

PROCEDURE TITLE	PROCEDURE FOR HANDLING COMPLAINTS RECEIVED IN CONNECTION WITH THE AWARD OR ATTRIBUTION OF A CONTRACT
Executive sponsor	Vice-Principal (Administration and Finance)
Initial approval date	June 26, 2019
Date of last review	Not applicable

Related documents	<ul style="list-style-type: none"> • Procurement Policy • Policy on the Approval of Contracts and Designation of Signing Authority
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PREAMBLE

The Procedure for Handling Complaints Received in Connection with the Award or Attribution of a Contract (the “Procedure”) is a secondary document to the Procurement Policy of McGill University (the “University”) and is established, approved and issued under the authority granted thereunder to the Vice-Principal (Administration and Finance).

PART I – LEGAL FRAMEWORK, PURPOSE AND SCOPE

- 1.1 **LEGAL FRAMEWORK:** The University is required to establish a procedure of this kind in accordance with Section 21.0.3 of the Act respecting contracting by public bodies (ACPB).
- 1.2 **PURPOSE:** The purpose of this Procedure is to ensure the fair handling of complaints filed with the University in the course of certain procurement processes. It specifies the contract management process mechanisms that it covers, stipulates the method of filing complaints pertaining to such mechanisms, indicates the admissibility requirements for complaints, explains how they are analyzed by the University, and establishes time limits and other conditions regarding its decisions.
- 1.3 **SCOPE:** The Procedure governs complaints received by the University in connection with a process for the award of contracts by public tendering or by mutual agreement under Section 13(4) of the ACPB, for the certification of goods or for the qualification of enterprises provided that the contract resulting from either of these processes is governed by the ACPB (hereafter, the “Relevant Processes”).
- 1.4 **EXCLUSIONS:** The complaint procedure is not the appropriate recourse for initial requests for information or clarification or to modify documents for the Relevant Processes. These requests must first be formulated as prescribed by the documents for the Relevant Process.

PART II – HANDLING COMPLAINTS

- 2.1 **FILING A COMPLAINT:** If, in the reasonable opinion of the enterprise, the responses provided by the University pursuant to the methods described in Section 1.4 do not correct the conditions of the documents for the Relevant Processes, *“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,”* or, as the case may be, if the enterprise disagrees with the University’s decision in connection with a Relevant (award) Process in progress, it may file a complaint in accordance with the Procedure. The complaint must be presented using the [Autorité des marchés publics form](#) and be received by the University at the email addresses indicated in the notice of the Relevant Process. In order to draw the University’s attention to the complaint more quickly and ensure that it is addressed without delay, the subject line of the email should read: “COMPLAINT – [MCGILL CONTRACT NUMBER] – REASON FOR COMPLAINT.”
- 2.2 **WITHDRAWING A COMPLAINT:** The plaintiff may withdraw his/her complaint at any time prior to the deadline for the receipt of complaints indicated in the notice of the Relevant Process, by sending electronically to the University the reasons for withdrawing, to the same email addresses used to transmit the complaint.
- 2.3 **VERIFYING THE ADMISSIBILITY OF A COMPLAINT:** The professional in charge of the Relevant Process, under the possible supervision of the Contract Rules Compliance Monitor (the “CRCM”), when the latter deems it necessary, must confirm the admissibility of the complaint by verifying that it meets the admissibility requirements established in the **Table of complaint admissibility requirements** (Appendix A).
- 2.4 **ANALYZING THE COMPLAINT:** In the case of an admissible complaint, the professional in charge of the Relevant Process, under the possible supervision of the CRCM, uses the **Complaint analysis table** (Appendix B) to analyze the complaint, based on the pertinent information collected, and to determine its relevance.
- 2.5 **UNIVERSITY’S DECISION:** The University transmits electronically, and simultaneously, its responses to all complaints received in connection with a Relevant Process, using the email addresses from which it received the complaints, within the time limits set forth in the **Table of time limits for handling complaints** (Appendix C). The University may decide:
- that the complaint is pertinent, in which case the University attaches to the documents for the Relevant Process, the corrective measures that it deems reasonably sufficient, generally by publishing an addenda on the electronic tendering system, but also including the cancellation of the current notice and publication of a new, corrected version, as applicable; or
 - that the complaint is irrelevant, in which case the University rejects the complaint and justifies its decision.
- 2.6 **NOTICES ON ELECTRONIC TENDERING SYSTEM:** The University must promptly enter in the electronic tendering system all pertinent information on every complaint sent to the University by a plaintiff having the required interest:
- the date on which the complaint was received;

- the date on which the complaint was withdrawn, if applicable;
- confirmation that its decision has been transmitted.

2.7 POSSIBLE RECOURSE WITH THE AUTORITÉ DES MARCHÉS PUBLICS: The plaintiff may submit a complaint directly to the Autorité des marchés publics (hereafter, the “AMP”):

- If he/she disagrees with the University’s decision, within 3 days following the date of the electronic transmission of the University’s decision, under Section 37 of the ACPB (or Section 38 of the Act if the University’s decision pertains to the award of a contract in connection with a Relevant Process).
- If he/she has not received the University’s decision 3 days before the deadline for the receipt of tenders indicated in the notice of the Relevant Process, under Section 39 of the ACPB (or before the projected date for entering into the contract by mutual agreement, under Section 41 of the Act if the University’s decision pertains to the award of a contract in connection with a Relevant Process).

2.8 ABSENCES: If the key individuals who manage the Procedure are absent, the University shall ensure continuity of the handling of complaints as follows:

- In the absence of the professional in charge of the Relevant Process, the management of Procurement Services will ensure the handling of the complaint or delegate this responsibility to another professional under its responsibility.
- In the absence of the CRCM, the Procurement Services’ officer in charge of contract management will assume this role under the Procedure, in consultation with the University’s Legal Services.

PART III – FOLLOW-UP

3.1 INTERNAL AUDIT: Compliance with the Procedure will be audited on a regular basis by the University’s CRCM and internal auditors. Non-compliance with this Procedure will result in corrective measures whose follow-up will be ensured by the Office of the Vice-Principal (Administration and Finance). Material violations or repetitive non-compliance with this Procedure may result in sanctions applied in a manner consistent with the provisions relating to disciplinary measures contained in University policies, regulations or collective agreements.

PART IV – REVIEW

4.1 This Procedure shall be reviewed every five years.

4.2 Notwithstanding the foregoing, the Vice-Principal (Administration and Finance) may, at any time in between these mandatory reviews, adopt revisions to the Procedure.

APPENDIX A

TABLE OF ADMISSIBILITY REQUIREMENTS

To be admissible by the University, a complaint must meet all of the requirements in the table below	
Requirement	The following elements must be verified to be true
1. The plaintiff must hold an interest in the Relevant Process	<ul style="list-style-type: none"> a. The plaintiff works in the area of business concerned by the Relevant Process b. The plaintiff wishes to compete in the Relevant Process c. The enterprise that he/she represents is not listed in the register of enterprises ineligible for public contracts d. The enterprise that he/she represents is eligible, in accordance with the eligibility requirements stipulated in the normative framework or specifically permitted by such framework, and adopted by the Relevant Process e. The enterprise that he/she represents is eligible, in accordance with any other eligibility requirement stipulated by the Relevant Process, insofar as the complaint does not concern this or these requirements
2. The complaint must pertain to a Relevant Process	<ul style="list-style-type: none"> a. Only the Relevant Processes as defined in Section 1.3 of the Procedure may be the subject of a complaint
3. Other requirements for the complaint or Relevant Process	<ul style="list-style-type: none"> a. The complaint includes a precise reference to the section(s) of the documents governing the Relevant Process that is the subject of the complaint b. The complaint pertains to documents available no later than 2 days following the deadline for the receipt of complaints indicated in the notice of the Relevant Process c. If the complaint pertains to amended documents, the amendment must not result from an order of the AMP d. The Relevant Process is in progress and began on or after May 25, 2019 e. The Relevant Process includes or may be reasonably deemed to include or result in an expenditure equal to or higher than the minimum public tender threshold
4. The complaint must be received in due form by the University	<ul style="list-style-type: none"> a. The complaint is received electronically, at the email addresses indicated in the notice of the Relevant Process b. The complaint is recorded on the prescribed AMP form c. The complaint was received within the time limits prescribed by the notice contained in the Relevant Process

APPENDIX B
COMPLAINT ANALYSIS TABLE

The University may reject a complaint for any of the criteria in this table	
Criterion	The following elements must be considered
1. The complaint is abusive, trivial or clearly unfounded	<ul style="list-style-type: none"> a. The complaint may be considered abusive when the corrective measures to remedy it are exaggerated or disproportionate, given the nature or subject of the Relevant Process. For example, a complaint will generally be considered abusive if the corrective measures to remedy it are of a scope or complexity that could either negatively affect the other enterprises which have not submitted any request to amend the documents for the Relevant Process, or could cause the University inordinate inconveniences; or b. The complaint may be considered trivial when the reasons cited to justify it or the corrective measures to remedy it lack seriousness. For example, a complaint will generally be considered trivial if the reasons cited to justify it place more importance on the opportunity for the plaintiff to make a sale than to satisfy the University’s requirement, or if the requested corrective measures would have the effect of distorting the requirement; or c. The complaint may be considered clearly unfounded when the reasons cited to justify it or the corrective measures to remedy it are groundless under the normative framework
2. The complaint does not demonstrate that the documents for the Relevant Process are in breach of the ACPB	<ul style="list-style-type: none"> a. The complaint fails to demonstrate that the documents provide for conditions that do not ensure the honest and fair treatment of competitors, or do not allow tenderers to compete in the Relevant Process although they are qualified to meet the stated requirements, or that they are otherwise not compliant with the normative framework
3. The plaintiff is taking or has taken legal recourse, for the same facts set forth in his/her complaint	<ul style="list-style-type: none"> a. The University receives notice of a legal proceeding or a formal notice from the plaintiff (or his/her attorney) referring to a legal remedy dealing with the same matter as the complaint, during the period in which such complaint is being handling

APPENDIX C

TABLE OF TIME LIMITS FOR HANDLING COMPLAINTS

The University considers the following mandatory time limits in handling the complaints received	
Step	Mandatory time limits applicable
1. Receipt of complaint by the University	<p>No later than the deadline for receipt of complaints* indicated in the notice of the Relevant Process.</p> <p>*This date coincides with the end of a period corresponding to one-half of the allotted time for the receipt of tenders (but never less than 10 days); there may not be less than 4 days between the deadline for the receipt of complaints and the main date indicated in the notice of the Relevant Process. For the purposes of this Procedure, "main date" means either the deadline for the submission of tenders or the University's projected date for entering into the contract by mutual agreement.</p>
2. Publication of the date of receipt of (first) complaint on electronic tendering system	Without delay, no later than 1 business day after receipt of the complaint
3. Transmission of the University's decision(s)	At the same time for all complaints pertaining to the same Relevant Process, following the deadline for the receipt of complaints indicated in the notice of the Relevant Process, but no later than 3 days before the main date indicated in such notice, together with the publication of any addendum to the complaint on the electronic tendering system
4. Publication of the date of transmission of the University's decision(s)	Maximum of 2 days before the main date of the notice of the Relevant Process (otherwise the operator of the electronic tendering system will postpone by 4 days the main date of the notice of the Relevant Process)
5. Minimum time limit to observe between transmission of the decision and the main date indicated in the notice of the Relevant Process	<p>2 days if the documents in the Relevant Process have not been amended; or</p> <p>7 days if the documents have been amended</p>
6. Transfer of complaint to the AMP	<p>Within 3 days following receipt of the University's documents; or</p> <p>Before the main date indicated in the notice of the Relevant Process if the plaintiff has not received the University's decision 3 days before the main date indicated in the notice of the Relevant Process (the complaint must be received by the AMP on or before this date).</p>