



## PROCEDURE FOR RECEIVING AND EXAMINING COMPLAINTS FILED WITH THE TOWN ABOUT THE TENDERING OR AWARDING PROCESS FOR PUBLIC CONTRACTS

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WHEREAS Bill 108, *An Act to facilitate oversight of public bodies' contracts and to establish the Autorité des marchés publics* (SQ 2017, c 27) (hereinafter the “Act”), was assented to on December 1, 2017;

WHEREAS subsequent to the coming into force of the Act and in accordance with section 573.3.1.3 of the *Cities and Towns Act* (CQLR, chapter C-19) (hereinafter the “CTA”) municipalities must establish a procedure for receiving and examining the complaints filed with them about the tendering or awarding process for public contracts;

WHEREAS the Town of Kirkland (hereinafter the “Town”) wishes to establish such a procedure;

### **Article 1 – Preamble**

The preamble is an integral part of this procedure.

### **Article 2 – Purpose of the procedure**

The purpose of this procedure is to ensure the equitable resolution of complaints filed with the Town in the course of the awarding of a target contract through a public call for tenders or otherwise.

### **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 them in this article:

- « normative framework » : The by-laws, policies, procedures and resolutions passed by the Municipal Council.
- « target contract » : Contract for the performance of work or the supply of insurance, equipment, materials or services, including professional services, that the Town may enter into, involving an expenditure equal to or above the applicable lowest public tender threshold;
- « tendering process » : Any ongoing process leading to the awarding of a target contract through a public call for tenders.
- « awarding process » : Any process leading to the awarding of a target contract by mutual agreement with a supplier who, according to the Town, is the only one in a position to provide the equipment, materials or services requested under section 573.3.0.0.1 of the CTA.
- « designated manager » : Person responsible for the application of this procedure, namely the Town clerk and Director of Legal Affairs, or, in her absence, the Assistant Director General and Treasurer.
- « SEAO » : Electronic tendering system referred to in section 11 of the *Act respecting contracting by public bodies* (CQLR, chapter C-65.1).

### **Article 4 – Application**

The implementation of this procedure is entrusted to the designated manager.

This person is responsible for receiving complaints and expressions of interest, for conducting the necessary verifications and assessments, and for responding to them within the timeframe provided by the Act.

## **Article 5 – Complaints filed with respect to an awarding process**

### **5.1. Interest required to file a complaint**

In the case of an ongoing public call for tenders, only a person or group of persons interested in participating in the awarding process or the representative of such a person or group, duly designated by resolution, may file a complaint about this process.

### **5.2 Reasons in support of a complaint**

A person or group of persons interested in participating in the awarding process, or the representative of such a person or group, may file a complaint about this process on the grounds that the tender documents:

- Contain conditions that do not ensure the honest and fair treatment of tenderers; or
- Contain conditions that do not allow tenderers to compete although they are qualified to meet the stated procurement requirements; or
- Contain conditions that are otherwise not compliant with the Town's normative framework.

### **5.3 Conditions and deadline for filing a complaint**

All complaints must be submitted electronically to the designated manager at the following email address: [plainte@ville.kirkland.qc.ca](mailto:plainte@ville.kirkland.qc.ca)

It must be presented on the form prescribed by the Autorité des marchés publics, available on its website.

It must be received by the designated manager not later than the complaint filing deadline indicated on the SEAO.

### **5.4 Contents of a complaint**

A complaint must contain the following information:

- Date;
- Identification and contact information of the complainant:
  - Name
  - Address
  - Phone number
  - Email address
- Identification of the call for tenders that is the subject of the complaint:
  - Call for tenders number
  - SEAO reference number
  - Title
- Detailed statement of the reasons in support of the complaint;
- Where applicable, any relevant documents in support of the reasons for the complaint;
- Any other information required on the form prescribed by the Autorité des marchés publics.

### **5.5 Admissibility of a complaint**

To be considered admissible by the designated manager, a complaint must meet the conditions listed below. In particular, it must:

- a) Be submitted by an interested person within the meaning of article 5.1;
- b) Be submitted electronically to the designated manager;
- c) Be presented on the form prescribed by the Autorité des marchés publics under section 45 of the Act;
- d) Be received by the designated manager not later than the complaint filing deadline indicated on the SEAO;
- e) Relate to a target contract;
- f) Relate to the contents of the tender documents available on the SEAO not later than two (2) days prior to the complaint filing deadline;
- g) Be based on one of the reasons listed in article 5.2 of this procedure; no other reason shall be considered as part of the analysis.

### **5.6 Receipt and processing of a complaint**

Upon receipt of a complaint, the designated manager shall examine it pursuant to this provision. In particular, the designated manager shall:

- a) Establish that the interest of the complainant within the meaning of article 5.1 is met; otherwise, the designated manager notifies the complainant in writing, without delay.

Once having established the complainant's interest, the designated manager indicates the receipt of a first complaint on the SEAO;

- b) Ensure that all other admissibility criteria under article 5.5 are met. If the complaint is inadmissible, the designated manager notifies the complainant pursuant to article 5.7.
- c) Together with the manager or the department responsible for the call for tenders, conduct the necessary verifications to establish the validity of the grounds alleged in the complaint.
- d) Where required, seek external services to help process the complaint.
- e) Where a complaint is found to be valid following its analysis and the conduct of verification activities, accept the complaint and take the appropriate measures to ensure its follow-up. Otherwise, the complaint must be rejected.

### **5.7 Decision**

The designated manager must send the complainant the Town's decision electronically after the complaint filing deadline, but not later than three (3) days before the determined tender closing date. If necessary, the designated manager 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 the decision is sent. This new deadline is published in the SEAO.

If the Town has received more than one complaint about the same call for tenders, the designated manager must send all of the decisions at the same time.

The designated manager must also, if applicable, inform the complainant of the complainant's right to file a complaint with the Autorité des marchés publics under section 37 of the Act within three (3) days after receiving the decision.

When sending the decision on a complaint, the designated manager shall, without delay, make an entry to that effect on the SEAO.

## **Article 6 – Expression of interest and complaints about a tendering process**

### **6.1 Reasons in support of an expression of interest**

Any person may express interest in entering into a contract that is the subject of a notice of intention published by the Town on the SEAO and demonstrate that he, she or it is capable of carrying out the contract on the basis of the procurement requirements and obligations stated in the notice.

### **6.2 How and when to file an expression of interest**

Any expression of interest must be sent electronically to the designated manager at the following email address: [plainte@ville.kirkland.qc.ca](mailto:plainte@ville.kirkland.qc.ca)

It must be received by the designated manager not later than the deadline set in the notice of intention published on the SEAO.

### **6.3 Contents of an expression of interest**

An expression of interest must contain the following information:

- Date;
- Identification and contact information of the person interested in entering into a contract with the Town:
  - Name
  - Address
  - Phone number
  - Email address
- Identification of the notice of intention published on the SEAO:
  - Contract number
  - SEAO reference number
  - Title
- Detailed statement and documentation demonstrating that the person is capable of carrying out the contract on the basis of the procurement requirements and obligations stated in the notice of intention.

### **6.4 Admissibility of an expression of interest**

To be considered admissible by the designated manager, an expression of interest must meet the conditions listed below. In particular, it must:

- a) Be submitted electronically to the designated manager;
- b) Be received by the designated manager not later than the deadline set in the notice of intention published on the SEAO;
- c) Be related to a target contract;
- d) Be based on the sole reason listed in article 6.1 of this procedure.

### **6.5 Receipt and processing of expressions of interest**

Upon receipt of an expression of interest, the designated manager shall examine it pursuant to this provision. In particular, the designated manager shall:

- a) Ensure that the admissibility criteria under section 6.4 are met.
- b) Together with the manager or the department responsible for the notice of intention, conduct the necessary verifications and assessments to ensure that the person is capable of carrying out the contract on the basis of the procurement requirements and obligations stated in the notice.
- c) Where required, seek external services to help process the expression of interest.
- d) Where the verifications and assessments conducted demonstrate that the person that has expressed interest is capable of carrying out the contract according to the procurement requirements and obligations stated in the notice of intention, accept the expression of interest and recommend against the Town entering into the contract by mutual agreement. Otherwise, the expression of interest must be rejected.

### **6.6 Decision**

The designated manager shall electronically send the Town's decision to the person who has expressed interest in entering into the contract at least seven (7) days before the projected contract date.

If the seven (7) day period cannot be complied with, the contract date must be deferred by the number of days needed to ensure compliance with that minimum period.

The designated manager must also inform the person of the person's right to file a complaint with the Autorité des marchés publics under section 38 of the Act within three (3) days after receiving the decision.

### **Article 7 – Effective date and accessibility**

This procedure comes into force July 2, 2019 and is available at all times on the Town's website at [www.ville.kirkland.qc.ca](http://www.ville.kirkland.qc.ca).