

Part I Chapter 58 Bid Protests

- A. Who May File the Protest.** Any bidder, offeror, prospective bidder, prospective offeror, or a prospective contractor who is aggrieved in connection with the solicitation or award of a contract may file a protest. Protests relating to cancellation of invitations for bids or requests for proposals and protests relating to the rejection of all bids or proposals are not permitted.
- B. Time for Filing.**
1. If a protest is submitted by a prospective bidder or prospective offeror, the protest must be filed before bid opening time or proposal receipt date.
 2. If a protest is filed by a bidder or offeror or a prospective contractor, the protest must be filed within seven days after the protesting bidder or offeror or prospective contractor 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 DAYS AFTER THE DATE THE CONTRACT WAS AWARDED. Date of filing is the date of receipt of protest.
 3. Untimely filed protests must be disregarded by the purchasing agency.
- C. Form of Protest.**
1. A protest must be in writing and filed with the agency head (or designee) of the purchasing agency.
 2. 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 before the purchasing agencies are deemed waived and may not be raised on appeal.
 3. The protesting party may submit with the protest any documents or information deemed relevant.
- D. Notice of Protest.** If award has been made, the issuing office 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 and offerors who appear to have a substantial and reasonable prospect of winning the award shall be notified and may file their agreement/disagreement with the purchasing agency within five days after receipt of notice of protest.
- E. Stay of Procurement.** The head of the purchasing agency (or designee) 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 purchasing agency shall not proceed further with the solicitation or with the award of the contract, and shall suspend performance under the contract if awarded, unless the agency head of the purchasing agency 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.

F. Procedures.

- 1. Contracting Officer Response.** Within 15 days of the receipt of a protest, the contracting officer may submit a written response to the head of the purchasing agency (or designee). The response may include any documents or information that the contracting officer deems relevant to the protest.
- 2. Protesting Party Reply.** Within 10 days of the date of the contracting officer response, the protesting party may file a written reply.
- 3. Review.** The head of the purchasing agency (or designee) shall:
 - a.** Review the protest and any response or reply.
 - b.** Request and review any additional documents or information deemed necessary to render a decision.
 - c.** Give the protesting party and the contracting officer reasonable opportunity to review and address any additional documents or information requested by the agency head.
 - d.** In his sole discretion, conduct a hearing.
 - e.** Within 60 days of the receipt of the protest, issue a written determination stating the reasons for the decision.
 - f.** 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.
- 4. "Clearly Without Merit" determinations.** If the head of the purchasing agency (or designee) determines, upon receipt, that the protest is clearly without merit and does not stay the procurement, the head of the purchasing agency (or designee) shall immediately issue the decision as required by H., below.

G. Settlement. The purchasing agency has the authority to settle and resolve bid protests.

H. Decision. The head of the purchasing agency (or designee) shall promptly, but in no event later than 60 days from the filing of the protest, issue a written decision. The decision shall:

- 1.** State the reasons for the decision.
- 2.** If the protest is denied, inform the protesting party of its right to file an appeal in Commonwealth Court within 15 days of the mailing date of the decision.
- 3.** If it is determined that the solicitation or award was contrary to law, enter an appropriate order under I. or J., below.

4. The purchasing agency shall send a copy of the decision to the protesting party and any other person determined by the purchasing agency to be affected by the decision.

I. Remedy Before Execution of Contract. If, before execution of a contract, it is determined that a solicitation or proposed award of a contract was in violation of law, the head of the purchasing agency may do one of the following:

1. Cancel the solicitation;
2. Change the solicitation to comply with law;
3. Reject all bids or proposals or those parts of the bids or proposals which were affected by the violation; or
4. Change or cancel the award to comply with law.

J. Remedies After Execution of Contract. If, after the execution of a contract, it is determined that a solicitation or award of a contract was in violation of law:

1. If the contractor did not act fraudulently or in bad faith, the contract may be:
 - a. Ratified and affirmed provided it is determined by the purchasing agency that doing so is in the best interest of the Commonwealth.
 - b. Modified to comply with the law with the consent of all parties.
 - c. Cancelled and the contractor shall be compensated for the actual expenses reasonably incurred under the contract prior to termination. Such compensation shall not include loss of anticipated profit, loss of use of money, or administrative or overhead costs.
2. If the contractor has acted fraudulently or in bad faith, the contract may be:
 - a. Declared void.
 - b. Modified to comply with law with the consent of all parties.
 - c. Ratified and affirmed, provided it is determined by the purchasing agency, if that action is in the best interests of the Commonwealth and without prejudice to the right of the agency to damages, as may be appropriate.