



|  |  |
|--|--|
| <b>Policy # DES-170-00</b>                             | <b>COMPLAINTS AND PROTESTS (RCW <a href="#">39.26.170</a>)</b>   |
| Purpose:   | <p>This policy provides the following information:</p> <ol style="list-style-type: none"> <li>1) Minimum requirements for a complaint process and a protest process.</li> <li>2) The criteria for filing a complaint or protest.</li> <li>3) Agency response requirements and timelines.</li> <li>4) How to request authority to sign a contract before the protest process is completed.</li> </ol>   |
| Enabling Legislation:<br>RCW <a href="#">39.26.170</a> | <p>Beginning January 1, 2013, agencies with original or delegated authority must have a procurement complaint process and protest process, both of which are clear and transparent. In addition:</p> <ol style="list-style-type: none"> <li>1) The complaint process, including the agency response to complaints, must occur before the deadline for bid submissions.</li> <li>2) The protest process must include a protest period after the apparent successful bidder is announced but before the contract is signed.</li> </ol>   |
| Complaint Process Purpose and Requirements:            | <p>The complaint process occurs early in the procurement process. The purpose of a complaint process is to settle unresolved vendor issues or concerns that either were not or could not be resolved during the question and answer period. The complaint process allows vendors to focus on the solicitation requirements and evaluation process and raise issues with these processes early enough in the process to allow an agency to correct a problem before bids are submitted and time expended on evaluations. A good complaint process can help reduce or eliminate the number of protests that would later be filed.</p> <p>The agency's procurement complaint process must meet the following minimum requirements:</p> <ol style="list-style-type: none"> <li>1) Vendors must be given an opportunity to submit a complaint to the agency based on any of the following: <ol style="list-style-type: none"> <li>a) The solicitation unnecessarily restricts competition;</li> <li>b) The solicitation evaluation or scoring process is unfair or</li> </ol> </li> </ol> |

|   |  |
|---|--|
|   | <p>flawed; or</p> <p>c) The solicitation requirements are inadequate or insufficient to prepare a response.</p> <p>2) Vendors must be allowed to submit complaints up to 5 business days prior to the bid response deadline. In addition, agencies can require vendor complaints to meet the following requirements:</p> <p>a) Must be in writing.</p> <p>b) Must be sent to the procurement coordinator, or designee, in a timely manner.</p> <p>c) Should clearly articulate the basis for the complaint.</p> <p>d) Should include a proposed remedy.</p> <p>3) The procurement coordinator or designee must respond to complaints in writing.</p> <p>4) The response to complaints including any changes to the solicitation must be posted on <a href="#">WEBS</a>.</p> <p>5) The agency head is to be notified of all complaints and be provided a copy of the agency's response.</p> <p>6) The complaint may not be raised again during the protest period.</p> <p>7) The agency complaint process does not need to include an appeal process.</p> |
| <p><b>Protest Process Purpose and Requirements:</b></p> | <p>The protest process occurs after the bids are submitted and evaluated. This allows bidders to focus on the evaluation process to ensure its integrity and fairness. Protests can raise issues related to the evaluation process as set out in the solicitation or how it the process was executed. This allows an agency to correct evaluation process errors and problems before a contract is executed.</p> <p>The agency's procurement protest process must meet the following minimum requirements:</p> <p>1) After the announcement of the apparent successful bidder (ASB), agencies must offer a debriefing conference to any bidder upon request.</p> <p>2) Agencies must give bidders a minimum of at least 3 business days after the ASB is announced to request a debriefing conference.</p> <p>3) Agencies can require bidder participation in a debriefing conference as a prerequisite for submitting a protest.</p> <p>4) Agencies must give bidders at least 5 business days after their debriefing conference to file a protest.</p> |

|   |  |
|---|--|
|   | <p>5) The protest process as a minimum, must allow vendors an opportunity to submit a protest based on any of the following:</p> <ul style="list-style-type: none"> <li>a) A matter of bias, discrimination, or conflict of interest on the part of an evaluator;</li> <li>b) Errors in computing the scores; or</li> <li>c) Non-compliance with procedures described in the procurement document or agency protest process or DES requirements.</li> </ul> <p>6) Agencies should assign a neutral party that had no involvement in the evaluation and award process to investigate and respond to the protest.</p> <p>7) Agencies must issue a written protest response no more than 10 business days from receipt of the protest, unless additional time is needed. The agency should notify the protesting bidder if additional time is needed.</p> <p>8) The agency protest decision is final and no appeal process will be required. If a protesting bidder does not accept the agency protest response, the bidder may try to seek relief from superior court.</p> <p>9) At the time that the agency protest response is issued, the agency head and the Department of Enterprise Services Director must be provided a copy of the original protest and the agency's response.</p> <p>10) Small and micro agencies that lack staff to address a protest may request assistance from DES.</p> |
| <p>Additional Requirements</p>                          | <ul style="list-style-type: none"> <li>1) Consistent with RCW <a href="#">39.26.170</a>, all competitive procurements must include an announcement of the ASB(s).</li> <li>2) Consistent with RCW <a href="#">39.26.030</a>, following the announcement of the ASB(s), bid submissions and bid evaluations must be available for public inspection.</li> </ul>   |
| <p>Compliance:</p>                                      | <p>Agencies are expected to exercise sound professional judgment in implementing an objective and transparent complaint process and protest process. The agency's record of compliance will be factored into the agency risk assessment.</p>   |
| <p>Exemptions:<br/>RCW <a href="#">39.26.170</a>(3)</p> | <p>The agency may not sign a contract before the protest process is completed except when the Enterprise Services Director grants the agency the authority to do so. Authority will only be granted if there are exigent circumstances that necessitate the contract to be signed. To request an exemption, the agency head must submit the request to the Enterprise Services Director. The request should explain the exigent circumstances and why it would be in the best interest of the state to grant the request.</p>  |

|                     |  |
|---------------------|--|
| <p>Definitions:</p> | <p>“Apparent Successful Bidder” is the lowest responsive and responsible Bidder as determined by the bid evaluation process and prior to Bidder negotiations. (See RCW <a href="#">39.26.160(6)</a>)</p> <p>“Bid” means an offer, proposal, or quote for goods or services in response to a solicitation issued for such goods or services by the department or an agency of Washington state government. (See RCW <a href="#">39.26.010(2)</a>)</p>   |
| <p>FAQ:</p>         | <p>Q1: Does the complaint and protest policy apply to low dollar request for quotes (RFQs) in which the lowest bid price determines the award?</p> <p>A: Yes.</p> <p>Q2: What if the agency has an urgent need that cannot accommodate the length of time it takes to fulfill the required complaint and protest timelines?</p> <p>A: Most agency procurement needs may be satisfied through proper planning, direct buy provisions or use of qualified master contracts. However, if DES procurement analysis suggests otherwise, an exemption may be granted or procurement policies may be modified.</p> <p>Q3: Will solicitations released prior to January 1, 2013 be exempt from this policy?</p> <p>A: Yes. Agencies are to follow the related laws, rules, and policies in force at the time when the solicitation was released.</p> <p>Q4: When should a protest bond be required and how do you set the bond limit?</p> <p>A: DES is in the process of developing a protest bond policy and best practices. Until then, agencies should contact DES prior to requiring a protest bond.</p> <p>Q5. What is a debriefing conference and how do I conduct one?</p> <p>A: A debriefing conference provides an opportunity for the bidder to meet with the agency to discuss its bid and evaluation. DES is developing a debriefing conference policy with information on how to conduct a debriefing conference.</p> |