

CHAMPLAIN REGIONAL COLLEGE

OF GENERAL AND VOCATIONAL EDUCATION



ADMINISTRATIVE FRAMEWORK FOR RECEIVING AND REVIEWING COMPLAINTS UNDER THE ACT RESPECTING CONTRACTING BY PUBLIC BODIES (ACPB)

Please Note:

An *Administrative Framework* (AF) is an administrative document that provides general guidelines for: the implementation of College Bylaws and Policies; ongoing administrative activities; and specific administrative functions. An AF usually outlines the guiding principles, procedures, and responsibilities related to a specific administrative function. However, College management is always expected to exercise good judgment, therefore, specific situations and circumstance may require some adjustments in procedures.

This Administrative Framework was adopted for the first time by the Director General's Advisory Committee (DGAC) on _____ and subsequently amended:

Director General's Advisory Committee (DGAC)

Date: _____

**ADMINISTRATIVE FRAMEWORK FOR RECEIVING AND REVIEWING COMPLAINTS UNDER THE ACT
RESPECTING CONTRACTING BY PUBLIC BODIES (ACPB)**

WHEREAS Bill108, entitled an *Act to facilitate oversight of public bodies' contracts and to establish the Autorité des marches publics* (L.Q. 2017, c. 27) (hereinafter called the "**AAMP**"), was approved on December 1, 2017;

WHEREAS the AAMP modified the *Act Respecting Contracting by Public Bodies* (L.Q. 2006, c. 29) (hereinafter called the "**ACPB**") such that public bodies must adopt a procedure to receive and review complaints made to them in tendering or awarding contracts;

WHEREAS colleges offering general and vocational education are public bodies subject to article 20(2) of the **AAMP**, and article 4 of the **ACPB**;

IN CONSEQUENCE THEREOF, Champlain Regional College adopts this procedure:

1. PREAMBLE

The preamble is an integral part of this procedure.

2. OBJECT

The purpose of this procedure is to ensure fair processing of complaints filed with Champlain Regional College within the framework of procedures for tendering or awarding a targeted public contract. It identifies the stages of reception and review of the complaint, as well as the means of communicating it.

3. PRESERVING RIGHTS OF RECOURSE

To preserve a complainant's rights to file a subsequent complaint with the *Autorité des marches publics* (hereinafter the "Authority"), any complaint sent to Champlain Regional College must be filed in conformity with this procedure.

4. DEFINITIONS

Unless there is an explicit statement to the contrary, or one arising from the context or from a legislative provision, the following expressions, terms, and words have, for the purposes of this procedure, the meaning and application attributed to them by this article:

"AMP": *Autorité des marchés publics*/ the Authority.

"Notice of Intention": Notice required under article 13.1 of the ACPB, which must be published on the Quebec government electronic tendering system (ETS) and indicate Champlain Regional College's intention to award a contract to a sole identified supplier, when it deems that an invitation to tender is not in the public interest under article 13(4) of the ACPB.

"Targeted contracts": Complaints may be laid against the following types of public contracts:

The following contracts, which entail public expenditure and expenses equal to or greater than the minimum threshold for a public invitation to tender applicable under public procurement liberalization agreements:

- 1 Supply contracts, including agreements for the purchase, or rental of moveable property, which may include the cost of installing, operating, and maintaining the property. Leasing contracts are considered supply contracts;
- 2 Construction contracts to which the *Building Act* (chapter B-1.1) applies and for which the contractor must hold the license required under chapter IV.
- 3 Service contracts other than contracts to integrate art work into the architecture and environment of government buildings and sites. Charter contracts, transportation contracts other than those to which the *Education Act* (chapter 1-13.3) applies, insurance contracts for damages, and business contracts other than construction contracts.

The following contracts, whether or not they entail the expenditure of public funds, and regardless of the amount of the expense:

- 1 Public-private partnership contracts entered into in an infrastructure project for which a public body partners with a contractor on the design, construction, and use of the infrastructure;
- 2 Any other contract determined by government regulation.

“Enterprise”: a legal person established for a private interest; a general, limited, or undeclared partnership, or a natural person who operates a sole proprietorship.

“AAMP”: *Act to facilitate oversight of public bodies’ contracts and to establish the Autorité des marchés publics* (L.Q. 2017, c. 27).

“ACPB”: *Act Respecting Contracting by Public Bodies* (L.Q. 2006, c.29)

“Expression of Interest”: An expression of interest by an enterprise or a group of enterprises following the publication of a notice of intention on the Quebec government electronic tendering system (ETS) constitutes a complaint about an award procedure by mutual agreement of a targeted contract.

“Complaint”: A complaint is an expression of dissatisfaction in which a prejudice can be invoked and a corrective action requested. Comments or requests for information or specifications do not qualify as complaints. In the latter case, the appropriate recourse is to send the request to the resource person named in the invitation to tender notice published on the electronic tendering system.

“Targeted Procedures”: The following detailed procedures may be the object of a complaint under this procedure:

- 1° **“Tendering”**: Every ongoing public call for tenders leading to the award of a targeted public contract;
- 2° **“Awarding”**: Every procedure aiming to award by mutual agreement a targeted contract to a single identified supplier when Champlain Regional College deems that call for tenders is not in the public interest under article 13(4) of the ACPB;
- 3° **“Eligibility of Enterprises”**: Champlain Regional College proceeds with an eligibility of enterprises procedure when there is a need to ensure, prior to proceeding to call for tenders,

the eligibility of enterprises that may tender. After publishing the list of eligible enterprises on the ETS, the public call for tenders will be limited solely to eligible enterprises;

- 4° **“Approval of goods”**: Champlain Regional College proceeds with an approval of goods procedure when there is a need to ensure, prior to proceeding to a call for tenders, that a product conforms to a recognized standard, or to an established technical specification. After publishing the list of approved goods on the ETS, the call for tenders will be limited to enterprises offering approved goods;

“RARC”: Person responsible for applying the rules of contract;

“Person in charge”: Person responsible for applying this procedure. This person is responsible for receiving complaints and expressions of interest, for performing the requisite audits and reviews, and for responding within the requisite delays under the AAMP;

“ETS”: Quebec government electronic tendering system under the ACPB article 11.

5. APPLICATION

Application of this procedure has been delegated to Yves Rainville, Director of Material Services.

6. COMPLAINT CONCERNING AN AWARD PROCEDURE¹

6.1 REQUISITE INTEREST

Only an enterprise or a group of enterprises interested in participating in the award procedure, or their representative, may file a complaint.

6.2 REASONS FOR THE COMPLAINT

A complaint may be filed if the public call for tenders documents:

- a) contain conditions that do not ensure honest or fair treatment of tenderers; or
- b) contain conditions that do not allow tenderers to participate in the target procedures even though they are qualified to meet the stated procurement requirements; or
- c) contain conditions that do not conform to standards governing contracts by public bodies.

6.3 METHODS AND DEADLINE FOR SENDING COMPLAINTS

Complaints must be sent electronically to the person in charge at the following email address: contrats@crcmail.net

They must, without exception, be transmitted on the form determined by the *Autorité des marchés publics*, available on the following website: <https://www.amp.gouv.qc.ca/fileadmin/documents/plaintes/Formulaire-plainte-envers-organisme-public-specimen.pdf>

¹ This section also applies to procedures governing eligibility of enterprises and approval of goods, as defined by article 4 of this procedure, with the needed adaptations.

They must be received by the person in charge no later than the deadline² for receiving complaints indicated on ETS. A copy must also be sent immediately to inform the *Autorité des marchés publics* at the following email address: lien-courriel@amp.gouv.qc.ca

6.4 CRITERIA FOR RECEIVABILITY OF A COMPLAINT

To be receivable, a complaint must satisfy each of the following conditions:

- a) Be sent by an interested enterprise according to the definition in article 6.1;
- b) Be sent by email to the person in charge, and according to the provisions hereunder;
- c) Be transmitted on the form determined by the *Autorité des marchés publics* by virtue of article 45 of the AAMP;
- d) Be received by the person in charge no later than the deadline for receiving complaints indicated on the ETS;
- e) Involve a targeted contract and procedure;
- f) Involve the contents of an invitation to tender documents available no later than two (2) days prior to the deadline for receiving complaints indicated on the ETS;
- g) Be founded on one of the reasons listed in article 6.2 of this procedure, no other reasons being admissible within the framework of the review.

6.5 THE COMPLAINT PROCEDURE

6.5.1 ACKNOWLEDGEMENT OF RECEIPT

Champlain Regional College will send an acknowledgement of receipt to the complainant within five (5) days of receiving the complaint.

6.5.2 REVIEW OF THE COMPLAINT

Upon receiving a complaint, the person in charge reviews the complaint in conformity with this provision. If needed, they will seek collaboration of the RARC (person responsible for applying the rules of contract), for whom the contract is to be signed, and/or external resources.

A complaint may be rejected at this preliminary stage if:

- a) it is judged frivolous or abusive;
- b) it is sent by a complainant lacking the requisite interest;
- c) it is sent by a complainant taking (or having taken) legal action for the same facts outlined in the complaint.

The person in charge first verifies the interest of the complainant. If the complainant has the requisite interest, the date of reception for the complaint is immediately registered on the ETS. In the absence of requisite interest, the complainant is immediately informed by email.

After verifying the complainant's requisite interest, the person in charge checks whether the complaint satisfies the receivability criteria under article 6.4 of this procedure.

Should the situation warrant, the person in charge contacts the complainant to obtain more information regarding the situation described in the complaint form.

² The reception deadline always ends on the 23rd hour, 59th minute, 59th second. Thus, a complaint could be sent and received by Champlain Regional College at any time within the prescribed delays.

6.5.3 DECISION

After analyzing the complaint, the person in charge determines whether or not the complaint is well founded. If the complaint is deemed well-founded, Champlain Regional College adopts appropriate corrective measures, notably by amending the public invitation to tender documents by addenda. If the complaint is deemed unfounded, Champlain Regional College rejects the complaint.

The person in charge sends Champlain Regional College's decision by email to the complainant after the deadline for receiving complaints, but no later than three (3) days³ prior to the deadline for receiving tenders indicated on the ETS.

In cases where more than one complaint has been received for the same targeted procedure, the person in charge sends his decisions to the complainants at the same time.

The person in charge makes sure there is a minimum delay of seven (7) days between the date of sending the decision to the complainant, and the deadline for receiving tenders. If needed, the deadline for receiving tenders posted on the ETS is extended by as many days as are necessary to respect this minimum delay. This new deadline is posted on the ETS.

Immediately after having sent the decision to the complainant, the person in charge indicates on the ETS that the decision has been sent.

This declaration is made on the ETS only if the complaint was sent by a complainant with the requisite interest.

7. WITHDRAWAL OF A COMPLAINT

The withdrawal of a complaint must, without exception, be performed before the deadline for receiving complaints indicated on the ETS.

To do so, the complainant must send an email to the following address: contrats@crcmail.net indicating the reasons for withdrawing the complaint.

Upon receiving the email, the person in charge registers the date of withdrawal of the complaint on the ETS.

8. RECOURSE TO THE L'AUTORITÉ DES MARCHÉS PUBLICS

If complainants disagree with Champlain Regional College's decision, they may file a complaint with the *Autorité des marchés publics* (AMP). In this case, the complaint must be received by AMP no later than three (3) days after the complainant's reception of Champlain Regional College's decision.

If the complainant has not received Champlain Regional College's decision three (3) days prior to the deadline for receiving tenders indicated on the ETS, the complainant may file a complaint with AMP. In this case, the complaint must be received by AMP no later than the deadline for receiving tenders.

9. EXPRESSION OF INTEREST IN A CONTRACT AWARD PROCEDURE

9.1 REQUISITE INTEREST

³ "Day" means calendar day.

Only an enterprise or a group of enterprises able to carry out the contract by mutual agreement that is the object of a notice of intention may express interest. To do so, they must send a demonstration document explicitly describing how they plan to execute the contract by mutual agreement with regards to the needs and obligations outlined in the notice of intention.

9.2 METHOD AND DEADLINE FOR SENDING AN EXPRESSION OF INTEREST

The expression of interest must be sent electronically to the person in charge at the following email address: contrats@crcmail.net.

It must be received by the person in charge no later than the deadline fixed for its reception, indicated in the notice of intention.

9.3 CRITERIA FOR RECEIVABILITY OF AN EXPRESSION OF INTEREST

To be receivable, an expression of interest must satisfy each of the following conditions:

- a) It must be sent by an enterprise able to execute a contract by mutual agreement with regards to the needs and obligations expressed in the notice of intention under article 9.1;
- b) It must be sent electronically to the person in charge, and according to the provisions in this procedure;
- c) It must be received by the person in charge no later than the deadline established in the notice of intention;
- d) It must involve a targeted contract by mutual agreement that is the object of a notice of intention.

9.4 PROCESSING AN EXPRESSION OF INTEREST

9.4.1 REVIEW

Upon receipt of an expression of interest, the person in charge undertakes a review in conformity with this provision. If needed, they seek the collaboration of the person responsible of the project for whom or the contract is to be signed, and/or external resources.

The person in charge determines whether the expression of interest satisfies receivability criteria listed in article 9.3 of this procedure.

9.4.2 DECISION

At the end of the expression of interest review, the person in charge determines whether or not the expression of interest is well-founded.

If the person in charge concludes that the expression of interest demonstrates that the enterprise, or the group of enterprises, is capable of executing the contract by mutual agreement and fulfilling the needs and obligations laid out in the notice of intention, Champlain Regional College adopts appropriate corrective measures, notably by not signing the contract by mutual agreement, and by proceeding with a public invitation to tender.

In the opposite circumstance, Champlain Regional College rejects the expression of interest and continues the procedure of awarding the contract by mutual agreement.

[If needed, explain in greater detail the procedure your college follows at this stage. The complaint review could, for instance, be sent to the RARC for a final decision.]

The person in charge sends an email with Champlain Regional College's decision to keep, or not to keep its intention of signing the contract by mutual agreement to the enterprise(s) that expressed interest at least seven (7) days prior to the date set for contract signing indicated in the notice of intention.

The person in charge makes sure there is a minimum delay of seven (7) days between the date of sending the decision to the enterprise(s) expressing interest, and the date set for signing the contract indicated in the notice of intention. If necessary, the signing date is extended as many days as are needed to respect the minimum delay.

10. WITHDRAWAL OF AN EXPRESSION OF INTEREST

The enterprise or group of enterprises may withdraw their expression of interest without losing their right to present a new one within the delays fixed in the notice of intention.

To this end, the enterprise or the group of enterprises must send an email to the following address: contrats@crcmail.net

11. RECOURSE TO THE AUTORITÉ DES MARCHÉS PUBLICS

If the enterprise or the group of enterprises expressing interest disagrees with Champlain Regional College's decision, they may file a complaint with the *Autorité des marchés publics* (AMP). In this case, the complaint must be received by the AMP no later than three (3) days following the receipt of Champlain Regional College's decision.

If the enterprise or the group of enterprises expressing interest does not receive Champlain Regional College's decision (3) days before the date set for signing the contract indicated in the notice of intention, they may file a complaint with the AMP. In this case, the complaint must be received by the AMP no later than one (1) day prior to the date set for signing the contract indicated in the notice of intention.

12. ENTRY INTO FORCE AND ACCESSABILITY

This procedure enters into force on May 25, 2019.

From the date of its entry into force, Champlain Regional College will make this procedure available at all times by posting it on its website.