

BY-LAW NUMBER 42

**A BY LAW ESTABLISHING THE PROCEDURE FOR RECEIVING AND EXAMINING COMPLAINTS FILED IN THE COURSE OF THE TENDERING OR AWARDING PROCESS FOR A PUBLIC CONTRACT**

Adopted by the Council of Commissioners on May 28, 2019, by resolution no. C-18/19-212

## 1. REFERENCE

Pursuant to section 21.0.3 of the *Act respecting contracting by public bodies*, [CQLR c 65.1](#) (hereinafter referred to as “**LCOP**”), public bodies covered by the *Act respecting the Public Procurement Authority*, [CQLR, c a-33.2.1](#) (hereinafter referred to as “**LAMP**”) are required to have a procedure for receiving and examining complaints<sup>1</sup>.

Therefore, this present procedure is established in accordance with the **LCOP** and regulations adopted thereunder and the **LAMP**.

## 2. OBJECTIVES

The purpose of this procedure is to establish guidelines for admissible complaints about public tenders and notices of intention covered by the law:

- Provide equitable resolution of complaints filed with the Western Québec School Board (hereinafter referred as the “**School Board**” or **WQSB**) in the course of the tendering or awarding process;
- Inform the public of the procedure for filing and examining complaints.

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<sup>1</sup> The expression of interest constitutes a complaint with respect to a process for the award of a public contract within the meaning of section 21.0.3 of the LCOP.

### 3. APPLICATION

In this present procedure, the complaint examination process is divided into three (3) categories:

- 3.1.** Complaints filed in the course of the tendering process for a public contract involving an expenditure equal or above the applicable public tender threshold;
- 3.2.** Complaints against a contract involving an expenditure equal 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 since ~~if~~ the School Board considers it will be able to prove, in light of the object of the contract and of the principles set out in section 2 of the LCOP, that a public call for tenders would not serve the public interest;
- 3.3.** Complaints regarding the tendering or awarding process for a public contract other than those referred to in sections 3.1 and 3.2 of the present procedure.
- 3.4.** The minimum thresholds for public tendering applicable and according to intergovernmental agreements are as follows:
- For a **supply contract**:
    - ALEC/AQNB<sup>1</sup> — 101,1 k\$
    - ACCQO<sup>1</sup>—101,1 k\$
    - AECG<sup>2</sup>—365,7 k\$
  - For **technical or professional services contracts**:
    - ALEC/AQNB<sup>1</sup> — 101,1 k\$
    - ACCQO<sup>1</sup>—101,1 k\$
    - AECG<sup>2</sup>—365,7 k\$
  - For a **construction contract**:
    - ALEC/AQNB<sup>1</sup> — 252,7 k\$\*\*
    - ACCQO<sup>1</sup>—101,1 k\$
    - AECG<sup>2</sup>—9,1 M\$

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\*\* Open to New Brunswick entrepreneurs starting at 100,000 \$.

1. The ALEC and the ACCQO thresholds are indexed every two years to inflation.

2. It should be noted that the thresholds of the AMP-OMC and the AECG are set in Special Drawing Rights (DTS). The Canadian dollar threshold is presented here for information only. These thresholds are adjusted every two years to reflect changes in the DTS Canadian dollar exchange rate. The last adjustment took place on January 1, 2018.

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**For more information, see the following link:** <https://bit.ly/2LY5o84>

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#### 4. DEFINITIONS

4.1. **COMPLAINT:** The act denouncing a decision or condition which is not compliant with the normative framework in the context of the tendering or awarding process of a public contract.

4.2. **NORMATIVE FRAMEWORK:** Legislative and regulatory framework with a view of setting standards regarding the important aspects of the management framework process as well as 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 who has manifested its interest in carrying out the contract following the publication of a notice of intention.

4.4. **INTERESTED PARTY:** Enterprise or group of enterprises capable of participating in the tendering process or carrying out the contract following the publication of a notice of intention.

4.5. **ENTERPRISE:** Legal person established in the private interest, a general, limited or undeclared partnership or a natural person who operates a sole proprietorship (section 13.1 art. 2 LCOP).

**4.5. TYPES OF PUBLIC CONTRACTS THAT MAY BE THE SUBJECT OF A COMPLAINT:** The following contracts that are covered by an intergovernmental agreement AND that involve an expenditure of public funds AND that involve an expenditure equal to or greater than the minimum applicable PUBLIC CALL FOR TENDER'S threshold:

**1° supply contracts, including contracts for the purchase or lease of movable property**, which may include installation, operating or maintenance costs, insofar as they do not relate to the acquisition of property intended for sale or resale in trade, or for the production or supply of goods or services intended for sale or resale in trade;

**2° construction work contracts** covered by the *Building Act*, [CQLR c.B-1.1](#) for which the contractor must hold the licence required under Chapter IV of that Act ;

**3° service contracts**, other than a contract to integrate the arts into the architecture and environment of government buildings and sites.

Contracts treated as service contracts, namely charter contracts, contracts of carriage other than those subject to the *Education Act*,

[CQLR c.I-13.3](#), general insurance contracts and contracts of enterprise other than construction contracts.

## 5. PERSON RESPONSIBLE FOR HANDLING OF COMPLAINTS

**5.1.** The complaint must be submitted electronically to the person responsible for handling complaints at [plaintes\\_aop@wqsb.qc.ca](mailto:plaintes_aop@wqsb.qc.ca) and who is the Compliance Officer.

**5.2.** In the absence of, or the inability to act of the person responsible for handling complaints, the substitute is the RARC or any other person designed by the Director General.

## 6. GENERAL PROVISIONS

### 6.1 APPLICATION

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

#### 6.1.1. BEFORE PROCEEDING WITH A COMPLAINT—ENSURE THAT FILING A COMPLAINT IS AN APPROPRIATE REMEDY

**A.** If the request is for **information or clarification** regarding the content of the documents in a call for tenders, a process for qualifying companies, a process for certifying goods or a process for awarding a contract by mutual agreement under paragraph 4 of the first paragraph of section 13 of the LCOP in progress,

The appropriate remedy is to address this request to the contact person identified in the notice published in the electronic tendering system

[seao@wqsb.qc.ca](mailto:seao@wqsb.qc.ca)

**B.** In the case of a **complaint** to be made in regarding the documents of a call for tenders, a process for the qualification of companies, a process for the certification of goods or a process for the award of a private contract under paragraph 4 of the first paragraph of section 13 of the LCOP in progress, the terms and conditions do not ensure fair and impartial treatment of competitors, do not allow competitors to participate in the process even if they are qualified to meet the needs expressed or are not otherwise in compliance with the normative framework.

The appropriate remedy is, first, to address your complaints to the Western Québec School Board by contacting the contact person identified in the notice published in the electronic tendering system

[mailto:plaintes\\_aop@wqsb.qc.ca](mailto:plaintes_aop@wqsb.qc.ca)

## 6.2 PROTECTION AGAINST REPRISALS

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

**6.2.2.** Section 51 of the LAMP stipulates specifically that it is forbidden to threaten a person or a group of persons of retaliation so that they refrain from filing a complaint to the **Autorité des marchés publics** (hereinafter referred as the “AMP”). Any person or group of persons who believe to have been a victim of retaliation may file a complaint with the AMP in order that it may determine if the complaint is substantiated and make any recommendations it considers appropriate to the chief executive officer of the WQSB. When the examination is concluded, the AMP informs the complainant of its findings and, if applicable, its recommendations.

## 6.3 PRESERVATION OF YOUR RECOURSE RIGHTS

To preserve your rights to a remedy with the AMP in accordance with the provisions provided by sections 37, 38, 39 and 41 of the LAMP, all complaints must be filed with the School Board in compliance with the present procedure.

## 6.4 WITHDRAWAL OF A COMPLAINT

**6.4.1.** In the case of a complaint against a call for public tender or enterprise qualification process or the certification of goods process, the withdrawal of a complaint **must be done** before the deadline for filing a complaint.

**6.4.2.** To this end, the Complainant must send an email to the School Board at [plaintes\\_aop@wqsb.qc.ca](mailto:plaintes_aop@wqsb.qc.ca) and indicate the reasons for the withdrawal of the complaint.

**6.4.3.** Upon receiving the email, the School Board will enter the date of the withdrawal of the complaint in the electronic call for the tender system (hereafter referred as “SEAO”).

**6.4.4.** In the case of a complaint regarding a contract entered into by mutual agreement pursuant to subparagraph 4 of 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 its demonstration document without compromising its right to present a new document within the deadline.

### **6.5 DISMISSAL OF A COMPLAINT**

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

- The complaint does not qualify for the entirety of the criteria required to be admissible;
- The Complainant is filing or has filed for the same facts, a judicial remedy.

### **6.6 DECISION OR ACTION**

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

**7. COMPLAINTS REGARDING THE AWARDING PROCESS OF A CONTRACT ENTAILING AN EXPENDITURE EQUAL OR ABOVE THE APPLICABLE THRESHOLD FOR A PUBLIC CALL FOR TENDER, A CALL FOR TENDER IN PROGRESS, THE CERTIFICATION PROCESS OF GOODS OR OF AN ENTREPRISE QUALIFICATION PROCESS.**

**7.1. COMPLAINT FILING AND VERIFICATION OF REQUIRED INTEREST**

- 7.1.1.** A complaint must be filed electronically with the AMP in the form it determined (hereafter referred as the “[AMP Form](#)”).
- 7.1.2.** A complaint must be filed electronically with the person responsible for the handling of complaints, at the following address: [plaintes\\_aop@wqsb.qc.ca](mailto:plaintes_aop@wqsb.qc.ca). The Complaint must be transmitted simultaneously to the AMP for information purposes.
- 7.1.3.** A complaint must be filed no later than the deadline for filing complaints provided for and in accordance with the LCOP and the regulations thereunder and stipulated on SEAO, a period corresponding to half the time for receiving tenders but which may not be less than ten (10) days;
- 7.1.4.** The School Board will make an entry to that effect on SEAO without delay, the time at which the complaint was filed, after having ascertained the Complainant’s interest. An acknowledgment of receipt will be sent to the Complainant.

## 7.2 ADMISSIBILITY ANALYSIS

### 7.2.1. Conditions of admissibility of a complaint:

7.2.1.1. A complaint should be filed in accordance with the provisions of section 7.1 of the present procedure;

7.2.1.2. A complaint should refer to one of the following:

- **Public Call for tender** in progress
- **Certification of goods** process
- **Enterprise qualification** process

7.2.1.3. The complaint must establish that the tender documents include:

- Conditions that do not ensure the honest and fair treatment of competitors or;
- Conditions that do not allow competitors to compete although they are qualified to meet the stated requirements or;
- Conditions not compliant with the normative framework.

## 7.3. EXAMINATION OF COMPLAINT AND DECISION

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### EXAMINATION OF COMPLAINTS

7.3.1 The person responsible for the handling the complaints will analyze the issues raised by the Complainant and indicated on the AMP form in connection with the documents concerned with the call for a tender process. To proceed with this analysis, the person responsible for the handling of complaints must comply with the following conditions provided for by the LCOP regulations<sup>2</sup>:

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<sup>2</sup> Regulation respecting certain supply contracts of public bodies, [CQLR c.C-65.1, r.2](#) (sections 9.3 to 9.9), Regulation respecting service contracts of public bodies, [CQLR c.C-65.1, r.4](#) (sections 9.3 to 9.9); Regulation respecting construction contracts of public bodies, [CQLR c.C-65.1, r.5](#) (sections 12.1 to 12.7), Regulation respecting contracting by public bodies in the field of information technologies, [CQLR c.C-65.1, r.5.1](#) (sections 13.1 to 13.7).

**7.3.1.1.** The complaint regarding a call for tenders must be filed with the school board no later than the complaint filing deadline indicated on SEAO;

**7.3.1.1.1.** Following the analysis of the admissibility of a complaint. The complaint handler works with the owner of the public tender (manager of the project from the WQSB) and, if necessary, with the professionals to further analyze the case.

**7.3.1.1.2.** The owner of the public tender and/or the professionals prepare a document justifying the complaint received.

**7.3.1.2.** The complaint may pertain only to the content of the tender documents available no later than two (2) days before that deadline.

**7.3.1.3.** When the person responsible for handling complaints receives its very first complaint, the School Board must make an entry to that effect on SEAO in the shortest of delays, after having ascertained the Complainant's interest.

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#### **DECISION OF THE COMPLAINT**

**7.3.1.4.** The person responsible for the handling the complaints must send the Complainant its decision electronically after the complaint filing deadline but no later than three (3) days before the tender closing date it has determined. If necessary, that person must defer the tender closing date.

**7.3.1.5.** The person responsible for the handling of complaints 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 after receiving the decision.

- 7.3.1.6.** If the person responsible for the handling of complaints has received two or more complaints regarding the same call for tenders, it must send all of its decisions at the same time;
- 7.3.1.7.** When the person responsible for the handling of complaints sends his decision regarding a complaint filed with him, the school board must make an entry to that effect on 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 of transmission of its decision;
- 7.3.1.9.** If two (2) days before the tender closing date, the School Board has not indicated on the SEAO that has sent its decision regarding a complaint, the system operator must, without delay, defer that date by four (4) days.
- 7.3.1.10** If the deferred date falls on a public holiday, it must again be deferred to the next second business day.
- 7.3.1.11.** If the day preceding the deferred date is not a business day, that date must be deferred to the next business day.

#### **7.4 COMPLAINT FILED WITH THE AMP**

- 7.4.1** If the Complainant does not agree with the decision, he can file a complaint with the AMP. In that case, the complaint must be received by the AMP, at the latest, three (3) days after the Complainant has received the decision in accordance with Section 37 of the LAMP. If the Complainant has not received the decision three (3) days before the tender closing date, he may complain to the AMP. In that case, the complaint must be received by the AMP no later than the tender closing date in accordance with Section 39 of the LAMP.

**8. COMPLAINTS REGARDING A CONTRACT INVOLVING AN EXPENDITURE EQUAL 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 SINCE THE SCHOOL BOARD CONSIDERS IT WILL BE ABLE TO PROVE, IN ACCORDANCE WITH THE PRINCIPLES SET OUT IN SECTION 2 OF THE LCOP, THAT A PUBLIC CALL FOR TENDERS WOULD NOT SERVE THE PUBLIC INTEREST**

**8.1. IF THE SCHOOL BOARD PUBLISHED A NOTICE OF INTENTION**

The enterprise must express its interest electronically to the person responsible for the handling of complaints at [plaintes\\_aop@wqsb.qc.ca](mailto:plaintes_aop@wqsb.qc.ca) no later than the deadline for the receiving of the enterprise demonstration.

The School Board will transmit electronically its decision to maintain or not its intention to enter into a contract by mutual agreement to the enterprise that has manifested its interest under subparagraph 5 of the first paragraph of section 13.1 of the LCOP.

This school board shall send its decision at least seven (7) days prior to the projected contract date of conclusion of the mutual agreement. If needed, the projected contract date of conclusion of the mutual agreement will be deferred by the number of days needed to ensure that this minimum period is complied with.

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 is able to carry out the contract in accordance with the needs and obligations expressed in the notice of intention.

If the School Board decides to proceed nonetheless 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 WQSB has not published, at least 15 days before the date provided for the conclusion of a mutual agreement on SEAO, a notice of intention under 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. COMPLAINT FILED WITH THE AMP**

If the Complainant is not satisfied with the decision, he may file a complaint with the AMP. In that case, the complaint must be filed no later than three (3) days after 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 date for the conclusion of the mutual agreement, he may file a complaint with the AMP. In that case, the complaint must be filed with the AMP at the latest one day before the projected date for the conclusion of the mutual agreement indicated on SEAO under Section 41 of the LAMP.

## **10. OTHER PROVISIONS**

**10.1.** The delays indicated in the present procedure and resulting from legislative or regulatory provisions will be modified automatically further to a legislative or regulatory amendment upon its coming into force.

**10.2.** This present procedure comes into force on **May 25, 2019**.

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**Chairman**

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**Secretary General**