

Enterprise Services Policy No. POL-DES-170-00

Complaints and Protest Policy

**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](http://apps.leg.wa.gov/RCW/default.aspx?cite=28B.10.016) and correctional and other types of institutions.

**Authorizing sources**:

* State Law [RCW 39.26.170](https://app.leg.wa.gov/RCW/default.aspx?cite=39.26.170)

**Effective date**: \_\_\_\_\_\_\_\_\_, 2020

**Last update**: January 8, 2015

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

**Approved by**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Chris Liu, Director

# Reason for Policy

Agencies with delegated authority must have a procurement complaint process and protest process, both of which are clear and transparent. The purpose of this policy is to provide minimum requirements for a complaint and protest process, criteria for filing a complaint or protest, agency response requirements and timelines, and clear and transparent processes.

# **Complaints**

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 early enough in the process to allow an agency to correct a problem before bids are submitted and time is expended on evaluations. A good complaint process can help reduce or eliminate the number of protests that would later be filed.

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

* 1. Vendors must be given an opportunity to submit a complaint to the agency based on any of the following:
		1. The solicitation unnecessarily restricts competition;
		2. The solicitation evaluation or scoring process is unfair or flawed; or
		3. The solicitation requirements are inadequate or insufficient to prepare a response.
	2. The complaint process, including the agency response to complaints, must occur before the deadline for bid submissions.
	3. 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:
		1. Must be in writing.
		2. Must be sent to the procurement coordinator, or designee, in a timely manner.
		3. Should clearly articulate the basis for the complaint.
		4. Should include a proposed remedy.
	4. The procurement coordinator or designee must respond to complaints in writing.
	5. The response to complaints including any changes to the solicitation must be posted on WEBS.
	6. The agency head is to be notified of all complaints and be provided a copy of the agency's response.
	7. The complaint may not be raised again during the protest period.
	8. The agency complaint process does not need to include an appeal process.

# **Protests**

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 the process was executed. This allows an agency to correct evaluation process errors and problems before a contract is executed.

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

* 1. The protest process must include a protest period after the apparent successful bidder (ASB) is announced but before the contract is signed.
	2. After the announcement of the Apparent Successful Bidder(s) (ASB(s)), agencies must offer a debriefing conference to any bidder upon request.
	3. Agencies must give bidders a minimum of at least 3 business days after the ASB(s) is announced to request a debriefing conference.
	4. Agencies can require bidder participation in a debriefing conference as a prerequisite for submitting a protest.
	5. Agencies must give bidders at least 5 business days after their debriefing conference to file a protest.
		1. Only those bidders who’ve submitted a bid are eligible to file a protest.
		2. It is recommended that protests are submitted to the Protest Officer or other neutral party, not the Agency Procurement coordinator.
	6. The protest process as a minimum, must allow vendors an opportunity to submit a protest based on any of the following:
		1. A matter of bias, discrimination, or conflict of interest on the part of an evaluator;
		2. Errors in computing the scores; or
		3. Non-compliance with procedures described in the procurement document or agency protest process or DES requirements.
	7. Agencies should assign a neutral party (Protest Officer) that had no involvement in the evaluation and award process to investigate and respond to the protest.
		1. The Protest Officer should have public procurement experience and must remain fair and impartial throughout the protest process.
	8. The Protest Officer 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.
		1. Agency has discretion to cancel procurement, if desired.
		2. Agency has discretion to award any unprotested categories, if desired and appropriate.
	9. The Protest Officer’s decision is final and no appeal process will be required. If a protesting bidder does not accept the Protest Officer’s protest response, the bidder may seek relief from superior court.
	10. 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 response.
	11. Small and micro agencies that lack staff to address a protest may request assistance from DES or another agency.

# **Additional Requirements**

* 1. 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.
	2. Consistent with RCW 39.26.030 and [the Office of Attorney General’s Obtaining Records Guide](https://www.atg.wa.gov/obtaining-records), following the announcement of the ASB(s), bid submissions and bid evaluations must be available for public inspection.
		1. Bid submissions & bid evaluations are temporarily exempt from disclosure until announcement of ASB(s).
		2. If requested, the protest period should not conclude before the requestor has been provided with this information, which may be relevant to the person’s 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**

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 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.

# **Training:**

Agency personnel who are responsible for managing a contract must complete DES’ Contract Management training.

Obtain training – DES has made the training program available in the Learning Management System (LMS).

Training new employees – Employees assigned these responsibilities shall complete the required training within 90 days of assignment. Specifically, this applies to anyone who is responsible for managing a contract and is a new employee, current staff assigned to new responsibilities/duties, or an employee assigned to a new position. More information on specific training requirements can be found at: [Contracts & Procurement Training & Development](https://des.wa.gov/services/contracting-purchasing/policies-training/contracts-procurement-training-development/).

# Procedures

Complaints and Protests Procedure – DES-PRO-170-00 [link]

# Appendices

Sample Protest Officer’s [Protest Review and Conclusion](file:///%5C%5Cdes.wa.lcl%5Cdoc%5CCPRM%5CEnterprise-Policy%5CMiscellaneous%20Policy%20Team%20Folders%5CPolicy%20%26%20Protest%20Manager%20Files%5CProtests%5CProtest%20Process%20Improvement%5CSample%20Protest%20Review%20and%20Conclusion%20DRAFT%2011-6-19.docx)

Sample Protest Officer’s [Response Letter](file:///%5C%5Cdes.wa.lcl%5Cdoc%5CCPRM%5CEnterprise-Policy%5CMiscellaneous%20Policy%20Team%20Folders%5CPolicy%20%26%20Protest%20Manager%20Files%5CProtests%5CProtest%20Process%20Improvement%5CSample%20Protest%20Response%20Letter%20DRAFT%2011-6-19.docx)

# History

Previous version – January 8, 2015