

Related Entries: (6.07, 6.0712)

Competitive Solicitation (Bid) Protests

Competitive solicitation (bid) protests must be resolved under procedures outlined in this policy and in conformity with F.S. 120.57(3) and the Uniform Rules at F.A.C. Chapters 28-106 and -110.

(1) Definitions

(a) Decision or intended decision – “Decision or Intended Decision” means:

1. the contents of a solicitation, including addenda;
2. a determination that a specified procurement can be made only from a single source;
3. rejection of a response or all responses to a solicitation; or
4. intention to award a contract as reflected by a posted solicitation tabulation or written notice.

(b) Filed - “Filed” means that a document has been physically received and time/date stamped by the Director of Procurement Services within the time required by this policy.

All documents required to be filed within a stated number of days must be filed no later than 4:30 p.m. of the last day for filing. Saturdays, Sundays, and legal holidays observed by the Board shall be excluded in the computation of any seventy-two (72) hour time period provided by this policy.

(c) Person - “Person” means an individual and includes a company, corporation, partnership, limited partnership, joint venture, or other legally recognized business entity.

(2) Notice of Decision

The Director of Procurement Services will give notice of a decision or intended decision by posting on the Department of Procurement Services website or applicable software. All such notices shall contain the following statement "Failure to file a protest within the time prescribed in F.S. 120.57(3) shall constitute a waiver of proceedings under F.S. Chapter 120."

(3) Notice of Protest

Any person who claims to be adversely affected by a proposed solicitation award and who has the standing to protest an award of a solicitation may file a written notice of protest no later than seventy-two (72) hours after the posting of the solicitation tabulation. For a protest of the terms, conditions, and specifications contained in a solicitation, the notice of protest

49 shall be filed in writing within seventy-two (72) hours after the posting of the solicitation. The
50 notice of protest must be filed with the Director of Procurement Services.
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52 (4) Formal Written Protest

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54 In addition to filing a notice of protest, a protesting vendor must file a formal written protest.
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56 The formal written protest must be filed with the assigned purchasing agent within ten (10)
57 days following the day of filing of the notice of protest. Failure to file the formal written protest
58 within the time prescribed by F.S. 120.57(3) shall constitute a waiver of proceedings under
59 F.S. Chapter 120 and a waiver of the protest.
60

61 The Formal Written Protest shall state, with particularity, the facts and law upon which the
62 protest is based and shall be in petition form, as required by F.A.C. 28-110.004(2).
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64 The formal written protest must contain, at a minimum, the following information:
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- 66 (a) Solicitation identification number and title;
- 67
- 68 (b) The name and address of the protesting party and the title or position of the person
69 submitting the protest;
- 70
- 71 (c) A statement that sets forth with particularity the facts alleged and the rules,
72 regulations, statutes, and constitutional provisions entitling the protesting party to
73 relief;
- 74
- 75 (d) A statement showing, with particularity, the specific relief sought by the protesting
76 party; and
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- 78 (e) Such other information as the protesting party considers material.
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80 Failure to file a notice of intent to protest, or failure to file a formal written protest within the
81 times prescribed in section F.S. 120.57(3), shall constitute a waiver of proceedings under
82 F.S. Chapter 120.
83

84 (5) Protest Costs

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86 The protesting party shall deposit an amount equal to five percent (5%) of the estimated total
87 contract value in the form of a cashier's check, made payable to The School District of Lee
88 County, Florida, no later than the deadline for the filing of the formal written protest. This
89 provision does not apply to matters under subsection (6) below.
90

- 91 (a) Said amount must be deposited with the Director of Procurement Services;
- 92
- 93 (b) Said amount must be recovered if the protesting party prevails without interest.
94

95 (6) Protest Bond for Educational Facilities or Public Buildings

96
97 According to F.S. 255.0516, concerning protests relating to educational facilities or public
98 buildings, the protester shall be required to post a bond payable to the Board amounting to:
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100 (a) In the amount of \$25,000 or two percent (2%) of the lowest accepted solicitation,
101 whichever is greater, for projects valued over \$500,000; or

102
103 (b) Five percent (5%) of the lowest accepted solicitation for all other projects.
104

105 The bond shall be conditioned upon the payment of all costs which may be adjudged against
106 the protester in the administrative hearing and any subsequent appellate court proceeding.
107 The solicitation protest bond may be secured by a certified check drawn on an approved
108 financial institution or a surety licensed to conduct business in the State of Florida by the
109 Florida Department of Insurance.

110
111 (7) Protest Resolution
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113 The Board shall create a Bid Dispute Committee (BDC). The BDC shall consist of the
114 appropriate department administrator (Procurement or Construction/Maintenance Services)
115 or designee, the School Board Attorney or designee, and the Superintendent of Schools or
116 designee. The BDC must meet with the protesting party within seven (7) days, excluding
117 Saturdays, Sundays, and legal holidays, from the day of filing the formal written protest. The
118 purpose of the meeting shall be to:

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120 (a) Review the basis of the bid protest;

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122 (b) Evaluate the facts and merits of the protest;

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124 (c) If possible, resolve the protest in a manner that is acceptable to the
125 affected parties.
126

127 (8) Board Hearing and Administrative Hearing
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129 If the protest is not resolved by mutual agreement within seven (7) days of filing the formal
130 written protest, and if there is no disputed issue of material fact, the Board must conduct an
131 informal proceeding according to F.S. 120.57(2).
132

133 If the protest is not resolved by mutual agreement within seven (7) days of the filing of the
134 formal written protest, and if there is a disputed issue of material fact, the Superintendent
135 shall refer the solicitation protest to the Division of Administrative Hearings for a formal
136 hearing, according to F.S. 120.569 and 120.57(3), and F.A.C. Chapter 28-110.
137

138 The Board shall enter its final order within thirty (30) days from the date of the entry of the
139 recommended order unless the parties reach an agreement. In its final order, the Board may
140 reject or modify the conclusions of law. The Board must be specific when rejecting or
141 modifying the conclusion of the law.
142

143 The Board may not reject or modify the findings of fact unless it determines from a review of
144 the entire record and states with particularity in the order that the findings of fact were not
145 based upon competent substantial evidence or that the proceedings on which the findings
146 were found did not comply with essential requirements of law.
147

148 If, after completion of the administrative hearing process and any appellate court
149 proceedings, the Board prevails, it shall recover all costs and charges, which shall be
150 included in the final order or judgment, including payments made by the Division of

151 Administrative Hearings and attorney's fees. If the protester prevails, they shall recover from
152 the District all costs and expenses, which shall be included in the final judgment order and
153 other fees as ordered.

154
155 (9) Stay of Competitive Solicitation Process

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157 The filing of a formal written protest shall suspend the Board's contract award process until
158 the protest is resolved. However, the Board may set forth in writing particular facts and
159 circumstances which require the continuance of the contract award process without delay to
160 avoid immediate or serious danger to public health, safety, or welfare. In such event, the
161 Board will only purchase supplies or commodities which are necessary to the operation of
162 any school or the maintenance of any service without causing an immediate or serious
163 danger to the health, safety, or welfare of students, employees, of the general public.

164
165 In the event of a conflict, the applicable provisions of F.S. Chapter 120 and F.A.C. Chapter
166 28-110 shall prevail over the provisions of this policy.

167
168 (10) The Board reserves the right to exercise any right or privilege accruing from law or regulation
169 not addressed directly by this policy.

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172 Adopted: June 14, 2022
173 Statutory Authority: 120.57(3), 255.0516, 1001.42, 1001.43 F.A.C. Ch. 28-106 ,
174 F.A.C. Ch. 28-110

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