



Board of County Commissioners
Office of Purchasing
Title: Protested Solicitations and Awards

Effective Date: 8/17/01 Supersedes Date: 10/27/98

Procedure No: PP-160

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I. General:

This procedure shall serve as a *specific* guideline for the protested solicitations and awards in accordance with Chapter 1-14, Article II, Section 1-14-21(4) of the Code of Ordinance of Escambia County, Florida (Ordinance No. 96-36) as amended on 10/27/98.

II. Procedure:

- A. **Right to Protest** - After posting, any actual or prospective bidder or proposer who is aggrieved in connection with the pending award or other element of the process leading to the award of a contract may protest to the Purchasing Manager.
- B. **Notice** - The protest shall be submitted within two (2) business days after posting of the award recommendation at that location where bids or proposals are submitted. The protest must be in writing and must identify the protester and the solicitation and shall include a factual summary of the basis of the protest. Such protest is considered filed when it is received by the Office of Purchasing.
- C. **Authority to Resolve** - Protests filed in accordance with Section (II)B. of this procedure will be resolved under the provisions of this subsection.
 - 1. The Purchasing Manager, in consultation with the County Administrator, shall have the authority to review and attempt to resolve the protest informally. After reviewing the facts surrounding the issues raised in the protest letter, the Purchasing Manager, upon the approval of the County Administrator, may take the determination to:
 - (a) Uphold the protest based on a violation in accordance with the provisions of this article. Should this corrective action result in a change in the recommended awardee, a new award posting will be accomplished in accordance with section 46-85, Code of Ordinances, which posting shall again allow for filing of protests.



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- (b) Deny the protest. If the protest is denied, the protestor has the right to request that the protest be referred to a special master for a formal Protest hearing in accordance with Step 2 of the protest procedures as established in subsection II. C.2.(a) of this procedure.
 - (c) The Purchasing Manager shall promptly issue a written statement of the determination, providing the reason for that determination, and providing copies to the protestor and to any other intervening party.
2. (a) If the protestor wishes to continue the protest after it has been denied by the Purchasing Manager, the protestor shall be required to request that a formal protest hearing before a special master be convened. This request shall be made in writing to the Purchasing Manager within two (2) business days of issuance of the Purchasing Manager's determination. Such request shall state the particular grounds on which it is based and may include pertinent documents and evidence relating thereto. Any grounds not stated shall be deemed to have been waived by the protestor. This written request to convene a formal protest hearing must be accompanied by a *protest bond of an amount equal to one (1.0) percent of the value of the solicitation, but in no case less than five hundred dollars (\$500.00) nor greater than five thousand dollars (\$5,000.00). This bond shall be in cash or by a U.S. postal service money order, certified cashier's or bank check payable to Escambia County. Failure to post such bond within two (2) business days after the Purchasing Manager's determination shall result in the protest being dismissed by the Purchasing Manager.

***Note: The requirement for a Protest Bond is hereby waived for procurements covered by Federal Transit Administration Funding (FTA).**

- (b) The bond required by this section shall be conditioned upon the payment of all costs and charges which may be adjudged against the person filing the request for a formal protest hearing. If the person protesting the award prevails, the bond shall be returned to the protestor; however, if, after completion of a formal protest hearing in which the County prevails, the bond shall be forfeited, and the County shall be entitled to recover the costs and charges, excluding attorney's fees, of such hearing. The entire amount of the bond also shall be forfeited if the special master determines that a protest was filed for frivolous or improper purpose, including, but not limited to, the purpose of harassing, causing unnecessary delay, or causing needless cost for the County or other parties.



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3. After referral by the Purchasing Manager, a special master shall hold a hearing within ten (10) business days of the receipt of such request.
 - (a) At or prior to the protest proceeding, the protestor may submit such additional written or physical materials, objects, statements, affidavits, and arguments which he/she deems relevant to the issues raised. In the proceeding, the protestor, its representative, or counsel, may make an oral presentation of such evidence and arguments, which may include direct and cross examination of witnesses. Hearsay evidence shall be admissible in the proceeding, but shall not form the sole basis for the decision of the special master. At any time, the special master may also make whatever inquiries of the parties and their witnesses he or she deems pertinent to a determination of the protest. The judicial rules of evidence and procedure shall not apply; however, the special master shall ensure that the proceeding affords meaningful due process and fundamental fairness to the protestor at all times.
 - (b) At the conclusion of the parties' evidence and arguments, the special master shall announce a decision and shall prepare a written decision and recommendation which shall be filed with the Board of County Commissioners within five (5) days after the hearing. The text of the decision shall find facts and make conclusions, which conclusions shall be deducible from the facts as found by the special master. The special master shall state the facts specially and thereafter state separately a conclusion thereto. The findings of fact shall be stated in nonargumentative and neutral terms and shall be divided into short, separately numbered, declarative paragraphs or sentences each of which may contain only one (1) feature or point.
 - (c) The special master's decision shall include one of the following recommendations:
 1. If it is determined that the solicitation or award is in violation of law or the policies and procedures of the Office of Purchasing, the special master shall recommend that the solicitation be canceled or the award be canceled or revised, and that the protestor's bond be returned.



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2. If it is determined that the solicitation or award should be upheld, the special master shall recommend that the Purchasing Manager shall be directed to proceed with the posted award in accordance with the policies and procedures of the Office of Purchasing, and that the protestor's bond shall be forfeited. All costs and charges of the hearing shall be paid to the County within five (5) business days after final action of the Board of County Commissioners upholding the special master's decision and recommendation. Any costs and charges not fully discharged by the amount of the protestor's bond shall be paid by the protestor. Failure to pay said costs and charges within this five (5) business day period shall result in the protestor being suspended from the County's vendor list until such payment is made.
- (d) After filing, the special master's decision and recommendation shall then be presented for action at the next regularly scheduled meeting of the Board of County Commissioners together with a recommendation of the County Administrator relating to the disposition of the case. The matter shall be resolved by the board on the basis of the record before the special master and no evidence or issue which was not presented or raised at such hearing shall be considered. Presentations to the Board by parties shall be limited to thirty (30) minutes per side. The foregoing time limitation shall be inclusive of all speakers addressing the Board on behalf of each side. At the conclusion of such testimony, the Board shall by majority vote accept or reject the decision and recommendation of the special master. The Board may also in its sole discretion refer the matter back to the special master for additional proceedings.
- (e) The determination by the Board shall be the final and conclusive decision by the County regarding a bid protest under this section. However, such determination shall in no way be construed to limit the County's authority as otherwise may be provided for now or in the future by this article. Any aggrieved party within thirty (30) days of such determination by the Board may bring an action in the appellate division of the circuit court to appeal such decision.



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- D. **Stay of Procurement during Protests** - Notwithstanding anything contained herein to the contrary, in the event of a timely protest, the Purchasing Manager shall stay the award of the contract unless the County Administrator, with the advice of the County Attorney and after consultation with the using department, makes a determination that the award of the contract without delay is necessary to protect substantial interests of the County government.
- E. **Reservation of Powers by the Board** - Nothing in this section is intended to affect the powers of the Board to settle or resolve any protest proceeding or to settle actions pending before the courts relating to any protest.