

COMPLAINTS PROCEDURE

Complaint

A complaint is a written notification by a Firm with an interest in the tender to the Contracting Authority, in which the Firm specifies with reasons on what points he disagrees with the tender or any part of it.

The Firm can file a complaint about:

- the phase before the deadline for notification/submission (design complaint) of an ongoing tender;
- a selection or award decision of an ongoing tender;
- a case where a contracting authority did not tender when, according to the entrepreneur, it should have done so.

The complaint must at least contain:

- the date;
- the name and address of the Firm;
- 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 Firm.

Not every question by a Firm in a tendering procedure needs to lead to a complaint and not every complaint requires going through the entire complaint's procedure. Questions and requests relating to clarification of aspects of the tendering procedure must be submitted in time by the Firm 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 Firm continues to disagree with the response (in the Memorandum of Information) of the Contracting Authority, or if a response is not forthcoming, a complaint can be submitted with the Contracting Authority. The Firm 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 Firms with an interest in being awarded a specific tender. This includes:

- interested Firms;
- (potential) Candidates and Contractors;
- sub-contractors of (potential) Candidates and Contractors;
- industry associations and industry-related advice-centres of Firms.

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 Firms in the industry.

What is the final date for submitting a complaint?

The Firm 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.

The Contracting Authority will send a response to the receiving complaint within 5 working days.

If necessary, for complaints about a selection- or award decision, the Contracting Authority shall suspend the period announced by it or the (minimum) period prescribed by law, so that the Firm still has sufficient time - if deemed necessary - to use other legal protection options after complaint handling.

Where should you submit your complaint?

Complaints should be submitted in writing to: grievances@investinternational.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, based on information provided by the Firm 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. The complaints office may ask both the Firm and the Contracting Authority for an explanation.
- d. If necessary, the complaints office shall advise the Contracting Authority whether the ongoing procurement procedure or standstill period should be suspended. The Contracting Authority shall follow this advice or depart from it, giving reasons.
- e. The complaints office deals with the substance of the complaint and communicates the outcome of the complaint handling (the advice) to the Contracting Authority and the Firm who submitted the complaint. The advice of the complaint's office is adopted by the Contracting Authority. The Contracting Authority only deviates from the advice if it cannot go along with it on reasonable grounds and then carefully motivates this. The Contracting Authority communicates its decision (including reasons if it departs from the advice) to the Firm. The Firm can decide whether to take follow-up steps on this basis.
- f. The decision of the Contracting Authority is announced by the Contracting Authority to the Candidates or Contractors involved in an anonymized way via, for example, a Memorandum of Information or the messaging module of TenderNed.
- g. At the request of the Firm or the Contracting Authority, the complaints office may propose, before the Contracting Authority decides, to have the complaint submitted to the Committee of Tendering Experts (article 4.27 Aanbestedingswet (Public Procurement Act) 2012):
www.commissievanaanbestedingsexperts.nl/onderwerpen/veelgestelde-vragen/vraag-en-antwoord.
- h. When the Contracting Authority has informed the Firm 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:
www.commissievanaanbestedingsexperts.nl/onderwerpen/veelgestelde-vragen/vraag-en-antwoord.

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