublics@lbpsb.qc.ca](mailto:plaintes.contratspublics@lbpsb.qc.ca) and in compliance with this procedure;
- Be submitted on the form prescribed by the AMP in accordance with section 45 of the Act respecting the *Autorité des marchés publics*<sup>1</sup>;
- Be received by the deadline for receipt of complaints indicated in the SEAO;
- Not be or have been the subject of a judicial process by the complainant for the same facts as outlined in the complaint.

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<sup>1</sup> Under section 21.0.3 of the Act respecting contracting by public bodies, a complaint under section 21.0.4 must be submitted on the form prescribed by the AMP pursuant to section 45 of the Act respecting the *Autorité des marchés publics*, otherwise the complaint will be rejected.

## APPENDIX B

### **Conditions of admissibility of an expression of interest concerning a mutual agreement awarding process referred to in subparagraph 4° of first paragraph of section 13 of the Act respecting contracting by public bodies for which a company wishes to express their interest to fulfill it:**

To be admissible, the expression of interest must meet each of the following conditions:

- Relates to a public contract under paragraph 1 (1°) a) or paragraph 2 (1°) of section 20 of the Act respecting the *Autorité des marchés publics*;
- Relates to a mutual agreement contract in accordance to paragraph 4° or the first subparagraph of section 13 of the Act respecting contracting by public bodies;
- Be sent electronically to the person responsible identified in this procedure and in compliance with the provisions set out in it;
- Be received by the deadline indicated in the SEAO.
- Not be or have been the subject of a judicial process by the complainant for the same facts as set out in the expression of interest.