Annex 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. The following principle applies: "first ask, then complain". Questions and requests relating to clarification of aspects of the tendering procedure must be submitted by the entrepreneur to the contracting authority in time, 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. If the entrepreneur continues to disagree with the response from the contracting authority, or if a response is not forthcoming, he may file a complaint with the contracting authority. The entrepreneur may also file a complaint if, according to the tender document, there is no (more) opportunity to ask questions.

What can a complaint be about?

Complaints must relate to aspects of the tender that fall within the scope of the Public Procurement Act 2012. Complaints may not question the tender policy of the contracting authority in general.

The entrepreneur may file a complaint about all types of tendering procedures (regardless of the threshold value) concerning:

- the phase before the deadline for submission of an expression of interest/a tender in an ongoing tendering procedure;
- the selection or award decision of an ongoing tendering procedure;
- the situation in which the contracting authority has not put out a contract to tender when, according to the entrepreneur, it should have done so.

Who can file a complaint?

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

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

Complaints may not be filed anonymously. However, an industry association may file a complaint in its private capacity if this complaint relates to a specific tender which concerns one or more entrepreneurs in the industry.

[1] Tender also refers to the 'request for proposal' procedure.

What is the final date for submitting a complaint?
The entrepreneur is advised to file the complaint at the earliest possible opportunity. If the complaint is submitted very late or 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.

Where should you submit your complaint?
Complaints should be submitted in writing to:
KlachtenmeldpuntAanbesteden@minezk.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. Complaints submitted to the 'Klachtenmeldpunt' ('complaints office') will be handled on the basis of this complaint procedure and not on the basis of the Awb (General Administrative Law Act).
b. After receiving the complaint in the manner described above, the complaints office immediately confirms it has received the complaint.
c. 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.
d. 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.
e. 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.
f. 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).
g. 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 (except if the complaint relates to a selection or award decision) or to the competent judge in summary proceedings.