



Commission scolaire English-Montréal

English Montreal School Board

PROCEDURE: PERTAINING TO THE RECEIPT AND EXAMINATION OF COMPLAINTS FILED IN THE COURSE OF TENDERING OR AWARDING OF A PUBLIC CONTRACT

Origin: General Directorate

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

1. LEGAL FRAMEWORK

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

In the event of any discrepancy between the present procedure and the provision of applicable laws or regulations, the latter shall prevail.

2. OBJECTIVE

As per section 21.0.3 of the ARCPB, the School Board has the obligation to provide equitable resolution of complaints filed in the course of the tendering or awarding of a public contract and to establish a procedure for the receipt and examination of these complaints.

3. APPLICATION

This procedure only applies to the following situations:

- A. Complaint filed in the course of the tendering process for a public contract involving an expenditure of public funds equal or above the applicable public tender threshold, or 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 potential tenderers to compete although they believe that they are qualified to meet the stated needs;
 - The tender documents do not otherwise comply with the normative framework.

- B. Complaints pertaining to the awarding of a Contract involving an expenditure of public funds equal or above the public tender threshold in accordance with section 10 of the ARCPB entered into by mutual agreement pursuant to subparagraph 4 of section 13 of the ARCPB as the School Board considers it will be able to prove, in accordance with the principles set out in section 2 of the ARCPB and considering the object of the contract, that a public call for tenders would not serve the public interest. The School Board publishes or must publish a notice of intent to that effect.

4. DÉFINITIONS

Authority : The Autorité des marchés publics, constituted by virtue of the Act respecting the Autorité des marchés publics

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.

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Contract : Public contracts, as described by the Act respecting contracting by public bodies, and listed below, involving an expenditure of public funds equal or above the public tender threshold, otherwise defined :

- 1° supply contracts, including contracts for the purchase, lease or rental of movable property, which may include the cost of installing, operating and maintaining the property;
- 2° construction contracts to which the Building Act (chapter B-1.1) applies and for which the contractor must hold the licence required under that Act;
- 3° service contracts, including damage insurance contracts and contracts of enterprise other than construction contracts, contracts to integrate the arts with the architecture and environment of government buildings and sites, and contracts of carriage subject to the Education Act;
- 4° public-private partnership contracts entered into for the purposes of a public infrastructure project for which a public body brings in a contractor to participate in designing, building and operating the infrastructure, whether or not public fund expenditure is involved;
- 5° any other contracts determined by Government regulation.

Company: 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 al. 2 ARCPB).

Interested Party: Company or group of companies capable of participating in the tendering process or carrying out the contract following the publication of the notice of intention.

Complainant: Company or group of companies 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.

Complaint: Action to denounce a decision or condition not compliant with the normative framework against the tendering or awarding process for a public contract.

CRCM: Contract Rules Compliance Monitor at EMSB, responsible for the handling of complaints filed under this procedure.

SEAO: Official government Tendering Electronic System referred to in the ARCPB and ARAMP.

Minimal Threshold for Public Tendering: Minimal threshold set by the Government, for the purpose of the ARCPB, applicable to every qualifying contract upon the tendering or awarding process, subject to any modification decreed by the Government. For information purposes, the minimal threshold for public tender at the date of coming into effect of this procedure is set at \$101 100.

5. COMPLAINT FILED IN THE COURSE OF THE TENDERING PROCESS FOR A PUBLIC CONTRACT INVOLVING AN EXPENDITURE OF PUBLIC FUNDS EQUAL OR ABOVE THE APPLICABLE PUBLIC TENDER THRESHOLD, OR THE PROCESS FOR THE QUALIFICATION OF SUPPLIERS, OR FOR THE CERTIFICATION OF GOODS

5.1. Preliminary Step prior to submitting a complaint

Before filing a complaint, for information or details on tender documents, or in an attempt to resolve an issue, a request must be sent to the contact person identified in the notice published on SEAO.

5.2. Submitting of a complaint

Only an Interested Party or a group of interested parties capable of participating in the tendering process, or their representative, may file a complaint for the reasons as defined in clause 3 herein. In case of doubt, the School Board may ask to provide additional explanations to determine the interest in the tendering process and will immediately notify the Interested Party of its refusal to process the complaint if it thinks that the required interest is not met.

A complaint must be sent electronically to the School Board on the form prescribed by the Authority and available on its website at <https://www.amp.gouv.qc.ca/porter-plainte/plainte-organisme-public>. The form must be sent within the prescribed delay indicated on the SEAO.

The complaint must be detailed and contain all the elements establishing that the tender documents infringe on the normative framework or that the conditions do not ensure the honest and fair treatment of tenderers, or do not allow tenderers to compete although they are qualified. No other documents will be accepted unless specifically requested by the School Board.

The complaint must be filed at the School Board at the following address: complaintpubliccontrats@emsb.qc.ca. The complainant must simultaneously forward a copy of the complaint to the Authority by using the address indicated on the complaint form.

5.3. Processing of the complaint

The School Board must publish in the SEAO, without delay, the date on which it receives a complaint, except those filed by an Interested Party who doesn't have the required interest.

The School Board determines if the complaint is receivable and, where applicable, analyze it. A complaint may be dismissed if, amongst other:

- It has not been sent on the form as prescribed by the Authority;
- It has not been sent electronically;
- It has not been sent at the address as indicated herein;
- It was received after the prescribed delay;
- It was drafted before the start of the tendering process;
- It doesn't pertain to a public contract as defined in clause 4 herein;
- It doesn't relate to available tendering documents, the certification of goods, or the process for the qualification of suppliers;
- It relates to tendering documents available less than 2 days before the deadline to receive a complaint;
- The complainant is pursuing or has pursued a judicial remedy based on the same facts as those set out in the complaint.

If needed, the person responsible for processing the complaint may communicate with the complainant for further information.

5.4. School Board Decision

The School Board sends electronically 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. The School Board immediately indicates on the SEAO that its decision has been forwarded to the complainant(s).

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.

Otherwise, the School Board defers the date for receipt of tenders by the number of days needed to ensure compliance with that minimum period.

If the School Board receives more than one complaint for the same process, its decisions are sent to the complainants at the same time.

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.

The School Board informs the complainant of his right to file a complaint with the Authority within 3 days after receiving the decision, pursuant to section 37 of the ARAMP.

5.5. Complaint with the Authority

A complainant who disagrees with the School Board's decision may file a complaint with the Authority under section 37 of the ARAMP within 3 days after receiving the decision.

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 Authority under section 39 of the ARAMP. The complaint must be received by the Authority no later than the deadline date for receipt of tenders indicated on the SEAO.

6. COMPLAINTS AGAINST A CONTRACT INVOLVING AN EXPENDITURE OF PUBLIC FUNDS EQUAL OR ABOVE THE PUBLIC TENDER THRESHOLD IN ACCORDANCE WITH SECTION 10 OF THE ARCPB ENTERED INTO BY MUTUAL AGREEMENT PURSUANT TO SUBPARAGRAPH 4 OF SECTION 13 OF THE ARCPB

6.1. Notice of Intention

The School Board publishes a notice of intention on the SEAO at least 15 days before entering into contract by mutual agreement under section 13(4) of the ARCPB, in order to allow any company to express its interest in carrying out the contract.

The notice of intention states:

- the name of the company 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 contracting date;
- the reasons invoked for entering into the contract by mutual agreement despite the fact that it involves an expenditure of public funds equal to or above the public tender threshold;
- the address at which and deadline by which a company may express by email its interest and demonstrate that it is capable of carrying out the contract.

6.2. Submitting an expression of interest

An Interested Party may submit its interest to achieve the contract in writing, with sufficient details to explain 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. The expression of interest must be signed by a duly authorized representative of the company and must be submitted with all supporting documents that the Interested Party deems appropriate.

The expression of interest and the supporting documents, if any, must be sent by email to the School Board to the following address: complaintpubliccontracts@emsb.qc.ca, by the deadline indicated on the SEAO.

6.3. Processing of the expression of interest

The School Board ensures that the admissibility conditions are met and, if so, assesses the Interested Party's ability to carry out the contract in accordance with the School Board's needs and the obligations provided in the contract, as described in the notice of intention.

An expression of interest may be dismissed if, amongst other:

- It has not been sent electronically;
- It has not been sent at the address as indicated herein;
- It was received after the prescribed delay;
- The complainant is pursuing or has pursued a judicial remedy based on the same facts as those set out in the complaint.

If needed, the person responsible for processing the expression of interest may communicate with the Interested Party for further information.

6.4. School Board decision

The School Board sends its decision electronically to the Interested Party, as to whether or not it still intends to enter into contract by mutual agreement, as well as the reasons supporting its decision, 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. Otherwise, the date of conclusion of the contract is deferred of the number of days needed to ensure compliance with the minimum period of 7 days.

The School Board makes a public call for tenders when it considers that at least one Interested Party has demonstrated that it is capable of carrying out the contract according to the needs and obligations set out in the notice of intention.

The School Board informs the Complainant of its right to file a complaint with the Authority within 3 days after receiving the decision, in accordance with section 38 of the ARCPB.

6.5. Complaint to the Authority

A complainant who disagrees with the School Board's decision may file a complaint with the Authority under section 38 of the ARAMP within 3 days after receiving the decision.

A complainant who, three days before the projected contracting date, has not received the decision of the School Board may file a complaint with the Authority pursuant to section 41 of the ARAMP. The complaint must be received by the Authority no later than one day before the projected contracting date indicated in the SEAO.

A complaint may be filed with the Authority following the awarding of a contract by mutual agreement by the School Board without a proper notice as per the ARCPB. This complaint may be presented at any time to the Authority.

7. WAIVER AND WITHDRAWAL OF A COMPLAINT OR AN EXPRESSION OF INTEREST

A complainant may desist from a complaint filed with the School Board pertaining to an ongoing public tender or certification process of goods or enterprise qualification process.

A complainant that expressed an interest in the awarding process can also desist from a complaint.

The withdrawal of a complaint must be sent electronically, by using the form prescribed by the Authority or in writing, at the School Board, at complaintpubliccontracts@emsb.qc.ca .

The withdrawal of a complaint related to an expression of interest must be sent in writing to the School Board as per the modalities above, with the exception of use of the form.

The School Board will acknowledge receipt of all waiver and withdrawal and will indicate it on the SEAO.

8. ENTRY INTO FORCE

This procedure comes into force on May 25, 2019.