

STATE OF OHIO



DEPARTMENT OF REHABILITATION
AND CORRECTION

SUBJECT: Bid Protests	PAGE <u>1</u> OF <u>5</u>
	NUMBER: 22-BUS-15
RULE/CODE REFERENCE: 5120.01; 5120.09;	SUPERSEDES: 22-BUS-15 dated 03/19/04
RELATED ACA STANDARDS:	EFFECTIVE DATE: February 7, 2014
	APPROVED: 

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

II. PURPOSE

The purpose of this policy is to establish a uniform procedure for staff to respond to bidders who are not in agreement with the competitive process and file a protest with DRC.

III. APPLICABILITY

This policy applies to all persons employed by the Department of Rehabilitation and Correction and independent contractors when initiating all contracts, including personal, professional and consultant services.

IV. DEFINITIONS

Bid - An offer submitted by a prospective vendor in response to an invitation to bid or by an offeror in response to a request for proposal.

Bidder - One who submits a response to an invitation to bid or an offeror who submits a response to a request for proposal.

Bid Protest - A formal complaint made against the methods employed or decisions made by a procurement authority in the process leading to the award of a contract.

Competitive Bidding Process - Solicitation of two or more qualified sources by an invitation to bid or a request for proposal.

Procurement File - Those records maintained by a procurement organization sufficient to detail the significant history or a procurement including, but not limited to, information pertinent to the rationales for the method of procurement, selection of contract type, contractor selection or rejection, and basis for cost or price.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction (DRC) to provide a process for protesting bids. This process is an important part of an effective procurement program. A bidder who is not in agreement with the competitive process may file a protest citing areas of concern with DRC.

VI. PROCEDURES

The Ohio Revised Code sections 5120.09, 5120.19, 5120.24, and 5120.29 provide that the DRC may procure required supplies and/or services. The preferred method for procuring supplies and services is through competitive bidding process. Responses are evaluated and contracts awarded to the lowest, responsive and responsible bidder for bids and for Proposals, the offeror who represents the best, and overall value to the Department.

A. Right to Protest

1. Any bidder who is not in agreement with the competitive bidding process may file a protest. If protesting a bid, the protest must be filed prior to the scheduled date and time of bid opening.
2. If protesting a contract award, the protest must be filed within fifteen calendar days after the date the contract was awarded. The protest is to be filed with the Agency Procurement Officer (APO).
3. A copy of the complaint letter should be immediately delivered to DRC Legal Counsel. DRC Legal Counsel shall assist in the drafting of a timely response; even if this means that all that it can say is that the complaint letter has been received and is being investigated. The response shall also include the name, address and telephone number of the DRC Legal Counsel.
4. If the initial response is minimal, the DRC shall send a follow up response upon the completion of any appropriate investigation. Any second response shall also be prepared with the assistance of DRC Legal Counsel.
5. In the event of a timely filing of a protest referencing a bid, the APO shall review the bid file and make a determination as to the validity of the protest. If the bid is under evaluation and the APO determines that the protest merits further investigation, then proceedings of the evaluation of the bid or awarding of the contract shall be stayed until a final decision is made, unless the APO determines that completing the evaluation or award process is necessary to protect the interests of the State.

6. The APO has full authority, prior to commencement of an action in a court of law, to resolve and settle a protest filed by a bidder. This authority shall be exercised pursuant to relevant sections of the Ohio Revised and Administrative Codes. The APO shall issue a decision, in writing, stating the position of the Department and reasons for action taken. The decision of the APO shall be final and conclusive unless any person adversely affected by the decision commences action in a court of law.

B. Legal Contacts

1. Staff shall not talk with any person identifying himself or herself as an attorney or legal representative of a bidder or contractor. Such calls are to be directed to DRC Legal Counsel.
2. Attorneys are bound by a code of professional responsibility not to talk with parties that are represented by counsel. State employees are acting as an agent for the state, a party that is represented by counsel. An attorney, whether retained by a bidder or contractor or representing another party on behalf of the bidder or contractor, should not continue any conversation with a non-legal employee of the State of Ohio.

C. Classification of Protests

1. Level 1 Protest (Pre-Bid Opening/Pre-Contract Award protest by bidder received by DRC staff)
 - a. When a bidder raises a protest orally, staff shall document all verbal conversations and maintain this information as part of the procurement file. This shall include:
 - i. Solicitation referenced;
 - ii. Name of person;
 - iii. Company represented;
 - iv. Date and time of call/conversation;
 - v. Content of conversation to include response; and
 - vi. Any discussion of bid evaluation or attempts to do so.

This information shall be maintained as part of the procurement file.

- b. DRC staff shall instruct the bidder to submit a written protest immediately to the APO.
- c. Written response shall be provided within a reasonable time.
- d. Any threat of legal action is to be treated as a promise of legal action. DRC Legal Counsel and the APO must be notified immediately. All further communications with bidder shall cease unless directed otherwise by DRC Legal Counsel or the APO. The protest is to be considered a Level 3 Protest.
- e. Any contact from a person claiming to be a legal representative of a bidder/contractor shall be communicated to DRC Legal Counsel and the APO immediately. At no time is staff to discuss issues relative to a bid evaluation or contract award with an attorney

or other legal representative unless directed to do so by DRC Legal Counsel or the APO. The caller is to be provided with the phone number of DRC Legal Counsel.

2. Level 2 Protest (Post-Contract Award protest by bidder received by DRC staff)
 - a. When a bidder raises a protest orally, staff shall document all verbal conversations, including:
 - i. Contract number;
 - ii. Name of person;
 - iii. Company represented;
 - iv. Date and time of call/conversation; and
 - v. Content of call/conversation.

This information shall be maintained as part of the procurement file.
 - b. Written protests must be received within fifteen calendar days after the date the contract was awarded.
 - c. Written response shall be provided within a reasonable time.
 - d. Sometimes a complaining bidder shall request a meeting. Any such requests shall be directed to the APO. Any meeting with a complaining bidder shall be informal with the focus upon listening to the bidder's reasons for complaining and support for them. DRC staff should avoid answering questions or engaging in argument. DRC staff shall inform the bidder of its decision in a timely manner, preferably in writing. Usually, it is not possible or appropriate to provide a response at the meeting. DRC Legal Counsel shall be involved in the preparation of the response.
 - e. Upon receipt of written request, staff shall prepare a synopsis of the procurement and award process. The synopsis shall include, but not be limited to, bid evaluation and award, names of responding bidders, notations of conversations with any of the bidders or awardees and any other related information.
 - f. Upon receipt of a written protest, staff must discontinue any further discussions with any bidders or contractors relative to the protest unless directed otherwise.
 - g. Any threat of legal action is to be treated as a promise of legal action. DRC Legal Counsel and the APO must be notified immediately. All further communications with bidder shall cease unless directed otherwise by DRC Legal Counsel or the APO. The protest is to be considered a Level 3 Protest.
 - h. Any contact from a person claiming to be a legal representative of a bidder/contractor shall be communicated to DRC Legal Counsel and the APO immediately. At no time is staff to discuss issues relative to a bid evaluation or contract award with an attorney or other legal representative unless directed to do so by DRC Legal Counsel or the APO. The caller is to be provided with the phone number of DRC counsel.

3. Level 3 Protests (Attorney Involvement/Legal Action Threatened)
 - a. Upon receipt of a verbal or written communication, notification or threat from any attorney of pending legal action, staff must notify the APO and DRC Legal Counsel immediately.
 - b. All communications with non-state employees involving any aspect of the bid/contract are to be forwarded to DRC Legal Counsel for response. In absence of counsel, such request may be forwarded to the APO.
 - c. Bid/contract files and related documents are to be retrieved and examined by the staff, organized by dates of activity, and secured. Any public records requests are to be approved by DRC Legal Counsel.
 - d. If litigation is anticipated or acted upon, records for such litigation are not public records pursuant to statutory exceptions. Further, correspondence from legal counsel may carry attorney-client privilege. At no time are any written documents to be released without express, written approval from DRC Legal Counsel and the APO.
4. Level 4 Protest (Litigation Commenced)
 - a. Any staff who receives notice, verbal or written, that any legal action has been filed are to notify DRC Legal Counsel and the APO immediately. If you are unable to reach either of the parties, contact the Chief Counsel immediately. The DRC Legal Counsel shall then contact the Office of the Attorney General, Executive Agencies Section (AGO) for representation in the legal action. The APO must be notified immediately of any such legal action.
 - b. Any person receiving a subpoena shall notify DRC Legal Counsel.
 - c. Any person receiving a subpoena on behalf of another named individual shall obtain proper identification from the process server, note the time and date of receipt and forward to DRC Legal Counsel immediately.
 - d. Staff may be required to provide a memo on the bid at issue for the litigation file.
 - e. Records are not to be released for review or copies made without expressed authority from the Attorney General's Office (AGO) or DRC Legal Counsel.
 - f. Generally, once litigation has been filed, counsel for the state and/or the vendor may depose staff. The AGO shall notify affected staff of the dates and times for depositions and shall instruct staff on the deposition process.
 - g. Once litigation has begun, all discussion relative to the litigation, outside of the office, are to be discontinued unless directed otherwise by the AGO.