

09 NCAC 06B .1102 PROTEST PROCEDURES FOR AWARD OF CONTRACTS

(a) To ensure fairness to all offerors and to promote open competition, the purchasing agency shall respond to an offeror's protest over IT contract awards.

(b) This Rule applies to IT contracts with an estimated value of twenty-five thousand dollars (\$25,000) or more. The purchasing agency shall establish procedures to address protests by offerors where the award value is less than twenty-five thousand dollars (\$25,000).

(c) When an offeror protests a contract awarded by an agency of twenty-five thousand dollars (\$25,000) or more in value, the agency and the offeror shall comply with the following:

- (1) The offeror shall deliver a written request for a protest meeting to the agency head or his designee within 15 calendar days from the date of contract award. The agency head shall furnish a copy of the written request to the State CIO within 10 calendar days of receipt. The offeror's request shall contain specific reasons and any supporting documentation regarding why there is a concern with the award. If the request does not contain this information or the agency head determines that a meeting would serve no purpose, then the agency head, within 10 calendar days from the date of receipt, may respond in writing to the offeror and refuse the protest meeting request. A copy of the agency head's letter shall be forwarded to the State CIO.
- (2) If the protest meeting is granted, the agency head shall give written notice to the State CIO and any awarded vendor of the date and time of the protest meeting. The agency shall give notice to the awarded vendor and the State CIO stating whether any purchase order or performance has been suspended or terminated. The agency head shall schedule the meeting within 30 calendar days after receipt of the letter, unless a later date is accepted by the protesting party and the agency. Within 10 calendar days from the date of the protest meeting, the agency head shall respond to the offeror in writing with an agency decision. A copy of the agency head's letter shall be forwarded to the State CIO.
- (3) If a protest is determined to be valid by the State CIO then the following outcomes may occur:
 - (A) The award and issued purchase order shall be canceled and the solicitation for offers to contract is not re-bid;
 - (B) The award and issued purchase order shall be canceled and the solicitation for offers to contract is re-bid;
 - (C) The award and issued purchase order shall be canceled and the contract shall be awarded to the next lowest priced, technically competent, qualified offeror, if that offeror agrees to still honor its submitted bid.

(d) When an offeror protests a contract awarded by the State CIO that is twenty-five thousand dollars (\$25,000) or more in value, the State CIO and the offeror shall comply with the following:

- (1) The offeror shall deliver a written request for a protest meeting to the State CIO within 15 calendar days from the date of contract award. The offeror's request shall contain specific reasons and any supporting documentation regarding the offeror's concern with the award. If the request does not contain this information or the State CIO determines that a meeting would serve no purpose, then the State CIO, within 10 calendar days from the date of receipt of the offeror's protest, may respond in writing to the offeror and refuse the protest meeting request. A copy of the State CIO's letter shall be forwarded to the designated hearing officer.
- (2) If the protest meeting is granted, the State CIO shall attempt to schedule the meeting within 30 calendar days after receipt of the offeror's protest unless a later date is accepted by the protesting party and the State CIO. Within 10 calendar days from the date of the protest meeting, the State CIO shall respond to the offeror in writing with a decision. A copy of the decision shall be forwarded to the designated hearing officer.

(e) When an offeror protests a statewide term or convenience contract or master agreement established by the State CIO, the State CIO and the offeror shall comply with the following:

- (1) The offeror shall deliver a written request for a protest meeting to the State CIO within 15 calendar days from the date of the contract award. The offeror's request shall contain specific reasons and any supporting documentation regarding the offeror's concern with the award. If the request does not contain this information or the State CIO determines that a meeting would serve no purpose, the State CIO, within 10 calendar days from the date of receipt of the offeror's request shall respond in writing to the offeror and refuse the protest meeting request. A copy of the State CIO's letter shall be forwarded to the designated hearing officer.

- (2) If the protest meeting is granted, the State CIO shall give written notice to the designated hearing officer and any awarded vendor of the date and time of the protest meeting. Notice shall be given to the awarded vendor and the designated hearing officer stating whether any purchase order or performance has been suspended or terminated. The State CIO shall schedule the meeting within 30 calendar days after receipt of the offeror's protest unless a later date is accepted by the protesting party and the State CIO. Within 10 calendar days from the date of the protest meeting, the State CIO shall respond to the protesting offeror in writing with a decision. A copy of the decision shall be forwarded to the designated hearing officer.
- (f) If a party desires further administrative review after receiving a decision under Paragraph (c), (d), or (e) of this Rule, the protesting party may, within 60 days from the date such decision is received, request a hearing and final decision by the State CIO in accordance with these Rules and Article 3A of G.S. 150B. When further administrative review involves a contract awarded by an agency that is twenty-five thousand dollars (\$25,000) or more in value, the agency shall be a party in any further review processes.
- (g) The signature of an attorney or party on a protest constitutes a certification by the signer that the signer has read such document; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law; and that it is not interposed for any improper purpose such as to harass, cause unnecessary delay or a needless increase in the cost of the procurement or of the litigation. If a protest is determined to be frivolous or to have been filed without any substantial basis or reasonable expectation to believe that the protest was meritorious, the State CIO, upon motion or upon his own initiative, may impose any sanction available under the N.C. Rules of Civil Procedure. Notification to the affected party shall be in writing.

*History Note: Authority G.S. 147-33.76(b1); 150B-38;
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000;
Amended Eff. March 1, 2001;
Recodified from 09 NCAC 06B .1009 Eff. March 19, 2008;
Amended Eff. September 1, 2013;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015.*