

Procedure for receipt and examination of complaints filed as part of the call for tenders or the contract awarding process

WHEREAS the Bill no. 108, *An Act to promote the supervision of the contracts of public bodies and to establish the Public Procurement Authority* (L.Q. 2017, C. 27) [hereafter: The Act], was sanctioned to on December 1, 2017;

WHEREAS in order to comply with this sanction and in accordance with Article 938.1.2.1 of the *Municipal Code of Quebec* (hereinafter: MC), a municipality must have a procedure for the receipt and examination of complaints filed within the process of awarding of a contract following a public call for tenders or the awarding of a mutual agreement contract with a sole source involving an expenditure equal to or greater than the minimum threshold for public tenders;

WHEREAS the Municipality wishes to adopt a procedure for the receipt and examination of complaints made in connection with the tenders or the awarding of a contract;

Consequently, it is moved by Councillor
Seconded by Councillor

And resolved
That the present procedure be adopted

ARTICLE 1 PREAMBULE

The preamble is an integral part of the present procedure.

ARTICLE 2 PURPOSE OF THE PROCEDURE

The purpose of this procedure is to ensure fair treatment of complaints made to the Municipality through a tendering or contract awarding process.

ARTICLE 3 INTERPRETATION

Unless expressly stated to the contrary or as a result of the context or provision, the following expressions, terms and words have, in this procedure, the meaning and application assigned to it by this section:

Selected contract:

Contract for the performance of work or for the supply of insurance, material, materials or services, including professional services, that the Municipality may enter into involving an expenditure equal to or greater than the applicable minimum threshold for public tenders;

Adjudication process:

Any ongoing public call for tenders process must lead to the adjudication of a selected contract.

Awarding process:

Any process of awarding a contract by mutual agreement with a supplier who is the only one able to provide the materials, equipment or services requested, in accordance with Article 938.0.0.1 of the MC.

Designated authority :

Person responsible for the application of this procedure.

SEAO :

Electronic tendering system referred to in Article 11 of the *Act respecting contract awarding by public bodies*.

ARTICLE 4 APPLICATION

The application of this procedure is entrusted to the Director General.

This person is responsible for receiving complaints and expressions of interest, for performing the necessary verifications and analysis and for responding to them within the time required by the Act.

ARTICLE 5 COMPLAINTS ABOUT A TENDERING PROCESS

5.1 Interest required to file a complaint

Only an interested person or group of people interested in participating in an ongoing adjudication process or their representative may file a complaint regarding this process.

5.2 Reasons in support of a complaint

An interested person or group of persons interested in participating in the bidding process or their representative may file a complaint with respect to this process when they consider that the public call for tenders documents:

- provide conditions that do not ensure fair or equitable treatment of competitors; or
- provide conditions that do not allow competitors to participate even though they are qualified to meet the expressed needs; or
- provide conditions that do not conform to the normative framework of the municipality.

5.3 Terms and deadline for transmission of a complaint

All complaints must be sent electronically to the designated contact at the following email address: dg@ayerscliff.ca

It must be presented on the form determined by the Public Procurement Authority (SEAO - *Autorité des marchés publics*) available on its website.

It must be received by the designated authority no later than the deadline for receipt of complaints indicated in the SEAO.

5.4 Contents of a complaint

A complaint must contain the following information :

- Date;
- Identification and information of the complainant :
 - name
 - address
 - telephone number
 - email address
- Identification of the call for tenders pertaining to the complaint :
 - call for tenders number
 - reference number of SEAO
 - title
 - detailed statement of grounds supporting the complaint;
 - where applicable, any relevant document supporting the grounds of the complaint;
 - any other information required in the form determined by the Public Procurement Authority.

5.5 Criteria for admissibility of a complaint

For a complaint to be reviewed by the designated authority, it must meet the following conditions:

- a) be transmitted by an interested person as described in Article 5.1;
- b) be submitted electronically to the designated authority;
- c) be presented on the form determined by the Public Procurement Authority under Article 45 of the Act;
- d) be received by the designated authority no later than the deadline for receipt of

- complaints indicated in the SEAO;
- e) relate to a selected contract;
- f) relate to the content of the bid solicitation documents available in the SEAO no later than two (2) days before the deadline for receipt of complaints;
- g) be based on one of the grounds listed in Article 5.2 of this procedure, for any other reason not considered in the analysis.

5.6 Receipt and treatment of a complaint

Upon receipt of a complaint, the designated authority will review the complaint in accordance with this provision. She/he ascertains the interest of the complainant within the meaning of Article 5.1.

If she/he finds that the complainant does not have the required interest, she/he shall notify the complainant without delay by sending a notice to that effect (a model notice of interest is attached as Annex I of this procedure).

After having ascertained the complainant's interest, she/he immediately mentions in the SEAO the receipt of a first complaint. She/he ensures that the other criteria of admissibility envisaged in Article 5.5 are met.

If she/he considers the complaint to be inadmissible under Article 5.5 (c) of this procedure, she/ he shall notify the complainant without delay by sending a notice to that effect (a model notice of inadmissibility is attached as Annex II of this procedure).

It is recommended to inform the complainant that failure to have filed the complaint on the form determined by the Public Procurement Authority will render the complaint inadmissible as soon as this error is found. In this way, the complainant can retransmit the complaint to the municipality and the latter will have the opportunity to treat it rather than the complainant directly to the Public Procurement Authority.

If the complaint is not admissible for one of the reasons set out in Article 5.5 (b) to (g) of this procedure, the decision of inadmissibility is considered a decision within the meaning of the Act. (a model decision of inadmissibility is attached as Annex III of this procedure).

With the person in charge of the call for tenders or with the requesting service, the designated authority must carry out verifications in order to analyze the merits of the grounds alleged in the complaint.

As part of the handling of the complaint, the designated authority may engage the services of external resources.

She/he must, when the verifications and analyzes demonstrate that the complaint is founded, accept the complaint and take the appropriate measures to follow it up. If not, she/he must reject the complaint.

5.7 Decision

The designated authority must forward the decision to the complainant electronically after the complaint filing deadline specified in the SEAO program, but no later than three (3) days before the scheduled bid closing date. If necessary, the deadline for the receipt of tenders is postponed. This new deadline is published in the SEAO.

In cases where more than one complaint for the same call for tenders is received, the person responsible forwards the decisions at the same time.

If necessary, the designated authority shall postpone the deadline for the receipt of tenders so that a minimum period of seven (7) days remains from the date of transmission of the decision. This new deadline is published in the SEAO.

The decision must indicate to the complainant that he has a period of three (3) days following receipt of the decision to make a complaint to the Public Procurement Authority in accordance with Article 37 of the Act.

The designated authority shall immediately report the decision to the SEAO.

After ascertaining the interest of the complainant and the admissibility of the complaint, within the meaning of Article 5.5 of this procedure, the designated authority must render a decision on the merits of the complaint. In the event of rejection, this decision must be justified and documented, if necessary. A model decision for accepting a complaint is attached as Annex IV to this procedure. A model decision rejecting a complaint is attached as Annex V.

ARTICLE 6 EXPRESSIONS OF INTEREST AND COMPLAINTS FILED AGAINST AN AWARD PROCESS

6.1 Reason in support of an expression of interest

A person may express his or her interest in a contract that is the subject of a notice of intention when she/he considers that it is able to perform the contract in accordance with the needs and obligations set out in this notice published in the SEAO.

6.2 Method and deadline for transmitting an expression of interest

All expressions of interest must be submitted electronically to the designated authority at the following email address: dg@ayerscliff.ca.

It must be received by the designated authority no later than the deadline specified in the notice of intent published in the SEAO.

6.3 Content of an expression of interest

The expression of interest must contain the following information:

- Date
- Identification of the person interested in concluding the contract with the municipality:
 - name
 - address
 - telephone number
 - email address
- Identification of the notice of intent published in the SEAO :
 - contract number
 - SEAO reference number
 - title
- Detailed statement and documentation demonstrating that the person is able to complete the contract based on the needs and obligations set out in the notice of intent.

6.4 Eligibility criteria for an expression of interest

For an expression of interest to be reviewed by the designated authority, it must meet the following conditions:

- a) be submitted electronically to the designated authority;
- b) be received by the designated authority by the deadline specified in the notice of intent published in the SEAO;
- c) relate to a selected contract;
- d) be based solely on the grounds listed in Article 6.1 of this procedure.

6.5 Receipt and processing of the expression of interest

On receipt of an expression of interest, the designated authority shall examine and analyze it in accordance with this provision.

She/he ensures that the eligibility criteria set out in Article 6.4 are met.

If the expression of interest is inadmissible for one of the reasons set out in section 6.4 of this procedure, the decision of inadmissibility is considered a decision within the meaning of the Act. A model decision of inadmissibility is attached as Annex VI to this procedure.

She/he agrees, with the designated authority responsible for the contract or the requested service concerned by the notice of intent, to carry out verifications to ensure the person's capacity to execute the contract in accordance with the needs and obligations set out in this notice.

In the context of the processing of the expression of interest, the designated authority may engage the services of external resources.

The designated authority must, when the verifications and analyzes are carried out demonstrates that the person is able to carry out the contract, accept the expression of interest and recommend not to conclude the contract by mutual agreement. If not, the designated authority recommends continuing with the sole source award process.

If an expression of interest is accepted, the municipality must publish a public call for tenders in the SEAO if it wishes to continue the process and award the contract.

6.6 Decision

The designated authority shall forward the decision electronically to the person who has expressed an interest at least seven (7) days prior to the date specified in the notice of intent for the conclusion of the contract.

If this deadline cannot be respected, the date of conclusion of the contract must be postponed by as many days as necessary to respect it.

The decision must indicate to the person who has expressed interest that there is a period of three (3) days following receipt of the decision to file a complaint to the Public Procurement Authority, in accordance with Article 38 of the Act.

After ascertaining the eligibility of the expression of interest within the meaning of Article 6.4 of this procedure, the designated authority must render a decision as to the conclusion or not of the envisaged contract. A model decision of acceptance is attached as Annex VII and a model rejection decision is attached as Annex VIII to this procedure.

ARTICLE 7 COMING INTO FORCE AND ACCESSIBILITY

The present procedure comes into force on May 25, 2019.

Upon its coming into force, the Municipality makes it, in accordance with Article 938.1.2.1 MC, accessible at all times by publishing it on its website.

Procedure adopted by Resolution no. 2019-_____ in Ayer’s Cliff, this _____ 2019

Kimball Smith
Director General / Secretary-treasurer

Vincent Gérin
Mayor

Awarding Process

Notice of interest

(Articles 5.1 and 5.5 a) of the Procedure)

Date : **[specify the date]**

TO : **[identify the complainant]**

FROM : **[designated authority]**

SUBJECT: NOTICE -ABSENCE OF INTEREST TO FILE COMPLAINT

Please be advised that, after receiving your complaint dated **[specify the date of receipt]** about the call for tenders **[specify the title of the tender]**, we have determined that you do not have the interest required to file a complaint, since you are not, within the meaning of the Act to promote the supervision of contracts of public bodies and to establish the Public Procurement Authority (LQ 2017, c 27), an interested person or a group of interested people in participating in an ongoing tendering process or its representative.

We will not analyze your complaint.

[signature of the designated authority]

Tender Processus d'adjudication

Notice of inadmissibility

(Article 5.5 c) of the procedure)

Date : **[specify the date]**

TO : **[identify the complainant]**

FROM : **[designated authority]**

SUBJECT: NOTICE - INADMISSIBILITY OF YOUR COMPLAINT

Please be advised that, after receiving your complaint on **[specify the date of receipt]** about the call for tenders **[specify the title of the call for tenders]**, we are informing you that this complaint is inadmissible as it was not sent on the form prescribed by the Public Procurement Authority, under Article 45 of the *Act to promote the supervision of public agency contracts and to establish the Public Procurement Authority* (L.Q. 2017, c. 27).

We did not analyze your complaint.

If you would like us to analyze your complaint, please send it to us on the form prescribed for this purpose before the deadline for the receipt of complaints indicated in the SEAO.

[[signature of the designated authority]

Process for the call for tenders

Decision – Inadmissible

(Article 5.5 of the Procedure)

Date : **[specify the date]**

TO : **[identify the complainant]**

FROM : **[designated authority]**

SUBJECT: DECISION - INADMISSIBILITY OF YOUR COMPLAINT

Please be advised that after receiving your complaint on **[specify the date of receipt]** regarding the call for tenders **[specify the title of the call for tenders]**, it was subjected to an admissibility analysis. Your complaint is inadmissible for the following reason (s):

- It was not transmitted electronically to the designated authority **(article 5.5 b)**
- It was not presented on the form determined by the Public Procurement Authority under Article 45 of the Act **(article 5.5 c)**
- It was not received by the designated authority no later than the deadline for receipt of complaints indicated in the SEAO **(article 5.5 d)**
- It is not related to a selected contract **(article 5.5 e)**
- It does not pertain to the call for tender documents available in the SEAO no later than two (2) days before the deadline for receipt of complaints; **(article 5.5 f)**
- It is not based on one of the grounds listed in Article 5.2 of the Procedure pertaining to the receipt and processing of complaints filed within the call for tenders or the granting of a contract, for any other reason not considered in the analysis. **(article 5.5 g)**

We did not analyze your complaint on the merits.

In case of disagreement with the decision rendered, you have a period of three (3) days from receipt of this decision to formulate, in accordance with Article 37 of the *Act to promote the supervision of contracts of public bodies and instituting Public Procurement Authority* (L.Q. 2017, c. 27), a complaint to the Public Procurement Authority.

[signature of the designated authority]

Awarding Process

Decision – Acceptance of the complaint

Date : **[specify the date]**

TO : **[identify the complainant]**

FROM : **[designated authority]**

SUBJECT : DECISION REGARDING YOUR COMPLAINT

Please be advised that after receiving your complaint on **[specify the date of receipt]** for the call for tenders **[specify the title of the call for tenders]**, it was analyzed and following which, your complaint is considered justified.

As a result, the measures deemed appropriate will be taken.

In case of disagreement with the decision rendered, you have a period of three (3) days from receipt of this decision to formulate, in accordance with Article 37 of the *Act to promote the supervision of contracts of public bodies and instituting Public Procurement Authority* (L.Q. 2017, c. 27), a complaint to the Public Procurement Authority.

[signature of the designated authority]

Awarding process

Decision – Rejection of the complaint

Date : **[specify the date]**

TO : **[identify the complainant]**

FROM : **[designated authority]**

SUBJECT : DECISION REGARDING YOUR COMPLAINT

Please be advised that after receiving your complaint on **[specify the date of receipt]** for the call for tenders **[specify the title of the call for tenders]**, it was analyzed and following which, it is considered unfounded, therefore it was rejected.

The reasons for rejecting your complaint are as follows: **[list the reasons for rejection and include, as appropriate, any relevant documentation]**

In case of disagreement with the decision rendered, you have a period of three (3) days from receipt of this decision to formulate, in accordance with Article 37 of the *Act to promote the supervision of contracts of public bodies and instituting Public Procurement Authority* (L.Q. 2017, c. 27), a complaint to the Public Procurement Authority.

[signature of the designated authority]

Award Process - Expression of Interest

Decision - Inadmissible Expression of Interest

Date : [specify the date]

TO : [identify the complainant]

FROM : [designated authority]

SUBJECT: DECISION - INADMISSIBILITY OF YOUR EXPRESSION OF INTEREST

Please be advised that after receiving your expression of interest on [specify the date of receipt] for contract [specify contract title], which has been the subject of a Notice of Intent published in the SEAO, we advise you that your expression of interest is inadmissible for the following reason (s) :

- It was not transmitted electronically to the designated officer (**Article 6.4 a**)
- It was not received by the Designated authority by the deadline specified in the Notice of Intent published in the SEAO (**Article 6.4 b**)
- It does not relate to a covered contract (**Article 6.4 c**)
- It is not based solely on the grounds of admissibility provided for in Article 6.1 of the Procedure for the receipt and examination of complaints arising from the awarding or attribution of contracts, that you consider that you are able to fulfill the contract in accordance with the needs and obligations set out in the notice published in the SEAO (**Article 6.4 d**)

We did not analyze your expression of interest. In case of disagreement with the decision rendered, you have a period of three (3) days from receipt of this decision to formulate, in accordance with Article 37 of the *Act to promote the supervision of contracts of public bodies and instituting Public Procurement Authority* (L.Q. 2017, c. 27), a complaint to the Public Procurement Authority.

[signature of the designated authority]

Award Process - Expression of Interest

Decision - Expression of Interest Accepted

Date : **[specify the date]**

TO : **[identify the complainant]**

FROM : **[designated authority]**

SUBJECT: DECISION REGARDING YOUR EXPRESSION OF INTEREST

Please be advised that after receiving your expression of interest on **[specify the date of receipt]** regarding contract **[specify the title of the contract]**, which has been the subject of a notice of intent published in the SEAO, we advise you that your expression of interest was analyzed and following which, it is accepted.

Consequently, the contract will not be concluded as a mutual agreement.

In case of disagreement with the decision rendered, you have a period of three (3) days from receipt of this decision to formulate, in accordance with Article 37 of the *Act to promote the supervision of contracts of public bodies and instituting Public Procurement Authority* (L.Q. 2017, c. 27), a complaint to the Public Procurement Authority.

[signature of the designated authority]

ANNEX VIII

Award Process - Expression of Interest

Decision - Expression of Interest Rejected

Date : [specify the date]

TO : [identify the complainant]

FROM : [designated authority]

SUBJECT: DECISION REGARDING YOUR EXPRESSION OF INTEREST

Please be advised that after receiving your expression of interest on [specify the date of receipt] regarding contract [specify the title of the contract], which has been the subject of a notice of intent published in the SEAO, we advise you that your expression of interest was analyzed and following which, it has been rejected for the following reasons :

(list the reasons for rejection and include, if appropriate, any relevant documentation)

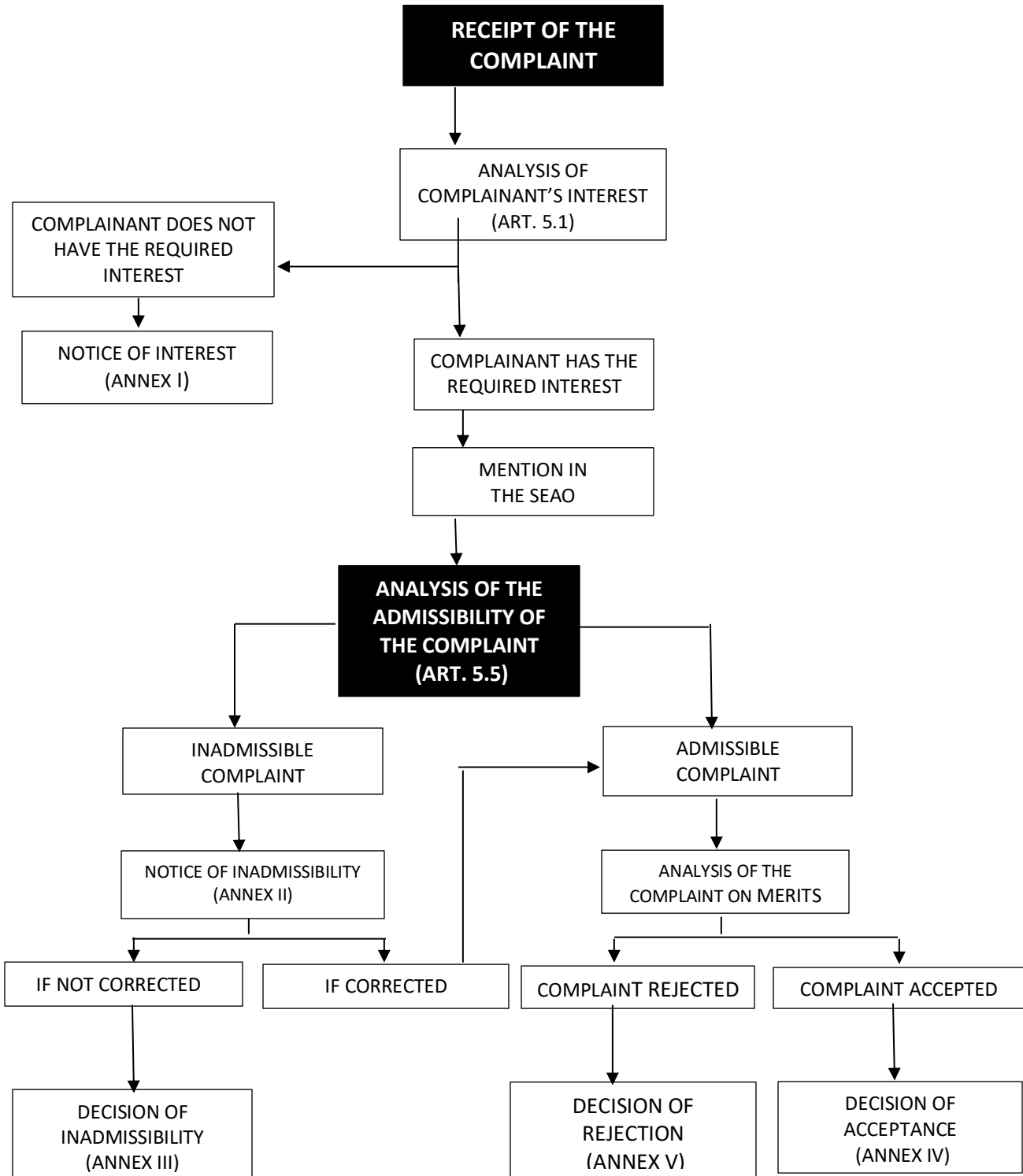
Consequently, the awarding process with the supplier will continue.

In case of disagreement with the decision rendered, you have a period of three (3) days from receipt of this decision to formulate, in accordance with Article 37 of the *Act to promote the supervision of contracts of public bodies and instituting Public Procurement Authority* (L.Q. 2017, c. 27), a complaint to the Public Procurement Authority.

[signature of the designated authority]

PROCEDURE DIAGRAM

Complaints regarding a tendering process



Expressions of interest and complaints filed with respect to an award process

