COMMISSION SCOLAIRE
Eastern Townships
SCHOOL BOARD

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PROCEDURE FOR THE RECEPTION AND REVIEW OF COMPLAINTS AS PROVIDED FOR IN SECTION 21.0.3 OF THE LAW ON CONTRACTS OF PUBLIC BODIES

Approval

During the Council of Commissioners meeting held on **October 15 2019**

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1. LEGAL FRAMEWORK

Under section 21.0.3 of the *Act Respecting Contracting Public Bodies* (*ARCPB*) is subject to the *Act Respecting the Autorités des marchés publics* (*AAMP*) are required to establish a procedure for receiving and reviewing complaints[1].

1.1 PROHIBITION ON RETALIATION

Complaints filed under this procedure must be made without fear of retaliation by the EASTERN TOWNSHIPS SCHOOL BOARD (ETSB).

Furthermore, it should be noted that Article 51 of the *Act Respecting the Autorités des marchés publics* (*LAMP)* stipulates that it is prohibited to threaten a person or a partnership with retaliation in order to prevent them from filing a complaint with the *Autorités des marchés publics* (*AMP*). Any person or partnership that believes it has been the victim of retaliation may file a complaint with the *Autorité des marchés publics (AMP)* so that they may determine whether the complaint is well founded and, if so, submit the recommendations it deems appropriate to the head of the public body involved in the retaliation. Upon completion of its review, the *AMP* informs the complainant of its findings and, if applicable, its recommendations.

1.2 PRESERVING YOUR RIGHT TO FILE AN APPEAL

In order to preserve your right to appeal under conditions set forth in Articles 37,39, any complaint filed with the **EASTERN TOWNSHIPS SCHOOL BOARD (ETSB)** must be made in accordance with the guidelines set forth in this procedure.

2. APPLICABLE TERMS AND CONDITIONS

2.1 BEFORE FILING A COMPLAINT – MAKE SURE THAT FILING A COMPLAINT IS THE APPROPRIATE COURSE OF ACTION

If the request concerns information or clarification regarding the content of tender documents or an ongoing contractor qualification process, **the appropriate course of action is to direct the request to the contact person identified in the notice published on the electronic tendering system.**

If the documents for a call for tenders, a contractor qualification process, a product certification process, or a process for awarding a contract by mutual agreement pursuant to paragraph 4° of the first paragraph of Article 13 of the *Act Respecting Contracting Public Bodies* (*ARCPB)* currently in effect contains conditions that do not ensure the fair and impartial treatment of contractors, do not allow contractors to participate even though they are qualified to meet the stated needs, or are otherwise not in compliance with the regulatory framework, **the appropriate course of action is, first, to address your concerns to the EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) by contacting the designated contact person identified in the notice published on the electronic tendering system.**

[1] An expression of interest constitutes a complaint regarding a public contract award process within the context of Section 21.0.3 of the *ARCPB*.

2.2 WHO CAN FILE A COMPLAINT?

Only a company capable of performing the private contract that is the subject of the award process pursuant to paragraph 4 of the first paragraph of Article 13 of the *ARCPB* may express interest in it.

2.3 WHAT TYPES OF PUBLIC CONTRACTS CAN BE THE SUBJECT OF A COMPLAINT?

The following contracts that are covered by an intergovernmental agreement AND involve the expenditure of public funds AND involve an expenditure equal to or greater than the applicable minimum threshold for public tendering:

1° supply contracts, including contracts for the purchase or lease of movable property, which may include costs related to the installation, operation, or maintenance of the property, provided that they do not involve the acquisition of property intended for sale or resale in the course of trade, or for use in the production or supply of goods or services intended for sale or resale in the course of trade;

2° construction contracts covered by the *Building Act* (Chapter B-1.1) for which the contractor must hold the license required under Chapter IV of that Act;

3° service contracts, other than contracts for the integration of the arts into the architecture and environment of government buildings and sites.

A lease agreement is treated as a procurement contract.

Contracts treated as service contracts, namely charter contracts, transportation contracts other than those subject to the *Education Act* (Chapter I-13.3), property and casualty insurance contracts, and contracts for services other than construction contracts.

The following contracts that are covered by an intergovernmental agreement AND whether or not they involve the expenditure of public funds, AND regardless of the amount of the expenditure:

1° public-private partnership contracts entered into in connection with an infrastructure project in which a public entity engages a contractor to design, build and operate the infrastructure;

2° any other contract specified by government regulation.

2.3.1 PROCESSES CONCERNED

A public tender process, a contractor qualification process and a product certification process are currently underway.

A process for awarding a contract by mutual agreement as referred to in paragraph 4 of the first subparagraph of Article 13 of the *ARCPB*, for which a company wishes to express its interest in carrying it out.

2.3.2 APPLICABLE MINIMUM THRESHOLDS FOR PUBLIC CONTRACTS

The applicable thresholds are as follows:

- For a procurement contract: $101,100
- For a technical or professional service contract: $101,100
- For a construction contract: $101,100
- For an information technology contract: $101,100

3. PROCEDURE FOR HANDLING A COMPLAINT

3.1 TO WHOM AND HOW SHOULD THE COMPLAINT BE SUBMITTED?

In the case of a complaint concerning a public call for tenders, a contractor qualification process, an ongoing product certification process, or a process for the award of a negotiated contract referred to in paragraph 4 of the first paragraph of Article 13 of the *ARCPB*, in which a contractor wishes to express its interest in carrying out the work:

The complaint must be submitted electronically to the EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) at plaintecontrat@etsb.qc.ca, and also to the *AMP* for information purposes.

In addition, the complaint must be filed using the form specified by the *AMP*, which is available at the following address, as stipulated in Section 21.0.3 of the *ARCPB*: https://www.amp.gouv.qc.ca/porter-plainte/plainte-organisme-public/

3.2 WHEN MUST THE COMPLAINT BE RECEIVED?

In the case of a complaint concerning an ongoing public tender, a contractor qualification process or a product certification process:

A complaint of this nature, as provided for in Section 21.0.4 of the *ARCPB*, must be received by the EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) no later than the deadline[2] for receiving complaints specified in the electronic bidding system.

Such a complaint may only cover the content of documents made available no later than two (2) days before that date.

The complainant must submit the complaint simultaneously to the EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) for appropriate handling and to the *AMP* for information purposes.

In the case of a complaint concerning a process for awarding a negotiated contract referred to in paragraph 4 of the first paragraph of Article 13 of the *ARCPB*, for which a company wishes to express its interest in carrying out the contract:

[2] The deadline for receiving complaints always ends at the 11th hour, 59th minute and 59th second (23:59:59). Thus, a complaint may be submitted to and received by the EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) at any time within the prescribed time limits

The company's demonstration that it is capable of fulfilling the private contract in accordance with the requirements and obligations set forth in the notice of intent must be submitted to the EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) no later than the deadline for receipt specified in the electronic tendering system (*SEAO*).

3.3 SENDING A CONFIRMATION OF RECEPTION

In the case of a complaint concerning an ongoing public tender process, a contractor qualification process, a product certification process:

The EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) will send an acknowledgment of reception to the complainant within three (3) business days.

3.4 WITHDRAWAL OF A COMPLAINT

In the case of a complaint concerning an ongoing public tender process, a contractor qualification process, a product certification process:

A complaint must be withdrawn before the deadline for receiving complaints.

To do so, the complainant must send an email to the EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) at the following email: plaintecontrat@etsb.qc.ca, stating the reasons for withdrawing the complaint.

Upon reception of this email, the EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) will record the date the complaint was withdrawn with *SEAO*.

In the case of a complaint concerning a process for awarding a negotiated contract referred to in the first paragraph of Article 13(4) of the *ARCPB*, for which a company wishes to express its interest in carrying out the contract:

The company may withdraw its demonstration document without forfeiting its right to submit a new one within the specified time limit.

4. PROCEDURE FOR THE REVIEW OF COMPLAINTS

4.1 VERIFICATION OF THE COMPLAINANT'S INTEREST

In the case of a complaint concerning an ongoing public tender process, a contractor qualification process, a product certification process:

A company wishing to submit a complaint must possess the licenses, permits, registrations, accreditations, qualifications and certifications necessary to perform some or all of the work specified in the documents.

Any company that does not meet the specifications listed above will be considered:

4.1.1 RECORD IN THE ELECTRONIC TENDERING SYSTEM OF THE DATE ON WHICH EACH OF THE COMPLAINTS WERE RECEIVED

In the case of a complaint concerning an ongoing public tender process, a contractor qualification process, a product certification process:

The EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) will enter the date on which each complaint was received into the electronic tendering system, after verifying the complainant's interest.

4.2 ANALYSIS OF THE ADMISSIBILITY OF THE COMPLAINT

In the case of a complaint concerning an ongoing public tender process, a contractor qualification process, a product certification process:

For the complaint to be accepted, it has to meet all the following conditions:

- Relate to a public contract under paragraph 1 (1°) a) or paragraph 2 (1°) of Section 20 of the *LAMP*;
- Focus on a public tender, a process of qualifying companies in an ongoing goods approval process whose documents provide:
  - conditions that do not ensure fair and honest treatment of competitors, or;
  - conditions that do not allow competitors to participate even though they are qualified to meet the expressed needs, or;
  - conditions that are not otherwise in line with the regulatory framework;
- Relating to the contents of the tender documents, the company qualification process and the approval process of available goods no later than two (2) days before the complaint deadline indicated in the electronic tendering system;
- Be sent electronically to the person responsible identified in this procedure and according to the provisions laid out in it;
- Be submitted on the form determined by the *AMP* under the Article 45 of the *LAMP*[3];
- Be received no later than the complaint submission deadline indicated in the electronic tender system.

In the case of a complaint concerning a process for awarding sole-source contract referred to in the paragraph 4 of the first paragraph of Article 13 of the *ARCPB*, for which a company wants to express its interest in carrying it out:

To be accepted, the complaint must meet each of the following:

- Concern a public contract under the paragraph 1 (1o) a) or paragraph 2 (1o) of Article 20 of the *LAMP*;
- Refer to a mutual agreement (*gré à gré*) mentioned in paragraph 4° from the first paragraph of Section 13 of the *ARCPB*;
- Be sent electronically to the person responsible identified in this procedure and according to the provisions laid out in it;

[3] Under Section 21.0.3, only a complaint covered by Section 21.0.4 must be filed using the form determined by the *AMP* under Article 45 of the *LAMP*, otherwise the complaint will be rejected

- Be received no later than the deadline for receiving company demonstrations showing that they are able to carry out the contract on a negotiated basis according to the needs and obligations stated in the notice of intent.

4.2.1 REJECTION OF THE COMPLAINT

In the case of a complaint concerning an ongoing public tender process, a contractor qualification process, a product certification process:

The EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) will dismiss a complaint in any of the following situations:

- The complaint does not meet all the conditions set out in point 4.2;
- The complaint is pursuing or has pursued, for the same facts stated in their complaint, a legal action.

In the case of a complaint concerning a process for awarding a sole-source contract referred to in paragraph 4 of the first paragraph of Article 13 of the *ARCPB*, for which a company wants to express its interest in carrying it out:

- The complaint does not meet all the required conditions under point 4.2;
- The complainant is pursuing or has pursued, for the same facts outlined in their complaint, a legal action.

4.2.2. IN-DEPTH ANALYSIS OF THE COMPLAINT

In the case of a complaint concerning an ongoing public tender process, a contractor qualification process, a product certification process:

If the situation requires it, the person in charge of handling complaints will contact the complainant to get more details about the situation described in the complaint form.

At the end of the thorough analysis of the complaint, the person in charge of reviewing complaints decides whether the complaint is justified or not:

If the official responsible for handling the complaint determines that the documents governing the call for tenders, the contractor qualification process, or the product approval process do indeed contain conditions that do not ensure the fair and impartial treatment of contractors, prevent contractors from participating even though they are qualified to meet the stated needs, or otherwise fail to comply with the regulatory framework, the EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) will implement the corrective measure described in Section 5.2, “Corrective Measures,” if applicable.

If the official responsible for handling the complaint finds that the documents related to the request for tenders, the contractor qualification process, or the goods certification process do not include conditions that ensure the fair and impartial treatment of contractors, do not allow contractors to participate even though they are qualified to meet the stated needs, or do not otherwise comply with the regulatory framework of the EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) will not amend its bidding documents and will follow the procedure outlined in Section 5.1 regarding notification of the decision to the complainant(s).

In the case of a complaint concerning a process for awarding a negotiated contract referred to in paragraph 4 of the first paragraph of Article 13 of the *ARCPB*, for which a company wishes to express its interest in carrying out the contract:

In an off-competitive contracting process, if the review panel determines that the complaint is valid, the EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) will rescind the notice of intent for the off-competitive contract and proceed either through a public bidding process, a property certification process, or a contractor qualification process.

5. CONCLUSION(S) AND DISMISSAL OF THE CASE

5.1 NOTIFICATION OF THE DECISION TO THE COMPLAINANT(S)

In the case of a complaint concerning an ongoing public tender process, a contractor qualification process, a product certification process:

The EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) will notify the complaint(s) electronically of its decision regarding any of the following situations:

- The reason for the dismissal of the complaint due to the complainant's lack of interest;
- The reason(s) for the dismissal of the complaint due to its inadmissibility;
- Conclusions following a thorough analysis of the complaint.

This decision will be issued after the deadline for receiving complaints, but not later than three (3) days before the deadline for receiving bids specified in the electronic tender system.

The EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) will ensure that there is a minimum period of 7 days between the date its decision is communicated to the complainant and the deadline for receiving bids. If necessary, the deadline for receiving tenders at the *SEAO* will be extended by as many days as needed to ensure that this minimum period is observed.

In the case of a complaint concerning a process for awarding a negotiated contract referred to in paragraph 4 of the first paragraph of Article 13 of the *ARCPB*, for which a company wishes to express its interest in carrying out the contract:

The EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) will notify the company that has expressed interest, electronically, of its decision on whether or not to proceed with the private contract, in accordance with paragraph 5 of the first paragraph in Article 13.1 of the *ARCPB*.

This decision will be communicated at least seven (7) days before the scheduled date for the conclusion of the negotiated contract.

The EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) will ensure that there is a minimum period of seven (7) days between the date on which it notifies the company that has expressed interest, in accordance with paragraph 5 of the first subparagraph of Article 13.1 of the *ARCPB*, and the scheduled date for the conclusion of the negotiated contract. If necessary, the scheduled date for the conclusion of the private contract will be postponed by as many days as are necessary to ensure that this minimum period is observed.

5.1.1 NOTICE IN THE ELECTRONIC TENDERING SYSTEM OF THE DATE ON WHICH THE DECISION OF THE EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) WAS SENT TO THE COMPLAINANT(S)

In the case of a complaint concerning an ongoing public tender process, a contractor qualification process, a product certification process:

Immediately after notifying the complainant(s) of its decision, the EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) will indicate in the electronic tendering system that its decision has been communicated.

This notation is entered into the electronic tendering system only if a complaint has been filed by a complainant with the required interest.

5.2 CORRECTIVE ACTIONS, IF NECESSARY

In the case of a complaint concerning an ongoing public tender process, a contractor qualification process, a product certification process:

The EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) will amend the documents relevant to the process that the subject of the complaint by means of an addendum if, following a thorough review of the complaint, it deems it necessary to do so.

In the case of a complaint concerning an ongoing process for awarding a negotiated contract referred to in paragraph 4 of the first paragraph of Article 13 of the *ARCPB*, for which a company wishes to express its interest in carrying out the contract:

The EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) may proceed with a public call for tenders, after review, it determines that at least one expression of interest from a company has demonstrated that the company is capable of fulfilling the private contract in accordance with the requirements and obligations set for in the notice of intent.

5.2.1 POSSIBLE REMEDIES AVAILABLE TO THE *AMP* FOLLOWING A COMPLAINT FILED WITH THE EASTERN TOWNSHIPS SCHOOL BOARD (ETSB)

In the case of a complaint concerning an ongoing public tender process, a contractor qualification process, a product certification process:

If the complainant disagrees with the decision of the EASTERN TOWNSHIPS SCHOOL BOARD (ETSB), he or she may file a complaint with the *AMP*. In this case, the complaint must be received by the *AMP* no later than three (3) days after the complainant receives the decision from the EASTERN TOWNSHIPS SCHOOL BOARD (ETSB). (Article 37 of the *LAMP*).

If the complainant did not receive the decision from the EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) three (3) days before the submission deadline, they can file a complaint with the *AMP*. In this case, the complaint must be received by the *AMP* no later than the submission deadline set by the EASTERN TOWNSHIPS SCHOOL BOARD (ETSB). (Article 39 of the *LAMP*).

In the case of a complaint concerning a process for awarding a negotiated contract referred to in paragraph 4 of the first paragraph of Article 13 of the *ARCPB*, for which a company wishes to express its interest in carrying out the contract:

If the complainant disagrees with the decision of the EASTERN TOWNSHIPS SCHOOL BOARD (ETSB), he or she may file a complaint with the *AMP*. In this case, the complaint must be received by the *AMP* no later than three (3) days after the complainant receives the decision from the EASTERN TOWNSHIPS SCHOOL BOARD (ETSB). (Article 38 of the *LAMP*).

If the complainant has not received the decision from the EASTERN TOWNSHIPS SCHOOL BOARD (ETSB) three (3) days before the scheduled date for the conclusion of the private contract, he or she may file a complaint with the *AMP*. In this case, the complaint must be received by the *AMP* no later than one day before the scheduled date of execution of the negotiated contract as posted on the *SEAO* by the EASTERN TOWNSHIPS SCHOOL BOARD (ETSB). (Section 41 of the *LAMP*).

6. EFFECTIVE DATE OF THIS PROCEDURE: August 27, 2019