

Vendor Protests

Original Implementation: July 14, 1998

Last Revision: July 26, 2016

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 within 10 working days after the protesting party knows, or should have known, of the occurrence of the action which is protested. 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 under this section, 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. A statement that copies of the protest have been mailed or delivered to other identifiable interested parties.

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 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 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 general counsel shall review the protest, procurement director's determination and the appeal and prepare a written opinion and recommendation to the vice president for finance and administration. The vice president may, in his 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 to the vice president for finance and administration and has been referred to the president by the vice president, the following requirements shall apply.

1. Copies of the appeal and responses of interested parties, if any, and general counsel recommendation shall be delivered to the president.
2. All interested parties who wish to make an oral presentation at an open meeting with the president are requested to notify the general counsel at least 48 hours in advance of the open meeting.
3. The president may consider oral presentations and written documents presented by SFA staff and interested parties. The president shall set the order and amount of time allowed for presentations.
4. The president's determination of the appeal shall be final.

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

A decision issued in writing either by the president or in writing by the vice president for finance and administration, shall be the final administrative action of Stephen F. Austin State University.

Cross Reference: Tex. Gov't Code § 2155.076; 34 Tex. Admin. Code § 20.384

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