

Vendor Complaint Process

Government of the Northwest Territories



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1.0 Scope of the Vendor Complaint Process (VCP)

A method to handle vendor complaints and to improve the Government of the Northwest Territories (GNWT) procurement process is an integral part of a fair and open procurement policy. The following procedures facilitate this objective, allowing government to handle complaints in an organized, consistent manner, and to carry out the analysis and reporting requirements in order to improve upon the procurement process.

The VCP is intended to provide access to a consistent, fair and timely process to deal with vendor complaints concerning the GNWT's procurement process, and to identify ways to make improvements in that process.

Departments are responsible for undertaking procurement processes, and are therefore also primarily responsible under the VCP for reviewing and resolving complaints about their procurement processes.

The VCP is limited to issues of procurement policy and procedures for GNWT Departments. It is not intended to limit access to other complaint review processes. No compensation will be awarded to a complainant under the VCP.

A complaint means a written objection submitted by a potential vendor regarding a bid solicitation or contract award for goods, services or construction.

Vendor complaints and protests originate for a number of reasons, real or perceived; however, all of these reasons negatively reflect on the integrity of the procurement process. Some reasons are:

- specifications that are seen as vague or incomplete;
- bid preparation time too short to properly reply;
- specifications perceived as unfair, predetermined, or arbitrary;
- inconsistent application of procurement procedures; or
- violation of an applicable Trade Agreement.

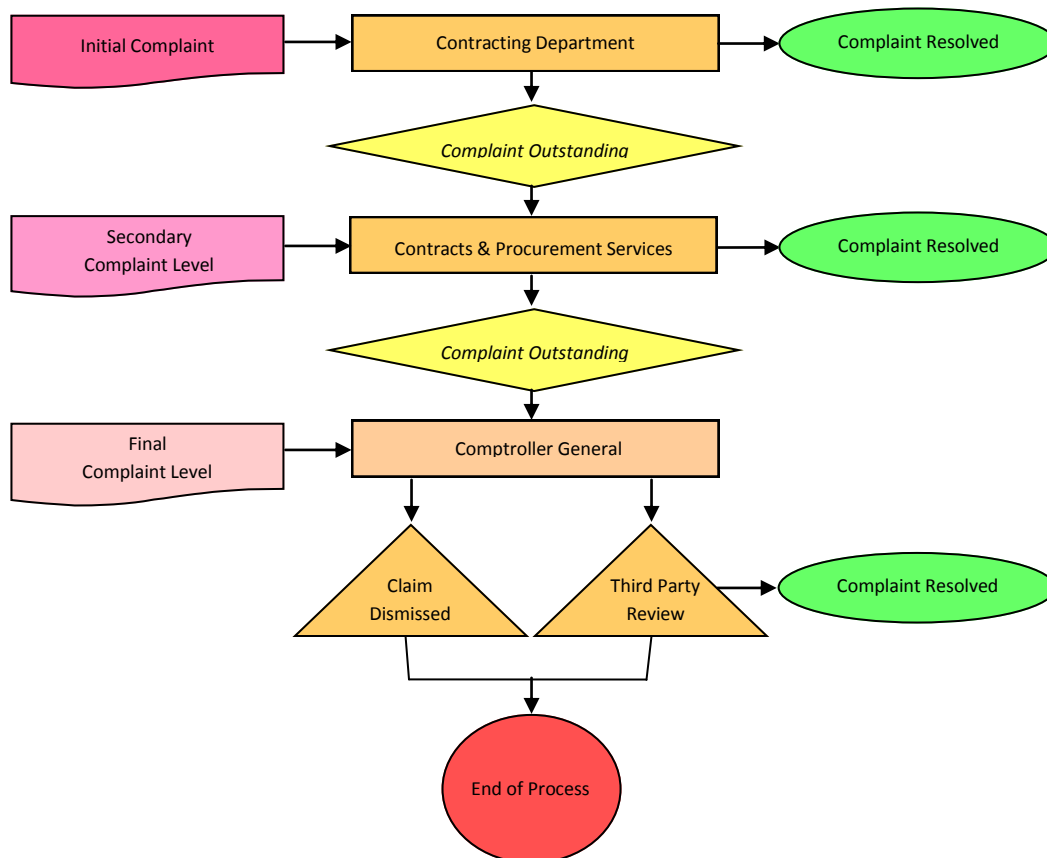
Prior to initiating a complaint, vendors are strongly encouraged to resolve problems by contacting the Department involved as the first step in the process. Experience has demonstrated that there are often minor errors, omissions or other inadvertent actions which can be quickly clarified or corrected to the satisfaction of the complainant, thus addressing the cause of many complaints and concerns at the outset. The VCP provides an opportunity for vendors to voice complaints and may sometimes help to resolve complaints that involve no significant factual or interpretative disagreements between the parties. Fundamental disputes over facts or over legal rights and obligations are, however, beyond the scope of the VCP.

2.0 Applicability

This complaint process applies to all procurement activity carried out by GNWT Departments covered under the *Financial Administration Act*.

Where a vendor has a procurement complaint with a Board or Agency, the overseeing government Department will only intervene if the Department has acted directly on behalf of the Board or Agency in procuring the goods or services.

3.0 Complaint Process



4.0 Initial Complaint to a Department

The vendor shall communicate its concerns or complaints in writing to the Department responsible for the procurement at any time during the competitive process with a view to resolving them. The contracting Department shall acknowledge receipt of the complaint in writing within 2 business days and provide a response within 15 business days.

On receipt of a complaint, the contracting Department shall review the complaint to determine if further action is appropriate. A complaint may be dismissed without further consideration, where in the opinion of the contracting Department:

- (a.) on its face is frivolous or invalid;
- (b.) the complainant is not a participant in the competitive process (i.e. did not submit a bid);
- (c.) is in respect of a procurement by an entity that is not a government Department;
- (d.) is made more than 10 business days after a notice of a contract award; or
- (e.) is otherwise inappropriate for consideration.

The complaint may be resolved, withdrawn or dismissed if in the opinion contracting Department the procurement is the result of a properly applied fair procurement process.

If dismissed, a reply to the complaint will be prepared by the contracting Department and forwarded to the Deputy Minister, who will review the findings, consider any recommendations, render a decision and reply to the complainant.

Should the contracting Department find reason for a more comprehensive review, it may form a review committee. After analysis of all information, the findings and recommendations of the review committee will be submitted in writing to the Deputy Minister, who will review the findings, consider any recommendations, render a decision and reply to the complainant.

5.0 Complaint to Contract Procurement Services

5.1 Complaint Submission

5.1.1 Where a vendor has not received a satisfactory response from the contracting Department, it may make a written request to the Contracts Advisor, Contracts and Procurement Services (CPS), to seek an independent review of the complaint. Such a request may only be made within 30 days after the date on which they received notification from the contracting Department as to the outcome of their complaint review process.

5.1.2 Complaints are to be submitted in written form to:

**Contracts Advisor
Contracts and Procurement Services (CPS)
Public Works and Services
Government of the Northwest Territories
Box 1320
Yellowknife NT X1A 2L9**

5.2 Complaint Format and Information Requirements

5.2.1 The complaint must include:

- Name, title, company name, address, e-mail address, fax and telephone numbers of the complainant.
- The signature of the complainant. Where an email complaint has been received, it will be deemed to have been signed by the originator of the email.
- Competition or contract number.
- A detailed description of the complaint, the background leading to the complaint, including relevant dates, and actions of involved parties.
- Copies of relevant documents submitted under the Department process.
- The name of the Department representative contacted to review the complaint originally, and the results of the discussions or correspondence within the contracting department's vendor complaint process.
- Request for a review of the complaint.
- Actions/remedies being requested of the GNWT.
- Information establishing that the person submitting the complaint is a valid complainant.
- A statement that no other review process is currently underway for the complaint.

5.3 Processing the Complaint

5.3.1 Within 15 business days of receiving a complaint, CPS will gather the appropriate competition documents, other correspondence and information related to the Department's vendor complaint process. CPS may also informally meet with the Department and/or the complainant if CPS considers it necessary.

5.3.2 CPS will consider the merits of the complaint and may, at its discretion, dismiss a complaint on the grounds that:

- The complainant does not have sufficient interest in the subject matter of the complaint;
- The complaint is not substantiated; or
- At the same time as the complaint is received, the complainant has initiated legal action, or has engaged in another review process pertaining to the complaint.

5.3.3 Where CPS dismisses a complaint, the Contracts Advisor will inform, in writing, the complainant and the Department against which the complaint was registered and state the reasons for refusing to undertake a review. A record of the dismissal of the complaint will be retained by CPS.

- 5.3.4 CPS will consider all the circumstances relevant to the complaint including:
- The seriousness of any deficiency found in the procurement process; and
 - Whether the parties acted in good faith.
- 5.3.5 If the complaint has been determined to have merit, possible outcomes include, but are not limited to:
- CPS to recommend to the Department to acknowledge the validity of the complaint and to undertake a renewed commitment to policy and procedure;
 - CPS to initiate enhanced training for procurement staff;
 - CPS to recommend to the Department to review an individual's expenditure and/or contract authority (i.e. authority to undertake procurement activity) and adjust as necessary;
 - CPS to initiate enhanced communication/interpretation of procurement policy;
 - CPS to recommend change in departmental procurement procedure;
 - CPS to initiate a review, clarification or may recommend a change to government procurement policy; or
 - CPS to recommend cancellation/amendment of the competition where a serious flaw has been identified.
- 5.3.6 Within 15 business days of determining the facts (as in 5.3.1), the CPS will, after analysing the information, prepare a report and recommendations regarding outcomes.
- 5.3.7 The CPS may extend the 30-day time requirements for review and final determination of the outcome when, in its judgement, circumstances require it. Where this occurs, the complainant will be advised by CPS, in writing, of the reason for the delay and when they may expect a response.

5.4 Replying to a Complaint

- 5.4.1 A report on the vendor complaint, including the outcome and reasons for the outcome, will be made in writing no later than 30 business days after receipt of the complaint by CPS.
- 5.4.2 Copies of the report will be sent to the complainant, the senior official delegated by the Deputy Minister of the contracting Department and the Comptroller General.
- 5.4.3 Copies of all replies may be available to Internal Audit Bureau, and the Auditor General, as required, or to other government officials. Copies may also be made available in accordance with the *Access to Information and Protection of Privacy Act* or the *Auditor General Act*.

5.5 Records, Documentation and Reports

5.5.1 CPS shall ensure that complete documentation and records on each complaint received by CPS, including a record of all communications with complainants, are maintained in order to allow later verification by participants, auditors or senior officials to determine whether or not the procurement process was carried out in accordance with government procurement policy and that the complaint was submitted and handled in accordance with the VCP.

5.5.2 The records on each complaint reviewed by CPS shall contain a copy of the following:

- The complaint identifying the complainant's name, address and the nature of the complaint;
- The competition documents, including the specifications or portions thereof relevant to the complaint;
- Any other documents that are relevant to the complaint, including the bids received, if judged appropriate;
- A statement setting out the facts, actions and recommendations, and response to the allegations of the complaint; and
- any additional evidence or information that was necessary to review the complaint.

5.5.3 All complaints are tracked and reported to the Office of the Comptroller General on an annual basis.

6.0 Request to the Comptroller General

6.1 Complaint Submission

6.1.1 Where a complainant has not received a satisfactory response from the CPS, the complainant may make a written request to the Comptroller General to seek an independent review of the complaint. Such a request may only be made within 30 business days after the date on which they received notification from the CPS the outcome of their complaint review process.

6.1.2 Complaints are to be submitted in written form to:

**Comptroller General
Department of Finance
Government of the Northwest Territories
Box 1320
Yellowknife NT X1A 2L9**

6.2 Complaint Format and Information Requirements

6.2.1 Complaint format and information requirements are the same as outlined in 5.2.1.

6.3 Processing the Complaint

6.3.1 The Comptroller General will consider the request for an independent non-binding review and respond to the complainant within 15 business days. The Comptroller General may at his/her discretion reject the request and inform the requestor, in writing, outlining the reasons for rejection.

6.3.2 If the Comptroller General considers the request for an independent review has merit, the Comptroller General will establish an independent review process to review the complaint. At the discretion of the Comptroller General the independent reviewer may be an individual or a panel. In either case the independent reviewers must be acceptable to both the Department and the complainant.

6.3.3 The independent reviewer will consider all information available from both the Department decision and the Contracts and Procurement decision and after analysing the information, will prepare a report and recommendations regarding outcomes

6.4 Replying to a Complaint

6.4.1 Within 30 days of its appointment the independent reviewer will issue a report as to its findings and its outcomes. Copies of the report will be sent to the complainant, the senior official delegated by the Deputy Minister of the contracting Department and the Comptroller General.