

Vendor Complaint Review Process (VCRP)

**For
Ministry of Health
Procurement**

**Proposed Vendor Complaint Review Process (VCRP)
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Procurement**

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Executive Summary

The vendor community in BC has identified a need for a process to deal with issues arising from government procurement processes. This need has been confirmed in feedback to the *Procurement Reform Framework* and the *Premier's Technology Council Third Quarterly Report*.

In addition to the processes for complaints escalated to the Procurement Governance Office (PGO), each ministry is required to document and publish an internal process for dealing with initial complaints. The Ministry of Health has developed a Vendor Complaint Review Process (VCRP). This process was developed in consultation with the Purchasing and Supply Services Division (PSSD) and with other ministries.

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

The Ministry VCRP is limited to issues of procurement policy and procedures for direct government. It is not intended to limit access to other complaint review processes. No compensation will be awarded to a complainant under the Ministry VCRP or the government VCRP framework.

Background

Vendors have requested a process for review of issues arising from the BC government's procurement processes. The need for a Vendor Complaint Review Process (VCRP) was confirmed from feedback to the *Procurement Reform Discussion Paper* released in March 2002, and in the *Third Quarterly Report of the Premier's Technology Council* released in September 2002.

Ministries and the government's Procurement and Supply Services Division in the Ministry of Management Services are responsible for procurement processes in government, and are therefore responsible for reviewing complaints about the procurement processes.

The establishment of the Procurement Governance Office (PGO) in the Ministry of Finance in October 2002 created an organization that is responsible for development and management of procurement policy, and for monitoring and reporting compliance to this policy. The PGO is independent of all government procuring entities, and is therefore well positioned to provide overall management of this impartial Vendor Complaint Review Process for government, and to serve as the place for "last resort" vendor complaints.

This Ministry Vendor Complaint Review Process has been prepared by the Ministry of Health in support of the PGO and is the vendor's first contact regarding procurement complaints against the Ministry.

Core Policy Manual Chapter 6 - Section 5

6.5 Vendor Complaint Review Process For Ministry Procurement

6.5.1 Objectives

The objectives of this policy are to define a vendor complaint review process (VCRP) that is accessible, consistent, fair, impartial and timely, and to identify ways to make improvements in the manner in which procurement is undertaken by the Ministry.

6.5.2 General

The VCRP is designed to ensure that there is a process for the review of vendor complaints about a Ministry procurement process. The intent of the VCRP is to assist the Ministry in identifying and responding to problems in the establishment and application of government procurement policy and procedures.

This VCRP requires that the Ministry and vendors provide full access to all information pertinent to complaints. All information under this VCRP is subject to the *Document Disposal Act* and the access and privacy provisions of the *Freedom of Information and Protection of Privacy Act*.

6.5.2.1 Definitions

Ministry, means the Ministry of Health.

PGO, means the Procurement Governance Office, Office of the Comptroller General, Ministry of Finance.

PSS, means Procurement and Supply Services, Ministry of Management Services.

Procurement, means those processes, including direct awards, related to the purchase of goods, services and construction.

Complaint, means a written objection submitted by a complainant regarding a competition, contract award, or proposed contract award for goods, services, or construction.

A complaint may be made with respect to the process used to evaluate proposals and how the evaluation criteria were applied, but may not include issues pertaining to individual point ratings given by an evaluation committee to specific evaluation criteria.

Complainant

- a) For the purpose of a vendor complaint relating to a competition, means an actual or prospective bidder or proponent whose direct economic interest would be affected by the award of a contract, or by the failure to award a contract.
- b) For the purpose of submitting a vendor complaint relating to a contract award, means a proponent who actually submitted a proposal in response to the competition for the contract.

6.5.2.2 Scope of VCRP

- The application of this VCRP is limited to the Ministry whose procurement is subject to government procurement policy as described in Chapter 6 of the Core Policy Manual.
- This VCRP is limited to issues of procurement policy and procedures. This VCRP is not available for issues related to vendor or Ministry performance or conduct during a contract. These issues are to be dealt with through the dispute resolution processes identified in the contract document.
- This VCRP does not limit or impair the rights of any vendor to seek a review through the Ombudsman's Office, or remedies of law through the judicial or other process.

6.5.2.3 Roles and Responsibilities

Ministry Responsibilities:

- Establishing and managing an accessible and fair process for responding to vendor complaints related to procurement activities undertaken by the Ministry.
- In the case of those complaints submitted to the PGO, providing all pertinent and required information.
- Recording information on all vendor complaints managed under the vendor complaint review process, and providing reports to the PGO as required.
- Implementing changes required to Ministry procurement processes identified through the complaint review process.
- Implementing any outcomes recommended by the PGO, and any subsequent remedial action.
- Making all reasonable efforts to review complaints.

Vendor Responsibilities:

- Making reasonable efforts to review the complaint with the Ministry by contacting them and following their complaint review process.
- Providing all pertinent and required information related to a complaint.

Procedures for Ministry Vendor Complaint Review Process

1. Registering a Complaint

- 1.1 The complainant must submit their complaint in writing on the Vendor Complaint Review Form or in a format that provides all of the information requested in the form to:

Administrator, Contract Management
2-1 1515 Blanshard Street
Victoria, BC
V8W 3C8
Phone: 250 952-2030
Fax: 250 952-2090

- 1.2 Complaints concerning a competitive process or a pending or awarded contract may be submitted by the complainant at any time during the competitive process, and up to thirty (30) business days after they have received notification from the Ministry of the final outcome of the competition.

2. Processing the Complaint

- 2.1 As soon as possible and within thirty (30) business days of receiving a complaint, the Ministry will gather the information related to the complaint, and this process may include an informal meeting with the complainant if the ministry/PSS considers it necessary.
- 2.2 The Ministry in considering the merits of the complaint may dismiss a complaint on the grounds that:
- the complainant does not have sufficient interest in the subject matter of the complaint; or,
 - the complaint is not substantiated; or,
 - at the same time as the complaint is received, the complainant has initiated legal action, or has submitted a complaint to the Ombudsman, or has engaged in another review process pertaining to the complaint.
- 2.3 Where the Ministry dismisses a complaint, they will inform the complainant as soon as possible the reasons for the dismissal.
- 2.4 If the complaint has not been dismissed pursuant to section 2.3, the Ministry will determine whether or not there has been a breach of policy or procedure. The Ministry may consider:
- the seriousness of any deficiency found in the procurement process;
 - whether the parties acted in good faith.

- 2.5 If it is determined that there has not been a breach of policy or procedure, or unfair treatment, the complaint will be denied and the complainant will be informed of the reasons for the denial.
- 2.6 If the complaint has been determined to have merit, possible Ministry outcomes include, but are not limited to:
- acknowledgement of the validity of the complaint and a renewed commitment to procedure and policy;
 - additional training and education for staff regarding procurement competencies;
 - recommendation for review of the Ministry or an individual's expense authority(ies) (i.e. authority to undertake procurement activity) and adjustment if necessary;
 - change in Ministry procurement procedure;
 - referral to the PGO to enhance communication or interpretation of procurement policy;
 - referral to the PGO to initiate a review, clarification or change of government procurement policy; or,
 - recommendation for cancellation or amendment of the competition or contract where a serious flaw has been identified.
- 2.7 The Ministry will have an escalating procedure, appropriate to the structure and requirements of the Ministry, in which a complaint not satisfactorily concluded is elevated to a senior official, delegated by the Deputy Minister.
- 2.8 As soon as possible and within thirty (30) business days of determining the facts (as in 2.1 above), the Ministry will prepare a report on its review of the complaint and prepare a response to the complainant. The response will contain the report, the outcomes and the rationale for them, as well as the procedure to be followed if the complainant wishes to pursue the matter further.
- 2.9 When unable to respond to the complainant within thirty (30) business days, the Ministry will advise the complainant of the reason for the delay and when they may expect a response.

3. Records and Documentation

- 3.1 The Ministry will maintain documentation and records pertaining to the complaint, including a record of all communications with complainants.
- 3.2 Copies of all records will be available to PGO, Internal Audit and Advisory Services, the Auditor General, or to other officials as authorized by the *Freedom of Information and Protection of Privacy Act* or the *Auditor General Act*.

VCRP Flowchart

Ministry of Health
November 22, 2007



