

SUBCHAPTER B: PROTEST PROCEDURES FOR VENDORS

§11.2

Effective April 19, 2007

§11.2. Protest Procedures for Vendors.

(a) Any actual or prospective bidder, offer or, proposer, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the Procurements and Contracts Manager of the commission or his designee (hereafter Manager). Such protests must be in writing and received in the Procurements and Contracts Section within ten working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. Formal protests must conform to the requirements of this subsection and subsection (c) of this section, and shall be resolved in accordance with the procedure set forth in subsections (d) and (e) of this section. Copies of the protest must be mailed or delivered by the protesting person to the project manager, if any, and other interested persons. For the purposes of this section, "interested persons" means all vendors who have submitted bids or proposals for the contract involved.

(b) In the event of a timely protest or appeal under this section, the state shall not proceed further with the solicitation or with the award of the contract unless the Manager makes a written determination that the award of a contract without delay is necessary to protect substantial interests of the state.

(c) A formal protest must be sworn and notarized and contain:

(1) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

(2) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) an identification of the issue or issues to be resolved;

(5) argument and authorities in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to other identifiable interested persons.

(d) The Manager may settle and resolve the dispute concerning the solicitation or award of a contract by mutual agreement with the protesting person.

The Manager may solicit written responses to the protest from other interested persons.

(e) If the protest is not resolved by mutual agreement, the Manager will issue a written determination on the protest.

(1) If the Manager determines that no violation of rules or statutes has occurred, he or she shall inform the protesting person and other interested persons by letter which sets forth the reasons for the determination.

(2) If the Manager determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he or she shall inform the protesting person and other interested persons by letter that sets forth the reasons for the determination and the appropriate remedial action.

(3) If the Manager determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, he or she shall inform the protesting person and other interested persons by letter which sets forth the reasons for the determination, and the appropriate remedial action, which may include ordering the contract void.

(f) After the Manager's determination has been made, the aggrieved person or interested persons may request reconsideration of the Manager's determination to be made by the executive director or his designee. Such request must be in writing and must be received in the Procurements and Contracts Section no later than ten working days after the date of the Manager's determination, which shall be calculated from the date the Manager's letter is hand-delivered, delivered by a nationally recognized courier service, or mailed by certified or registered mail. The request shall be limited to review of the Manager's determination. Copies of the request must be mailed or delivered by the aggrieved person to other interested persons. The request must contain an affidavit that such copies have been provided.

(g) The executive director shall issue a final determination on the protest within 15 days after receipt of the aggrieved person's request for reconsideration.

(h) A decision issued in writing by the executive director in response to a request for reconsideration shall be the final administrative action of the commission.

(i) Unless good cause for delay is shown or the Manager or executive director determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

(j) In the event of a protest, all documents collected by the commission as part of a solicitation, evaluation, and/or award of a contract shall be retained by the commission for a period of four years to include the current fiscal year and three additional fiscal years.

Adopted March 28, 2007

Effective April 19, 2007