

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

(1) Purpose. The procedures set forth in this section are:

- (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 - on the university website.
- (e) Filing - when filing documents or written materials with:
  - 1. The Issuing Office, the filing is the delivery of the document or written materials with the Issuing Office. Filing the Notice of Intent to Protest may be done by U.S. mail, courier, or email to the issuing office. Filing 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 and must be received in the issuing office by the time prescribed.
  - 2. The 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) Designee - the person selected by the President to perform a

- (m) **Presiding President** means the presiding president of the university; however, if the presiding president appoints a designee, shall mean the designee only.
- (n) **Presiding Officer** - the Quasi-Judicial Officer or the University Official handling the protest proceeding.
- (o) **Protest proceeding**

posting of the Specification shall constitute a waiver of the right to protest proceedings related to that Specification;

2. **Protesting any Other Decisions or Intended Decisions.** If a Potential Protestor is protesting any decision or intended decision other than a Specification, the Potential Protestor must timely file a Notice of Intent to Protest such decision or intended decision with the Issuing Office within 72 hours of the posting of the decision or intended decision that is being protested. A Notice of Intent to Protest filed after the notice of decision or intended decision being protested shall constitute a waiver of the right to protest proceedings related to that decision or intended decision.

a. **Filing Period for the Notice of Intent to Protest.** The 72-hour period for filing the Notice of Intent to Protest regarding any decision or intended decision begins upon the electronic posting of the decision or intended decision. If the end of the 72-hour period falls on a Saturday, Sunday, or legal holiday, the deadline for filing the Notice of Intent to Protest shall be the next business day. A Notice of Intent to Protest may not be filed before the 72-hour period begins.

b. **Content of the Notice of Intent to Protest.** The Notice of Intent to Protest must be addressed to the Issuing Office; must identify the Potential Protestor; must state the name and address of the university whose action is being protested; must identify the solicitation by number and title, or if the intended protest is not related to a competitive solicitation, must provide other language that will enable the university to identify the decision or intended decision being protested; and must state that the Potential Protestor intends to protest the decision or intended decision.

(6) **Formal Protest and Solicitation Protest Bond.**

(a) **Timely Filing of a Formal Protest and Solicitation Protest Bond.** The Potential Protestor must timely file a Formal Protest with the Issuing Office within ten (10) days after the date the Notice of Intent to Protest was filed. In addition, the Potential Protestor must timely file the required Solicitation Protest Bond with the Issuing Office within ten (10) days after the date the Notice of Intent to Protest was filed. The failure of the Potential Protestor to timely file the Formal Protest or to timely file the Solicitation Protest Bond shall constitute a violation of the Procurement Regulations.

(b) **Content of the Formal Protest.** The Formal Protest must state with particularity the facts and law upon which the protest is based. Only actual or prospective bidders or offerors who would be adversely affected by the

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

(8) **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 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 a qualified representative.

(10) **Resolution by Mutual Agreement.**

- (a) **Informal Discussions.** Following the timely filing of a Formal Protest and Solicitation Protest Bond, the university may hold informal discussions with the Protestor to resolve the protest by mutual agreement. Such discussions, if made available, will take place within seven (7) days, of the filing of the or resolve protests.
- (b) **Time Tolerated.** If informal discussions are scheduled, the time requirements related to this regulation are tolled for the period of time from the date the

(12) Summary Proceeding. If the protest contains no disputed issues of material fact, the University Official shall conduct a summary proceeding. The summary proceeding will be conducted within thirty ( 30) days after the date the Formal Protest was filed.

(a) Notice of Proceeding. The University Official shall serve written notice on all parties, such notice will allow the parties at least seven (7) days from the date of the notice to file with the University Official any documents, memoranda of understanding, or other materials. The University Official shall also serve the other parties with a copy of the same. At the end of the seven (7) days, the University Official shall then serve a second notice to the parties stating that the parties have seven (7) days to file with the University Official and to serve the other parties with their written responses to the written material filed by the other parties.

(b) The University Official, in his or her sole discretion, schedule an informal hearing on the matter for the purpose of taking oral evidence or argument. If the University Official schedules an informal hearing, the University Official shall serve the parties with written notice at least fourteen (14) days prior to the hearing, setting forth the place, date, and time of the hearing.

(c) The University Official shall issue a Recommended Order.

1. The University Official will issue a Recommended Order to the President of the University, or to the President's designee, or to the University Official, or to the University Official's designee. The Recommended Order shall take into consideration only those documents and written materials filed by the parties, and if an informal hearing is held, information obtained as a result of the informal hearing;
2. The Recommended Order shall be issued to the President within fifty (50) days after date the Formal Protest was filed. The University Official shall serve copies of the Recommended Order, along with the date the Recommended Order was issued, to the parties immediately after issuing the Recommended Order to the President;
3. The University Official shall also submit the recording of the informal hearing, if one was held, and all documents and written material filed in the matter to the President when issuing the Recommended Order.

(d) The University Official shall file written exceptions to the Recommended Order. The Parties must file any exceptions to the Recommended Order with the President within seven (7) days after the date the Recommended Order was issued.

(e) The Final Order. The President shall enter a Final Order within twenty-one (21) days after the date the Recommended Order was issued. In deciding on the Final Order, the President may consider the written materials and exceptions filed

- by the parties, and the recording of the informal hearing, if any. The
- (f) **Final Decision.** The final decision shall be in accordance with Florida Rule of Appellate Procedure 9.190(b)(3), applicable to review of quasi-judicial decisions of an administrative body not subject to the Administrative Procedure Act. A request for review may be made by filing a petition for certiorari review with the appropriate circuit court within 30 days of the date of the final decision.

**(13) Quasi-Judicial Hearing.** If the Formal Protest contains issues of material fact, the University shall schedule a hearing for a quasi-judicial hearing. The hearing shall be conducted within forty (40) days after the date the Formal Protest was filed.

- (a) **Appointment of Quasi-Judicial Officer.** Within seven (7) days after the date of the filing of the Formal Protest, the University shall appoint a Quasi-Judicial Officer or forward a request for hearing and such other documents, laws and regulations as may be required by the Florida Department of Administrative Hearings to the Department, and for assignment of an Administrative Law Judge to conduct a quasi-judicial hearing.
- (b) **Notice of Hearing.**
1. Within seven (7) days after being appointed, the Quasi-Judicial Officer shall issue a Notice of Hearing, stating the time, date and location for the parties to present evidence and argument on the issues under consideration. The Quasi-Judicial Officer shall set a time and place for all hearings and shall serve written notice on all the parties;
  2. The Quasi-Judicial Officer shall conduct a hearing on the merits of the protest, unless otherwise agreed by the parties.
- (c) **University Statement of Actions.** Within seven (7) days after the appointment of the Quasi-Judicial Officer, the university shall file a written statement to the Quasi-Judicial Officer stating the actions (proposed actions, actions already taken, or refusal to take actions), the reasons for the actions, the university, and a summary of the factual, legal, and policy grounds for such actions. The university shall immediately serve a copy of the Statement of Actions on the other parties.
- (d) **Protestor Response to University Statement of Actions.** Within seven (7) days after the university provides the University Statement of Actions to the Quasi-Judicial Officer, the Protestor may file a written response to such statement with the Quasi-Judicial Officer. The Protestor shall immediately

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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 QuasiJudicial 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 othe 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 dfc'WYX]b[ 'hc'XYh'fa ]b'Y'k \Y'h'Y'f'h'Y'i' b]j' Yfg]m'g'XYW]g]cb'cf']bh'Y'b'XYX' 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 dfch'Y'gh]g'f'Y[ U'f'X]b[ 'h'Y'i' b]j' Yfg]m'g'XYW]g]cb'hc'f'Y'Y'W'U'`f'Y'gdc'bg'Y'g'hc'U' competitive solicitation, the standard of r eview shall be whether the i b]j' Yfg]m'g]bh'Y'b'XYX'U'W]cb'g]'`Y[ U'z'U'f'V]f'f'U'f'n'z'X]g\cb'Y'gh'c'f' 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.



than thirty (30) days after receipt of the hearing transcript, the Quasi-Judicial

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

