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## CHAPTER 28. Protests

### Table of Contents

<b>CHAPTER 28. Protests</b> .....	<b>28-1</b>
<b>28.1 General</b> .....	<b>28-2</b>
28.1.1 Policy .....	28-2
28.1.2 Notice to Offerors .....	28-2
<b>28.2 Written Submission</b> .....	<b>28-2</b>
<b>28.3 Time for Filing</b> .....	<b>28-2</b>
<b>28.4 Pre-Award Protests</b> .....	<b>28-3</b>
28.4.1 Decision to Continue or Withhold Award .....	28-3
<b>28.5 Post-Award Protests</b> .....	<b>28-3</b>
<b>28.6 Consideration of Protests</b> .....	<b>28-3</b>
<b>28.7 Resolution of Protests</b> .....	<b>28-4</b>
28.7.1 Remedies if Pre-Award Protest Is Upheld .....	28-4
28.7.2 Remedies if Post-Award Protest Is Upheld .....	28-4
28.7.3 Findings and Notice if Protest Is Denied .....	28-4
<b>28.8 Appeal</b> .....	<b>28-4</b>



## **28.1 General**

### **28.1.1 Policy**

A protest is a procedure whereby a bidder/proposer may bring to the Authority's attention and seek relief from a perceived error or unfairness. A protest must be accepted and reviewed to ensure the fairness, competitiveness and cost effectiveness of the procurement process. Errors or inappropriate procedures in the procurement process should be corrected without litigation if possible, and the protest procedures shall be implemented toward this end.

A Contracting Officer will attempt to resolve all issues in dispute related to the solicitation documents or procurement process by mutual agreement. Reasonable efforts should be made to bring to the Authority's attention as early as possible any ambiguities, claims of discriminatory or exclusionary specifications, or other concerns regarding the solicitation documents or the solicitation process prior to the submission of a protest.

If a person or firm is already under contract with the Authority and is alleging a wrong with respect to the contract, even if the alleged wrong involves the procurement process that resulted in the contract, the matter is a dispute that should be addressed under the chapter on Claims, Disputes, and Appeals. The protest procedure in this Chapter is only for persons or firms that have not been awarded a contract.

### **28.1.2 Notice to Offerors**

The Contracting Officer shall insert a provision in all solicitations that informs prospective offerors of the applicable protest procedures, and cites the procedures in this Chapter.

## **28.2 Written Submission**

Protests shall be concise and logically presented to facilitate review. Failure to substantially comply with any of the requirements of this subparagraph may be grounds for dismissal of the protest.

Protests shall include at least the following information:

1. Name, address, email address, and fax and telephone numbers of the protester
2. Solicitation or contract number
3. Detailed statement of the legal and factual grounds for the protest, including a description of resulting harm to the protester
4. Copies of supporting documents, if any
5. Statement as to the form of relief requested
6. All information establishing that the protester is an interested party for the purpose of filing a protest on an award decision
7. All information establishing the timeliness of the protest

All protests shall be addressed and submitted to the issuing Contracting Officer (name, title, and address of the individual) as listed in the solicitation.

## **28.3 Time for Filing**

Protests directed to the terms, conditions, or form of a proposed procurement action, must be received by the Contracting Officer in writing not later than 10 calendar days prior to the date established for opening



of bids or receipt of proposals, except that an initial protest that arises under an amendment to a solicitation or invitation to bid may be filed up to 4 calendar days after the date the amendment was issued but in no case after the time established for opening of bids or receipt of proposals.

Protests of an award decision shall be filed in writing with the Contracting Officer within 5 calendar days of when the protester knew or should have known of the facts and circumstances upon which the protest is based. Only offerors may protest an award decision.

If the contract has been awarded, protests must be filed within 5 calendar days of when the protester knew or should have known of the facts and circumstances upon which the protest is based. To be filed on a given day, protests must be received by 5:00 p.m. according to local time in the District of Columbia. Any protests received after that time will be considered to be filed on the next day.

## **28.4 Pre-Award Protests**

During resolution of a pre-award protest, all procurement activities and, where applicable, contractor performance shall continue unless the Contracting Officer determines there is a reason to suspend or delay all or part of the procurement activities.

### **28.4.1 Decision to Continue or Withhold Award**

After receipt of a protest before award, a contract may be awarded, pending resolution of the protest, provided the decision is in the Authority's best interest.

If contract award is withheld pending resolution of the protest, the Contracting Officer will inform the offerors whose offers might become eligible for award of the contract. If appropriate, the offerors should be requested, before expiration of the time for acceptance of their offers, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extension of offers, consideration should be given to proceeding with award.

## **28.5 Post-Award Protests**

Incomplete submissions will not be considered filed until all information is provided. When a protest is filed after contract award within the specified protest time limit, the Contracting Officer shall immediately review whether to suspend performance pending resolution of the protest. The Contracting Officer may authorize continued contract performance, notwithstanding the protest, based on a written finding of at least one of the following:

1. Contract performance would be in the Authority's best interest
2. Urgent and compelling circumstances that significantly affect the Authority's interests will not permit waiting for a decision

## **28.6 Consideration of Protests**

The Contracting Officer will acknowledge receipt of a protest. The Contracting Officer may, at his or her discretion, hold a hearing, request additional submissions or information either orally or in writing, or take any other actions he or she deems useful or necessary in making a decision. The Authority's consideration of the particular types of protests will, except as otherwise provided in this Chapter, be in accordance with the following provisions.



## **28.7 Resolution of Protests**

Best efforts shall be made to respond to protests within 30 calendar days after the protest is filed. The Contracting Officer may respond to the protest without further exchanges of information if the documentation is sufficient. To the extent permitted by law and regulation, the parties may exchange relevant information.

The Contracting Officer will issue a written decision on the basis of the information provided by the protestor, the results of any meetings with the protestor, and the Authority's own investigation. If the protest is upheld, the Authority will take the appropriate action to correct the procurement action and protect the rights of the protestor, including without limitation the resolicitation of bids or proposals, a re-evaluation of bids or proposals or revision or correction of determinations, or termination of an awarded contract. If the protest is denied, the Authority will lift any suspension imposed, notify other proposers to the extent they were previously informed of any suspension of the procurement process, and proceed with the procurement process or the contract, as the case may be.

The Contracting Officer's decision shall be well-reasoned and explain the Authority's position and the reason for the decision. The decision shall be provided to the protester using a method that provides evidence of receipt.

### **28.7.1 Remedies if Pre-Award Protest Is Upheld**

If the pre-award protest is upheld, the Contracting Officer may grant one or more of the following remedies:

1. Re-compete the requirement
2. Issue a new solicitation
3. Amend the solicitation provisions that gave rise to the protest and continue with the procurement
4. Such other remedies as the Contracting Officer may determine are necessary to correct a defect

### **28.7.2 Remedies if Post-Award Protest Is Upheld**

If the post-award protest is upheld, the Contracting Officer may grant one or more of the following remedies:

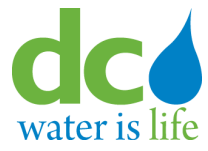
1. Terminate the contract
2. Re-compete the requirement
3. Refrain from exercising options under the contract
4. Such other remedies as the Contracting Officer may determine are necessary to correct a defect

### **28.7.3 Findings and Notice if Protest Is Denied**

If the decision is to deny the protest and to proceed with contract award or continue contract performance, the Contracting Officer shall include the written findings or other required documentation in the file. The Contracting Officer also shall give written notice of the decision to the protester and other interested parties.

## **28.8 Appeal**

1. A protester may appeal a denial of protest by a Contracting Officer to a court of competent jurisdiction.



2. The decision of the Contracting Officer shall be final and conclusive. No further administrative remedies will be available to the protester.