



COMPLAINT FILING AND PROCESSING PROCEDURE

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COMPLAINT FILING AND PROCESSING PROCEDURE

1. STATUTORY FRAMEWORK

Pursuant to section 45 of the [Act respecting the Autorité des marchés publics](#)¹ (the “Act”) (AAMP), the Autorité des marchés publics (the Authority) must establish a procedure governing, in particular, the filing and processing of complaints.

1.1. Prohibition on reprisals

The Act protects you. It is forbidden to take a reprisal in any manner whatever against complainants or to threaten complainants so that they will abstain from filing a complaint with the Authority.²

Complainants who believe that they are the victims of reprisals can file a complaint with the Authority, which will determine if the complaint is founded. At the conclusion of the examination, the Authority can submit the recommendations that it deems appropriate to the executive officer of the public body concerned. It informs the complainants of its observations and recommendations, if need be.

If you believe that you are in this situation, you can contact the Authority at 1-888-772-7443.

Moreover, no civil action may be instituted against a complainant because of a complaint filed in good faith with the Authority, regardless of the latter’s conclusion in this respect, or because of the publication by the Authority of a report.

1.2. Maintain your rights to recourse

To avoid the dismissal of your complaint, be sure to abide by the conditions described in this procedure.

¹ CQLR, chapter A-33.2.1.

² Section 51 of the AAMP.

2. APPLICABLE CONDITIONS

2.1. Be sure that filing a complaint with the Authority is the appropriate recourse

This procedure is intended for any individual or general partnership that wishes to file a complaint with the Authority concerning the public contract tendering or awarding process of a public body referred to in section 20 of the AAMP.

Accordingly, in the procedure, “public body” means a body referred to in section 4 or in section 7 of the [Act respecting contracting by public bodies](#)³ (ACPB) and a municipal body.

“Municipal body” means a municipality, a metropolitan community, an intermunicipal management board, a public transit authority, a northern village, the Kativik Regional Government, a mixed enterprise company or any other person or body that the legislation subjects to any of the provisions in sections 573 to 573.3.4 of the [Cities and Towns Act](#),⁴ 934 to 938.4 of the [Municipal Code of Québec](#),⁵ 106 to 118.2 of the [Act respecting the Communauté métropolitaine de Montréal](#),⁶ 99 to 111.2 of the [Act respecting the Communauté métropolitaine de Québec](#),⁷ or 92.1 to 108.2 of the [Act respecting public transit authorities](#).⁸

As a general rule, before complainants approach the Authority, they must first have filed a complaint with the public body responsible for the tendering or awarding process. Indeed, the Authority is a neutral, independent body that acts mainly to review the decisions handed down by public bodies following the processing of complaints submitted to them. However, it is possible to directly file a complaint with the Authority when:

- in the context of a public contract awarding process, the public body has not published a notice of intention on the electronic tendering system (SEAO) although it was required to do so;⁹
- in the context of a public contract tendering process, the public body amends the tender documents during the period beginning two (2) days before the deadline for receiving complaints indicated on the electronic tendering system and the complainant is of the opinion that the amendment contains 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.¹⁰

³ CQLR, chapter C-65.1.

⁴ CQLR, chapter C-19.

⁵ CQLR, chapter C-27.1.

⁶ CQLR, chapter C-37.1.

⁷ CQLR, chapter C-37.02.

⁸ CQLR, chapter C-30.01.

⁹ Depending on the circumstances, section 13 (4) of the ACPB; section 204.3.1 of the *Act respecting Northern villages and the Kativik Regional Government* (CQLR, chapter V-6.1); section 101.2 of the *Act respecting public transit authorities* (CQLR, chapter S-30.01); section 105.5 of the *Act respecting the Communauté métropolitaine de Québec* (CQLR, chapter 37.01); section 938.0.01 of the *Municipal Code of Québec* (CQLR, chapter C-27.1); and section 573.3.0.0.1 of the *Cities and Towns Act* (CQLR, chapter, C-19).

¹⁰ Section 40 of the ACPB.

2.2. Who may file a complaint with the Authority?

Within the conditions indicated, the AAMP stipulates that any person or general partnership interested and the person that represents them may file a complaint with the Authority with respect to a tendering or awarding process.¹¹ When the complaint concerns a tendering process, a group of interested persons or interested general partnerships or their representative may also file a complaint with the Authority.¹²

An “interested” person or general partnership possesses the requisite interest described in section 4.2 of this procedure.

2.3. Which public contracts may be subject to a complaint?

The public contracts that may be subject to a complaint filed with the Authority are those that involve an expenditure equal to or above the public tender threshold beyond which a public body must resort to a public call to tender.¹³

Consult [the checklist on the Secrétariat du Conseil du trésor website](#) in this respect.

More specifically, a “public contract” means

- a) a contract described in paragraph 1 or 3 of section 3 of the ACPB that a public body, other than a municipal body, may enter into, namely:
 - o supply contracts, including contracts covering the purchasing or leasing of movable property, which can include installation, operating or maintenance expenses pertaining to the property insofar as they do not cover the acquisition of property destined for commercial sale or resale or to be used in the production or supplying of goods or services destined for commercial sale or resale;
 - o construction work contracts covered by the [Building Act](#) (chapter B-1.1) in respect of which the contractor must hold the requisite permit pursuant to Chapter IV of the Act;
 - o service contracts, other than a contract respecting the integration of the arts into architecture and the buildings’ environments and government sites;
 - o contracts in the same category as service contracts, namely, chartering contracts, transportation contracts other than those subject to the [Education Act](#) (chapter I-13.3), damage insurance contracts and the contracts of enterprises other than construction work contracts.
- b) an insurance or procurement contract or a contract respecting the execution of work or to supply services that a municipal body may conclude.

¹¹ Sections 37 to 42 of the Act.

¹² Section 43 of the Act.

¹³ Paragraph 2 of section 20 of the Act.

2.3.1. Processes that may be subject to a complaint

To be admissible, a complaint must concern one of the following processes:

- a process for the certification of goods under way;¹⁴
- a corporate qualification process under way;¹⁵
- a public contract tendering process under way;
- a public contract awarding process under way when the process is subject to the obligation to publish a notice of intention.¹⁶

2.3.2. Purpose of the complaint

The complaint must focus on the contents of the documents published in the electronic tendering system. The role of the Authority is to ascertain if the documents:

- stipulate conditions that do not ensure the honest, fair treatment of the tenderers;
- do not allow the tenderers to participate in the process although they are qualified to meet the stated procurement requirements;
- do not otherwise conform to the normative framework.

¹⁴ Section 69 of the Act. It should be noted that this does not apply to the public bodies covered by section 7 of the ACPB.

¹⁵ Section 69 of the Act.

¹⁶ For public bodies covered by the ACPB, the notice of intention is required when the body believes that it can show that recourse to a public call for tenders to conclude a contract involving an expenditure equal to or above the public tender threshold would not serve the public interest (sections 13 and 13.1 of the ACPB). It also applies to municipal bodies in the case of single suppliers. See footnote 8 for a list of the relevant sections.

3. COMPLAINT FILING PROCEDURE

3.1. With whom and how must the complaint be filed?

The complaint must be sent to the Authority by electronic means using the [appropriate form](#) accessible on the AMP website. The form indicates all of the information that the complainant must provide to support the complaint.

3.2. When must the Authority receive the complaint?

Complaint filed with the Authority following a response from the public body

- Whether the complaint concerns a tendering process or an awarding process, the complainant who disagrees with the decision handed down by the public body can file a complaint with the Authority. The Authority must receive the complaint **not later than three (3) days after receipt by the complainant of the decision of the public body**.¹⁷ If that deadline expires on a Saturday, a Sunday or a holiday, it is extended to the next working day.

Complaint filed with the Authority in the absence of a response from the public body

- When the complaint concerns a tendering process, the complainant may contact the Authority if, having filed a complaint with the public body, he has not received a decision from the body three (3) days after the deadline for receiving tenders. The Authority must receive the complaint **not later than the tender closing date** indicated by the public body on the electronic tendering system.¹⁸
- When the complaint concerns an awarding process, the complainant may file a complaint with the Authority if, having indicated his interest to the public body, he has not received a decision from the body three (3) days before the date stipulated for the conclusion of the contract indicated by the public body on the electronic tendering system. The Authority must receive the complaint **not later than one day before the date stipulated for the conclusion of the contract indicated** by the public body **on the electronic tendering system**.¹⁹

Complaint filed directly with the Authority without first having been filed with the public body

- When, in the context of a tendering process, the public body amends the tender documents during the period beginning two (2) days before the deadline for receiving complaints indicated on the electronic tendering system, the complainant may file a complaint directly with the Authority if he is of the opinion that the amendment contains 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. The Authority must receive the complaint **not later than two (2) days before the tender closing date** indicated by the public body on the electronic tendering system.²⁰

¹⁷ Sections 37 and 38 of the Act.

¹⁸ Section 39 of the Act.

¹⁹ Section 41 of the Act.

²⁰ Section 40 of the Act.

- When, in the context of a public contract awarding process, the public body has not published a notice of intention on the electronic tendering system although it was required to do so.²¹ The AAMP does not stipulate a **deadline** for filing the complaint with the Authority. However, the Authority must receive it before the conclusion of the contract concerned.

3.3. Transmission of an acknowledgement of receipt

As soon as the Authority receives a complaint, it will send the complainant a submission confirmation number.

3.4. Withdrawal of a complaint

A complainant who wishes to do so may withdraw his complaint. He must inform the Authority accordingly using the complaint withdrawal form [accessible on the AMP website](#). Once the complaint has been withdrawn, the Authority will send the complainant a withdrawal confirmation notice. Processing of the complaint is then halted and the case is closed.

²¹ Section 42 of the Act. See footnotes 8 and 12 for a list of the relevant cases and sections.

4. COMPLAINT PROCESSING PROCEDURE

4.1. Verification of the purpose of the complaint

At this stage, the Authority verifies the complaint to ensure that it concerns:

- a public contract as described in section 2.3 of this procedure;
- a public body as described in section 2.1 of this procedure.

4.2. Verification of the interest required to file a complaint

The Authority then verifies that the complainant possesses the requisite interest to file a complaint.

A complainant possesses the requisite interest to file a complaint with the Authority when he has the intention to fulfill the contract, is qualified to tender and has the capacity to satisfy the needs indicated by the public body in its tender documents.

Accordingly, should the Authority have to remedy the situation about which the complainant has complained, the complainant, in the context of a tendering process, could validly submit a tender and would be able to fulfill the contract or, in the context of an awarding process, he could validly display his interest and demonstrate his ability to fulfill the contract.

4.3. Verification of deadlines

To ensure that the complaint is admissible, the Authority verifies that the complaint has well and truly been submitted within the specified time. Consult section 3.2 concerning the applicable time limits.

4.4. Dismissal of the complaint

The Authority will dismiss a complaint in any of the following situations:²²

- it considers the complaint to be abusive, frivolous or clearly unfounded;
- the complaint has not been submitted in accordance with this procedure or has been received late. The AMP can, however, under exceptional circumstances and if it deems the examination of the complaint to be relevant, consider a complaint admissible that has not been submitted in accordance with the procedure or has been received late;
- the complainant does not possess the requisite interest;
- the complaint concerns an amendment made to the tender documents in accordance with an order or a recommendation of the Authority;
- the complainant should have first filed a complaint with or expressed his interest to the public body;
- the complainant refuses or neglects to provide, within the time specified by the Authority, the information or documents that the Authority requires; or
- the complainant is pursuing or has pursued a judicial remedy based on the same facts as those set out in the complaint.

²² Section 46 of the Act.

When the Authority dismisses a complaint because the complainant does not possess the requisite interest, has failed to file a complaint with the public body concerned when he was required to do so, or because he did not file his complaint with the Authority within the prescribed time limit and in the manner stipulated in this procedure, the information provided by the complainant is deemed to be submitted to the Authority as the communication of information.²³

In all cases, the Authority informs the complainant in writing of the dismissal of the complaint and indicates the reasons for its decision. It also transmits its decision to the public body concerned when the complaint is dismissed after it obtained the body's observations.

4.5. Entry on the electronic tendering system

If the Authority deems the complaint admissible, it informs the complainant and the public body concerned accordingly and also notifies the electronic tendering system. Depending on the circumstances, the tendering deadline or the date stipulated for the conclusion of the contract will be suspended until the Authority hands down its decision.²⁴

4.6. Examination of the complaint

As soon as the public body is informed that a complaint filed with the Authority is admissible, the public body must promptly submit to the Authority its observations. The Authority has 10 days from the time it receives the public body's observations to make its decision. However, it can extend this deadline if the complexity of the complaint warrants doing so. In certain cases, the Authority and the public body can agree on the maximum duration of the additional time period.²⁵

However, if the Authority fails to make a decision before the expiry of the additional time period, it is deemed to have decided that the tendering or awarding process for the contract complies with the normative framework, thus enabling the public body to pursue its contracting process without amending it.

²³ Section 56 of the Act.

²⁴ Section 48 of the Act.

²⁵ Section 49 of the Act.

5. CONCLUSION AND TRANSMISSION OF THE AUTHORITY'S DECISION

5.1. Possible conclusions

Following the examination of a complaint focusing on a tendering process, the Authority can:

- confirm the decision of a public body, that is, allow the awarding process to proceed without requiring amendments to the tender documents;
- order the public body to amend its tender documents to the satisfaction of the Authority. It should be noted that in the case of a municipal body, the Authority can only recommend that it do so;
- order the public body to cancel the public call for tenders under way. It should be noted that in the case of a municipal body, the Authority can only recommend that it do so.

Following the examination of a complaint focusing on an awarding process, the Authority can:

- confirm the decision of the public body, that is, allow the awarding process to proceed;
- order the public body not to pursue its intention to conclude by mutual agreement the public contract contemplated and launch a public call for tenders if it intends to conclude the contract. It should be noted that in the case of a municipal body, the Authority can only recommend that it do so;
- notify the public body and the co-contractor that the contract concluded by mutual agreement without having published beforehand a notice of intention on the electronic tendering system although it was required to do so by the AAMP is cancelled as a matter of right. It should be noted that the Authority may not reach such a conclusion with respect to a municipal body.²⁶

5.2. Transmission to the complainant of the decision

Upon completion of the examination of the complaint, the Authority transmits in writing its reasoned decision to the complainant and to the public body concerned. It then publishes the decision on its website and provides the electronic tendering system with a summary of the decision.

6. RECOURSE

The Authority's decisions are final.

Moreover, except on a question of jurisdiction, no judicial review judgment stipulated in the [Code of Civil Procedure](#) (chapter C-25.01) may be exercised nor any injunction granted against the Authority, its president and chief executive officer, its vice-presidents, a member of its staff or one of its mandataries referred to in section 27 as part of his duties.

²⁶ Paragraph 3 of section 67 of the Act.