

CONTRACTOR APPEAL PROCESS

PURPOSE

1. A contractor may use the contractor appeal process (Appeal Process) to resolve complaints relative to the procurement process.
2. The selection of the method of procurement and a decision by a Government department or entity (Procurer) to reject all tenders, proposals, offers or quotations are not subject to review.
3. Contractual disputes must be resolved in accordance with the dispute resolution process set out in the contract between the Government and the Contractor.
4. The Appeal Process should be used if you are:
 - (a) a Contractor who is or has been engaged in the Government's procurement process;
or
 - (b) an actual or prospective bidder whose business interests would be affected by the award of a contract or failure to award a contract.
5. The Appeal Process comprises:
 - (a) review by the Procurer;
 - (b) review by the Office of Project Management and Procurement (OPMP); and
 - (c) appeal to the Permanent Secretary to the Cabinet Office.
6. Complaints and appeals will not automatically delay the contract award process.
7. Failure to raise a timely complaint in accordance with the Appeal Process will be deemed to be a waiver of the right to contest the matter further.

REVIEW BY PROCURER

8. **Informal Review.** In the first instance, a Contractor should contact the project manager or the procurement contact person identified in the solicitation documents (procurement officer) to resolve any issues. Complaints must be received by the project manager or procurement officer within twenty (20) days of the date the Contractor became aware of the circumstances which give rise to the complaint.

9. Contractors who have completed a competitive bid process and have questions regarding the outcome of their submissions may contact the project manager or procurement officer to request that the Procurer conduct a debriefing session.
10. If the issue remains unresolved, the Contractor may follow the formal review process.

REVIEW BY OPMP

11. **Formal Review.** The formal review process should be followed when the issue or dispute has not been resolved through the informal review process. Formal complaints should be submitted to OPMP within fifteen (15) days of an unsuccessful attempt at an informal resolution.
12. The Contractor must complete a Contractor Complaint Form which includes:
 - (a) the name, title, company name, address, email address, fax and telephone number(s) of the Contractor;
 - (b) the signature of the Contractor. Where an email complaint has been received, it will be deemed to have been signed by the originator of the email;
 - (c) a detailed description of the complaint, the background leading to the complaint, including relevant dates, and actions of the parties involved in the procurement process;
 - (d) copies of relevant documents to support the complaint; and
 - (e) proposed actions and/or remedies.
13. The Contractor may submit the Contractor Complaint Form to OPMP by:
 - (a) email to procurement@gov.bm; or
 - (b) regular mail to the following address:

Attention: Director, Office of Project Management and Procurement
General Post Office Building
56 Church Street, 2nd floor
Hamilton HM12
Bermuda
14. Within two (2) business days of receiving the complaint, OPMP will:
 - (a) acknowledge receipt of the complaint (via mail or email); and

- (b) create a file number and log the complaint.
15. To facilitate the formal review process, the Procurer will provide OPMP with:
- (a) a statement of facts regarding the complaint;
 - (b) a description of any actions taken to address the complaint; and
 - (c) supporting documents relevant to the complaint (i.e. bids, contracts, evaluations, debriefing notes, etc.)
16. OPMP will endeavour to provide a written response (via mail or email) to the Contractor within fifteen (15) business days of receipt of the complaint by OPMP, stating the reasons for the decision and indicating that any appeal of the decision must be directed to and received by the Permanent Secretary to the Cabinet Office within fifteen (15) days of receipt by the Contractor of OPMP's decision.
17. OPMP will update the complaint log with the proposed resolution and/or actions taken.

APPEAL TO THE PERMANENT SECRETARY

18. A Contractor may appeal a decision made by OPMP. The appeal must be directed to and received, in writing, by the Permanent Secretary to the Cabinet Office within fifteen (15) days of receipt by the Contractor of OPMP's decision. The appeal must contain: (a) the complaint addressed to OPMP; (b) OPMP's decision; and (c) the rationale upon which the Contractor has relied in determining the validity of the decision against which the Contractor has appealed. The Permanent Secretary will:
- (a) investigate the complaint;
 - (b) provide a written response to the Contractor; and
 - (c) update the complaint log with the proposed resolution and/or actions taken.
19. The Permanent Secretary will endeavour to conclude the Appeal Process with the Contractor within thirty (30) business days of receipt of the complaint by the Permanent Secretary. Where the Permanent Secretary extends the deadline for completion of the Appeal Process, the Contractor will be advised, in writing, of the reason for the delay and when the Contractor may expect to receive a response.

CONFIDENTIALITY

20. Complaints must not be made anonymously. Contractor information will be kept in strict confidence by OPMP.

DOCUMENT RETENTION

21. A copy of the following documentation related to each complaint must be retained in the records of the Procurer and OPMP:
 - (a) the complaint identifying the Contractor's name and address, and the nature of the complaint;
 - (b) documents specifically related to the complaint, which may include, but are not limited to competitive bid or contract documents, evaluation or debriefing notes;
 - (c) a statement of facts, actions, recommendations, and responses to the complaint;
 - (d) any additional evidence or information that was necessary to review the complaint;
 - (e) a copy of the decision(s) and appeal (if applicable) relative to the complaint; and
 - (f) confirmation from or to the Contractor that the complaint has been satisfactorily resolved.
22. OPMP may draw on any of the documents described in paragraph 21, at any time, in order to investigate a complaint.