

PENSACOLA STATE COLLEGE
PROCEDURES OF THE DISTRICT BOARD OF TRUSTEES

Procedure Title:	Contract Solicitation or Award Bid Protest	<u>Number</u> 514
Related Policy:	Policy 6Hx20-5.003 Procurement Requirements	<u>Page</u> Page 1 of 5

Purpose

The purpose of this procedure is to establish the dispute resolution process for protests arising from the College's contract procurement processes for the purchase of goods, services and leases, and for construction-related competitive solicitations. This shall be the exclusive procedure applicable to all such protests.

Definitions

A. For purposes of this procedure, the following terms mean:

1. "Competitive solicitation" or "solicitation" means an invitation to bid, a request for qualifications, a request for proposals or an invitation to negotiate.
2. "Decision or intended decision" means:
 - a. The issuance of the specifications related to the competitive solicitation
 - b. Rejection of a response or all responses to a competitive solicitation; or
 - c. Intention to award a contract resulting from a competitive solicitation as indicated by a posted solicitation tabulation or other written or electronic notice.
3. "Formal Written Protest" is a formal written complaint that states with particularity the facts and law upon which the protest is based.
4. "Notice of Intent to Protest" – a short and plain written statement that indicates a potential Protestor's intent to file a Formal Written Protest.
5. "Protest" – a Protestor's alleged violation by the College of:
 - a. any law, regulation or the College's rules and/or procedures; or
 - b. the College's terms, conditions, or specifications contained within the competitive solicitation documents.
6. "Protestor" – any actual or prospective qualified bidder, respondent, person or firm that:
 - a. is adversely affected by a decision or intended decision of the College;
 - b. has standing to file a protest; and
 - c. who timely files a notice of intent to protest.

Procedure

A. General

1. Valid Subject Matter – A Protestor may only protest a decision or intended decision of the College resulting from a competitive solicitation for a contract of \$65,000 or more. A valid protest must allege that the College violated law, regulation, its rules and/or procedures or the terms, conditions or specifications contained within the competitive solicitation documents. Mere disagreement with the result of a competitive solicitation is not sufficient grounds for a valid protest.
2. Prohibited Challenges – Notwithstanding anything in this procedure to the contrary, a protest may not challenge the relative weight assigned to the solicitation evaluation criteria by the College, or the formula for assigning points in making an award or recommendation of award.
3. Notice – All notices required to be delivered under this procedure may be delivered:
 - a. by mail to the College's Purchasing Office at 1000 College Boulevard, Pensacola, Florida 32504;
 - b. by fax to the College's Purchasing Office at (850) 484-1794; or
 - c. by email directly to the person to whom notice is required to be delivered.
4. Timeliness and Time Periods – For the purposes of determining timeliness of any notice or filing or the tolling of any time period under this procedure:
 - a. references to "days" shall mean calendar days;
 - b. in the event that the final day for a College employee or official to respond or for a person to file a protest or appeal falls on a Saturday, Sunday, or a College observed holiday, the date for responding or filing such protest or appeal shall be extended until the next day which is neither a Saturday, Sunday or College observed holiday; and
 - c. notices received by the College after the close of the College's business hours at 4:00 p.m. local time, shall be deemed received by the College effective as of the next business day of the College.
5. Costs, Fees and Bond
 - a. The Protestor shall be liable for all of its own costs and expenses incurred related to a protest, including all appeals.
 - b. The filing of a Formal Written Protest (as set forth in Section d below) must be accompanied by the payment of a two hundred fifty and no/100 dollar (\$250.00) non-refundable filing fee. The filing fee may be paid in cash, by bank or certified check and must be received by the College Purchasing Department prior to the expiration of the time for filing the Formal Written Protest.
 - c. In addition to the filing fee, the Protestor shall file with the Purchasing Department, a security in the form of a certified check, letter of credit or protest bond (in a form, and with such terms, approved by the College) payable to the College in an amount equal to two percent (2%) of the estimated contract amount, bid or proposal amount. If no contract price was

submitted, the College shall estimate the contract amount based on factors including, but not limited to, the price of previous or existing contracts for similar contracts or services. Such bond or other security must be received prior to the expiration of the time for filing the Formal Written Protest. If the protest is successful, the posted security will be refunded in full. If the protest is unsuccessful, the security shall be returned, less all fees, expenses, damages, costs and charges incurred by the College.

- d. Noncompliance with these filing requirements within the applicable deadline for filing of the protest shall be deemed to be a waiver by the Protestor of the right to protest proceedings under this procedure.
6. Stay Pending Protest – Upon receipt of the Notice of Intent to Protest that has been timely filed (as set forth in Section 3 below), the College shall stop the solicitation or contract award process until the subject of the protest is resolved by final College action, unless the College President, or designee, sets forth in writing particular facts and circumstances which require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety or welfare.

B. Notice of Decision or Intended Decision

1. The College shall provide a notice of decision or intended decision by electronic posting. The notice shall contain the following statement: “Failure to timely file a protest or failure to timely deliver the required filing fee and security bond in accordance with the Pensacola State College Administrative Procedure shall constitute a waiver of any right to protest proceedings.”

C. Notice of Intent to Protest

1. Seventy-Two (72) Hour Period – If a potential Protestor desires to protest a decision or intended decision of the College, the potential Protestor must timely deliver a Notice of Intent to Protest within seventy-two (72) hours of the College’s posting of its decision or intended decision. A potential Protestor’s failure to timely file a Notice of Intent to Protest within the seventy-two (72) hour time period shall constitute a waiver of the right to protest proceedings.
2. Content of Initial Notice of Intent to Protest – A Notice of Intent to Protest shall:
 - a. be delivered to the College’s Purchasing Department and addressed to the Director of Purchasing at 1000 College Boulevard, Pensacola, Florida 32504.
 - b. identify the solicitation by number and title or any other language that will enable the College to identify it; and
 - c. state that the person intends to protest the decision. The seventy-two (72) hour period will not be extended by service of the Notice of Protest by mail.

D. Formal Written Protest

1. Time Period for Filing – The Protestor must deliver a Formal Written Protest to the College’s Purchasing Office at 1000 College Boulevard, Pensacola, Florida 32504 within ten (10) days after the date the Notice of Intent to Protest is filed. The seventy-two (72) hour period will not be extended by service of the Notice of Protest by mail. The Formal Written Protest must include

the required filing fee and security bond as specified herein. The failure of the Protestor to file the Formal Written Protest or to file the filing fee and security bond shall constitute a waiver of the Protestor's right to protest proceedings and/or denial and dismissal of the Protestor's protest.

2. Content of Formal Written Protest – The Formal Written Protest shall contain the following information:
 - a. The identification of the Protestor.
 - b. A statement of when and how the Protestor received notice of the College's action or proposed action.
 - c. A statement of the material facts alleged, including a statement of specific facts the Protestor contends warrant reversal or modification of the College's proposed action.
 - d. A statement of the specific rules or statutes that the Protestor contends require reversal or modification of the College's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes.
 - e. A statement of the relief sought by the Protestor, stating precisely the action Protestor wishes the College to take with respect to the proposed action.

E. Protest Review and Final Determination

1. Informal resolution and review by the College Director of Purchasing: The College's Director of Purchasing ("Director") shall attempt to settle or resolve protests by mutual agreement within seven (7) days of receiving the Formal Written Protest. The Director may request information from, and speak individually or collectively to, any people or entities having information relevant to the protest, including but not limited to the Protestor and other respondents to a solicitation. In the event that an informal mutual resolution cannot be reached within seven (7) days, the Director shall review the protest de novo and render a written decision on the protest and provide a copy of the written decision to the Protestor within five (5) days.
2. Appeal for Review by College Business Officer ("Hearing Officer"): A Protestor may appeal the decision of the Director by delivering written notice to the College's Vice President of Business Affairs at 1000 College Boulevard, Pensacola, Florida 32504 within seven (7) days from the date of the Director's decision. The appeal shall be in writing and shall state with specificity the grounds for the appeal and the action requested. The VP of Business Affairs shall attempt to settle or resolve the matter, with or without a meeting or hearing, at the option of the VP of Business Affairs. Otherwise, the VP of Business Affairs will convene a co-review of the protest with the College's Comptroller ("Business Officers"). In the event that either of the Business Officers served as evaluators during the competitive solicitation being protested, they may designate an impartial officer of the College to hear the protest in his/her place. The Business Officers may request information from, and speak individually or collectively to, any person or entity having information relevant to the matter, including but not limited to the appealing party and other respondents to a solicitation, if any. Upon review, the Hearing Officers shall render a written decision on the appeal and provide a copy of the written decision to the Protestor within ten (10) days following receipt of the appeal.
3. Appeal for a Protest Hearing

- a. **Hearing Procedure.** The Protestor may appeal the decision of the Hearing Officers by delivering a written notice of appeal to the College President with a copy to the General Counsel at 1000 College Boulevard, Pensacola, Florida 32504 within five (5) days following the written decision of the Hearing Officers. The VP of Business Affairs shall forward the grievance materials to the Office of the General Counsel. Within five (5) days following receipt of the appeal the College President, or designee, shall appoint three (3) employees to serve on a Protest Review Committee (“Committee”). The Office of the General Counsel will be responsible for coordinating the schedule and actions required by the Committee. The General Counsel, or other legal designee, will serve as an advisor to the Committee and will provide legal counsel with respect to policies, procedures and processes.
- i. The Committee will schedule a final hearing on the protest within ten (10) days of the Committee’s formation. Prior to the final hearing, the Committee shall review the record of the protest and provide the Protestor and other concerned parties with at least five (5) days prior written notice of the time, date and location of the final hearing.
- ii. The Committee will hear the protest during which the Protestor and the College shall have an opportunity to clarify the evidence supporting their cases. Each party will have an opportunity to provide statements and responses. The Committee may ask questions of the Protestor, College representatives and relative third parties.
- iii. During the hearing, the Protestor may only assert or rely on any facts or information substantially similar to that presented in the original formal grievance materials.
- iv. Within five (5) days following the hearing, the Committee, through its chairman, shall forward its findings and recommendations to the College President, who shall, after reviewing said findings and recommendations, render a final determination of the protest within ten (10) days following receipt of the Committee’s recommendations. The College President shall transmit a copy of the recommendations, findings and final determination to the Protestor with a copy to the General Counsel.
- v. The decision of the College President shall be conclusive and represent the final action of the College.

Responsible Official:	Director, Purchasing and Auxiliary Services
President’s Signature:	 Date: 10/13/2021