

## INTRODUCTION TO PROTESTS

We are dedicated to the maintenance of a procurement system of quality and integrity. Our goals include the fair and equitable treatment of all persons who deal with the procurement system, promoting public confidence in the procedures we follow, and maximizing competition by using the least restrictive specifications possible.

As a check on this system, our laws provide participants an opportunity to protest our actions. To help you understand that right, we offer the following summary. Please remember that only the statutes are binding. This summary is not an official agency interpretation of the statute and should not be relied upon. Rather, it is provided solely as an introduction to the concepts found in Section 11-35-4210 of the Consolidated Procurement Code. After familiarizing yourself with these concepts, you should read the statute itself.

Section 11-35-4210(1)(a) grants to any "prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract" a right to protest. A protest must be in writing and must be received within fifteen days of the date the solicitation is first advertised in South Carolina Business Opportunities (SCBO). Solicitation amendments may be protested within fifteen days of the date they are issued. Posting of an award does not shorten the time to protest a solicitation.

Section 11-35-4210(1)(b) grants to any "actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract" a right to protest. A protest must be in writing and must be received within ten days of the date the award notice is posted. If a protest has been timely filed, a protestant may amend its protest "no later than fifteen days after" the award notice was posted. The date of posting must appear on the face of all such notices.

When calculating a protest period, count "calendar days." The statute explains as follows: "In computing any period of time prescribed by this code . . ., the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for the state or federal government, then the period shall run to the end of the next business day."

To protect these statutory protest rights, the Procurement Code requires that all solicitations and all award notices include "a statement of a bidder's right to protest pursuant to section 11-35-4210(1)." These documents must also include "[n]otice of the address of the appropriate chief procurement officer . . ."

Protests must be in writing and must be received by the appropriate chief procurement officer (CPO) within the applicable time period. Time limits are strictly applied. The protest must "set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided."

Authority to review protests is split between the following three CPOs:

- Chief Procurement Officer for Construction, also known as the State Engineer
- Chief Procurement Officer for Information Technology, also known as the Information Technology Management Officer
- Chief Procurement Officer for Supplies and Services, also known as the Materials Management Officer

Each is authorized to conduct an administrative review and issue a binding decision.

If a protest is timely filed, an automatic stay prevents the state from "proceed[ing] further with the solicitation or award of the contract until ten days after a decision is posted by the appropriate chief procurement officer, or, in the event of timely appeal to the Procurement Review Panel, until a decision is rendered by the panel . . ." While there is a process for the CPO to lift the automatic stay, such requests are rarely granted.

Available remedies are identified in section 11-35-4310 and depend on whether a contract has formed prior to the protest.

Be prepared to prove your case; protestants bear the burden of proving their issues of protest. When considering your protest, the CPO has the option of conducting an administrative hearing. A pamphlet summarizing this informal process is posted under the legal section of Procurement Services' home page.

A CPO's decision in a protest may be appealed only to the Procurement Review Panel, which is a separate state agency. Such appeals must be filed within ten days of the posting of the CPO's decision. The appeal can be submitted to either the CPO or to the Panel. The appeal letter must be in writing, must set forth the reasons for disagreement with the decision of the chief procurement officer, and must be accompanied by a \$250 filing fee made payable to the Procurement Review Panel.

Before you file a protest, be sure you have a sound basis. Penalties exist for filing frivolous protests.

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