

#### §1.4 Protest Procedures for Contractors

(a) Purpose. The purpose of this rule provides for the Department's compliance with 34 TAC Chapter 20, Subchapter F, Division 3, the rules of the Texas Comptroller of Public Accounts addressing procurement, which require state agencies to adopt protest procedures consistent with the Comptroller's procedures.

(b) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Board--The Governing Board of the Department.

(2) Department--The Texas Department of Housing and Community Affairs.

(3) Interested Parties-- All vendors who have submitted bids or proposals for the contract involved. A list of interested parties is available upon request from the Department.

(4) Protest--A written objection submitted to the Department by any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a procurement contract by the Department.

(c) These procedures are for Department procurements only. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with a solicitation, evaluation, or award may formally protest to the Department's Purchasing Officer.

(d) To be considered timely, the Protest must be filed in accordance with the requirements of 34 TAC §20.535(b).

(e) To be considered complete, the Protest must be in writing, signed by an authorized representative, notarized, and contain:

(1) a specific identification of the statutory or regulatory provision(s) that the Person submitting the Protest alleges to have been violated;

(2) a specific description of each action ~~made by the Department~~ that the Person submitting the Protest alleges to have been violated specified in the statutory or regulatory provision(s) identified in paragraph (1) of this Subsection;

(3) a precise statement of the relevant facts including:

(A) sufficient documentation to establish that the Protest has been timely filed;

(B) a description of the adverse impact to the Department and/or the state; and

(C) a description of the resulting adverse impact to the protesting vendor;

(4) a statement of the argument and authorities that the Person submitting the Protest offers in support of the Protest;

(5) an explanation of the subsequent action the Person submitting the Protest is requesting; and

(6) except for a Protest that concerns the solicitation documents or actions associated with the publication of solicitation documents, a statement confirming that copies of the Protest have been mailed or delivered to other identifiable Interested Parties.

(f) The Purchasing Officer shall have the initial authority to settle and resolve the Dispute concerning the solicitation or award of a contract. The Purchasing Officer may dismiss the Protest if it is not timely filed or does not meet the requirements of this section. The Purchasing Officer may solicit written responses to the Protest from other Interested Parties.

(g) If the Protest is not resolved by mutual agreement, the Purchasing Officer will provide a written recommendation to the Department's Executive Director.

(h) The Executive Director shall issue a final written determination on the Protest within 15 calendar days after receipt of the Purchasing Officer's recommendation in accordance with the requirements of 34 TAC §20.537(c).

(i) In the alternative, the Executive Director may, in his or her discretion, refer the matter to the Department's Governing Board for their consideration at a regularly scheduled meeting. The decision of the Board shall be final.

(j) A protesting party may appeal the determination of the Executive Director under Subsection (~~hg~~) of this section to the Department's Governing Board. An appeal of the Executive Director's determination must be in writing and received by the Purchasing Officer not later than 10 calendar days after the date the Executive Director sent written notice of their determination. The scope of the appeal shall be limited to review of the Executive Director's determination. The protesting party must mail or deliver to all other interested parties a copy of the appeal, which must contain a certified statement that such copies have been provided.

(1) The appeal will be presented for consideration at the next regularly scheduled meeting of the Governing Board. The decision of the Governing Board shall be final.

(2) An appeal that is not filed timely shall not be considered unless good cause for delay is shown in writing relating to issues that are significant to agency procurement practices or procedures, or the Department's General Counsel makes such a determination.

(k) All documents collected by the Department as part of a solicitation, evaluation, and/or award of a contract shall be retained with the procurement file according to Department's Records Retention Schedule.

(l) The Department reserves all of its rights under 34 TAC §20.536. The Department may award a solicitation or award without delay, in spite of a timely filed Protest, to protect the best interests of the state.