



SUPPLIER COMPLAINTS SCHEDULE

PURPOSE

This Schedule provides direction and guidance for public authorities on handling supplier complaints relating to procurements undertaken by South Australian public authorities under Treasurer's Instructions 18 - Procurement.

The appropriate handling of supplier complaints is vital to ensuring the integrity of government procurement processes. It is also essential for compliance with the South Australian Government Procurement Framework ('the Framework'), Premier and Cabinet Circular 039 Complaint Management in the SA Public Sector ('PC039') and applicable free trade and government procurement agreements ('international obligations')¹.

SCOPE

The scope of this Schedule is limited to complaints raised by a supplier regarding a procurement undertaken by a public authority. It is to be read and applied within the context of the public authority's existing complaint management system (as required under the Framework and PC039).

Supplier complaints that disclose information:

- of a criminal nature must be directed to SA Police in accordance with obligations under the *Public Interest Disclosure Act 2018*;
- involving public officer corruption, misconduct, or maladministration must be reported to the Office for Public Integrity in accordance with the *Independent Commissioner Against Corruption Act 2012*, *Police Complaints and Discipline Act 2016* and the *Public Interest Disclosure Act 2018*;
- that involve complaints relating to the South Australian Industry Participation Policy are to be referred to the Office of the Industry Advocate; and
- that involve complaints relating to breaches of free trade and government procurement agreements (International Obligations) are to be referred to Procurement Services SA (PSSA).

¹ See the *International Obligations Guideline* for further information on the free trade and government procurement agreements.

Further information: Procurement SA

Contact Email: procurement@sa.gov.au

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SUPPLIER COMPLAINTS SCHEDULE

The complaint management process will at a minimum:

- document the process for handling supplier complaints, including appropriate escalation procedures within the public authority
- detail how the investigation will be conducted
- provide timelines for conducting investigations and formally responding to the complaint
- identify the information or documentation required by the complainant
- provide details of the contact person and process to provide documentation
- encourage the public authority and complainant to seek resolution of the complaint through consultation
- detail how complaints are to be referred to Procurement Services SA if the matter is not resolved to the satisfaction of the complainant.

Suppliers must be allowed a minimum of 14 calendar days to submit a complaint in writing (from the time when the complaint becomes known or should have been known to the supplier). All formal complaints will be investigated, and responded to in writing, by an appropriate independent officer who is not directly involved in the subject matter of the complaint. For example, public authorities with a central procurement unit may elect to have complaints managed by an internal audit unit.

The complaints management process will be publicly available to suppliers.

Contract Disputes

If a dispute arises out of a contract, the public authority will manage the dispute in accordance with the specific terms and conditions of the contract and will seek advice from the Crown Solicitor's Office as required.

ROLES AND RESPONSIBILITIES

Public Authorities

In line with the Procurement Governance Policy, PC039 and the government's international obligations, Chief Executives are responsible for ensuring their public authorities have effective systems, practices and processes in place to manage supplier complaints at any stage of the procurement process, including contract management.

It is important that public authorities uphold good supplier practices in all aspects of procurement and adopt an open and transparent approach to the handling of supplier complaints.

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		Version:	1.2

SUPPLIER COMPLAINTS SCHEDULE

Public authorities are responsible for supplier complaints frameworks and for:

- providing constructive feedback to suppliers on the outcome of any offers to supply
- adopting an open and transparent approach to the handling of supplier complaints
- providing clear and accessible information for suppliers at the commencement of a procurement process on how to submit a complaint or provide feedback
- offering various options for a supplier to submit a written complaint (such as online, email, letter)
- including details of a nominated complaints / feedback contact officer in market approach documents
- providing detail of the information or documentation required from the complainant and the process to provide documentation
- appropriately managing confidential information and identities (of complainant or public authority officer)
- having a mechanism for assessing the severity of the complaint
- providing responses to supplier complaints in writing
- regularly communicating with the complainant in writing throughout the complaint management process, and advising anticipated timeframes for reviewing the complaint
- investigating complaints impartially and in a timely, ethical and transparent manner.

Suppliers

Suppliers have a responsibility to:

- invest time and effort in understanding government procurement processes
- consider whether an issue may be dealt with by providing feedback or seeking clarification from the public authority contact person before making a complaint
- provide their complaint in writing (if the complainant has made a verbal complaint, ensure the complainant is aware that a complaint cannot be progressed until it has been submitted in writing) within 14 days calendar days from when the complaint becomes known, or should have been known, to the supplier)
- submit the complaint to the public authority's nominated contact officer for procurement feedback/complaints
- provide appropriate information and documentation to support an investigation in a timely manner

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		Version:	1.2

SUPPLIER COMPLAINTS SCHEDULE

- endeavour to resolve problems or complaints in a professional manner directly with the public authority before seeking independent investigation
- not issue any news releases or responses to media enquiries and questions regarding a procurement process without the public authority's written approval.

Assessing the severity of the complaint

Public authorities should assess the severity of the complaint in accordance with the public authority's internal procurement framework and complaints management framework.

Procurement Review Committee

In line with the requirements of the Framework, complaints will only² be escalated to the Procurement Review Committee (PRC)³ following an investigation that cannot be resolved to the satisfaction of both the public authority and the supplier. The PRC will not participate in a complaint management process until the complaint has been investigated by the public authority and/or independent investigation.

The PRC:

- may make recommendations to the Treasurer to direct that a public authority suspend or reconduct all or any part of the procurement process
- will engage (through PSSA) an independent third party to investigate and review complaints
- will refer matters to the appropriate authority as required
- will provide recommendations, in writing, in a timely fashion.

COMPLAINT HANDLING PROCESS

Supplier complaints can be a valuable source of information on how and where issues have occurred and may pinpoint improvement opportunities in the procurement function and processes.

The timely investigation and management of supplier complaints is essential for maintaining good relationships between public authorities and suppliers.

Appendix 1 provides an overview of the process (with required steps to be taken) to be considered alongside the public authority's complaint management process. It includes when and how a complaint is to be escalated.

² unless the Treasurer considers that the circumstances warrant an earlier intervention.

³ via Procurement Services SA: procurement@sa.gov.au

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		Version:	1.2

SUPPLIER COMPLAINTS SCHEDULE

There may be extenuating circumstances in which the process outlined at Appendix 1 would not be appropriate. These may include issues where there has been a clear breach of law, or particularly sensitive, complex and/or serious complaints.

PREVENTION OF COMPLAINTS

Public authorities can minimise the potential for supplier complaints by:

- offering written information up front on the supplier complaint process including the contact details of an appropriately skilled contact officer who can deal with complaints
- conducting the procurement in an ethical and impartial manner
- conducting the procurement aligned to the requirements of the Framework
- ensuring that all staff undertaking procurement processes understand government procurement policies and demonstrate good procurement practice
- providing specifications that are outcomes focused and not inherently biased to a particular supplier
- documenting, justifying and authorising market approaches that limit supplier responses
- maintaining open, timely and ongoing communications with suppliers both throughout the procurement process and during contract management
- providing South Australian businesses with the opportunity to tender for government business
- managing effective relationships with the supplier market
- carrying out market analysis before approaching the market
- debriefing unsuccessful suppliers.

DOCUMENTATION AND REPORTING

The market approach documentation will include the name and contact details of an independent and appropriately skilled and experienced public officer who can manage supplier comments, feedback and complaints.

Public authorities will maintain records of supplier complaints via a database and/or physical file containing all relevant documentation. Public authorities are required to report on supplier complaints via annual reporting for its own public authority annual report (public complaints reporting) in accordance with Premier and Cabinet Circular 13 Annual Reporting Requirements.

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SUPPLIER COMPLAINTS SCHEDULE

APPENDIX 1: SUPPLIER COMPLAINTS PROCESS

Formal complaint made	
Step 1	The formal complaint is submitted to the public authority by the supplier in writing (within 14 calendar days from when the complaint becomes known, or should have been known, to the supplier). The written complaint should include: - background information identifying the relevant invitation to supply/tender, process and dates - a summary of the problems or concerns - an outline of any dealings with the public authority to date (including relevant communications, names, meetings) - contact details (including names, addresses, and phone numbers).
Step 2	The public authority acknowledges receipt of the complaint, provides the supplier with initial detail about the process and timeframe for review, and completes the following steps 3-12 as required.
Investigation	
Step 3	Identify whether the complaint needs to be referred to another authority, or whether another public authority should be consulted on the complaint, including if the complaint relates to: - allegation of criminal activity (refer to SA Police) - allegations of public officer corruption, misconduct or maladministration (refer to Office for Public Integrity) - the South Australian Industry Participation Policy (refer to the Office of the Industry Advocate) - breaches of international obligations (refer to Procurement Services SA).
Step 4	Refer the complaint and document all information, decisions, and correspondence, or move to Step 5.
Step 5	An independent officer of the public authority investigates the complaint (i.e. a person not directly involved in the subject matter of the complaint).
Step 6	If the complaint can be resolved immediately without additional investigation, provide the supplier with written notification of the decision in a timely manner.
Step 7	Close the complaint and document all information, decisions, and correspondence, or move to Step 8.
Step 8	If further investigation is warranted, an independent officer with sufficient skills and knowledge to undertake a thorough and impartial review should be appointed. This person may or may not be the same officer who conducted the initial review and may be an internal or external officer.

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SUPPLIER COMPLAINTS SCHEDULE

	- The investigation should be undertaken within a reasonable timeframe (in line with public authority's complaints management process). - The supplier should be regularly informed of process and if timeframes for resolution are expected to change.
Step 9	Once a determination is made, notify the supplier, in writing, of the outcome and advise any action(s) being taken, reasons, remedies or resolutions.
Step 10	Provide the supplier at least 7 calendar days to advise of acceptance (or otherwise) of the findings
Step 11	If supplier accepts the findings, close the complaint and document all information, decisions and correspondence, or move to Step 12.
Escalation to Procurement Review Committee	
Step 12	If the investigation cannot be resolved to the satisfaction of the public authority and the supplier, the Chief Executive of the public authority will inform the Procurement Review Committee (PRC), via Procurement Services SA (PSSA), within 7 calendar days. - Public authorities will provide all relevant documentation to the PRC, via PSSA, including details of any investigation already undertaken (process and outcome). - The supplier will be advised that their complaint has been sent to the PRC for review and will be provided with the opportunity to reply to a procuring public authority's response (if applicable) before the PRC makes its final recommendations relating to the complaint. In the case of the supplier escalating the complaint to the PRC: - The supplier will submit the Supplier Complaints Form to PSSA within 7 calendar days of advising the public authority of their non-acceptance of the independent investigation findings. - PSSA will notify the public authority that the supplier has escalated the complaint, within 7 calendar days of receipt of the Supplier Complaints Form.
Appeal	
Step 13	If the complaint remains unresolved to the satisfaction of the supplier, the supplier will be provided with information of the Ombudsman SA .

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