

SECTION 14: BID/PROPOSAL PROTEST PROCEDURE
(Administrative Code AC-4-2 Bid Protest Hearing Guide)

14.0 General

For all formal quotes and proposals (over formal level) the Bid/Proposal Protest Procedures must be included in all quote/proposal documents and for each phase of the procurement, if a 2-step process.

- 14.0.1 Any contractor/vendor/firm that has submitted a formal bid/quote/proposal to Lee County, and who is adversely affected by an intended decision with respect to the award of the formal bid/quote/proposal, shall file with the County's Procurement Director or Assistant County Manager a written "Notice of Intent to File a Protest" not later than 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/quote/proposal.
- 14.0.2 The "Notice of Intent to File a Protest" is one of two documents necessary to perfect a Protest. The second document is the "Formal Written Protest", both documents are described below.
- 14.0.3 The "Notice of Intent to File a Protest" document shall state all grounds claimed for the Protest, and clearly indicate it as the "Notice of Intent to File a Protest". Failure to clearly indicate the "Intent to file the Protest" shall constitute a waiver of all rights to seek any further remedies provided for under this Protest Procedure.
- 14.0.4 The "Notice of Intent to File a Protest" shall be received ("stamped in") by the Procurement Director or Assistant County Manager not later than Four O'clock (4:00) PM on the third working day following the day of receipt of the County's Notice of Intended Decision.
- 14.0.5 The affected party shall then file its Formal Written Protest within Ten 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 contractor/vendor/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/quote/proposal, or Ten Thousand Dollars (\$10,000.00), whichever is less. Said bond shall be designated and held for payment of any costs that may be levied against the protesting contractor/vendor/firm by the Board of County Commissioners, as the result of a frivolous Protest.
- 14.0.5.1A contractor/vendor/firm is not required to post a protest bond for any FTA funded procurements.

14.0.6 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.

14.0.7 Any contractor/vendor/firm submitting the County's standard bond form (CMO:001), along with the bid/quote/proposal, shall not be required to submit an additional bond with the filing of the Formal Written Protest.

14.0.8 The Formal Written Protest shall contain the following:

- County bid/quote/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 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 of 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.

- 14.0.9 Upon receipt of a timely filed “Notice of Intent to File a Protest”, the Procurement Director or Assistant County Manager (as appropriate) may abate the award of the formal bid/quote/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 and immediate award of the formal bid/quote/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 procedure. The expedited Protest hearing shall be held within 96 hours of the action giving rise to the contractor/vendor/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 14.0.5, to include the requirement for a bond, shall not apply.
- 14.0.10 The Dispute Committee shall conduct an informal hearing with the protesting contractor/vendor/firm to attempt to resolve the Protest, within seven working days (excluding Saturdays, Sundays and Legal Holidays) from receipt of the Formal Written 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.
- 14.0.11 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.
- 14.0.12 Upon receiving the recommendation from the Dispute Committee, the Board of County Commissioners shall conduct a 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.

14.0.13 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 contractor/vendor/firm. Any costs, charges or damages assessed by the Board in excess of the security shall be paid by the protesting contractor/vendor/firm within 30 calendar days of the Board's final determination concerning the award.

14.0.14 All formal bid/quote/proposal solicitations shall set forth the following statement:

“FAILURE TO FOLLOW THE BID PROTEST PROCEDURE REQUIREMENTS WITHIN THE TIMEFRAMES AS PRESCRIBED HEREIN AND ESTABLISHED BY LEE COUNTY BOARD OF COUNTY COMMISSIONERS, FLORIDA, SHALL CONSTITUTE A WAIVER OF YOUR PROTEST AND ANY RESULTING CLAIMS.”