

## **ANNEX III - WCO Financial Rules extract**

### **(7) Procedure for requesting information and lodging a complaint following a call for tenders procedure**

#### **(a) Request for information following a call for tenders procedure**

Only a tenderer who has participated in a WCO call for tenders may submit a request for information. Any request received from a sub-contractor of the tenderer will not be entertained.

Requests must be submitted to the official responsible for purchases, in writing (letter or e-mail), within eight (8) working days from the day after notification of the decision to reject the tenderer's offer. Beyond that time all requests will be rejected.

The official responsible for purchases has ten (10) working days from the day after receipt of the request for information to provide the tenderer with a written response (by letter or e-mail).

For reasons of confidentiality, the official responsible for purchases may not, under any circumstances, provide the tenderer with information about : (i) the technical or financial tenders of the other participating tenderers, (ii) the selection criteria and their weighting, or (iii) the content of the report drawn up by the Advisory Committee on Contracts (ACC).

If the tenderer is not satisfied with the response provided by the official responsible for purchases, he may lodge a complaint with the Review Committee under the procedure described in Item 7 (b) below.

#### **(b) Complaint following a call for tenders procedure**

##### **(i) Procedure**

Any tenderer who has participated in a call for tenders and feels he has been wronged may bring a complaint before the Review Committee, if he has first submitted a request for information to the official responsible for purchases in accordance with the procedure described in Item 7 (a) above.

In order for his request to be admissible, the tenderer must :

- submit his complaint to the Head of Administration and Personnel by registered letter with acknowledgement of receipt, within five (5) working days following the day when the official responsible for purchases responded to the request for information;
- indicate the reasons for his complaint and identify any alleged failure on the part of the WCO; and
- specify the amount of the alleged damage or loss suffered (the Review Committee reserves the right to request proof).

The Review Committee shall first verify the admissibility of the complaint, i.e., (i) whether a request for information has first been properly submitted to the official responsible for purchases, (ii) whether the complaint was lodged within the given time frame, (iii) whether it contains valid and legitimate grounds, and (iv) whether it specifies the amount of the alleged damage or loss suffered. If this is not the case, the complaint will be immediately and irrevocably rejected.

When examining the substance of the complaint, the Review Committee shall check that the selection criteria used are objective and have led to acceptance of the best tender.

The Review Committee shall communicate its reasoned opinion to the Secretary General for final decision within thirty (30) working days from receipt of the complaint.

The Secretary General shall then inform the applicant, by letter, of his decision, which is not subject to appeal.

If the tenderer is not satisfied with the Secretary General's decision, he has five (5) working days following that decision to initiate arbitral proceedings in accordance with Part I of Customs Co-operation Council Decision No. 331. By way of derogation from paragraph 2 (i) of Part I of Decision No. 331, the time limits specified are not applicable, and have been replaced by the aforementioned time limit of five (5) working days.

(ii) Composition of the Review Committee

The Review Committee shall comprise the following members :

- the Secretary General or his representative;
- a representative of the Legal Service;
- an expert designated by the Head of Administration and Personnel; and
- in an advisory capacity, the official responsible for purchases.

In order to conduct a technical examination of the result of a tender, the Review Committee may turn to an outside consultant for an external opinion on the technical characteristics of the tender.

Persons having participated in the Advisory Committee on Contracts (ACC) meeting with the right to vote may not sit on the Review Committee. They may, however, be consulted if required for the proper analysis and understanding of the complaint, and/or to provide information justifying their selection.

(c) Compensation

If, at the end of the review procedure or of the arbitral proceedings as described in Part I of Customs Co-operation Council Decision No. 331, a final decision awards compensation to the claimant for the damage or loss suffered as a result of a failure on the part of the WCO during the contested call for tenders procedure, such compensation shall be limited, in all cases, to the cost of preparing the tender and the costs incurred in lodging the complaint, up to a maximum of twenty thousand (20,000) euro.

In no case shall the WCO be required to pay an amount greater than twenty thousand (20,000) euro as compensation under these Financial Rules.