

## Orange County Florida Code of Ordinances CHAPTER 17 - FINANCE, SECTIONS 313 AND 313.1

### **Sec. 17-313. - Protested solicitations and awards—Invitation for bids.**

(a)

*Right to protest.* Any actual or prospective bidder who is allegedly aggrieved in connection with the solicitation or pending award of a contract may protest to the chief of purchasing and contracts.

(b)

*Posting.* The purchasing and contracts department shall post a recommendation of award at the location where bids were opened. The recommendation of award shall be publicly posted at the purchasing and contracts department no less than three full business days after the decision to recommend award to a bidder.

(c)

*Notice.* A notice of protest must be submitted no later than 5:00 p.m., on the fifth full business day after posting of the award recommendation. The protest must be in writing and must identify the protesting party and the IFB number and title and shall include a factual summary of the basis of the protest.

A formal written protest must be filed no later than 5:00 p.m., on the fifth full business day after the date of filing the notice of protest. The formal written protest shall; identify the protesting party and the solicitation involved; include a clear statement of the grounds on which the protest is based; refer to the statutes, laws, ordinances or other legal authorities which the protesting party deems applicable to such grounds; and specifically request the relief to which the protesting party deems itself entitled by application of such authorities to such grounds. The protesting party shall mail a copy of the notice of protest and the formal written protest to all other bidders and to any person with whom he/she is in dispute and shall provide the chief of purchasing and contracts with evidence of such mailing.

A formal written protest is considered filed with the county when it is received by the purchasing and contracts division. Accordingly, a protest is not timely filed unless it is received by the purchasing and contracts division within the times specified above. Failure to file a written notice of protest and subsequent formal written protest within the time period specified shall result in relinquishment of all rights of protest by the vendor and abrogation of any further bid protest proceedings.

These procedures shall be the sole remedy for challenging an award of bid. Bidders are prohibited from attempts to influence, persuade or promote through any other channels or means. Such attempts shall be cause for suspension in accordance with section 17-314(b) of this article.

The time limits in which protests must be filed as specified herein may be altered by specific provisions in the IFB.

(d)

*Authority to resolve.* The chief of purchasing and contracts shall attempt to resolve the protest in a fair and equitable manner and shall render a written decision to the protestant.

The protesting party may appeal such decision by delivering written notice of appeal of the decision to the chief of purchasing and contracts no later than 5:00 p.m. on the fifth full business day after the date of the written decision, whereby a protest committee, comprised of the chief of purchasing and contracts, a representative of the county attorney, county administration, the M/WBE department, and the using department manager or division director, shall have the authority to settle and resolve the protest.

(e)

*Proceedings.* The chief of purchasing and contracts shall serve as the presiding officer of the committee in a nonvoting capacity and shall give reasonable notice to all substantially affected persons or businesses prior to the date scheduled to consider the appeal of the protest.

(1)

At or prior to the protest proceeding, the protesting party may submit any written or physical materials, objects, statements, affidavits and arguments which he/she deems relevant to the issues raised.

(2)

In the proceeding, the protesting party, or its representative or counsel, may also make an oral presentation of the evidence and arguments. However, neither direct nor cross examination of witnesses will be permitted, although the presiding officer and other committee members may make whatever inquires deemed pertinent to a determination of the protest.

(3)

The judicial rules of evidence shall not apply, and the committee shall base its decision on such information adduced in the course of the proceeding upon which reasonable prudent persons rely on the conduct of their affairs.

(4)

If it is determined that the solicitation or award is in violation of law or the administrative regulations and internal procedures of purchasing and contracts, the solicitation or award shall be canceled or revised.

(5)

If it is determined that the solicitation or award should be upheld, the chief of purchasing and contracts shall promptly issue a decision on behalf of the committee in writing stating the reason for the action with a copy furnished to the protesting party and all substantially affected persons or businesses. The decision shall be final and conclusive as to the county unless further action is taken by the board or a party commences action in court. Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording. The proceedings shall be open to the general public.

(f)

*Stay of procurement during protests.* In the event of a timely protest, the chief of purchasing and contracts shall not proceed further with the solicitation or with the pending award of the contract until the chief of purchasing and contracts, with the advice of the county attorney and after consultation with the using department, makes a determination that the award of the contract without delay is necessary to protect substantial interests of the county government.

(g)

*Protest to the board.*

(1)

*Requirements.* If, in a competitive-bid procurement where the bid award must be approved by the board, a bidder believes that the protest committee's decision is unfair or incorrect, it may write a letter to the members of the board objecting to the decision. The letter of objection and any and all attachments must be delivered to all board members no later than 5:00 p.m. on the fifth full business day after the chief of purchasing and contracts issues a decision on behalf of the committee. The letter must (1) identify the aggrieved bidder and the solicitation involved; (2) include a clear statement of the legal and factual grounds on which the aggrieved bidder's objection is based; and (3) refer to the statutes, laws, ordinances or other legal authorities which the party deems applicable to such grounds, and (4) specify the relief requested of the board by the aggrieved bidder. The aggrieved bidder shall simultaneously deliver duplicate copies of the letter and all attachments (if any) to the county administrator, the county attorney, and the chief of purchasing and contracts. Thereafter, the aggrieved bidder and any others may lobby members of the board, and the chief of purchasing and contracts shall mail or deliver copies of the aggrieved bidder's letter (including copies of any attachments) to all other bidders. All meetings between bidders and board members which take place after receipt of the letter of objection must be open to the public and, may not take place unless notice of the meeting has been posted at the place designated for such postings at least two full business days prior to the day of the meeting. This noticed meeting may be held only in a county meeting room or office or in an office or meeting room at some governmental building where the public may freely attend. Neither the aggrieved bidder nor any other bidder may communicate or attempt to communicate with any member of the board in connection with the particular bid solicitation in any manner other than as set forth expressly in this paragraph.

(2)

*Exclusive method of protest, objection, and appeal.* There is a compelling county interest in procuring goods and services in a timely manner so as to provide county residents and visitors with efficient, cost-effective,

and operationally effective county infrastructure, facilities, and services in a timely manner. Consequently, procurement disputes must be resolved by the board with minimal delays. Therefore, in a competitive-bid procurement where the bid award must be approved by the board, the procedure set forth in this subsection (g) is the sole means by which a bidder aggrieved by a decision of a protest committee under subsection (e) may seek recourse with the board. Refusal or failure by any aggrieved bidder to pursue its right of objection under this subsection shall constitute a waiver of its right to pursue any further remedies or appeals, either administratively or judicially.

(3)

*Violation of lobbying ordinance.* No bidder may engage in any effort, either directly or indirectly, to influence the actions of the board with respect to a pending award of a contract for which an invitation for bids was issued except as set forth in this subsection (g). Any bidder engaging in a protest to the board as allowed under this subsection (g) shall comply strictly with the requirements and restrictions of this subsection. Any attempt by any bidder to communicate with any board member, directly or indirectly, whether in person or through agents, employees, or lobbyists, or otherwise to influence the vote of any board member, in connection with any pending award of a contract for which an invitation for bids has been issued, in any manner not strictly in compliance with the requirements and restrictions of this subsection (g) shall be deemed in violation of the black-out-period restrictions of section 2-355 and section 2-355.1 and, therefore, subject to the sanctions of section 2-356.

(h)

*Reservation of powers to settle actions pending before the courts.* Nothing in this section is intended to affect the existing powers of the board of county commissioners to settle actions pending before the courts.

(i)

*Damages.* In the event of the court upholding the protestant's claim, the court-awarded damages on behalf of the protestant shall be solely limited to bid/proposal preparation costs and reimbursement of the amount of the protest bond as stipulated in subsection 17-313(d) herein.

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*(Ord. No. 92-26, § IV.D, 9-15-92; Ord. No. 96-8, § 8, 3-26-96; Ord. No. 2002-15, § 4, 10-15-02; Ord. No. 2008-13, § 4, 7-8-08)*

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### **Sec. 17-313.1. - Same—Requests for proposals.**

(a)

*Right to protest.* Any proposer who alleges an omission, an error, a mistake, or an incorrect evaluation or scoring of its proposal or other proposals may submit a letter of protest to the chief of purchasing and contracts no later than 5:00 p.m. on the fifth full business day after the initial posting of the listing of short-listed firms. Such letter may request a re-evaluation of specific areas of the proposal(s) by the procurement committee; and must specifically delineate the alleged omission, error, mistake, or incorrect evaluation, and include a suggested remedy which could be administered by the selection committee.

(b)

*Posting.* The following protest procedures for the RFP process shall apply: The listing of short-listed firms recommended for the project by the procurement committee shall be publicly posted at the purchasing and contracts department for no less than five full business days after the procurement committee evaluation.

(c)

*Notice.* Upon timely receipt of the letter of protest, the chief of purchasing and contracts shall notify all other short-listed firms of the protest by copy of the protest letter, and shall refer the letter of protest to the procurement committee. The procurement committee shall schedule a hearing for appropriate action to be determined by the committee. The procurement committee's hearing shall take place prior to the board's consideration of the award.

(d)  
*Proceedings.*

(1)  
At the procurement committee's hearing, the protesting party, its representative or counsel, and any other parties affected by the procurement committee's decision may make an oral presentation of the testimony and argument. However, neither direct or cross examination of witnesses will be permitted, although the presiding officer and other committee members may make whatever inquiries are deemed pertinent to a determination of the protest.

(2)  
The judicial rules of evidence shall not apply. The procurement committee shall base its decision on such information adduced in the course of the proceeding upon which reasonable prudent persons rely in the conduct of their affairs.

(3)  
If it is determined that either the solicitation or award is in violation of law or the administrative regulations and internal procedures of purchasing and contracts, the solicitation or award shall be canceled or revised.

(4)  
The chief of purchasing and contracts shall promptly issue the final short-list as established by the committee, indicating the confirmed scoring for each selection criteria, with a copy furnished to the protesting party and all other short-listed proposers. The decision as to short list and scoring shall be transmitted to the board of county commissioners for its consideration and approval. Any party may arrange for the proceedings to be stenographically recorded at that party's expense. The proceedings shall be open to the general public.

(5)  
During the protest proceedings, proposers are prohibited from attempts to influence, persuade or promote through any other channel or means. Such attempts shall be cause for suspension in accordance with section 17-314 of this article.

(6)  
The time limits in which protests must be filed as specified herein may be altered by specific provision in the RFP.

(e)  
*Stay of procurement during protest.* In the event of a timely protest, the chief of purchasing and contracts shall not proceed further with the solicitation or with the pending award of the contract unless the chief of purchasing and contracts, with the advice of the county attorney and after consultation with the using department, makes a determination that the immediate award of the contract is necessary to protect substantial interests of the county.

(f)  
*Protest to the board.*

(1)  
*Requirements.* If, in a competitive-proposal procurement where the contract award must be approved by the board, a proposer believes that the procurement committee's decision on a protest under subsection (d) is unfair or incorrect, it may write a letter to the members of the board objecting to the decision. The letter of objection and any and all attachments must be delivered to all board members no later than 5:00 p.m. on the third full business day after the chief of purchasing and contracts issues the final short-list. The letter must (1) identify the proposer and the solicitation involved; (2) include a clear statement of the legal and factual grounds on which the aggrieved proposer's objection is based; (3) refer to the statutes, laws, ordinances or other legal authorities which the aggrieved proposer deems applicable to such grounds; and (4) specify the relief requested of the board by the aggrieved proposer. The aggrieved proposer shall simultaneously deliver duplicate copies of the letter and all attachments (if any) to the county administrator, the county attorney, and the chief of purchasing and contracts. Thereafter, the aggrieved proposer and any others may lobby members of the board, and the chief of purchasing and contracts shall mail or deliver copies of the aggrieved proposer's letter (including copies of any attachments) to all other proposers. All meetings between bidders and board members which take place after receipt of the letter of objection must be open to the public and, may not take place unless notice of the meeting has been posted at the place designated for

such postings at least two full business days prior to the day of the meeting. This noticed meeting may be held only in a county meeting room or office or in an office or meeting room at some governmental building where the public may freely attend. Neither the aggrieved proposer nor any other proposer may communicate or attempt to communicate with any member of the board in connection with the particular competitive-proposal solicitation in any manner other than as set forth expressly in this paragraph.

(2)

*Exclusive method of protest, objection, and appeal.* There is a compelling county interest in procuring goods and services in a timely manner so as to provide county residents and visitors with efficient, cost-effective, and operationally effective county infrastructure, facilities and services in a timely manner. Consequently, procurement disputes must be resolved by the board with minimal delays. Therefore, in a competitive-proposal procurement where the contract award must be approved by the board, the procedure set forth in this subsection (f) is the sole means by which a proposer aggrieved by a decision of a procurement committee under subsection (e) may seek recourse. Refusal or failure by any aggrieved proposer to pursue its rights under this subsection shall constitute a waiver of its right to pursue any further remedies or appeals, either administratively or judicially.

(3)

*Violation of lobbying ordinance.* No proposer may engage in any effort to influence the actions of the board with respect to a pending award of a contract under the competitive proposal process set forth in section 17-311 except as expressly set forth in this subsection (f). Any aggrieved proposer engaging in a protest to the board as allowed under this subsection (f), and any other proposer supporting or opposing the protest of an aggrieved proposer as allowed under this subsection (f), shall comply strictly with the requirements and restrictions of this subsection. Any attempt by any proposer to communicate with any board member or otherwise to influence the vote of any board member, in connection with any pending award of a contract, in any manner not strictly in compliance with the requirements and restrictions of this subsection (f) shall be deemed in violation of the black-out-period restrictions of section 2-355 and section 2-355.1 and, therefore, subject to the sanctions of section 2-356.

(g)

*Reservation of powers to settle actions pending before the courts.* Nothing in this section is intended to affect the existing powers of the board to settle actions pending before the courts.

(h)

*Damages.* In the event of any court or other proceeding upholding the protestant's claim, any damages, including court-awarded damages accruing to the protestant or any other party shall be limited solely to proposal preparation costs.

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(Ord. No. 96-8, § 9, 3-26-96; Ord. No. 2002-15, § 5, 10-15-02; Ord. No. 2008-13, § 5 7-8-08)

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