

2007 Annual Update
on Government Contracts

A close-up photograph of the American flag, showing the stars and stripes, positioned in the top right corner of the slide.

BID PROTEST ON STATE OF FLORIDA PROCUREMENTS

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November 2007



Triggering Event



1. For protest of IFB/Specifications
 - Discovery of defect
 2. For protest of proposed award
 - Per Chapter 287 and Florida Administrative Code
 - Vendor bid system section of myflorida.com
 - IFB will also have posting date (frequently missed)
- HINT: Begin organizing for possible protest in advance of award.

Short Fuse



1. 72 hours from posting of award to file notice of intent.
2. 10 days from notice of intent to file formal protest.
 - HINT: Do not file notice of intent until day 3 in order to maximize time for preparation of formal protest.
 - 1% protest bond
3. Automatic stay

Protest Investigation/ Preparation



1. Public records request
 - Serve as soon as decision to protest is made
 - Obtain all other bids
 - Obtain all addenda and clarifications
 - Obtain pre-bid conference notes and tapes
 - Obtain agency selection criteria/scoring guidelines (RFP context)
 - Obtain tabulations and worksheets

Protest Investigation/ Preparation (Cont'd.)



2. Gather bid/proposal preparation team
 - Debrief on preparation of bid/proposal
 - Obtain explanation for deletions/qualifications (where bid/proposal has been disqualified)
 - Accumulate information on agency evaluators
 - Assign team members to review bid/proposal of awardee

The Formal Protest



1. Be expansive
(can always drop arguments later)
2. Cite case law
(regardless of legal standard, agency will look for cases with similar facts where protest was granted)
3. Be aware of evidentiary issues
(Use affidavits where possible)
4. Anticipate intervention

Hypothetical Protest



1. Request for proposal (as opposed to IFB)
2. Statewide services
3. Contract divisible by region
4. Separate evaluations by members of agency evaluation team
5. Use of reference questions to guide scoring by evaluation team
6. Very close scoring; substantial disparity between scorers
7. Split award (Incumbent/Protester to be awarded only portion of its prior contract)

Issues Presented



1. Entity issues: Who is the bidder?
2. Mandatory responsiveness criteria
3. Responsibility: Mandatory self-reporting (related entity investigations)
4. Undisclosed selection criteria (reference questions; address items not required by RFP)
5. Inaccurate/inconsistent scoring (overlooked items in proposal; scored same responses differently in different proposals)
6. Failure to follow own scoring rules
7. Bias (prior relationship with bidders; evidence of pre-judgment – emails)

Strategy/Business Considerations



1. Incumbency Status
2. Profitability of Contract/Portion Thereof
3. Agency Protest History (Recent Outcomes)
4. Probability of Success
 - Discretion to waive irregularities
 - Difficulty in challenging subjective scoring
 - Limited time to develop factual basis
 - Others?

Strategy/Business Considerations (Cont'd.)



5. Cost of Protesting

- Internal: intensive participation by in-house personnel
- Attorney's Fees

6. Staying Power of Opposition

- NOTE: Refers to intended awardee as much/if not more than Agency

Mandatory Negotiation Conference



1. Deadline for referral to DOAH: 7 days
2. Confidentiality (Waiver to allow 3-way discussions)
3. Applied to hypothetical:
 - Go for broke (risk counter protest)
 - Threat of re-bid
 - Cost of proceeding
4. If you “win” protest where are you?

Reality Of Process



1. Hearing held 30 days after DOAH gets protest
2. Recommended order issued 30 days after hearing or after ALJ receives transcript (whichever is later)
3. Final order from agency 30 days after receipt of recommended order
4. Agency can reject DOAH findings
5. Recourse is appeal to First District Court of Appeal