

Desk Procedures Manual

Superior Court of California, County of Imperial	Division/Department: Finance			
	Procedure Name: Competitive Solicitations Protest Policy			
	Initiator: Terri Darr	Date Issued: 05/09/2012	Last Revision: 10/03/2014	Approved By: Kristine Kussman

INTRODUCTION

There are two types of procurement protests: solicitation specifications protests and award protests. This policy provides information on these types of protest and how they are handled.

DESIGNATION OF PROTEST PERSONNEL

The Court's protest hearing officer is the Technology Manager or the Facilities Manager. These managers may not be the hearing officer for purchases they are requesting. The protest appeals officer is the Court Executive Officer. The Court will issue written determinations regarding protests.

1. SOLICITATION SPECIFICATIONS PROTESTS

A solicitation specifications protest is a protest alleging that a solicitation document contains a technical, administrative, or cost specification or requirement that is defective. The specification or requirement may be defective because it is:

- Onerous, unfair, or illegal; or
- Imposes unnecessary constraints in proposing less costly or alternate solutions.

A. Who May Submit a Solicitation Specifications Protest

Any prospective bidder may submit a solicitation specifications protest.

B. Deadline for Receipt of Protest

The deadline for the Court to receive a solicitation specifications protest is the applicable date specified in the solicitation document. If no date is specified in the solicitation document, the deadline for the Court to receive a solicitation specifications protest is the solicitation's Deadline for Questions.

The prospective Protester is solely responsible for ensuring that a solicitation specifications protest is received by the Court by the deadline. The failure of a prospective Protester to submit a timely solicitation specifications protest constitutes a waiver of the prospective Protester's right to protest the solicitation's specifications or requirements.

C. Required Information

A solicitation specifications protest must include the following information:

- Contact information of the Protester or its representative (this must include name, address, and telephone number, and should include email address and facsimile number);
- The title of the solicitation document to which the protest is related;
- The specific alleged deficiency in the solicitation's technical, administrative, or cost specifications or requirements;
- A detailed description of the specific legal and factual grounds of protest and any supporting documentation; and
- The specific ruling or relief requested.

A solicitation specifications protest lacking any of this information may be rejected by the protest hearing officer.

The protest hearing officer may issue a written determination regarding the solicitation specifications protest without requesting further information from the Protester. Therefore, the solicitation specifications protest must include all grounds for the protest and all evidence available at the time the protest is submitted. If the Protester later raises new grounds or evidence that was not included in the initial protest submittal but which could have been raised at that time, the Court shall not consider the new grounds or new evidence.

D. Submission of the Protest

The Protester must send the solicitation specifications protest to the protest hearing officer or other individual identified in the solicitation document to receive protests. Send to:

Protest Officer
939 W. Main St
El Centro, CA 92243

The Protester may deliver the protest personally or may send the solicitation specifications protest by certified mail, registered mail, or overnight courier. If the solicitation specifications protest is personally delivered, a receipt must be provided to the Protester if requested.

E. Evaluation

When evaluating the solicitation specifications protest, the protest hearing officer should consider:

- The validity and defensibility of the allegedly defective technical, administrative, or cost specification or requirement;
- Whether the Protester has raised a valid issue; and
- Whether competition would be advanced by revising the allegedly defective technical, administrative, or cost specification or requirement.

The protest hearing officer may seek legal advice as needed.

Note: The Protester bears the burden of proof to show that the solicitation document contains a defective technical, administrative, or cost specification or requirement.

F. Written Determination

The protest hearing officer must issue a written determination before the Court opens the Bids (or evaluates the Bids, if the Bids are not sealed). If required, the Court may extend the Bid Closing Time to allow for time to review the solicitation specifications protest.

If the protest hearing officer determines that the solicitation specifications protest has merit, the protest hearing officer should take appropriate remedial action. Such action may include:

- Changing or clarifying the defective technical, administrative, or cost specification or requirement through an addendum to the solicitation document; or
- Canceling the solicitation.

If an addendum to the solicitation document is issued and the addendum may require additional time for Protester to respond, the addendum should extend the Bid Closing

Date by an appropriate amount of time (as determined by the protest hearing officer).

G. Appeal

The protest hearing officer's written determination is the final action by the Court unless the Protester submits an appeal to the protest appeals officer within 2 Court days of the issuance of the protest hearing officer's written determination.

2. AWARD PROTESTS

An award protest is a protest alleging that:

- The Court has committed an error in the award process sufficiently material to justify invalidation of the proposed award; or
- The Court's decisions are lacking a rational basis and are, therefore, arbitrary and capricious.

Example: The solicitation document stated that 50% of a Bid's total score would be cost points, but the Court instead made cost points only 30% of the Bid's total score.

Failure to comply with the protest processes may result in the Court's rejection of an award protest.

A. Who May Submit an Award Protest

A Protester may submit an award protest if the Protester meets the following requirements:

- The Protester submitted a Bid that the Protester believes to be responsive to the solicitation document; and
- The Protester believes that the Court has incorrectly selected another Bidder for an award.

A person or entity who did not submit a Bid may not make an award protest. In no event will a Court consider a protest if the Court rejected all Bids or the solicitation was canceled for any reason.

B. Deadline for Receipt of Protest

For any solicitation using a RFQ, the deadline for the Court to receive an award protest, if not specifically stated in the solicitation document, is before the contract is awarded. For solicitations using a written solicitation document, the deadline for the Court to receive an award protest is specified in the table below. The Court will define if the solicitation is for a good or service, and if the solicitation is for technology or non-technology.

The Protester is solely responsible for ensuring that an award protest is received by the Court by the applicable due date. In no event will a Court consider a protest after the contract has been awarded.

Non Technology Goods	Non Technology Services	Technology Goods and Services
The Court must receive the award protest within 24 hours after the Court issues the intent to award.	The Court must receive the award protest within 5 Court days after the Court issues the intent to award.	The Court must receive the award protest within 5 Court days after the Court issues the intent to award.

The Protester will have 10 calendar days after the Court receives the protest to submit all information in section C below to the Court.	The Protester will have 5 calendar days after the Court receives the protest to submit all information in section C below to the Court.	The Protester will have 10 calendar days after the Court receives the protest to submit all information in section C below to the Court.
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C. Required Information

An award protest must include the following information:

- Contact information of the Protester or its representative (this must include name, address, and telephone number, and should include email address and facsimile number);
- The title of the solicitation document to which the protest is related;
- The specific alleged error or irrational decision made by the Court;
- A detailed description of the specific legal and factual grounds of protest and any supporting documentation; and
- The specific ruling or relief requested.

If an award protest is missing any of this information (by the date the Protester is required to have all such information to the Court), the award protest may be rejected by the protest hearing officer.

The protest hearing officer may issue a written determination regarding the award protest without requesting further information from the Protester. Therefore, the award protest must include all grounds and all evidence available at the time the award protest is submitted. If the Protester later raises new grounds or evidence that was not included in the initial protest submittal but which could have been raised at that time, the Court shall not consider such new grounds or new evidence.

Note: For protests of non-IT goods solicitations, the Protester must assert that it is the lowest responsible bidder meeting specifications.

D. Submission of the Protest

The Protester must send the award protest (and any supporting documentation) to the protest hearing officer or other individual identified in the solicitation document to receive protests. The Protester may deliver these materials personally to the Court; otherwise the Protester must send these materials by certified mail, registered mail, or overnight courier. If the materials are personally delivered, a receipt must be provided to the Protester if requested.

E. Evaluation

When evaluating the award protest, the protest hearing officer should consider:

- Whether the Court committed an error in the award process;
- Whether an allegedly defective decision lacks a rational basis; and
- If the Court committed an error in the award process or made a decision that lacks a rational basis, the materiality of the error or decision.

The protest hearing officer may seek legal advice as needed.

The Protester bears the burden of proof to show that (i) the Court has committed an error in the award process sufficiently material to justify invalidation of the proposed award, or (ii) the Court's decisions are lacking a rational basis and are, therefore, arbitrary and capricious.

Note: The following do **not** constitute the absence of a rational basis:

- The Protester disagrees with the scores assigned by the Evaluation Team; or
- The Evaluation Team could have assigned different scores based on the same information.

F. Written Determination

The protest hearing officer must respond to an award protest with a written determination before the contract is awarded. The protest hearing officer should issue the written determination within 10 Court days of the complete submission of the award protest, or notify the Protester that additional time will be required. The Court may extend the award date to allow for time to review the award protest.

If the protest hearing officer determines that the award protest has merit, the protest hearing officer should take appropriate remedial action. In determining the appropriate remedial action, the protest hearing officer should consider all circumstances surrounding the procurement, including:

- The seriousness of the procurement deficiency;
- The degree of prejudice to other Bidders;
- The impact on the integrity of the competitive procurement system;
- The good faith of the parties;
- The cost to the Court;
- The urgency of the procurement; and
- The impact on the Court.

Remedial actions may include:

- Issuing a new solicitation;
- Re-competing the contract;
- Terminating the contract (e.g., if a contract was executed despite a pending appeal);
- Refraining from the exercise of options under the awarded contract; and
- Awarding the contract consistent with law.

G. Appeal The protest hearing officer's written determination is considered the final action by the Court unless the Protester submits an appeal to the protest appeals officer within 5 calendar days of the issuance of the protest hearing officer's written determination.

The Court may, at its sole discretion, delay the contract award until the appeal is resolved or proceed with the award and implementation of the contract.

3. APPEALS

A protester must send the appeal to the protest appeals officer by certified mail, registered mail, or overnight courier. A protester is a person or entity who has submitted a protest in connection with a competitive solicitation document. The protester may also deliver the appeal personally to the Court as specified in the solicitation document. If the appeal is personally delivered, a receipt must be provided to the protester if requested.

Any appeal not received by the protest appeals officer by the applicable deadline for submission will be rejected by the protest appeals officer. The protester is solely responsible for ensuring that an appeal is received by the protest appeals officer by the applicable due date.

The appeal must include:

- Contact information of the protester or its representative (this must include name, address, and telephone number, and should include email address and facsimile number);
- The title of the solicitation document to which the protest is related;
- A copy of the protest hearing officer's written determination;
- A detailed description of the specific legal and factual grounds for the appeal and any supporting documentation; and
- The specific ruling or relief requested.

An appeal lacking any of this information may be rejected by the protest appeals officer. The appeal must include all information that the protester wants the protest appeals officer to consider.

The protester bears the burden of proof to show that the protest hearing officer's written determination is incorrect:

- In light of new information related to the protest that was not available at the time the protest was originally submitted; or
- Because it is in error of law or regulation.

The protest appeals officer will review the appeal and issue a written determination. The written determination of the protest appeals officer constitutes the final determination of the Court regarding the protest. Issues that could have been raised earlier will not be considered on appeal.

If the protest appeals officer determines that the appeal has merit, the protest appeal officer will direct the protest hearing officer to take appropriate remedial action.

4. POST-AWARD DISPUTES

A post-award dispute is a disagreement or conflict between a Vendor and a Court after a contract has been executed. Most often, post-award disputes arise due to contract performance issues on the part of either the Vendor or the Court.

A. Deal in Good Faith

Courts and Vendors should deal with one another in good faith and attempt to resolve post-award disputes quickly and fairly.

B. Resolving Disputes

Buyers and other Court personnel should consider the following when a post-award dispute arises.

- The Buyer should review the dispute resolution language contained in the contract to see if a specified dispute resolution process is required. The Buyer should ensure that any dispute resolution process is followed.
- When possible, the Court should attempt to resolve the dispute through informal discussions and negotiations. These discussions and negotiations should include the Buyer, the contract managers, and any other key parties.
- A Court cannot make a gift of public funds. Accordingly, any settlement to be paid by a Court must be justifiable and not constitute a gift.
- Court management and/or legal counsel should be involved, as appropriate.
- If a dispute resolution requires a change to the contract, the Buyer should prepare and process an amendment to document the change expeditiously.

Post-award disputes, regardless of magnitude, must be documented in the procurement file.