

## CHAPTER 4-12-14 RESOLUTION OF PROTESTED SOLICITATIONS AND AWARDS

### Section

4-12-14-01	Resolution of Protested Solicitations
4-12-14-02	Resolution of Protested Award or Intent to Award
4-12-14-03	Appeals of Protest Decisions

#### **4-12-14-01. Resolution of protested solicitations.**

The following provisions must be followed by any actual or prospective bidder or offeror that is aggrieved in connection with a solicitation:

1. The aggrieved party shall submit a protest to the procurement officer in written form, clearly identifying the solicitation and the details of the nature of the protest.
2. When the solicitation contains a deadline for submission of questions and requests for clarifications, protests of the solicitation will not be allowed if these faults have not been brought to the attention of the procurement officer before the specified deadline. If no deadline for questions is specified, protests based on defects in the solicitation must be made at least seven calendar days before the deadline for receipt of bids or proposals.
3. The procurement officer has seven calendar days to review the protest and to render a written decision. The procurement officer may extend the protest review period by no more than seven days and will send written notice to the aggrieved party of the extension.
4. The procurement officer has the authority to cancel or amend a solicitation prior to the opening date and to delay the subsequent opening date.
5. During the time the protest and appeals are being considered, the solicitation period will be extended if not resolved before the opening date.
6. The aggrieved party has seven calendar days to appeal the decision of the procurement officer.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-12

#### **4-12-14-02. Resolution of protested award or intent to award.**

A bidder or offeror that has submitted a response to a solicitation and is aggrieved may protest an award or notice of intent to award in accordance with the following provisions:

1. The aggrieved party shall submit a written protest to the procurement officer that clearly identifies the solicitation, award or proposed award, and the details of the nature of the protest.
2. The protest must be received within seven calendar days after the aggrieved party knew or should have known of the facts giving rise to the protest. Seven days after award or issuance of a notice of intent to award, it will be assumed that all interested parties knew or should have known all the facts surrounding the solicitation.
3. During the time the protest is being considered, the award will be stayed, unless a written determination is made that award without delay is necessary to protect the interests of the state. Written notice of the protest and stay of award will be sent to the successful bidder or offeror.

4. The procurement officer has seven calendar days to review the protest and render a written decision. The procurement officer may extend the protest review period by no more than seven calendar days and will send written notice to the aggrieved party of the extension.
5. The aggrieved party has seven calendar days to appeal the decision of the procurement officer.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-12

#### **4-12-14-03. Appeals of protest decisions.**

1. The aggrieved party may appeal the decision of the procurement officer to the director or designee within seven calendar days after receiving notice of the decision.
  - a. The director or designee has seven calendar days to review the protest and render a decision in writing. If the appeal is submitted on a weekend or state holiday, the seven-day period will commence on the first working day after the appeal was submitted.
  - b. During the time the appeal is being considered, the award will be stayed, unless a written determination is made that award without delay is necessary to protect the interests of the state.
  - c. If the protest is not resolved by mutual agreement, the director or designee will promptly issue a decision in writing stating the reasons for the action taken and informing the protestant of its right to judicial or administrative review, if any, as provided by the laws of North Dakota.
  - d. A decision under this subsection is final and conclusive.
2. If the protest is sustained, the director or designee has the authority to resolve the protest in the best interests of the state.
  - a. Remedies may include cancellation and reissue of a solicitation, amendment of a solicitation and evaluation criteria, and cancellation of a contract award.
  - b. When a protest is sustained and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, a bidder or offeror may not recover profits that it anticipates would have been made if that party had been awarded the contract. Any other settlement of relief must be referred to the office of the attorney general.
3. Frivolous protests may be cause for suspension or debarment from consideration of contract award for a period of up to three years. A written determination by the state procurement manager is required for this action.
4. Nothing in this section is intended to affect the power of the attorney general to settle actions pending before the courts.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-12