

# PROCUREMENT BYLAW 2021-103

## EXTERNAL VERSION Bid Dispute Protocol

Version: 1

Release Date: January 31, 2022

PROCUREMENT OFFICE



# PROTOCOL 9: Bid Dispute

## 1. PURPOSE AND INTERPRETATION

The Region is committed to following open, fair, and transparent procurement processes where a Supplier has an opportunity to raise a dispute in relation to a procurement process in which they participated, or in which they were interested in participating but did not due to the reasons triggering the dispute.

This Protocol establishes the process for handling bid disputes in a fair, transparent, consistent, and timely manner that is compliant with relevant trade agreements. This Protocol also helps to resolve issues that involve no significant factual or interpretive disagreement between the parties. This Protocol is not intended to resolve fundamental disputes over facts or legal rights and obligations, or to establish a mechanism to adjudicate such disputes.

This Protocol should be read in conjunction with the Region’s [Procurement Bylaw 2021-103](#) or its successor, the [Bid Debriefing Protocol](#), the Bid [Debriefing and Dispute Quick Reference Guide](#) (Appendix), and the [Procurement Review Committee \(PRC\) Protocol](#).

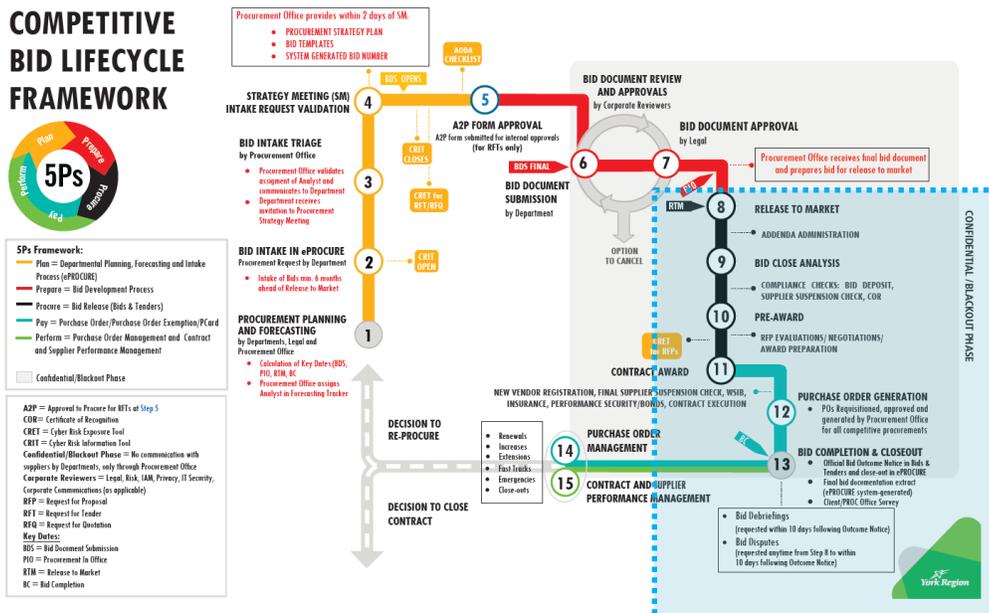
## 2. DEFINED TERMS

Capitalized terms used in this Protocol are defined in the [Glossary of Commonly Used Procurement Terms](#) document.

## 3. ALIGNMENT TO 5PS PROCUREMENT FRAMEWORK

Bid disputes can be raised:

- By Prospective Suppliers at any time following Step 8 – Release to Market up until **ten (10) Days** following the date that the Bid Outcome Notice is posted on the Region’s bidding platform during Step 13; and
- By Participating Suppliers within **ten (10) Days** following a Debriefing held during Step 13 in alignment with the 5Ps-15 Steps Competitive Bid Lifecycle Framework:



## 4. APPLICATION

This Protocol is applicable when a Supplier raises a dispute in relation to any Regional procurement process, the value of which meets or exceeds the threshold mandated by the Trade Treaties. Disputes may be raised by Prospective Suppliers and Participating Suppliers.

## 5. OBJECTIVES

Objectives of the Bid Dispute Protocol are to:

- (i) create a bid dispute process that is accessible, fair, transparent, consistent, and timely
- (ii) identify opportunities for improvements to the Region's procurement processes; and
- (iii) ensure accountability in the Region's procurement processes

## 6. ATTENDEES AT DISPUTE PROCEEDINGS

Attendees at the dispute proceedings must include:

- (i) Voting Members of the PRC
- (ii) Purchasing Representative facilitating the procurement
- (iii) Project Lead
- (iv) Deputy Regional Solicitor (as required)
- (v) Commissioner of the Procuring Department (as required)

## 7. DISPUTE RESOLUTION UNDER TRADE AGREEMENTS

The process provided in this Protocol is separate and distinct from any dispute resolution processes that may exist under applicable trade agreements. If a Supplier wishes to dispute a matter or bring a complaint under an applicable trade agreement, the Supplier must follow the process set out in the trade agreement, which may differ from the process set out in this Protocol.

## 8. RESTRICTIONS

- a. **Debriefing requirement for Participating Suppliers:** Participating Suppliers must request and attend a Debriefing, as per the [Bid Debriefing Protocol](#), prior to raising a bid dispute.
- b. **Engagement in other Legal proceedings against the Region:** If a Supplier has commenced legal proceedings against the Region related to a procurement process, including any challenge under a trade agreement, a bid dispute, as set out in this Protocol, shall not be used to challenge the same procurement process.

## 9. BID DISPUTE PROCESS

The following process should be followed for all bid disputes:

### 9.1 Notice of Dispute

To initiate a formal bid dispute under this Protocol, the Supplier must submit a completed [Notice of Dispute Form](#) to the Director of the Procurement Office in accordance with the following:

- a. **Prospective Suppliers** must submit a notice of dispute no later than **ten (10) Days** following the Bid Outcome Notice being posted to the Region’s bidding platform.
- b. **Participating Suppliers** must submit a notice of dispute no later than **ten (10) Days** following a Debriefing, required as per the [Bid Debriefing Protocol](#).

**9.2 Acknowledgment of Notice of Dispute**

The Director of Procurement will endeavor to acknowledge receipt of the notice of dispute within **two (2) Business Days** of receipt.

**9.3 Initial Dispute Review**

Upon receipt of the Notice of Dispute Form, the PRC will review the dispute to determine if further action is appropriate.

A dispute shall be dismissed, where:

- a. The dispute is raised by a Participating Supplier, but:
  - (i) the Notice of Dispute Form is received more than **ten (10) Days** after the date of the Debriefing; or
  - (ii) a Debriefing has not been requested, or has not yet taken place in accordance with the [Bid Debriefing Protocol](#);
- b. The dispute is raised by a Prospective Supplier, but the Notice of Dispute Form is received more than **ten (10) Days** after the Bid Outcome Notice was posted on the Region’s bidding platform;
- c. The Supplier has initiated legal action or has addressed the issue through other legal action.

If the dispute is dismissed, the Director of the Procurement Office will notify the Supplier of the reason for the dismissal.

**9.4 Dispute Review Process**

If the dispute passes the initial review, as established in Section 9.3, the following steps will apply:

- a. The Procurement Office will meet with the Project Lead to gather relevant background information in relation to the dispute.
- b. The Director of the Procurement Office will convene a PRC meeting to review and consider the dispute.
- c. The PRC will determine if the procurement in question has breached any applicable requirements of the Procurement Bylaw and/or any applicable trade agreements.
- d. The PRC will take the following into consideration during its review of a bid dispute:

Procurements being disputed at the PRE- or POST-Bid Outcome Notice stage	Procurements being disputed at the PRE-Bid Outcome Notice stage
All Suppliers have the right to: <ul style="list-style-type: none"> <li>(i) access all relevant documents pertaining to the bid dispute</li> <li>(ii) be heard prior to a decision being made</li> <li>(iii) be represented and accompanied</li> <li>(iv) access the bid dispute proceedings</li> <li>(v) request that the bid dispute proceedings take place in public and that witnesses may be present.</li> </ul>	For disputes raised by Prospective Suppliers, <ul style="list-style-type: none"> <li>(i) Rapid interim measures may be required to be established to preserve the Supplier’s opportunity to participate in the procurement</li> <li>(ii) Such interim measures may result in the extension or suspension of the procurement process.</li> <li>(iii) Adverse consequences, including public interest, may be considered when deciding whether interim measures may be applied</li> <li>(iv) The reasons for not applying interim measures should be made in writing.</li> </ul>

## 10. DETERMINATION

**10.1 Upon completion of its review**, the PRC will make a decision and issue a written determination to the Supplier:

- a. As prescribed in applicable Trade Treaties, the determination must be issued **within ninety (90) Days** from the receipt of the notice of dispute, unless an extension of time is warranted due to extenuating circumstances, in which case the findings will be issued **within 135 Days** after the filing of the dispute.
- b. The written determination should be completed by the lawyer participating in the Dispute Review Process and should include:
  - (i) A summary of the dispute
  - (ii) A detailed analysis of the findings
  - (iii) A proposed resolution to the matter, indicating any remedies being proposed (See Section 11– Potential Remedies)
  - (iv) Indication of any changes that will be made to the Region’s policies and practices to help prevent similar issues arising in future procurement processes

**10.2 The written determination** will be provided to the Procurement Office for issuance to the Supplier within **ninety (90) Days** of the date that the notice of dispute was received.

**10.3 The determination of the PRC is the final determination under this protocol.** If the Supplier is not satisfied with the response of the PRC, the Supplier may consider its other options, including challenges under the applicable trade agreements and/or other governing laws.

## 11. POTENTIAL REMEDIES

In accordance with the Region’s trade treaty obligations, if the PRC determines that a breach of any applicable requirements of the Procurement Bylaw and/or any applicable trade agreements has occurred, it may be resolved either through corrective action or financial compensation, as set out below.

Pre-Bid Closing	Pre-Award	Post-Award
<b>Corrective action</b> <u>may</u> be provided including extending the closing date of the Call for Bids or any other rapid interim measure that provides the Supplier with an opportunity to participate in the procurement.	<b>Corrective action</b> <u>may</u> be provided including re-evaluating Bids or any other rapid interim measure that provides the Supplier with an opportunity to participate in the procurement. <b>Financial compensation</b> <u>may</u> be provided when the procurement is closed, and corrective action is not feasible. It may be limited to either the costs for preparing the Bid or the costs relating to the bid dispute, or both.	<b>Financial compensation</b> <u>may</u> be provided when the procurement is closed, and corrective action is not feasible. It may be limited to either the costs for preparing the Bid or the costs relating to the bid dispute, or both.

## 12. POST-DISPUTE

- a. In consultation with the Director of the Procurement Office, a member of the Procurement Office will complete the [Post-Dispute Form](#) **within five (5) Business Days** from the date of the determination, save it in the Region’s document management system, and distribute to the PRC attendees.

# BID DEBRIEFING AND DISPUTE PROCESS

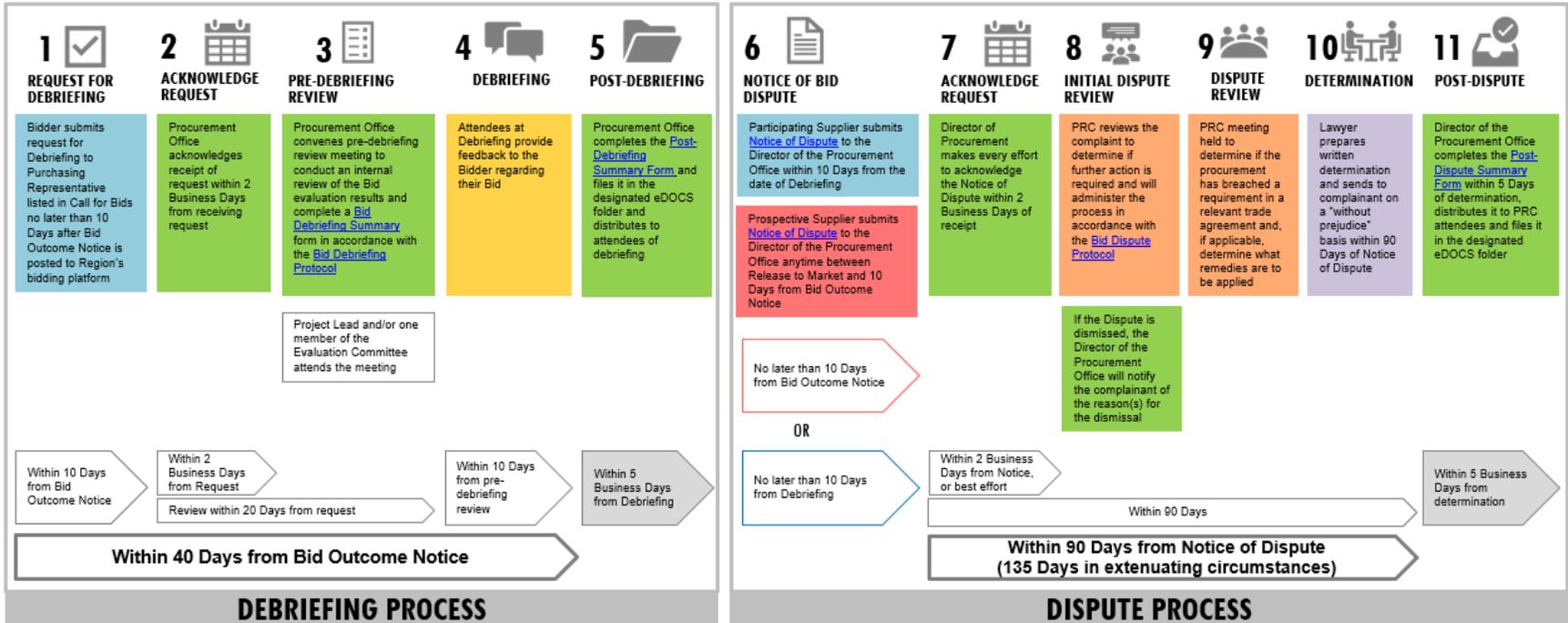
## WHAT IS A DEBRIEFING?

An opportunity for the Region to provide feedback to a Bidder regarding their unsuccessful Bid

## WHAT IS A BID DISPUTE?

A complaint made by a Supplier regarding a procurement that the Supplier believes was not conducted in accordance with the procurement rules established in an applicable trade agreement

## QUICK REFERENCE GUIDE



### DEBRIEFING PROCESS

### DISPUTE PROCESS

**ROLES:** Bidder/Participating Supplier (Blue) Prospective Supplier (Red) Procurement Office (Green) Department (White) Attendees at Debriefing (Yellow) Legal Services (Purple) Procurement Review Committee (Orange)

# APPROVALS

This Protocol has been approved by the Director, Procurement Office, and where applicable, by Legal Services.