

18.002 Notice and Protest Procedures for Protests Related to a University's Contract Procurement Process.

(1) Purpose. The procedures set forth in this Regulation shall apply to protests that arise from all university contract procurement processes for the purchase of goods, services, leases and for construction-related competitive solicitations, and shall be the exclusive set of procedures applicable to all such protests.

(2) Definitions.

- (a) Adversely affected - where the university decision or intended decision will cause immediate injury in fact to the Protestor and the injury is of the type that the pertinent law or regulation is designed to protect.
- (b) Days - calendar days.
- (c) Decision or intended decision - the Specifications; the rejection of a response or all responses to a competitive solicitation; the intent to award a contract pursuant to a competitive solicitation as indicated by a posted written notice; a sponsored research exemption; or a determination that a specified procurement can be made only from a sole source.
- (d) Electronic posting - posting on the university's designated website.
- (e) Filing - when filing documents or written materials with:
 - 1. The Issuing Office, the filing is the delivery of the original of the document or written materials at the Issuing Office. Filing the Notice of Intent to Protest or the Formal Protest via email or facsimile is not permitted. The time allowed for filing any documents or written material is not extended by the mailing of such;
 - 2. The President, the President's Designee or the Presiding Officer, filing is the delivery of the documents or written material to the President, President's Designee or Presiding Officer via email or in person at a hearing.
- (f) Formal Protest - the formal written complaint that complies with the requirements of Section (6) of this regulation.
- (g) Issuing Office - the office that issued the solicitation, or if a solicitation has not been issued, the office that made the decision or intended decision that is being protested.
- (h) Legal holidays - those days designated as holidays in Section 110.117, Florida Statutes, and those days - other than Saturdays and Sundays - when the university is officially closed.
- (i) Notice of Intent to Protest - a short and plain written statement that complies with the requirements of Section (5) of this regulation.
- (j) Potential Protestor - any actual or prospective bidder or offeror, person, or firm with standing to protest the decision or intended decision.
- (k) President - means the presiding president of the university.
- (l) President's Designee - the person selected by the President to(i)2(d)2(en-70)14(ir)64(a)

- (m) President/President's Designee – means the presiding president of the university; however, if the presiding president appoints a designee, shall mean the presiding president's designee only.
- (n) Presiding Officer - the Quasi-Judicial Officer or the University Official handling the protest proceeding.
- (o) Protest proceeding - either a summary proceeding involving a University Official or a quasi-judicial hearing involving a Quasi-Judicial Officer.
- (p) Protestor - any actual or prospective qualified bidder or offeror, or person or firm that is adversely affected and has standing who timely files a Notice of Intent to Protest and also timely files a Formal Protest.
- (q) Quasi-Judicial Officer - the designated presiding official (may be an Administrative Law Judge or a qualified attorney with a minimum of five years' experience practicing law) in a protest proceeding where there are disputed issues of material fact.
- (r) Serve/Service – sending a copy of the information to the parties via email communication at the email addresses of record.
- (s) Specification – the contents of the competitive solicitation or any addenda thereto; the approval of a sole source procurement; or other solicitation documents as permitted by applicable law or regulation.
- (t) Timely Filed – actual receipt of documentation or written material by the Issuing Office, the President, the President's Designee, or the Presiding Officer on or before the deadline.
- (u) University Official – the person appointed by the President to conduct a summary proceeding.

(3) Notice of Decision or Intended Decision. The university shall provide a notice of decision or intended decision by electronic posting. The notice shall contain the

posting of the Specification shall constitute a waiver of th

university's proposed action have standing to protest the award or intent to award a contract through competitive solicitation. The Formal Protest must contain the following:

1. The name of the Protestor and the address, telephone number and email address of the Protestor/Protestor's counsel or representative. The email address provided will be the email address used by the Issuing Office, the President, the President's Designee, the Presiding Officer, and the other parties for serving the Protestor with notice, documents and other materials related to the protest;
2. The identification of the university and competitive solicitation involved, if no competitive solicitation is involved, identification of the action being protested;
3. A statement of when and how the Protestor received notice of the decision

dismissed, and the university may, if desired, reinstate the contract procurement process.

(8) University's Response to a Formal Protest. The university will file a notice with the Issuing Office of the name, phone number and email address for the attorney representing the university in the protest; the email address provided will be the email address used by the Issuing Office, the President, the President's Designee, the Presiding Officer, and the other parties for serving the university with notice, and documents and material related to the protest. The university may also file a written response to the Formal Protest with the Issuing Office within seven (7) days after the date the Formal Protest is filed.

(9) Right of Counsel. A party participating in the protest or appearing in a protest proceeding has the right, at the party's own expense, to be represented by counsel or by a qualified representative.

(10) Resolution by Mutual Agreement.
(a) Informal Discussions. Following

serve a copy of the Protestor's Response to the University's Statement of Actions on the other parties.

(e) Discovery. After the assignment of the Quasi-Judicial Officer, the parties may obtain discovery through the means and manner provided in the Florida Rules of Civil Procedure 1.280 through 1.400. The Quasi-Judicial Officer may issue appropriate orders to effectuate the purposes of discovery and to prevent delay.

1. Each party must serve a list of evidence to the other parties at least seven (7) days prior to the first day of the hearing, along with a general description of how the party intends to use the evidence in the hearing;
2. Each party must file a witness list with the Quasi-Judicial Officer and serve the same on the other parties at least seven (7) days prior to the first day of the hearing. The parties must include a general description of how the party intends to use each witness in the hearing with the witness list.

(f) De Novo Proceeding. The Quasi-Judicial Officer shall conduct a de novo proceeding to determine whether the university's decision or intended decision is contrary to the statutes, regulations, or policies governing the university, or contrary to the Specifications. The standard of proof for the proceedings shall be whether the proposed university action was clearly erroneous, contrary to competition, arbitrary, or capricious. However, if the protest is regarding the university's decision to reject all responses to a competitive solicitation, the standard of review shall be whether the university's intended action is illegal, arbitrary, dishonest or fraudulent.

(g) Burden of Persuasion. The burden of proof rests with the party protesting the university action.

(h) Conduct of Hearing. All parties shall have an opportunity to: present evidence; to respond to all issues involved; to conduct cross-examination and submit rebuttal evidence; and to submit proposed findings of fact and proposed orders.

1. The hearing shall be conducted in conformity with the Florida Rules of Civil Procedure and the Florida Rules of Evidence applicable to civil proceedings unless specifically contradicted by this regulation or otherwise agreed by the parties;
2. Each party shall have a minimum of fifteen (15) minutes to argue its position. The Protestor shall present its argument first and have the opportunity

protest proceedings are over (to include the period of time in which the final decision of the university can be appealed).

(16) **Intervenors.** Persons other than the original parties to a pending proceeding whose substantial interest will be affected by the proceeding and who desire to become parties may petition the Presiding Officer for leave to intervene. Except for good cause shown, petitions for leave to intervene must be filed with the Presiding Officer no later than 20 days after the date the Formal Protest was filed. The petition shall include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to a Board of Governors' or university's rule or regulation, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding. The petition shall also include the email address of the intervenor/intervenor's counsel or representative; the email address provided will be the email address used by the President, the President's Designee, the Presiding Officer, and the other parties for serving the intervenor with notice, documents and materials related to the protest. If time permits, the parties may, within seven (7) days after service of the intervenor's petition, file a response in opposition to the petition with the Presiding Officer and serve the same on the other parties. The Presiding Officer may impose terms and conditions on the intervenor to limit prejudice to other parties.

(17) **Presiding Officer Orders.** The Presiding Officer may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the protest.

(18) **Motions.** All requests for relief shall be by motion. All motions shall be in writing unless made on the record during a hearing and shall fully state the action requested and the grounds relied upon. The moving party shall file the motion with the Presiding Officer and serve a copy on the other parties. When time allows, the other parties may, within seven (7) days after service of a written motion, file a response in opposition and serve the same on the other parties. Written motions will normally be disposed of after the response period has expired based on the motion, together with any supporting or opposing memoranda. The Presiding Officer shall conduct proceedings and enter such orders as are deemed necessary to dispose of issues raised by the motion. Motions, other than a motion to dismiss, shall include a statement that the movant has conferred with the other parties of record and shall state whether any party has an objection to the motion. Motions for extension of time shall be filed prior to the expiration of the deadline sought to be extended and shall state good cause for the request.

(19) **Evidence.** In a protest to an invitation to bid or request for proposals procurement, no submissions made after the bid or proposal opening which amend or supplement the bid or proposal shall be considered. In a protest to an invitation to

