

# Complaints and Protests

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**Applies to:** Any state office or activity of the executive branches of state government, including state agencies, departments, offices, divisions, boards, commissions, institutions of higher education as defined in [RCW 28B.10.016](#) and correctional and other types of institutions ([RCW 39.26.010\(1\)](#)) ([RCW 39.26.100](#)) ([RCW 39.26.102](#)) governed by [RCW 39.26](#).

**Authorizing sources:**

- State Law [RCW 39.26.170](#)

**Effective date:** April 26, 2021

**Last update:** January 8, 2015

**Sunset review date:** *5 years from effective date*

**Approved by:**



Chris Liu, Director

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## Reason for Policy

The purpose of this policy is to ensure state agencies include opportunities for vendor feedback on competitive solicitations. During a competitive solicitation process, agencies may, and are encouraged to, include a less formal feedback opportunity using a question and answer period; or a pre-bid conference. This policy will focus on the minimum requirements for a more formal complaint and protest process (as required in [RCW 39.26.170](#)), criteria for filing a complaint or protest, agency response requirements and timelines, and clear and transparent processes. Agencies with delegated authority [[link to policy](#)] must have a procurement complaint process and protest process, both of which are clear and transparent to vendors, the general public, and the state.

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## Policy

### Complaints

The complaint process occurs during the competitive solicitation portion of the procurement process prior to submitting a response to a competitive solicitation. Complaints are designed to improve and clarify the competitive solicitation 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 or the pre-bid conference. The complaint process allows vendors to focus on the solicitation requirements and evaluation process and raise issues early enough in the process to allow an agency to correct a problem before bids are submitted and time is expended on evaluations and helps mitigate the need for protests. Complaints must be allowed from the competitive solicitation posting date through a specified period of days before the competitive solicitation due date.

The agency's procurement complaint process must meet the following minimum requirements:

- a) Vendors must be given an opportunity to submit a complaint to the agency based on any of the following:
  - i) The solicitation unnecessarily restricts competition;
  - ii) The solicitation evaluation or scoring process is unfair or flawed; or
  - iii) The solicitation requirements are inadequate or insufficient to prepare a response.
- b) The complaint process, including the agency response to complaints, must occur before the deadline for bid submissions.
  - i) The complaint process must allow the agency to have discretion to extend the bid submission deadline if necessary to allow sufficient time for responses and review of complaints (e.g., the nature or complexity of the complaint requires additional time and/or the availability of the response to a complaint is too close to the bid submission deadline not allowing sufficient time for bidders to prepare a bid submittal).
- c) 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:
  - i) Must be in writing.
  - ii) Must be sent to the procurement coordinator, or designee, during the complaint period.
  - iii) Should clearly articulate the basis for the complaint.
  - iv) Should include a proposed remedy.
- d) The procurement coordinator or designee must respond to complaints in writing. The bid submission deadline should not conclude before the requestor has been provided with the applicable written responses to all complaints and provided a reasonable amount of time to review the same, which may be relevant to the bidder's bid submittal.
- e) The response to complaints including any changes to the solicitation must be posted as an amendment on the statewide bidder notification system.
- f) The agency head is to be notified of all complaints and be provided a copy of the agency's response.
- g) The complaint may not be raised again during the protest period.
- h) The agency complaint process does not need to include an administrative appeal process.

## Protests

The protest process occurs after the bids are submitted and evaluated, and after the announcement of the Apparent Successful Bidder (ASB); but prior to contract award. This allows bidders to focus on the evaluation and award process to ensure its integrity and fairness. Protests can raise issues related to the evaluation and award process as set out in the solicitation or how the process was executed. This allows an agency to correct evaluation process errors and problems before a contract is awarded and executed.

The agency's procurement protest process must meet the following minimum requirements:

- i) The protest process must include a protest period. The protest period commences after the ASB is announced but before the contract is awarded and executed. The protest period must be no less than five business days.
  - i) The protest process must allow the agency to have discretion to extend the protest period if necessary (e.g., the nature or complexity of the solicitation or the availability of the bid submissions and bid evaluations require additional time).
- j) After the announcement of the ASB(s), agencies must offer a debriefing conference to any bidder upon request.
  - i) Agencies must give bidders a minimum of at least 3 business days after the ASB(s) is announced to request a debriefing conference.

- ii) Agencies can require bidder participation in a debriefing conference as a prerequisite for submitting a protest.
  - (1) If the agency does not receive a timely request for a debriefing conference, the agency may cancel the protest period.
- k) If any bidder requests a debriefing conference, agencies must provide a protest period of no less than 5 business days for eligible bidders to file a protest.
  - i) Only those bidders who've submitted a bid and participated in a debriefing conference are eligible to file a protest, if the agency has required bidder participation in a debriefing conference as a prerequisite for submitting a protest.
  - ii) It is recommended that protests are submitted to the Protest Officer or other neutral party, not the Agency Procurement coordinator.
- l) The protest process at a minimum, must allow bidders an opportunity to submit a protest based on any of the following:
  - i) A matter of bias, discrimination, or conflict of interest on the part of an evaluator;
  - ii) Errors in computing the scores; or
  - iii) Non-compliance with procedures described in the procurement document or agency protest process or DES policy requirements.
- m) Agencies shall assign a neutral party (Protest Officer) who had no involvement in the evaluation and award process to investigate and respond to the protest.
  - i) The Protest Officer should have public procurement experience and must remain fair and impartial throughout the protest process.
- n) The Protest Officer must issue a written protest response no more than 10 business days after receipt of the protest, unless additional time is needed. The agency should notify the protesting bidder in writing if additional time is needed.
  - i) The agency has discretion to cancel the procurement, if desired.
  - ii) The agency has discretion to award any unprotested categories, if desired and appropriate.
- o) The Protest Officer's decision is final and no administrative appeal process is required. If a protesting bidder does not accept the Protest Officer's protest response, the bidder may seek relief from superior court.
- p) At the time that the 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 protest response.
- q) Small and micro agencies that lack staff to address a protest may request assistance from DES or another agency.

### Additional Requirements

- a) Consistent with [RCW 39.26.160\(7\)](#), all competitive procurements must include an announcement of the ASB(s), using the state's enterprise vendor registration and bid notification system\*\*.
  - i) In the event the protest process results in a different ASB(s), the agency must include an announcement of the new ASB(s), using the state's enterprise vendor registration and bid notification system\*\*. The debrief and protest period begins again after the new ASB(s) are announced.
- b) Consistent with [RCW 39.26.030](#), following the announcement of the ASB(s), bid submissions and bid evaluations must be available for public inspection.
  - i) Bid submissions & bid evaluations temporarily are exempt from public disclosure until announcement of ASB(s).
  - ii) If requested, the protest period should not conclude before the requestor has been provided with the applicable bid submissions and bid evaluations and provided five business days to review the same, which may be relevant to the bidder's protest, to submit a protest.

## Compliance

Agencies are expected to exercise sound professional judgment when implementing their objective and transparent complaint and protest processes. The agency's record of compliance will be factored into the agency's procurement risk assessment.

## Exemptions

Consistent with [RCW 39.26.170\(3\)](#), 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 circumstances that necessitate the contract to be signed. To request an exemption, the agency head must submit a written request to the Enterprise Services Director. The request should explain the pressing/demanding circumstances and why it would be in the best interest of the state to grant the request.

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## Procedures/Guidelines

[Complaints and Protests Procedure – DES-PRO-170-00](#)

[Debrief Guideline – DES-GDL-170-00](#)

[FAQ Complaints and Protest](#)

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## Appendices

**Sample Protest Officer's** [Procurement Integrity Certification](#)

**Sample Protest Officer's** [Protest Review and Conclusion](#)

**Sample Protest Officer's** [Response Letter](#)

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## History

Previous version – January 8, 2015

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\*\* An enhancement to the state's enterprise vendor registration and bid notification system will be launched in March/April 2021 to accommodate the announcement of ASB(s). Prior to the enhancement, announcements of ASB(s) shall be conducted using alternative methods to meet the intent of the policy.