

**CHAPTER FIVE: PROCUREMENT****Article 513: Bid Protest Procedures - Provinces**

1. This Article applies to complaints regarding procurement by Provinces.
2. Where, in respect of a specific procurement, a supplier has had recourse to the dispute settlement procedures under another procurement agreement, it may not utilize the bid protest procedures of this Chapter for that specific procurement.
3. The supplier shall communicate its concerns or complaints in writing to the procuring Party with a view to resolving them.
4. Where a supplier has exhausted all reasonable means of recourse with respect to a complaint with the procuring Party, it may make a written request to the contact point in the Province where the supplier is located to seek resolution of the complaint.
5. Where the contact point determines that the complaint is reasonable, it shall, on behalf of the supplier, within 20 days after the date of delivery of the request, approach the contact point of the procuring Party and make representations on the supplier's behalf. Where the contact point determines that the complaint is unreasonable, it shall provide a written notice to the supplier within 20 days after the date of delivery of the request setting out reasons for the decision. Failure to provide such notice is deemed to be notice for the purposes of Article 1711(2)(a) (Initiation of Proceedings by Persons).<sup>1</sup>
6. Where the matter has not been resolved under paragraph 5 within 20 days after the date of delivery of the supplier's request, the Party in whose territory the supplier is located may make a written request for consideration of the complaint by a review panel. The request shall be delivered to the procuring Party and to the Secretariat. Where the Party in whose territory the supplier is located determines the complaint to be unreasonable, it shall provide written notice to the person within 20 days after the date of delivery of the supplier's request. Failure to provide such notice is deemed to be notice for the purposes of Article 1711(2)(b) (Initiation of Proceedings by Persons).<sup>2</sup>
7. The review panel shall consider the complaint in accordance with the following:
  - (a) each Party shall, before the date of entry into force of this Agreement, establish a roster consisting of competent and impartial people who will be able to serve on and chair review panels, and deliver notice of the roster to the other Parties;
  - (b) the contact points of the two Parties shall, within five days after the date of delivery of the request by the Secretariat, appoint panellists from the rosters. A panel shall usually consist of a maximum of three members, one selected from each of the rosters of the Parties involved, and a chairperson, also competent and impartial, to be ratified by panel members;
  - (c) Parties may agree to choose a chairperson who is mutually acceptable and who is not listed on their rosters;

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<sup>1</sup> This paragraph was amended by the Seventh Protocol of Amendment.

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- (d) notwithstanding paragraphs (b) and (c), any other composition of a panel acceptable to both Parties is permissible;
- (e) the panel shall begin consideration of a complaint within five business days after its formation;
- (f) the panel should complete its work within 20 business days after its formation. On formal request, an extension owing to extraordinary circumstances may be granted with notice to all Parties;
- (g) the panel shall establish procedures and guidelines appropriate to each case. The contact points of both Parties shall provide secretarial and research support to the panel and maintain necessary records;
- (h) the panel may investigate the challenge to determine whether there is an inconsistency with this Chapter. Where necessary, the panel is entitled to receive a copy of pertinent tender documents and other relevant support information that it may require to assist in its determination. The panel shall keep confidential all information obtained by it in accordance with Article 510;
- (i) the panel may make written recommendations to the procuring Party and, where appropriate, to the Party in whose territory the supplier is located, concerning practices related to the procurement in question that the panel considers to be inconsistent with this Chapter;
- (j) the panel shall deliver its report to both Parties. Both Parties shall consult with each other and the supplier with the object of reaching a mutually acceptable accommodation based on the report; and
- (k) both Parties shall share the fees and expenses of the panel equally.

8. The contact points shall, within 10 business days after the date of delivery of the report, append to the report a description of the accommodation or, if an agreement on accommodation has not been reached, the different positions of both Parties. The report is complete and final at this stage.

9. Where a Party considers, as a result of a panel's report and subsequent consultations, or another series of similar unresolved complaints, that the other Party is not complying with the terms of this Chapter, the Party may have recourse to Article 1708 (Publication, Committee Agenda) or 1709 (Non-Implementation - Retaliatory Action).<sup>3</sup>

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This paragraph was amended by the Seventh Protocol of Amendment.