Appendix 5 Complaints procedure

Complaint

A complaint is a written notification by an enterprise with an interest in the tender[1] to the contracting authority, in which the entrepreneur specifies with reasons on what points he disagrees with the tender or any part of it.

The complaint must at least contain:

- The date.
- The name and address of the entrepreneur.
- The name of the tender.
- The content of the complaint in which the complaint is clearly defined as such.
- How the complaint could be resolved according to the entrepreneur.

Not every question by an entrepreneur in a tendering procedure needs to lead to a complaint and not every complaint requires going through the entire complaints procedure. Questions and requests relating to clarification of aspects of the tendering procedure must be submitted in time by the entrepreneur to the contracting authority in accordance with the provisions in the tender document. This also applies to a request to make a non-essential change in the tender documents. Only if the entrepreneur continues to disagree with the response (in the summary of additional information and changes) of the contracting authority, or if a response is not forthcoming, may he lodge a complaint with the contracting authority. The entrepreneur may also lodge a complaint immediately.

Complaints relate to aspects of the tender that come within the scope of the Tendering Act 2012. Complaints may not question the tendering policy of the contracting authority in general.

Who is allowed to lodge a complaint?

A complaint may be lodged by entrepreneurs with an interest in being awarded a specific tender. This includes:

- interested entrepreneurs
- (potential) tenderers and candidates
- subcontractors[2] of (potential) tenderers and candidates
- industry associations and industry-related advice centres of entrepreneurs.

Complaints may not be lodged anonymously. However, if it has any objections, an industry association may submit a complaint in its private capacity if this complaint relates to a specific tender which concerns one or more entrepreneurs in the industry.

What is the final date for submitting a complaint?

The entrepreneur is advised to lodge his complaint at the earliest possible opportunity. If the complaint is submitted too late, the contracting authority will not be able to resolve the complaint during the ongoing procedure.

Submitting a complaint does not stop a tender procedure. The contracting authority may or may not decide to suspend the procedure.

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[1] Tender also includes the offer procedure.

[2] Subcontractors may lodge a complaint in so far as the complaint does not concern the relationship between main contractor and subcontractor.

Where should you submit your complaint?
Complaints should be submitted in writing to:
KlachtenmeldpuntAanbesteden@minez.nl

The complaint will be dealt with by one or more persons who have not been involved with the tender to which the complaint relates.

The complaints handling procedure

a. After receiving the complaint in the manner described above, the complaints office immediately confirms it has received the complaint.
b. The complaints office subsequently investigates if the complaint is legitimate, if necessary on the basis of information provided by the entrepreneur and the contracting authority. The complaints office starts this investigation as soon as possible, proceeds expeditiously, while taking account of the schedule of the tender procedure.
c. If, after the complaint has been investigated by the complaints office, the contracting authority concludes that the complaint is (partially) legitimate and the contracting authority takes corrective and/or preventive measures, the contracting authority will inform the entrepreneur of this in writing as soon as possible. The other (potential) tenderers and candidates are also informed. Depending on the stage of the tender procedure, the contact person of the tender of the contracting authority may communicate the measures to the persons involved in the tender at the same time as the person who made the complaint is informed. This is to prevent giving undue preference to any of the parties.
d. If, after the investigation, the contracting authority concludes that the complaint is not legitimate, it will reject the complaint giving its reasons for doing so and inform the entrepreneur.
e. At the request of the entrepreneur or the contracting authority, the complaints office may propose, before the contracting authority makes a decision, to have the complaint submitted to the Committee of Tendering Experts (article 4.27 Aanbestedingswet (Public Procurement Act) 2012).
f. When the contracting authority has informed the entrepreneur of the decision it has reached, or if the contracting authority fails to respond to the complaint within a reasonable term, the complainant may submit the complaint to the Committee of Tendering Experts.