

Appendix F - Complaints Procedure

1.1 Complaint

A complaint is a written notification to a contracting authority from an undertaking that has an interest in the tender procedure, in which the undertaking provides reasons for why it disagrees with the tender procedure or any part of it.

The complaint must include at least the following information:

- The date;
- The name and address of the undertaking;
- The name and contact details, including email address of the complainant's contact person;
- The name and contact details, including email address of the contracting authority's contact person for the tender procedure to which the complaint relates;
- The identification of the tender procedure;
- The substance of the complaint, clearly identifying it as a complaint;
- How in the undertaking's view, the complaint could be remedied.

Not every question from an undertaking in a tender procedure constitutes a complaint, and not every complaint necessarily requires the complaints procedure to be followed. The principle applies: "ask questions first, complain afterwards". Questions and requests aimed at clarifying aspects of the tender procedure must be submitted by the undertaking to the contracting authority in good time, in accordance with the tender documents. This also applies to a request to make a non-material amendment to the procurement documents.

If the undertaking continues to disagree with the contracting authority's response, or if no response is provided, the undertaking may submit a complaint to the contracting authority. An undertaking may also submit a complaint if, under the procurement documents, there is no longer an opportunity to submit questions.

1.2 What Can a Complaint Relate to?

Complaints relate to one or more aspects of a tender procedure that fall within the scope of the Dutch Public Procurement Act 2012. Complaints may not relate to the contracting authority's general procurement policy.

An undertaking may submit a complaint about any type of tender procedure, regardless of the threshold value, concerning:

- The phase before the deadline for submitting requests to participate or tenders in an ongoing tender procedure;
- The selection decision or award decision in an ongoing tender procedure;
- A situation in which a contracting authority has not conducted a tender procedure, while the undertaking considers that it should have done so.

1.3 Who May Submit a Complaint?

A complaint may be submitted by parties that have an interest in the award of a specific contract. This includes:

- Interested economic operators;
- Potential or actual tenderers and candidates;
- Trade associations and trade-related advisory centres for undertakings.

Complaints may not be submitted anonymously. However, a trade association may submit, in its own name, a complaint concerning objections to a specific tender procedure that are shared by one or more undertakings in the sector.

1.4 Until When May a Complaint be Submitted?

The undertaking is advised to submit its complaint at the earliest possible stage. If the complaint is submitted very late or too late, this may mean that the contracting authority is no longer able to remedy the complaint within the ongoing procedure.

Submitting a complaint does not suspend the tender procedure. The contracting authority is free to decide whether or not to suspend the procedure.

Where Must a Complaint Be Submitted?

A complaint must be submitted in writing to:

procurementcomplaints@neonl.com

The complaint will be handled by one or more persons who were not directly involved in the tender procedure to which the complaint relates.

1.5 Handling of Complaints

a. Complaints submitted to the complaints desk will be handled on the basis of this complaints procedure and not on the basis of the Dutch General Administrative Law Act.

b. After receiving the complaint in accordance with the procedure described above, the complaints desk will promptly confirm receipt of the complaint.

c. The complaints desk will then investigate whether the complaint is well-founded, if necessary on the basis of additional information provided by the undertaking and the contracting authority. The complaints desk will start this investigation as soon as possible, proceed with it expeditiously and take into account the timetable of the tender procedure. If, before the complaints desk has had the opportunity to decide



on the submitted complaint, the complainant submits the complaint to the competent court, the complaints desk will declare the complainant inadmissible.

d. The complaints desk will issue advice to the contracting authority. The advice will state, with reasons, whether the complaints desk considers the complaint to be well-founded, partially well-founded or unfounded. It is then for the contracting authority to decide on the complaint, taking into account the advice of the complaints desk.

e. If, following the investigation by the complaints desk, the contracting authority concludes that the complaint is wholly or partly justified and the contracting authority takes corrective and/or preventive measures, the contracting authority will inform the undertaking in writing as soon as possible. The other potential or actual tenderers or candidates will also be informed. Depending on the stage of the tender procedure, the measures may be communicated to the parties involved in the tender procedure by the contracting authority's contact person for the tender at the same time as the complainant is informed, in order to avoid giving any party an advantage.

f. If, following the investigation, the contracting authority concludes that the complaint is not justified, it will reject the complaint with reasons and inform the undertaking accordingly.

g. Once the contracting authority has informed the undertaking how it will address the complaint, or if the contracting authority fails to respond to the complaint within a reasonable period, the complainant may submit the complaint to the Dutch Commission of Procurement Experts or to the competent preliminary relief judge.

