

Vendor Protests

Original Implementation: July 14, 1998

Last Revision: July 23, 2019

Purpose

This policy establishes guidelines for the submission and evaluation of vendor protests in connection with the solicitation, evaluation, or award of a contract with the university.

General

Any actual or prospective bidder, offeror, or contractor who feels aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the director of procurement and property services/HUB coordinator of Stephen F. Austin State University. Such protests must be in writing and received in the procurement director's office: (1) by the end of the posted solicitation period if the protest concerns the solicitation documents or actions associated with the publication of the solicitation documents; (2) by the day of the award of a contract resulting from the solicitation if the protest concerns the evaluation or method of evaluation for a solicitation; or (3) no later than ten (10) days after the notice of award if the protest concerns the award.

Formal protests must conform to the requirements of this policy, and shall be resolved in accordance with the procedure set forth herein. Copies of the protest must be mailed or delivered by the protesting party to any other interested parties. For the purposes of this policy, "interested parties" means all vendors who have submitted bids, proposals, or other expressions of interest related to the solicitation and/or contract involved.

In the event of a timely protest or appeal, Stephen F. Austin State University shall not proceed further with the solicitation or award of the contract unless the procurement director, after consultation with the end user, makes a written determination that the award of contract without delay is necessary to protect the best interests of the university.

A formal protest must be sworn and contain:

1. A specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;
2. A specific description of each act alleged to have violated the statutory or regulatory provision(s) identified above;
3. A precise statement of the relevant facts;
4. An identification of the issue or issues to be resolved;
5. Argument and authorities in support of the protest; and
6. An explanation of the subsequent action sought.

The procurement director shall have the authority, prior to appeal to the vice president for finance and administration, to settle and resolve the dispute concerning the solicitation, evaluation, or award of a

contract. The procurement director may solicit written responses to the protest from other interested parties.

If the protest is not resolved by mutual agreement, the procurement director will issue a written determination on the protest.

1. If the procurement director determines that no violation of rules or statutes has occurred, he/she shall so inform the protesting party, the end user, and other interested parties by letter which sets forth the reasons for the determination.
2. If the procurement director determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he/she shall so inform the protesting party, the end user, and other interested parties by letter which sets forth the reasons for the determination and the appropriate remedial action.
3. If the procurement director determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, he/she shall so inform the protesting party, the end user, and other interested parties by letter which sets forth the reasons for the determination, which may include ordering the contract void.

The procurement director's determination on a protest may be appealed by the protesting party to the vice president for finance and administration. An appeal of the procurement director's determination must be in writing and must be received in the vice president's office no later than 10 working days after the date of the procurement director's determination. The appeal shall be limited to review of the procurement director's determination. Copies of the appeal must be mailed or delivered by the protesting party to any other interested parties and must contain a certified statement that such copies have been provided.

The vice president may, in his/her discretion, refer the matter to the president for his/her consideration or issue a written decision on the protest.

When a protest has been appealed, the following requirements shall apply.

1. Copies of the appeal and responses of interested parties, if any, shall be delivered to the vice president or president, as applicable (“appellate authority”).
2. The appellate authority may, in his/her sole discretion, hold a hearing on the appeal if he/she believes the written record is not sufficient to render a determination. If a hearing is held, the appellate authority will set the order and amount of time allowed for presentations. The general counsel may be present as an advisor to the university.
3. The appellate authority's determination of the appeal shall be final.

Unless good cause for delay is shown or the appellate authority determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely or containing all required information will not be considered.

A decision issued in writing by the appellate authority, shall be the final administrative action of Stephen F. Austin State University.

Cross Reference: Tex. Gov’t Code § 2155.076; 34 Tex. Admin. Code §§ 20.531-.538

Responsible for Implementation: Vice President for Finance and Administration

Contact for Revision: Director of Procurement and Property Services/HUB Coordinator

Forms: None

Board Committee Assignment: Finance and Audit