

**SECTION 12: BID/PROPOSAL PROTEST PROCEDURE**  
(Administrative Code AC-4-2 Bid Protest Hearing Guide)

12.0 General

For all formal advertised sealed bids and formal proposals (over \$100,000.00) the Bid/Proposal Protest Procedure must be included in all bid/proposal documents and for each phase of the procurement, if a 2-step process.

12.1 Bid/Proposal Protest Procedure

- 1) Any firm that has submitted a formal bid/proposal to Lee County, and who is adversely affected by an intended decision with respect to the award of the formal bid/proposal, shall file with the County's Public Works Director a written "Notice of Intent to File a Protest" not later than Seventy-Two (72) hours (excluding Saturdays, Sundays and Legal Holidays) after receipt of a "Notice of Intended Decision" from the County with respect to the proposed award of the formal bid/proposal.
- 2) The "Notice of Intent to File a Protest" is one of two (2) documents necessary to perfect a Protest. The second document is the "Formal Written Protest," both documents are described below.
- 3) The "Notice of Intent to File a Protest" document shall state all grounds being claimed for the Protest and clearly indicate it as the "Notice of Intent to File a Protest." Failure to clearly indicate on the document that it is the "Notice of Intent to File the Protest" and include all grounds claimed for the protest, shall constitute a waiver of all rights to seek any further remedies provided for under this Protest Procedure.
- 4) The "Notice of Intent to File a Protest" must be received ("stamped in") by the Public Works Director no later than Four O'clock (4:00) PM on the third working day following the day of the Protestor's receipt of the County's "Notice of Intended Decision."
- 5) The affected party must then file a Formal Written Protest within ten (10) calendar days after the time for the filing of the Notice of Intent to File a Protest has expired. Except as provided for in the paragraph below, upon filing of the Formal Written Protest, the firm shall post a bond payable to the Lee County Board of County Commissioners in an amount equal to five percent (5%) of the total bid/proposal or Ten Thousand Dollars (\$10,000.00), whichever is less. Said bond shall be designated and held for the payment of any costs that may be levied against the protesting firm by the Board of County Commissioners, if the protest is deemed by the County to be a frivolous Protest. All deadlines will be strictly construed by the County.

12.1 Bid/Proposal Protest Procedure (Continued)

- 6) A clean Irrevocable Letter of Credit or other form of approved security payable to the County may be accepted. Failure to submit a bond, letter of credit or other approved security simultaneously with the Formal Written Protest shall invalidate the protest, at which time the County may continue its procurement process as if the original "Notice of Intent to File a Protest" had never been filed.
- 7) Any firm submitting the County's standard bond form (CMO:001) along with the bid shall not be required to submit an additional bond with the filing of the Formal Written Protest.
- 8) The Formal Written Protest shall contain the following:
  - . County bid/proposal identification number and title.
  - . Name and address of the affected party and the title or position of the person submitting the Protest.
  - . A statement of all claimed disputed issues of material fact. If there are no disputed material facts, the Formal Protest must so indicate.
  - . A concise statement of the facts alleged and the rules, regulations, statutes or constitutional provisions which entitle the affected party to relief.
  - . All information, documents, other materials, calculations and any statutory or case law authority in support of the grounds for the Protest.
  - . A statement indicating the relief sought by the affected (protesting) party.
  - . Any other relevant information that the affected party deems to be material to the Protest.
- 9) Upon receipt of a timely filed "Notice of Intent to File a Protest, the Public Works Director will abate the award of the formal bid/proposal as appropriate until the Protest is heard pursuant to the informal hearing process as further outlined below, except and unless the County Manager shall find and set forth in writing particular facts and circumstances that would require an immediate award of the formal bid/proposal for the purpose of avoiding a danger to the public health, safety or welfare. Upon such written finding by the County Manager, the County Manager may authorize an expedited Protest hearing

12.1 Bid/Proposal Protest Procedure (Continued)

procedure. The expedited Protest hearing shall be held within ninety-six (96) hours of the action giving use to the firm's Protest, or as soon as may be practicable for all parties. The "Notice of Intent to File a Protest" shall serve as the grounds for the affected party's presentation and the requirements for the submittal of a formal, written Protest under Section 5 to include the requirement for a bond shall not apply.

- 10) The Dispute Committee shall conduct an informal hearing within Seven (7) working days (excluding Saturdays, Sundays and Legal Holidays) from receipt of the Formal Written Protest with the protesting firm to attempt to resolve the Protest. The Chairman of the Dispute Committee shall ensure that all affected parties may make presentations and rebuttals, subject to reasonable time limitations, as appropriate. The purpose of the informal hearing by the Dispute Committee, the Protester and other affected parties is to provide an opportunity: (1) to review the basis of the Protest; (2) to evaluate the facts and merits of the Protest; and (3) to make a determination whether to accept or reject the Protest.
- 11) Once a determination is made by the Dispute Committee with respect to the merits of the Protest, the Dispute Committee shall forward to the Board of County Commissioners its recommendations which shall include relevant background information related to the procurement.
- 12) Upon receiving the recommendation from the Dispute Committee, the Board of County Commissioners shall conduct an informal hearing on the matter at a regularly scheduled meeting. Following presentations by the affected parties, the Board shall render its decision on the merits of the Protest.
- 13) If the Board's decision upholds the recommendation by the Dispute Committee regarding the award and further finds that the Protest was either frivolous and/or lacked merit, the Board, at its discretion, may assess costs, charges or damages associated with any delay of the award or any costs incurred with regard to the Protest. These costs, charges or damages may be deducted from the security (bond or letter of credit) provided by the firm. Any costs, charges or damages assessed by the Board in excess of the security shall be paid by the protesting firm within thirty (30) calendar days of the Board's final determination concerning the award.

12.1 Bid/Proposal Protest Procedure (Continued)

- 14) All formal bid/proposal solicitations shall set forth the following statement:

"FAILURE TO FOLLOW THE BID/PROPOSAL PROTEST PROCEDURE REQUIREMENTS WITHIN THE TIME FRAMES AS PRESCRIBED HEREIN AND ESTABLISHED BY LEE COUNTY BOARD OF COUNTY COMMISSIONERS, FLORIDA, SHALL CONSTITUTE A WAIVER OF YOUR PROTEST AND ANY RESULTING CLAIMS."

12.2 Protests Involving Grant Funding

If required by the grant document, it shall be the responsibility of the project sponsoring department to notify the grant source immediately of any grant funding involved in a project for which a Notice of Intent to File a Protest is received.

12.3 Dispute Committee

The Dispute Committee shall be responsible for conducting an informal hearing with the unsuccessful firm filing the protest.

- 1) For a formal advertised sealed bid/proposal, the Dispute Committee members are: the Public Works Director (or designee) as permanent chairman, a representative from the County Managers' Office, and a department director/division director appointed by the Chairman.
  - a) The County Attorney (or designee) shall attend these informal hearings to provide legal counsel, but not as a voting member.