

# PROTESTS AND PROTEST RESOLUTION

A protest is a written objection that sets forth facts showing that the protestor has been aggrieved in connection with a solicitation or with the award of a contract. The protest must be submitted to the OSP Director or the head of the agency that issued the solicitation. Protest submissions and their determinations are governed by A.C.A. § 19-11-244.

## Protest Timing

Protests can be presented at two points during the procurement process and must be submitted timely to be considered valid:

1. At least 72 hours before the deadline for submitting a response to the solicitation, if it is a protest in connection with some aspect of the solicitation (as opposed to protest in connection with the award of a contract).
  - Any prospective contractor has the right to protest a solicitation.
2. Within 14 calendar days after the calendar day on which the contract is awarded or after the posting of notice of anticipation to award a contract, whichever comes first.
  - A person submitting a protest must also give notice of the protest to the apparent successful contractor by sending the apparent successful contractor a copy of the protest by electronic mail and regular mail, as per A.C.A. § 19-11-244(a)(2)(B).
  - Only those prospective contractors who submitted a response to the solicitation have the right to protest a contract award.

## Protest Parameters

A protestor must be clearly aggrieved, meaning that it must have been denied the opportunity to fairly compete for a contract, or that it was denied the award of a contract, because of the improper or unlawful solicitation term(s) or selection for award.

A protest must also set forth facts which connect the grievance to the solicitation or award and which state the grounds for the protest as defined in A.C.A. § 19-11-244(a)(4).

## Protest Response Process

If a timely protest is received, the State is prohibited from moving forward in the procurement process and/or executing a contract that is the result of the protested solicitation or award until the director or head of procurement has issued the official protest determination.

The one exception to this course of action is when the OSP director or the head of the relevant procurement agency makes a written determination that the execution of the

contract without delay is necessary to protect substantial interests of the State. See A.C.A. § 19-11-244(f.)

Within 5 days of the date the apparent successful contractor is given notice of a protest, the apparent successful contractor may file a response to the protest, per A.C.A. § 19-11-244(a)(5)(A-B).

### **Protest Determination**

The protest determination is provided to the protestor in writing and may either deny or sustain the protest. The determination is final and conclusive.

If the protest is sustained and the successfully protesting bidder was denied the contract award, the protestor may be entitled to the reasonable costs incurred in connection with the solicitation.

A prospective contractor who is aggrieved by a protest that was without merit or intended purely to delay the contract award may bring a private cause of action for tortious interference with a business expectancy against the person or entity that submitted the protest.

The director, or head of the procurement agency, may attempt to settle and resolve a protest prior to rendering an administrative protest determination. Any meetings held for this reason are not public but shall not be kept from public disclosure.