

Protest Procedures For Department of General Services Invitations for Bids

I. Who May File the Protest. Any bidder or prospective bidder who is aggrieved in connection with the IFB or award of the contract solicitation or award of a contract may file a protest. Protests relating to cancellation of invitations for bids and protests relating to the rejection of all bids are not permitted. A bidder is a person that submits a bid in response to the IFB. A prospective bidder is a person that has not submitted a bid in response to the IFB.

II. Time for Filing.

A. If a protest is submitted by a prospective bidder, it must be filed within seven (7) days after the prospective bidder knew or should have known of the facts giving rise to the protest EXCEPT THAT IN NO EVENT MAY A PROTEST BE FILED AFTER BID OPENING TIME.

B. If a protest is filed by a bidder, the protest must be filed within seven (7) days after the protesting Bidder knew or should have known of the facts giving rise to the protest EXCEPT THAT IN NO EVENT MAY A PROTEST BE FILED LATER THAN SEVEN (7) DAYS AFTER THE NOTICE OF AWARD OF THE CONTRACT OR PURCHASE ORDER IS POSTED ON THE DGS WEBSITE. Date of filing is the date of receipt of protest.

C. The Department of General Services is required by law to disregard any untimely filed protests.

III. Form of Protest.

A. A protest must be in writing and filed with the Deputy Secretary for Procurement, Bureau of Procurement Executive Office, 515 North Office Building, Harrisburg, PA 17125

B. A protest must state all grounds upon which the protesting party asserts that the solicitation or award was improper. Issues not raised by the protesting party in the protest are deemed waived and may not be raised on appeal.

C. The protesting party may submit with the protest any documents or information deemed relevant.

IV. Notice of Protest. If award has been made, the Department of General Services shall notify the successful Bidder or contractor of the protest. If the protest is received before award and substantial issues are raised by the protest, all bidders who appear to have a substantial and reasonable prospect of winning the award shall be notified and may file their agreement/disagreement with the Department within three (3) days after receipt of notice of the protest.

V. Stay of Procurement. The Deputy Secretary for Procurement shall immediately decide, upon receipt of the protest, whether or not the solicitation or award shall be stayed, or if the protest is timely received after the award, whether the performance of the contract should be suspended.

The Department of General Services shall not proceed further with the IFB or with the award of the contract, and shall suspend performance under the contract if awarded, unless the Deputy Secretary for Procurement makes a written determination that the protest is clearly without merit or that award of the contract/purchase order without delay is necessary to protect the substantial interests of the Commonwealth.

VI. Procedures.

A. Contracting Officer Response. Within fifteen (15) days of the receipt of a protest, the contracting officer (the Department of General Services' Chief Procurement Officer) may submit a

written response to Deputy Secretary for Procurement. The response may include any documents or information that the contracting officer deems relevant to the protest.

B. Protesting Party Reply. Within ten (10) days of the date of the contracting officer response, the protesting party may file a written reply.

C. Review. The Deputy Secretary for Procurement shall:

1. Review the protest and any response or reply.

2. Request and review any additional documents or information he deems necessary to render a decision.

3. Give the protesting party and the contracting officer reasonable opportunity to review and address any additional documents or information requested by the agency head.

4. In his sole discretion, conduct a hearing.

5. Within sixty (60) days of the receipt of the protest, issue a written determination stating the reasons for the decision.

6. If additional time is required to investigate the protest, inform the protesting party of the additional time needed to render a determination and obtain the protesting party's consent.

D. "Clearly Without Merit" Determinations. If the Deputy Secretary for Procurement determines, upon receipt, that the protest is clearly without merit and does not stay the procurement, the Deputy Secretary for Procurement shall immediately issue the decision as required by Subparagraph h below.

VII. Settlement. The Bureau of Procurement has the authority to settle and resolve bid protests.

VIII. Decision. The Deputy Secretary for Procurement shall promptly, but in no event later than sixty (60) days from the filing of the protest, issue a written decision. The decision shall:

A. State the reasons for the decision.

B. If the protest is denied, inform the protesting party of its right to file an appeal in Commonwealth Court within fifteen (15) days of the mailing date of the decision.

C. If it is determined that the solicitation or award was contrary to law, enter an appropriate order.

The Deputy Secretary for Procurement shall send a copy of the decision to the protesting party and any other person determined by the Deputy Secretary for Procurement to be affected by the decision.

Protest Procedures For Request for Proposals (RFP)

I. Who May File the Protest. An offeror or prospective offeror or prospective contractor who is aggrieved in connection with the request for proposals (RFP) or award of the contract may file a protest. No protest may be filed if the request for proposals (RFP) is cancelled or if all proposals received in response to the RFP are rejected.

II. Place for Filing. A protest must be filed with the Issuing Office identified in the RFP.

III. Time for Filing.

A. A prospective offeror who is considering filing a proposal must file the protest within seven (7) days after the prospective offeror knew or should have known of the facts giving rise to the protest, but in no event later than the proposal submission deadline specified in the RFP.

B. A protest filed by an offeror who submits a proposal must be filed within seven (7) days after the protesting offeror knew or should have known of the facts giving rise to the protest, but in no event may an offeror file a protest later than seven (7) days after the date the notice of award of the contract is posted on the DGS website.

C. The date of filing is the date of receipt of the protest.

D. Commonwealth agencies are required by law to disregard any protest received beyond the deadlines established in this Section III.

IV. Contents of Protest.

A. A protest must be in writing.

B. A protest shall state all grounds upon which the protesting party asserts the RFP or contractor selection was improper.

C. The protesting party may submit with the protest any documents or information it deems relevant.

V. Notice of Protest.

A. The Issuing Office will notify the successful offeror of the protest if contractor selection has already been made.

B. If the Issuing Office receives the protest before selection, and it determines that substantial issues are raised by the protest, the Issuing Office will notify all offerors who appear to have a substantial and reasonable prospect of selection.

C. Any offeror notified of a protest pursuant to this Section V. may file its agreement/disagreement with the Issuing Office within the time period specified in the acknowledgement of protest letter sent by the Issuing Office.

VI. Stay of Procurement.

A. The agency head or designee will promptly decide upon receipt of a timely protest whether or not the award of a contract shall be delayed, or if the protest is timely received after the award, whether the performance of the contract should be suspended.

B. The Issuing Office shall not proceed further with the RFP unless the agency head or designee, in consultation with the using agency where applicable, makes a written determination that the

protest is clearly without merit or that award of the contract without delay is necessary to protect the substantial interests of the Commonwealth.

VII. Response and Reply.

A. Within 15 days of receipt of the protest, the Issuing Officer may submit to the agency head or designee and to the protesting party a response to the protest.

B. The protesting party may file a reply to the Issuing Officer's response within ten days of the date of the response.

VIII. Procedures.

A. The agency head or designee shall review the protest and any response or reply.

B. The agency head or designee may decide the merits of the protest on the written, submitted documentation; request and review any additional documents or information deemed necessary to render a determination; or, in his sole discretion, conduct a hearing.

IX. Determination. The agency head or designee shall promptly, but in no event later than 60 days from the filing of the protest unless both parties agree to an extension, issue a written determination. The determination shall:

A. State the reason for the decision, and

B. If the determination is a denial of the protest, inform the protesting contractor of its right to file an action in the Commonwealth Court within fifteen (15) days of the determination mailing date.

The agency head or designee shall send a copy of the determination to the protesting party and any other person determined by the agency head or designee to be affected by the determination.

X. Secretary of General Services Designee. For protests of Department of General Services RFPs or awards of contracts for supplies and services through the competitive sealed proposals process, the Deputy Secretary for Procurement is the Secretary of General Services' designee to handle these protests.