

**GOVERNMENT OF THE YUKON**

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**BID CHALLENGE COMMITTEE  
TERMS OF REFERENCE**

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Updated: February 5, 2021

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## INTRODUCTION

These terms of reference are issued as an aid to implementing the Procurement Complaints Procedure under GAM 2.6 Section 15. If a conflict in interpretation arises between this document and GAM 2.6, GAM 2.6 will take precedence.

The procurement process must rely to some extent on the judgement of procurement authorities. Therefore, the regulations and GAM 2.6 make several provisions whereby procurement authorities may be held accountable for their decisions. These provisions address that:

- a) bidders and proponents are given access to the results of the decision making process;
- b) unsuccessful bidders and proponents can get clear explanations why their bids or proposals were rejected;
- c) an informal escalation process has been established as a mandatory process that must be followed before the formal process can begin; and
- d) a formal bid challenge process has been established to deal with complaints about how the regulations and GAM 2.6 were applied to specific procurement competitions.

The complaint procedure process is intended and designed to be an after-the-fact review of procurement authorities' decisions related to their tender documents and the procurement policy. The objectives are to ensure that, if errors or abuse occur, they are not repeated in the future and that there be suitable redress for aggrieved parties.

Bidders and proponents, who may have a complaint, must first try to resolve their differences through an informal dispute process with the procurement authority. If the informal dispute process does not resolve the issue, the formal bid challenge process may be used to investigate the complaint and provide recommendations.

## AUTHORITY FOR THE BID CHALLENGE COMMITTEE

The Bid Challenge Committee is established under Part II, section 8 of the Contracting and Procurement Regulations and GAM 2.6, section 15.

## **APPLICATION AND SCOPE**

The process applies to all requests for bids and proposals issued under the Contracting and Procurement Regulations and GAM 2.6, except Contracts issued through a Direct Award Process by the procurement authority and decisions made under section 6(3)d of GAM 2.6.

Complaints, and hearings when required, will deal with the procurement process, ie. The activities and decisions of procurement authorities up to the time a contract is awarded. The process is not intended to examine the implementation or conduct of any contract once awarded.

## **COMPOSITION AND TERM OF THE BID CHALLENGE COMMITTEE**

The committee is made up of a committee chair, an alternate chair who will act in the absence of the chair, and up to 10 committee members. The twelve members will all be from the private sector. When possible, the committee will have a minimum of 25% Yukon First Nation membership and a minimum of one Yukon First Nation member will serve on the three-person Panel convened to hear a challenge (effective February 22, 2021). There will be no Yukon Government representatives.

Minister appoints members for a period of up to two years, and members may be reappointed.

## **PANELS**

A panel made up of the committee chair, and two committee members hears complaints. When appointing members to a panel, the chair shall make best efforts to select members from among the committee who are best qualified to consider the matter at hand. However, to avoid any possibility of a conflict of interest, the chair will also be careful that no member appointed to a panel has any direct or perceived interest in the complaint.

## **PROCESS**

Complainants who wish to challenge a decision must discuss their concern with the procurement authority first, using the debrief process or by following the informal complaints procedure to resolve issues, if possible.

Subject to GAM 2.6, section 15(1)(b), where a Supplier has reason to believe that they have been treated unfairly or that the Procurement process has not been

followed, the Supplier may make a written complaint to the Bid Challenge Committee Secretariat. **Subcontractors or sub-consultants cannot register a complaint.**

Complaints are registered with the Bid Challenge Committee Secretariat. Complaints can be sent by email to [bccsecretariat@gov.yk.ca](mailto:bccsecretariat@gov.yk.ca) or by dropping off a hard copy of the letter to the Procurement Support Centre at 101-104 Elliott St. Whitehorse, YT Y1A 0M2.

A complaint must be made in writing. No special forms are required. The Bid Challenge Secretariat on behalf of the Deputy Head of the Procurement Authority will require the complainant to provide full and sufficient details related to the complaint, including their efforts to resolve the complaint with the procurement authority.

The complainant will be given an acknowledgement of receipt.

The Deputy Head of Highways and Public Works will forward the complaint to the Deputy Head of the procurement authority and to the chair of the Bid Challenge Committee.

## **TIMING/DEADLINES FOR COMPLAINTS**

The complaint must be registered within the 60 calendar days following the closing time stated in the Procurement documents, or within 15 calendar days following the award of the Contract or SOA, whichever is later.

The procurement authority will provide a written report about the circumstances relating to the complaint to the chair. The chair of the committee will conduct an initial review of the complaint to determine whether there will be an inquiry or hearing. Before reviewing the complaint, the chair is required to declare whether a conflict of interest exists and in the event one does exist, the alternate chair would review the complaint.

## **APPOINTING AND CONVENING THE PANEL**

The committee chair appoints a three-member panel to review the complaint when it has been determined that an inquiry or hearing will be held.

The panel will determine where in the Yukon it will sit to hear the complaint. The chair must convene the panel within a reasonable time following acceptance of the complaint. Any member, prior to being appointed to a panel, will declare to the chair, any conflict of interest the member may have in regard to the complaint to be heard. If a member declares a conflict of interest exists, they will not be eligible to sit on the panel. All panel members must be conflict-free to participate in the

hearing.

## RULES OF PROCEDURE

The conduct of each hearing will be as determined by the chair after considering the nature of the complaint, these terms of reference and other relevant factors. Panel hearings are not to be seen as courtroom style debates. Formal "rules of evidence" will not apply.

In general, hearings will follow the following format:

1. The chair will outline the complaint and confirm the rules and procedures for the hearing.
2. The complainant will be given an opportunity to verbally present his/her case including any request for redress. Written documentation may also be presented at this time.
3. The panel may ask questions of the complainant.
4. The procurement authority will be given an opportunity to verbally present his/her case. Written documentation may also be presented at this time.
5. The panel may ask questions of the procurement authority.
6. Both the complainant and contracting authority may be given the opportunity to present additional information and closing statements.
7. After dismissing both the complainant and the procurement authority, the panel will sit (in camera), as required, to discuss the facts and merits of the case, to hear and consider the submissions of the complainant and the procurement authority and prepare a report with recommendations.
8. Panel members will keep confidential all information and discussions relating to the hearing that are confidential or are declared to be confidential.

Both parties to the complaint have the right to bring an advisor or assistant to the hearing. One person only from each party will be allowed to make a presentation. All persons attending the hearing, and their roles, shall be identified

to the chair at least two days prior to the commencement of the hearing.

The panel may refuse to hear and consider, or may cease to consider a complaint on the grounds that:

- the complaint is without merit, trivial, frivolous, vexatious or has already been resolved; or
- the complainant does not have sufficient personal interest in the subject matter of the complaint.

The chair must inform the complainant and the procurement authority of the panel's decision. The chair shall state the reasons for the panel's decision.

The committee does not have authority to delay award of the contract or to cancel, revoke, amend, or alter a contract.

## **REDRESS**

Where the panel considers that a complaint is valid, it may make recommendations to the procurement authority, including recommending that the procurement authority pay to the complainant compensation for:

- (a) the complainant's reasonable costs in preparing a Response; and/or
- (b) the complainant's reasonable costs for participating in the inquiry or hearing.

If the panel recommends compensation to the complainant, the panel will follow the guidelines and formula for awarding compensation outlined in the Bid Challenge Process: Hearing and Bid/Proposal Preparation Costs.

In making its decision, the panel will consider all the circumstances relevant to the complaint, including:

- (a) the seriousness of any deficiency in the procurement process found by the panel;
- (b) fairness to other participants in the procurement process and maintaining the integrity of the procurement process;
- (c) the terms of the procurement documents;
- (d) the degree to which the complainant and all other interested parties were prejudiced; and

(e) the degree to which the integrity and efficiency of the competitive procurement system was prejudiced.

## **Report and Response**

The panel will make a report of its findings and any recommendations it may have to the Deputy Head of the procurement authority. A copy of the report must be given to the complainant.