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**TESTIMONY  
OF  
SARAH ALLEN, ADMINISTRATOR  
STATE PROCUREMENT OFFICE**

**TO THE SENATE COMMITTEE ON JUDICIARY  
AND  
THE SENATE COMMITTEE ON WAYS AND MEANS**

FEBRUARY 28, 2020, 10:45 A.M.

**SB 2843, SD1  
RELATING TO PROCUREMENT**

Chairs Rhoads and Dela Cruz, Vice Chairs Keohokalole and Keith-Agaran, and members of the committee, thank you for the opportunity to submit testimony on SB2843. The State Procurement Office (SPO) submits the following comments.

SPO conducted research that shows the following information as of January 2020:

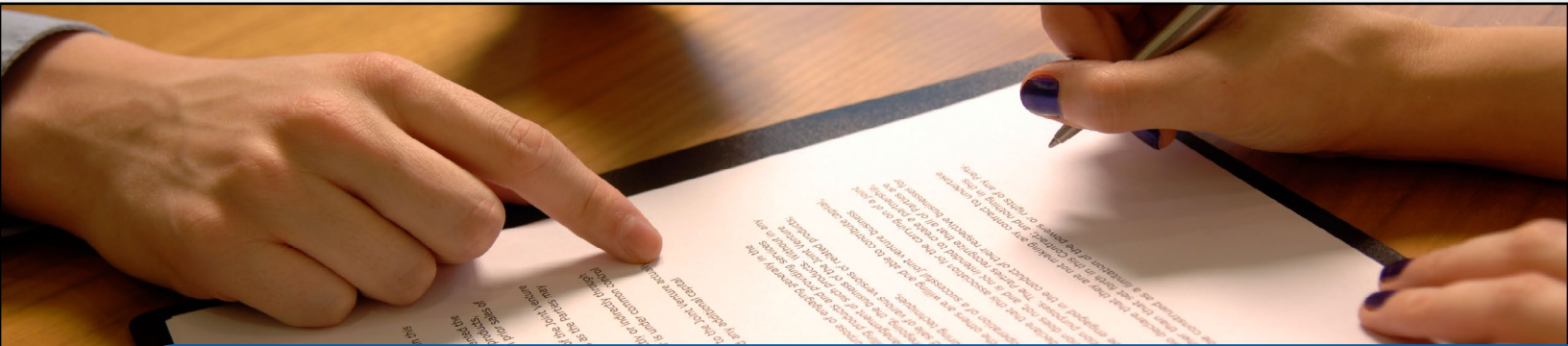
- Only three states (6%) require bonds for all protests.
- Three other states require a protest bond under certain circumstances based on Chief Procurement Officer (CPO) judgement or if the value is greater than one million dollars.
- Protest bonds are not a requirement for Federal Contracting.

In a NASPO State Bid Protest Research Brief, dated April 2013, the average protest bond is 1-2% percent range of the estimated value of the contract. Nevada is an exception; which can be as high as 25% of the contract's value. In California, the CPO determines whether a protest is frivolous and based on a subjective decision, may require a protest bond.

The brief also mentions that there were no substantive data tests showing that protest bonds discourage frivolous protest.

SPO recommends staying within the average 1-2% that the majority of other states are using, and to consider relief for small business and small dollar protests.

Thank you.



## State Bid Protests

### Introduction

This National Association of State Procurement Officials (NASPO) research brief was prepared by the Bid Protest Work Group formed under NASPO's Emerging Issues Committee. It examines bid protest policies and practices in state central procurement offices across the nation. The paper draws heavily from the results of a NASPO Bid Protest Survey conducted in February 2013, which registered a response rate of 82%.

The NASPO 2008 Practical Guide recognizes the value of having workable procedures for bidders and contractors to file bid protests, appeals, complaints and contract claims, noting that "[a] procurement system that is truly open isn't afraid to be challenged on its contract award and management decisions." Current bid protest practices among the states suggest that incorporating a fair mechanism to evaluate bid protests helps to ensure a level playing field for all vendors. The approach recommended in the NASPO Practical Guide is to have procedures established by law providing the opportunity for a bid protestor or contractor to appeal decisions on bid protests and contract claims, a fair hearing on the issues and prompt resolution<sup>1</sup>.

Section 9 of the American Bar Association (ABA) 2000 Model Procurement Code includes model language for legal and contractual remedies; many states have partially or completely adopted the Model Procurement Code. Commentary included in the model code notes that "it is essential that bidders, offerors, and contractors have confidence in the procedures for soliciting and awarding contracts" and this can be ensured by "allowing an aggrieved person to protest the solicitation, award, or related decisions"<sup>2</sup>.

Federal bid protests have been part of the federal procurement system since the early 20th century. The United States

Congress authorizes bid protests and recognizes their role in providing "redress to disappointed bidders and offerors and in ensuring the integrity of the federal procurement process"<sup>3</sup>.

There are three primary administrative and judicial forums that have authority to hear bid protests against the federal government: the procuring agency, the U. S. General Accountability Office (GAO), and the U. S. Court of Federal Claims. Each has different rules and standards it applies to a protest. These rules can be found at the links below:

- [Comptroller General Bid Protest Regulations](#).
- [Rules of the United States Court of Federal Claims](#) (as amended through July 2, 2012)

GAO provides an objective, independent, and impartial forum for the resolution of disputes concerning the awards of federal contracts<sup>4</sup>. Filing a GAO protest generally triggers an automatic stay of contract award or performance during the time the protest is pending as opposed to the process where the protest is filed with the Court of Federal Claims.

Although not yet a common occurrence and part of the routine procurement process like federal protests are, protests filed at the state level seem to have increased in most states in recent years.

### Definitions and Bid Protest Processes

The NIGP Dictionary of Terms<sup>5</sup> defines protests as "oral or written objections by a potential interested party to a solicitation or award of a contract, with the intention of receiving a remedial result; may be filed in accordance with agency

<sup>1</sup> NASPO State and Local Government Procurement: A Practical Guide. (2008). Lexington, KY: NASPO

<sup>2</sup> American Bar Association Model Procurement Code for State and Local Governments. (2000)

<sup>3</sup> GAO Bid Protests: An Overview of Time Frames and Procedures. (2011). Congressional Research Services

<sup>4</sup> Bid Protests at GAO: A Descriptive Guide, Ninth Edition. (2009). Retrieved March 4, 2013 from: <http://www.gao.gov/decisions/bidpro/bid/d09417sp.pdf>

<sup>5</sup> National Institute of Governmental Purchasing (NIGP) Public Procurement Dictionary of Terms. (2010). Herndon, VA: NIGP

policy and procedure within predetermined timelines”.

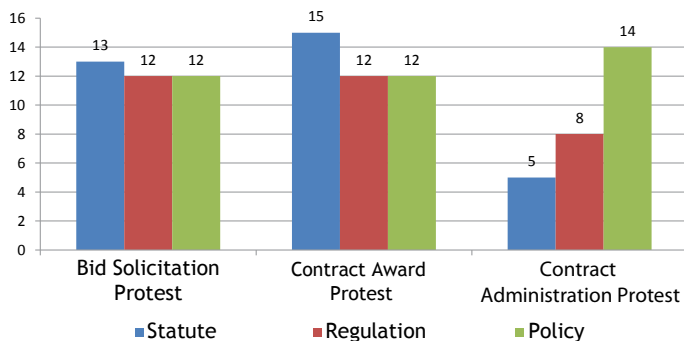
State definitions and procedures for bid protests vary among the states. Definitions and timing for filing and response for 42 states that participated in the NASPO survey are shown in Appendix I. Citations and website URLs, where available, for formal protest procedures established by statute, regulation, or policy by responding state are presented in Appendix II.

For most states that have a formal bid protest process, bid protest means an objection, challenge in connection with a solicitation, the award of a contract, or the intended award of a contract. The general practice in most states is that they have to be filed in writing to the head of the procuring agency or the central procurement officer/manager who has the authority to conduct an administrative review.

In most states, bid protest rules do not have express provisions imposing an automatic stay of contract award or performance with the filing of a bid protest. Depending on the jurisdiction's process, some states do not proceed further with the solicitation or award and suspend performance until a final decision is made regarding the protest, unless a determination is made that award or performance of the contract without delay is in the best interest of the state. The decision to stay lies with the chief procurement officer or senior executive who can make an override determination that the award of the contract without delay is necessary to protect state's interest or a protest is clearly without merit.

### State Bid Protest Processes

Most states responding to the survey indicated that they have some type of formal process in place for protests in connection with bid solicitations, contract awards, and/or contract administration. The language setting up these processes resides in statutes, regulations, or policies. The chart below shows states that have bid protest processes in place, by type of law and policy.



### Debriefing

The Federal Acquisition Regulations (FAR) Subpart 15.5 includes provisions on preaward and postaward debriefings. The language presented in Appendix III includes good

guidance about not turning debriefings into a point-by-point comparison of proposals. The focus is on the successful or unsuccessful offeror's proposal being debriefed and how it satisfied or did not satisfy evaluation criteria.

Results from the NASPO survey indicate that less than one fourth of the responding states have a debriefing process (Alaska, California, District of Columbia, Delaware, Hawaii, Iowa, Massachusetts, Michigan, New York, Pennsylvania, and Washington). The majority of respondents deem debriefings as effective means to deter a bid protest and eight states believe the opposite. Not all state procurement offices that conduct regular debriefings, however, have formal requirements to do so. There are states that conduct them informally and allow the opportunity for Q&As. A couple of states noted that although they do not have a debriefing process, they are considering allowing it. One state procurement official commented that his/her state did not have a positive experience with debriefings and rarely entertain them. In Alaska, there is no legal requirement for it. The process for informal debriefing is described in Alaska's Request for Proposals document template and is limited to the work performed by the contractor and performed at the discretion of the project director.

Respondents to the survey shared their experience implementing a debriefing policy in their state. Their exact comments and lessons learned are reproduced below:

- ❑ In my opinion, a debriefing conference humanizes the interaction and thereby reduces the number of protests received. People often read into what is communicated through formal correspondence, and in general, I think direct communication is far more effective.
- ❑ Our practice encourages debriefing and information resolution of disputes prior to formal protests. We have started including debriefing into the RFP/IFB key events timeline. Before formally issuing the award, we only share the company's relative rank and provide information about that company's bid review (other bidder information is not shared and only becomes available after announcement and issuance of award).
- ❑ We encourage debriefs, however they are not required. The vendors that participate appreciate the opportunity to discuss their bid response and learn more about the process. Our debrief language is below: DTMB-Procurement encourages all bidders - those who were successful in receiving an award and those who were not - to arrange a debriefing session with the buyer handling the solicitation. This is a great way to help improve your proposals and become more competitive in the future. Debriefings may be conducted in person, or over the phone. During this session, the buyer will review your



proposal, highlight its specific strengths, and indicate areas where the submission may have contained deficiencies. In preparation of a debrief request that the buyer email the Evaluation Synopsis. This document will show how the proposal was scored. Write down any questions concerning the Evaluation Synopsis before meeting with the buyer. The best debriefs take place when the bidder is prepared with questions. Please do not confuse a debrief with the protest process.

❑ No statute driven action. In cases where a vendor has been declared non-responsive, we will discuss the issue with the affected vendor prior to issuing the contract intent-to-award letter along with notice of those vendors being non-responsive.

❑ Vendors do not take full advantage of the debriefing but when they do, they can benefit for future opportunities by the lessons learned in the debrief. Debriefs also offer a more expeditious and open dialogue about vendors' real questions regarding the bid and subsequent award.

❑ We do not have a policy, but we do find that a debriefing with the suppliers helps them to improve their bidding practices and to understand how to improve and work closer with the state. Particularly in the more complex and higher dollar solicitations, a debriefing is very helpful and helps to alleviate vendor frustrations that could become a protest if not addressed by the State.

❑ Informal. I believe the best way to resolve sticky situations is to get the parties to the table and talk about it. Most of the time, the protestor wants to be heard and understood by somebody in charge of the situation. I call everyone to the table; the protestor, the agency buyer, the program expert, the lawyers...whoever needs to be in the room.

❑ While we have no formal policy, debriefings are available after an award is made based on a request for proposals.

❑ California holds debriefing sessions for bidders after the Intent to award is posted and the protest period has passed. This process is beneficial in assisting bidders in submitting future bids, but does not directly deter a bidder from protesting a current award.

❑ Debriefings are used as an educational tool to provide vendors with feedback on their specific proposal and where the Commonwealth is able to identify areas of strength and weakness in that vendor response.

❑ There is no policy, but at the times we have offered debriefing meetings we have not received protests.

❑ The key to successful debriefings is training in how to handle them. If poorly conducted, bidders will leave a debriefing more unhappy and frustrated than when they arrived. Without training, purchasers are often: defensive and argumentative about judgments decisions made, particularly if they were involved, - reluctant to respond to questions, for fear of disclosing improper information, or - too talkative, providing details of deliberations or their own opinions about the process or outcome.

More than two-thirds of states responding to the survey indicated that their bid protest rules do not provide greater access in advance of award to information relevant to the award not yet available through FOIA.

Close to half of the states responding to the survey track the protests for those bids over which they have authority. However, not all states keep a consolidated list of all protests at the central procurement office level; in other cases, each purchasing agency keeps a separate record and only appeals are kept at the central level.

Only three states that allow bid protests quantify the cost for a protest. Most states absorb the cost as the cost of doing business. For those states that quantify it, the protester or unsuccessful party is assessed all cost and charges. Any other costs are absorbed by the state.

California serves as an example of this cost absorption. Under the traditional bid protest process and protests of non-information technology service contracts, the state absorbs the entire cost of the protest. Under California's Alternative Bid Protests process, on the other hand, the cost of the arbitration is paid by the unsuccessful party. The cost is based directly on the Hearing Officer's established hourly rate. If the Procurement Division determined that the protest was frivolous and required the protestant to provide a bond, and the arbitrator determines that the protest is not frivolous, in addition to returning the frivolous bond, the state is subject to costs as follows: 1.If the arbitrator denies the protest, the protestant shall be liable for half of the costs of the arbitration. The state shall pay the remaining half of the arbitration costs. 2. If the arbitrator upholds the protest, the state shall pay for all costs of the arbitration and the protestant will be refunded the deposit by the Office of Administrative Hearings (OAH). A protestant who withdraws his or her protest before the arbitrator's decision has been issued will remain liable for all arbitration costs up to the time of withdrawal. These costs include, but are not limited to, the arbitrator's time in preparation, prehearing conferences, and hearing the protest. If the Procurement Division deemed the protest frivolous, any bond posted shall be forfeited to Procurement. Except as provided above, if any costs are determined to be payable by the protestant, that amount shall be subtracted

from deposit(s) of the protestant as ordered by the arbitrator. Any additional costs shall be billed to the Protester and any refunds shall be sent to the protestant by the OAH. If a protestant is a small business, then the state shall pay the OAH all arbitration costs and collect the amount due from protestant. Any other costs such as staff time and supplies are absorbed by the state budget.

Thirty-five states responding to the survey allow formal court action after administrative protests and/or dispute appeals have been exhausted. Two states without a formal administrative bid protest processes require formal court action for bid protests. Statistics on court proceedings are not captured at the state procurement office level.

### Protest Bonds

Results from the NASPO survey show that 36 states (out of 42 responding) do not require protest bonds. Four states (Florida, Hawaii, Nevada, and Tennessee) require a bond with the submission of a protest. See chart below.



California also requires a bond, but only under the Alternative Protest Process; the traditional protest process does not include any cost. In California, if the coordinator makes a preliminary determination that the protest is frivolous, a "frivolous bond" is assessed.

Examples of language and values placed on protest bonds for states that are required to use them by statute or use them as a practice are shown in Appendix IV.

### States' experience with protest bonds. Do they discourage frivolous protests?

When asked to describe their experience implementing their protest bonds policy, a few states that used them believe their protest bond policies do discourage frivolous protests. Other states indicated that they have not had a sufficient number of protest bonds to determine the impact. One state noted that bid protest bonds policies do not seem to discourage frivolous protests.

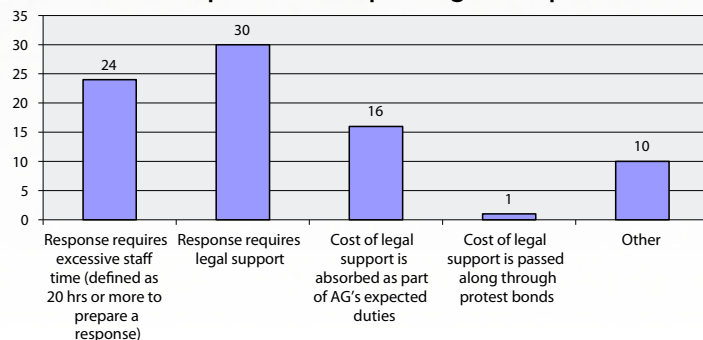
States that do not accept bid protest bonds were also asked to describe their experience and the benefit/value of not requesting a bond for a bid protest and weigh in on the same issue. A few respondents indicated that they did not have any issues associated with not requiring bid protest bonds and indicated that their protest procedures work effectively. Others noted that their approach is to avoid creating barriers

to the bid process and requiring protest bonds would discourage all protests, frivolous or otherwise. It was also noted that the administrative review process should be informal, flexible and responsive and all parties benefit from the early identification and resolution of any errors or other issues. Another common comment was that not requiring protest bonds avoids undue financial burden on small businesses. Also, one state explained that one reason for not calling protest bonds was that the volume of protests is manageable and did not force a consideration of policy change. On the other hand, one state that is considering requiring a bond equal to 10% of the contract value, noted that the goal is to avoid frivolous vendor appeals and allow the state to offset the cost of the review by deduction of costs from the bond.

### Level of Effort to Respond to Bid Protests

Responding to bid protests is a time consuming effort. For most states, response requires excessive staff time (defined as 20 hours or more to prepare a response) and support from legal counsel. In one state, the cost of legal support is passed along through protest bonds.

States' experiences responding to bid protests



Below are verbatim state comments describing the type of effort involved in responding to bid protests.

- ❑ Protests/disputes are handled within the agency; AG is not involved unless the vendor files an Article 78 with the courts. Agency legal and procurement staff handle the administrative protest (Director is responsible party); the CPO handles the administrative appeal. The AG defends the state in court in the event the bidder elects to seek court action (which is allowed by statute at any time).
- ❑ The answers in this section depend on the nature of the protest. Simple issues such as late bid submissions can be completed within minutes. More complex protests may take significant time in research and legal review.
- ❑ If the SPO is the only available person with legal training, the response takes significant time away from other

duties. Average preparation time is probably slightly under the 20-hour threshold.

- ❑ The time and legal complexity varies immensely.
- ❑ Response to protests requires some time by Procurement as well as occasionally by legal counsel, but we believe that is part of doing business. We try to manage the time and effort spent responding to protests so it does not get excessive. We conduct some research and provide protest responses, and basically tell the protester if they chose to pursue the protest further, they should litigate.
- ❑ Cost of legal support under the Traditional Bid Protest process, and for protests of non-information technology service contracts is absorbed as part of the state's expected duties. Under the Alternative Bid Protest process, the state is able to pass along the cost of the Hearing Officer's time to a bidder/vendor that is unsuccessful in their protest. However, significant state staff time is spent to prepare the state's response and subsequently defend the state's selection, and the cost associated with this time is always absorbed by state.
- ❑ My organization absorbs the legal cost via interagency billing.
- ❑ We learn from most protests of ways to improve our processes or specifications. It is a very time consuming, painful process and it seems that the down turn of the economy has increased the numbers of protests.
- ❑ Response time varies based on the complexity of the procurement.
- ❑ The Division of Administration's Office of General Counsel, not the Attorney General, provides legal support. While some protests require considerable time I would not say such time is excessive.
- ❑ While there is additional staff time required to respond, I'm not sure I would term it excessive. If the documentation and process is solid, it's generally just packaging it together, which is already a part of our process on each and every award, so that vendors or other interested parties can download the info from our website. This includes score sheets, notes, etc.... they're all on our website when we issue a Notification of Award, so vendors can easily obtain the info. I honestly believe that also helps keep protests to a minimum, as they're not speculating on what might have happened... they have the facts.
- ❑ The AG defends. We do not have an assigned AG. Ad-

ditionally an AG is usually the hearing officer so the legal time is doubled.

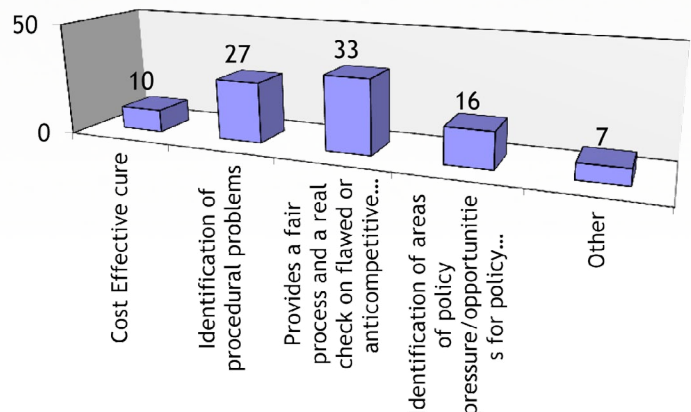
### Value/Benefit of a Bid Protest Process

While definitions and bid protest processes vary among the states, there is definitely commonality running throughout, especially in terms of the value provided by allowing the process.

As mentioned before, many states deem protests as time consuming and expensive in terms of staff time required to respond, depending on the complexity of the procurement. Massachusetts indicated that the state chose the no protest process approach (since the late 1990s), because it was determined that there was no significant value in their protest policy and process.

Within the NASPO survey, the most frequently indicated benefits of having a bid protest process were providing a fair process and real check on flawed or anti-competitive awards as well as providing an opportunity to identify procedural problems. See chart below.

Value/benefit of a Protest  
as perceived by State Central Procurement Officials.



Additional comments from respondents regarding the perceived value of having state bid protest policies are highlighted below:

- ❑ "Better image in the supplier community as a fair and open procurement system".
- ❑ "If protest does go to court, occasionally the court's decision/ruling settles ambiguity which can sometimes be written in the procurement statute".
- ❑ "Maintains the focus on "right the first time" from buyers knowing the public is going to scrutinize the process".



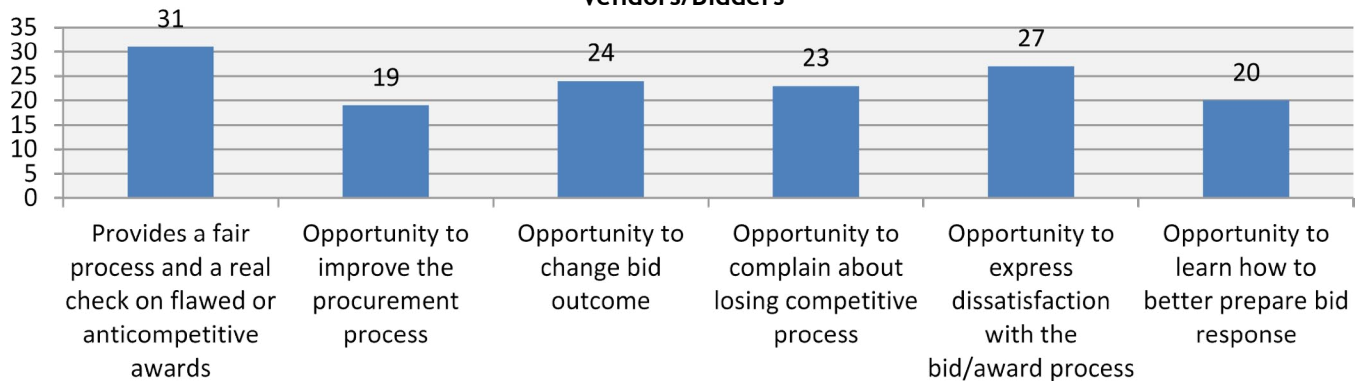
The benefits and value of having a bid protest process, cited by most respondents based on their experience working with vendors/bidders and feedback received from vendors are: “provide a fair process and real check on flawed or anti-competitive awards”, “opportunity to express dissatisfaction with the bid/award process” and opportunity to change the bid outcome. See the chart at the bottom of the page.

Less than half of the states responding to the survey believe that bid protests occur because the law allows the process. A good mix of state comments in response to the question “In your opinion, do bidders protest because the bid process, established by statute, regulation, or policy allows it” is shown below:

- ❑ They want to make sure the procurement process is fair and this is the avenue they use to state their concern about the process.
- ❑ I firmly believe that if we had statutes allowing for protests, it just invites a protest.
- ❑ Without fee or expense to file this is an easy way to take a shot at the process, complain about anything and everything and hope that something sticks. The value for the State Procurement Office has come in the ability to memorialize a response and when questioned by outside areas of pressure (i.e. legislature or constituent relations) the ability to produce a well-rounded and thorough response to the protest has proven beneficial to diffuse the concern that the process was flawed.
- ❑ Most times it is a business strategy to delay awarding the contract. Other times, there are valid reasons for unequal treatment or vague requirements.
- ❑ They want to exhaust all opportunities to potentially still receive the award.

- ❑ I do not believe protests are filed simply to delay the process. Protesting parties are usually sincere.
- ❑ We have the option of denying a request for appeal based on four criteria: 1. The petitioner is not aggrieved, 2. A prior request by the petitioner has been granted, 3. The request was made more than 15 days after notification, 4. The request is capricious, frivolous or without merit.
- ❑ A more publicized process may invite protests.
- ❑ In a significant number of cases, the protest is an attempt to get a second bite at the substantive evaluation process, rather than for review of defects in the process.
- ❑ Most bidders would not protest if the policy was not available. However, it does give the bidder the opportunity to have their concern/s heard.
- ❑ Not sure how to answer this question...yes they protest because it's allowed and couldn't if it wasn't...but I don't mind protests, because with the bond/security in place we don't get frivolous protests. The vendor genuinely feels aggrieved and we work through it.
- ❑ Our experience is that typically there is a misunderstanding or misperception about the bidding process or bidders have some incorrect information, or just want to challenge our process.
- ❑ Under the Traditional Bid Protest process, there are no bonds, fees or costs for filing a protest, as such, there is little disincentive to filing a protest. In addition, for the past several years, statistics (related to commodity and information technology acquisitions) show that approximately half of the protests filed are subsequently withdrawn by the protestant. In many instances, where

**Value/benefit of a Protest from a Vendor Perspective,  
based on State Procurement Officials' Experience Working with  
Vendors/Bidders**



the protestant is also the current contractor, the protest is lodged as a means to allow the protestant to generate additional orders before withdrawing the protest. Because of these types of practices, the state created the Alternative Bid Protest process, and the regulatory provision to assess a frivolous bond.

- ❑ Yes, the vendors protest because they are allowed to by law. If not allowed by law, there would be no protest process and consequently no official protest.
- ❑ At times protests seem to be frivolous and obstructive.
- ❑ Yes, sometimes a bidder protests because they can, but they still have to tell why they are aggrieved. More often, they protest because they don't understand the process, didn't read the documents, didn't follow the directions and lost. Sometimes because they think they have a better service or product than others. Sometimes because we made a mistake and they are right in pointing it out. Sometimes because we are ignorant of their industry and didn't do a good job of specifying or evaluating.
- ❑ Over the past five years in my role as the policy and protest manager, I respond to approximately 12 protests a year (60) and only two that I can recall were upheld. In my opinion, bidders protest because they lost and it costs them nothing to submit a protest. I strongly believe that if they must submit even a nominal amount of money in the form of a protest bond, we would likely see a lot fewer protests.

### ***Examples of the Most Significant Bid Protests throughout the States***

Below are exact comments from a few responding state procurement officials who were willing to share their most significant bid protest for the purpose of this paper.

#### **California**

Below is an example of a protest that was particularly significant to California's Department of General Services (DGS). First, it raised awareness of the need to develop a set of rules or framework around which acquisition staff can assess a bidder's responsibility. In addition, it demonstrated the success of the regulation that allows the state to render certain protests frivolous. The protest process is time intensive and costly to the state. Considerable time and effort was spent evaluating the documents, preparing the state's defense, and attending the hearing. If this procurement had not been conducted under the Alternative Protest process, there would have been no mechanism to stop the protest from going through the entire protest process again.

California's DGS conducted an IFB for "Wood and Guardrail Posts, and Survey Stakes" on behalf of the Department of Transportation (DOT). The intended award was protested on the grounds that the intended awardee was not a responsible bidder, citing the awardee's (personal) bankruptcy filing and claims of no assets, among other reasons. The intended awardee currently held the Wood Post contract, and the contracting staff at DOT had no documented performance issues with the current contractor (intended awardee), in fact the DOT found the contractor's performance to be satisfactory. Presented during the hearing was documentation from the bankruptcy hearing essentially showing that although the intended awardee was initially discharged from his debts, due to having virtually no assets, this decision was revoked, due to misrepresentation made by the intended awardee about monies paid to him from the current DOT contract. The Hearing Officer upheld the protest, finding the intended awardee to be an unreliable and unfit business partner for the state. The State then announced its intent to award the contract to a new contractor (the former protestant) and the award was again protested; this time by the former awardee. As this procurement was conducted under the state's Alternative Bid Protest process, the state rendered the new protest "frivolous" and required that the protestant submit a bond in the amount of 10% of the estimated contract value to proceed. As the protestant has no financial means to put up the bond, he did not provide the bond, and the protest was closed.

#### **Florida**

There are several significant bid protest cases within the state of Florida. An example of two such cases includes the issues of standing by a non-bidder and a challenge to bid specifications. These two seminal cases are *Advocacy Center for Persons with Disabilities v. Department of Children and Families*, 721 So. 2d 753 (Fla. 1st DCA 1998) and *Capeletti Brothers v. Department of General Services*, 499 So. 2d 855 (Fla. 1st DCA 1986) ("The purpose of the bid solicitation protest provision is to allow an agency, in order to save expense to the bidders and to assure fair competition among them, to correct or clarify plans and specifications prior to accepting bids." A challenge to an RFP must be directed to specifications that are so vague that bidders cannot formulate an accurate bid, or are so unreasonable that they are either impossible to comply with or too expensive to do so and still remain competitive")

#### **Nevada**

Traditionally, many of our protests center around challenging evaluators scoring of a given proposal. One example was our Auction Services contract for excess/surplus property. An unsuccessful vendor, who previously held the contract, filed a protest based on scoring. He refused to accept the low scores his firm received. He challenged the fact that the evaluators who had intimate knowledge of the services he'd



previously performed, scored him lower than those who did not and had based their scores completely on his proposal. The Hearings/Appeals Officer ruled that it was completely appropriate to have individuals familiar with his most recent state work on the panel and he was downgraded for his poor performance. It was a case of “past performance matters” and doing a poor job, but writing a good proposal doesn’t prevail. Nevada’s hearings/Appeals officers have been, to date, reluctant to substitute their judgment for that of credible evaluators. Most of the rare appeals we experience center around that issue. In Nevada, the hearings/Appeals Officer has two-(2) potential remedies. They may either uphold the state’s award or order a re-do of the solicitation. They cannot rearrange the evaluation and award a contract to someone other than the state has.

### **New York**

There have been a number of protests over the years. Though not recent, one protest/dispute which was handled first administratively through administrative dispute/protest, then administrative appeal, then went to court, is an example of administrative practice being confirmed by the court. Outcome of this protest reaffirms state’s right to request lower price from bidders of a multiple award bid and codifies practice allowed in legislative change.

### ***Lessons Learned and Guidance from State Procurement Officials***

A few respondents to the NASPO survey were gracious enough to share some of their experiences with bid protests and offer some advice and guidance on how protests should be reviewed and responded to. Comments from State Procurement Directors are presented below, in their own words:

- ❑ Debriefing vendors is a great tool - we see fewer protests if we help vendors understand the evaluation process and how they scored.
- ❑ Be timely and factual. Don’t minimize a vendor’s position... all of them feel they’re best suited for contract award, so don’t take it personally. If there are numerical errors or process errors that are satisfactorily brought to my attention, I take action. I don’t need a vendor to go through the time and expense of a formal appeal as provided under the statute, if a math error has occurred or we didn’t perfect the solicitation process. I can simply withdraw the RFP/BID and re-do or take other appropriate action.
- ❑ Attempt to handle disputes informally first, provide written guidance to vendor community regarding policy, assign responsibility to receive and rule to a senior level procurement manager who gathers information and

recommended response from legal and the applicable procurement team. Allow an independent appeal to the CPO/ Deputy Commissioner responsible for procurement. Keep strong procurement records that will assist in protest review. Utilize counsel who will ultimately have to defend any legal challenge and assist the AG in the event of formal legal action. Set deadlines in the policy for receipt of protests and appeals so procurement awards aren’t delayed unnecessarily.

- ❑ Be impartial, courteous and responsive to the protester, regardless of how angry or weak the claim.
- ❑ Explain the standard of review and procedural requirements (in as simple language as possible). E.g., State employees are not required to always make the best possible decision, only a reasonable one. Try to explain the policies behind statutes and administrative rules, particularly if there seems to be little “harm” in ignoring them for the matter at issue. Don’t be defensive about adverse decisions. It should be a learning experience for all involved.
- ❑ Ensure the procurement file is properly documented and in order prior to posting the intent to award.
- ❑ Make sure the specifications and requirements are sound, and that the evaluation team understands and properly follows the evaluation methodology.
- ❑ Structure your response to the statement of protest to facilitate the hearing officer’s review.
- ❑ Have a discussion between the buying unit or department and legal staff once the statement of protest is received. Each protest point is vetted, and analyzed against the solicitation requirement and how the proposal or bid was evaluated. The exercise assists in preparing the state’s response to the protest, ensures that there were no errors in the evaluation, and prepares the staff for possible testimony.
- ❑ Always allow opportunity for discussion. Nine times out of ten, matters go away after sharing solicitation responses, etc.
- ❑ Be direct. Be succinct. Be factual. Don’t respond to allegations or claims that are immaterial to the bid process so that you are not sidetracked and address them for closure only as being immaterial to the bid process.
- ❑ A flexible, common-sense-based approach best serves both the state’s and vendor’s interests of promptly resolving issues while they are still manageable administratively.

❏ My advice to others is to follow your procedures and code requirements to the letter, and seek advice from your legal counsel if you have any questions. We have an administrative position designated to facilitate the protest process as well as the Complaint to Vendor (CTV) process along with other duties. The procedure is not posted anywhere, but it is one of our internal policies (PUR-007 Communications and Protest Procedure). When a vendor registers a complaint stating they had a concern about our bidding process, or questioning another bidder's qualifications, or any type of formal complaint, we treat it as a protest, and the procedure begins. Upon receipt of a protest letter or email, within 1 to 3 business days an acknowledgement of the protest is sent to the vendor stating we will respond in the coming days. Our procedure states we will address the points of the protest within 10 working days or sooner. We have four levels of protest. The first two levels do not involve legal counsel, and the last two involve them. If a protest is filed by a law firm representing a vendor, our legal counsel gets involved. Typically a protest is filed because a vendor does not understand our bidding process or evaluation process, and once that is explained, they understand. They may not like or agree to our explanation, but as long as we are following our procedure or State Code, typically a vendor will say they understand. Legal advises us sometimes if our explanations are sufficient to do battle in court if the protest would go to litigation.

❏ Ask your legal counsel to provide a summary.

❏ A few lessons from Oregon:

- Oregon has strong "sunshine" laws that make everything related to a procurement public.
- We resolve protests at the lowest level - usually at the buyer or buyer manager desk. If a protest gets to my desk (CPO), I will usually meet with the protestor to get their "side of the story". We find that sitting down with the offeror often results in an amicable result.
- We provide a timely written response to protests.
- If needed, we get legal counsel to help.
- We are not hesitant to change our course of action or admit we could do something better...and then do something about it so that we are fair to everyone involved. "Open and fair competition" is our mantra.
- We have cultivated a strong tradition of the Governor's Office staying out of procurement processes!

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### Disclaimer

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## Appendices

APPENDIX I. Bid Protest Policies and Procedures. Definitions and Timing (2013 NASPO Bid Protest Survey)		
State Definition for Bid Protests	Who Hears the Protest and Timing for Filing	Timing for Response and Decision Process
<b>ALABAMA</b>		
The Division of Purchasing shall provide a notice of intent to award of all contracts let by competitive bid by electronic posting to the Division of Purchasing website. Any bidder adversely affected by an intent to award a contract let by competitive bid shall file with the Director of Purchasing a notice of protest within five (5) calendar days after the notice of intent to award is electronically posted. The notice of protest may be filed by mail, by hand delivery, by email or by facsimile.	The notice of protest must be filed with the Director of Purchasing by 5:00 PM, Central Time, on the fifth calendar day after the notice of intent to award is electronically posted. A formal written protest shall be filed within seven (7) days, excluding Saturday, Sunday, and State holidays, after the notice of protest is filed. The formal written protest may be filed by email in PDF format or by mail or hand delivery. The formal written protest must be filed with the Director Purchasing by 5:00 PM, Central Time, on the seventh day after filing the notice of protest. The bidder or its legal representative must sign the formal written protest or it will not be accepted. Failure to file either the notice of protest or the formal written protest within the time limits prescribed herein shall constitute a waiver of any protest of the award of contract. The formal written protest shall state with particularity the facts and law upon which the protest is based.	Within 30 calendar days of receipt of the timely filed, formal written protest, the Director of Purchasing shall issue a written decision with respect to the protest. Should the decision by the Director of Purchasing be adverse to the bidder, the bidder may seek relief in accordance with section 41-16-31 of the Code of Alabama.
<b>ALASKA</b>		
Alaska Stat. Sec. 36.30.560. An "interested party" (an actual or prospective bidder or offeror whose economic interest might be affected substantially and directly by the issuance of a contract solicitation, the award of a contract, or the failure to award a contract) may protest the award of a contract, the proposed award of a contract, or a solicitation for supplies, services, professional services, or construction by an agency.	Alaska Stat Sec. 36.30.565 (a) A protest based on alleged improprieties or ambiguities in a solicitation must be filed at least 10 days before the due date of the bid or proposal, unless a later protest due date is specifically allowed in the solicitation. If a solicitation is made with a shortened public notice period and the protest is based on alleged improprieties or ambiguities in the solicitation, the protest must be filed before the due date of the bid or proposal. Notwithstanding the other provisions in this subsection, the protest of an invitation to bid or a request for proposals in which a pre-bid or pre-proposal conference is held within 12 days of the due date must be filed before the due date of the bid or proposal if the protest is based on alleged improprieties or ambiguities in the solicitation. A protest based upon alleged improprieties in an award of a contract or a proposed award of a contract must be filed within 10 days after a notice of intent to award the contract is issued by the procurement officer. (b) If the protester shows good cause, the procurement officer of the contracting agency may consider a filed protest that is not timely.	Alaska Stat. Sec. 36.30.580. Decision by the procurement officer. (a) The procurement officer of the contracting agency shall issue a written decision containing the basis of the decision within 15 days after a protest has been filed. A copy of the decision shall be furnished to the protester by certified mail or other method that provides evidence of receipt. (b) The time for a decision may be extended up to 30 days for good cause by the commissioner of administration, or, for protests involving construction or procurements for the state equipment fleet, the commissioner of transportation and public facilities. If an extension is granted, the procurement officer shall notify the protester in writing of the date that the decision is due. (c) If a decision is not made by the date it is due, the protester may proceed as if the procurement officer had issued a decision adverse to the protester.
<b>ARIZONA</b>		
Any interested party may file a protest. A timely action with a legal/factual basis.	A Protest must be filed with 10 days of the action to the Procurement Officer.	Protests are first addressed by the Procurement Officer, within 14 days. The Procurement Officer's Decision can be appealed to the Director of Administration, within 30 days of the Decision. 14 days for protests. 21 days for appeals to prepare the Agency Report

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<b>ARKANSAS</b>		
Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation of a contract may protest by presenting a written notice at least seventy-two (72) hours before the filing deadline for the solicitation response to the State Procurement Director or the head of a procurement agency.  Any actual bidder, offeror, or contractor who is aggrieved in connection with the award of a contract may protest to the State Procurement Director or Head of a Procurement Agency (higher education).	The State Procurement Director or Head of a Procurement Agency (for higher education) has the authority to consider it. The protest shall be submitted in writing within fourteen (14) calendar days after the aggrieved person knows or should have known of the facts giving rise to the grievance.	There is no set time on the response from the State Director or Head of Procurement Agency. But once the decision is made, a written decision must be furnished to the protestor within five (5) days. That decision is final and conclusive. There currently is not an appeal review; the only recourse is legal/court action.
<b>CALIFORNIA (Traditional Bid Protest Process)</b>		
A protest is a challenge brought by a bidder during the competitive solicitation process asserting that the solicitation requirements are restrictive or unclear ("protest of requirements" applicable to Information Technology Acquisitions, only), or that the protestant should have been selected for award ("protest of award").  A protest may be filed by any "participating" bidder.	Unless approved for the Alternative Bid Protest Process, protests for Information Technology acquisitions or commodities are heard and decided by the Victim Compensation and Government Claims Board. There is no mandatory deadline for deciding these (Traditional) protests.  Protests for non-information technology services are heard and decided by the Department of General Services, Office of Administrative Hearings; there is no mandatory deadline for deciding these decisions.	The State has ten calendar days to respond to protests heard by the VCGCB under the Traditional Bid Protest process.  For non-information technology service protests, the Hearing Officer sets the time period for responding to the statement of protest.
<b>CALIFORNIA (Alternative Bid Protest Process)</b>		
A protest is a challenge brought by a bidder during the competitive solicitation process asserting that the solicitation requirements are restrictive or unclear ("protest of requirements" applicable to Information Technology Acquisitions, only), or that the protestant should have been selected for award ("protest of award"). A protest may be filed by any "participating" bidder.	Protests approved for the Alternative Bid Protest process are heard and decided by the Department of General Services, Office of Administrative Hearings.	The State has seven calendar days to respond to protests heard by the OAH under the Alternative Bid Protest process.  By statute, a decision must be rendered within 45 days from the date the protest is filed.
<b>COLORADO</b>		
CRS 24-109-102 "Protested solicitations and awards" states that any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the head of a purchasing agency or a designee.	The head of a purchasing agency or a designee shall have the authority to settle and resolve a protest.  The protest shall be filed in writing within seven working days after such aggrieved person knows or should have known of the facts giving rise thereto.	A written decision regarding the protest shall be rendered within seven working days after the protest is filed.
<b>CONNECTICUT</b>		
No protest procedure established by statute.	If there's a concern about a contract award, the vendor is asked to discuss with the Contract Specialist and Team Leader (debrief), if still dissatisfied, they can elevate to Procurement Director. If dissatisfied, from there they can entertain legal action.	

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<b>DELAWARE</b>		
<p>A vendor may file a written protest challenging a compliance with applicable procurement procedures subject to the vendor's compliance with the following provisions. Any such written protest will be resolved in accordance with the following provisions.</p> <p>At a minimum, the written protest must include the following: a. The name and address of the protestor; b. Appropriate identification of the solicitation (solicitation number); c. Specific objection or challenge with supporting evidence. Note: Prior contractual relationships alone are not a basis for a protest; and d. The desired remedy.</p>	<p>The vendor must observe the following deadlines when filing a protest:</p> <p><u>Protest Filing Deadline</u>            Challenge to Competitive Solicitation Process - Two (2) business days prior to the closing date and time of the solicitation, as published on bids. delaware.gov</p> <p>Challenge to an intended or Actual Contract Award - In the event GSS posts an award, the protest must be filed within ten (10) calendar days of the intent to award a contract. In the event GSS does not post an award, the protest must be filed within ten (10) calendar days of the date of the date the notice of award is issued.</p>	<p>The State, at its discretion, may deem issues not raised in the initial protest as waived with prejudice by the protesting vendor.</p> <p><b>Protest Resolution</b> The Director of Government Support Services shall review and issue a written decision on the protest as expeditiously as possible after receiving all relevant requested information.</p> <p>Available remedies for sustained protests are as follows: a. If a protest is sustained prior to the closing date and time of the solicitation, available remedies may include, but are not limited to, the following: i. Modification of the solicitation document, including but not limited to specifications and terms and conditions; ii. Extension of the solicitation closing date and time (as appropriate); and iii. Cancellation of the solicitation. b. If a protest of the intended/ actual contract award is sustained, available remedies may include, but are not limited to, the following: i. Revision or cancellation of the award, ii. Re-evaluation and re-award or re-solicitation with appropriate changes to the new solicitation. c. The decisions made the Director of Government Support Services are final and permanent regardless of the protest being accepted or denied. However, the objecting party may appeal the decision by initiating legal proceedings with a Court in Delaware jurisdiction.</p>
<b>DISTRICT OF COLUMBIA</b>		
<p>Protest means a written objection by an aggrieved party to a solicitation for bids or proposals or a written objection to a proposed or actual contract award.</p> <p>Any aggrieved party can file a protest. Aggrieved person means an actual or prospective bidder or offeror (i) whose direct economic interest would be affected by the award of a contract or by the failure to award a contract, or (ii) who is aggrieved in connection with the solicitation of a contract.</p>	<p>The District's Contract Appeals Board considers protests.</p> <p>A protest based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed with the Board prior to bid opening or the time set for receipt of initial proposals.</p> <p>In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into this solicitation, must be protested not later than the next closing time for receipt of proposals following the incorporation.</p> <p>Protests other than those covered in paragraph (a) shall be filed with the Board not later than ten (10) business days after the basis of the protest is known or should have been known, whichever is earlier.</p>	<p>Twenty Business Days</p>



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<b>FLORIDA</b>		
<p>There are two types of protest in Florida: a specifications challenge and a challenge to the intended award.</p> <p>A specification challenge can occur if the solicitation or specifications are so vague that a bidder cannot formulate an accurate response or the specifications are impossible to comply with.</p> <p>A challenge to the intended award occurs when the protestor can demonstrate that the state or agency has acted contrary to the agency's governing statutes, rules or the solicitation. See Section 120.57(3)(b), Florida Statutes</p>	<p>Per Section 120.57(3)(b), F.S., "Any person who is adversely affected by the agency decision or intended decision shall file with the agency a notice of protest in writing within 72 hours after the posting of the notice of decision or intended decision. With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking bids, proposals, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in writing within 72 hours after the posting of the solicitation. The formal written protest shall be filed within 10 days after the date the notice of protest is filed. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver."</p>	<p>The department's initial response is triggered by a notice to protest received within 72 hours of posting the solicitation or the intended award. After receipt of the written protest a settlement meetings between the protester and the department must occur within seven days of the department's receipt of the written protest. See Section 120.57(3)(d)1., Florida Statutes.</p> <p>If settlement is not reached, the department will transfer the matter to the Division of Administrative Hearings (DOAH). Once the matter is assigned to a hearing officer or administrative law judge a hearing will convene within 30 days unless the parties elect to waive the time frame. See Section 120.57(3)(e), Florida Statutes. The parties file a proposed recommended order 10 days after receipt of the transcript. The administrative law judge (ALJ) renders a recommended order to the department, 30 days thereafter. The department has 30 days to render a final order after receipt of the recommended order from the ALJ.</p>
<b>GEORGIA</b>		
<p>Definitions and requirements can be found in the Georgia Procurement Manual 6.5.1. available at:  <a href="http://pur.doas.ga.gov/gpm/MyWebHelp/GPM_Main_File.htm">http://pur.doas.ga.gov/gpm/MyWebHelp/GPM_Main_File.htm</a></p> <p>Types of protests are:            Challenge to Competitive Solicitation Process, Challenge to Sole-Source Notice, Challenge to Results of RFQC, and Challenge to an Intended or Actual Contract Award</p>	<p>Vendors Deputy Commissioner for Procurement two business days prior to closing the solicitation for challenge to competitive solicitation process, ten calendar days after the Notice of Intent to Award or Notice of Award for a Challenge to an Intended or Actual Contract Award.</p>	<p>No required response time. The solicitation is on hold until the decision is granted.</p> <p>Protestor may appeal to Commissioner within 3 days after protest decision by Deputy Commissioner.</p>
<b>HAWAII</b>		
<p>Hawaii Revised Statutes (HRS) chapter 103D, Part VII, Legal and Contractual Remedies Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the chief procurement officer or a designee as specified in the solicitation.</p>	<p>The chief procurement officer or a designee as specified in the solicitation.</p> <p>Except as provided in sections 103D-303 and 103D-304, a protest shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest of an award or proposed award shall in any event be submitted in writing within five working days after the posting of award of the contract under section 103D-302 or 103D-303, if no request for debriefing has been made, as applicable; provided further that no protest based upon the content of the solicitation shall be considered unless it is submitted in writing prior to the date set for the receipt of offers.</p>	<p>(b) The chief procurement officer or a designee, prior to the commencement of an administrative proceeding under section 103D-709 or an action in court pursuant to section 103D-710, may settle and resolve a protest concerning the solicitation or award of a contract. This authority shall be exercised in accordance with rules adopted by the policy board. (c) If the protest is not resolved by mutual agreement, the chief procurement officer or a designee shall promptly issue a decision in writing to uphold or deny the protest.</p>

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<b>IDAHO</b>		
<p>According to Idaho Code TITLE 67 Chapter 5733 (1) (a)-(e):</p> <p>(a) any vendor, qualified and able to sell or supply the items to be acquired, may challenge the specifications and shall specifically state the exact nature of his challenge.</p> <p>(b) any bidder whose bid was found nonresponsive may appeal such decision to the director of the department of administration. A nonresponsive bid, within the meaning of this chapter, is a bid which does not comply with the bid invitation and specifications and shall not apply to a vendor whose bid is considered but who is determined not to be the lowest responsible bidder as defined in this chapter.</p> <p>(c) A vendor whose bid is considered may protest the award.</p> <p>(d) In the case of a sole source procurement, any vendor, able to sell or supply the item(s) to be acquired, may challenge the sole source procurement.</p> <p>(e) The administrator of the division of purchasing may, on his own initiative, file a complaint with the director for a hearing before a determinations officer.</p>	<p>Idaho Code TITLE 67 Chapter 5733:</p> <p>(1) (a) There shall be, beginning with the day of receipt of notice, a period of not more than ten (10) working days in which any vendor, qualified and able to sell or supply the items to be acquired, may notify in writing the administrator of the division of purchasing of his intention to challenge the specifications and shall specifically state the exact nature of his challenge. The specific challenge shall describe the location of the challenged portion or clause in the specification document, unless the challenge concerns an omission, explain why any provision should be struck, added or altered, and contain suggested corrections.</p> <p>(1) (b) There shall be, beginning with the day following receipt of notice of rejection, a period of five (5) working days in which a bidder whose bid was found nonresponsive may appeal such decision to the director of the department of administration.</p> <p>(1) (c) A vendor whose bid is considered may, within five (5) working days following receipt of notice that he is not the lowest responsible bidder, apply to the director of the department of administration for appointment of a determinations officer. The application shall set forth in specific terms the reasons why the administrator's decision is thought to be erroneous.</p> <p>(1) (d) In the case of a sole source procurement, there shall be a period of not more than five (5) working days from the last date of public notice in which any vendor, able to sell or supply the item(s) to be acquired, may notify the administrator of the division of purchasing, in writing, of his intention to challenge the sole source procurement and briefly explain the nature of the challenge.</p> <p>(1) (e) The administrator of the division of purchasing may, on his own initiative, file a complaint with the director for a hearing before a determinations officer.</p>	<p>Typically 3 days.</p> <p>Idaho Code TITLE 67 Chapter 5733:</p> <p>(1) (a) Upon receipt of the specification challenge, the administrator of the division of purchasing shall either deny the challenge, and such denial shall be considered the final agency decision, or he shall present the matter to the director of the department of administration for appointment of a determinations officer. If the director of the department of administration appoints a determinations officer, then all vendors, who are invited to bid on the property sought to be acquired, shall be notified of the appeal and the appointment of determinations officer and may indicate in writing their agreement or disagreement with the challenge within five (5) days. The notice to the vendors may be electronic. Any vendor may note his agreement or disagreement with the challenge. The determinations officer may, on his own motion, refer the challenge portion and any related portions of the challenge to the author of the specification to be rewritten with the advice and comments of the vendors capable of supplying the property; rewrite the specification himself and/or reject all or any part of any challenge. If specifications are to be rewritten, the matter shall be continued until the determinations officer makes a final determination of the acceptability of the revised specifications. The administrator shall reset the bid opening no later than fifteen (15) days after final determination of challenges or the amendment of the specifications. If the administrator denies the challenge, then the bid opening date shall not be reset. The final decision of the determinations officer or administrator on the challenge to specifications shall not be considered a contested case within the meaning of the administrative procedure act; provided that a vendor disagreeing with specifications may include such disagreement as a reason for asking for appointment of a determinations officer pursuant to section 67-5733(1)(c), Idaho Code.</p>

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		<p>(1) (b) Non-responsive bid application. The director shall: (i) Deny the application; or (ii) Appoint a determinations officer to review the record and submit a recommended order to the director to affirm or reverse the administrator's decision of bid nonresponsiveness. The director shall, upon receipt of a written recommendation from the determinations officer, sustain, modify or reverse the administrator's nonresponsive bid decision. An appeal conducted under the provisions of this subsection shall not be considered a contested case and shall not be subject to judicial review under the provisions of chapter 52, title 67, Idaho Code.</p> <p>(1) (c) Upon receipt of the application, the director shall within three (3) working days: (i) Deny the application, and such denial shall be considered the final agency decision; or (ii) Appoint a determinations officer to review the record to determine whether the administrator's selection of the lowest responsible bidder is correct; or (iii) Appoint a determinations officer with authority to conduct a contested case hearing in accordance with the provisions of chapter 52, title 67, Idaho Code. A determinations officer appointed pursuant to section 67-5733(1)(c)(ii), Idaho Code, shall inform the director by written recommendation whether, in his opinion, the administrator's selection of the lowest responsible bidder is correct. The determinations officer in making this recommendation may rely on the documents of record, statements of employees of the state of Idaho participating in any phase of the selection process, and statements of any vendor submitting a bid. A contested case hearing shall not be allowed and the determinations officer shall not be required to solicit statements from any person. Upon receipt of the recommendation from the determinations officer, the director shall sustain, modify or reverse the decision of the administrator on the selection of the lowest responsible bidder or the director may appoint a determinations officer pursuant to section 67-5733(1)(c)(iii), Idaho Code. A determinations officer appointed pursuant to section 67-5733(1)(c)(iii), Idaho Code, shall conduct a contested case hearing and upon conclusion of the hearing shall prepare findings of fact, conclusions of law and a recommended order for the director of the department of administration.</p>



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		<p>Upon receipt of the findings of fact, conclusions of law and recommended order, the director shall enter a final order sustaining, modifying or reversing the decision of the administrator on the selection of the lowest responsible bidder.</p> <p>(1) (d) Upon receipt of the challenge, the director shall either: (i) Deny the application; or (ii) Appoint a determinations officer to review the record and submit a recommended order to the director to affirm or reverse the administrator's sole source determination. The director shall, upon receipt of a written recommendation from the determinations officer, sustain, modify or reverse the administrator's sole source determination. An appeal conducted under the provisions of this subsection shall not be considered a contested case and shall not be subject to judicial review under the provisions of chapter 52, title 67, Idaho Code.</p> <p>(1) (e) The director shall appoint a determinations officer who shall make written recommendations to the director and the director shall render whatever decision is necessary to resolve the complaint.</p> <p>(2) The director of the department of administration is hereby authorized and directed to appoint a determinations officer whenever one is required by this chapter. The officer shall meet and render whatever determination is called for.</p> <p>When a complaint is filed pursuant to section 67-5733(1)(b), Idaho Code, no bid may be awarded until the final decision is rendered by the director of the department of administration; provided that in all other cases where a determinations officer is appointed by the director, the director shall have the power to allow the acquisition contract to be awarded to the successful bidder prior to or after the decision of the determinations officer if he determines such award to be in the best interest of the state.</p> <p>Any determinations officer appointed pursuant to this section shall exist only for the duration of unresolved complaints on an acquisition and shall be dismissed upon resolution of all such complaints. The determinations officer shall be guided in his determination by the best economic interests of the state for both the near future and more extended periods of time.</p>

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		<p>In addition to the powers conferred on the determinations officer, the director of the department of administration may: impose the penalty prescribed by section 67-5734(3), Idaho Code; enjoin any activity which violates this chapter; direct that bids be rejected, or sustained; direct that specifications be rejected, sustained or modified; and direct further legal action.</p> <p>(3) Challenges or appeals conducted pursuant to section 67-5733(1)(a), (1)(b), (1)(c)(i) or (1)(c)(ii), Idaho Code, shall not be considered to be a contested case as that term is defined in the administrative procedure act. An appeal conducted pursuant to section 67-5733(1)(c)(iii), Idaho Code, shall be conducted as a contested case according to the provisions of chapter 52, title 67, Idaho Code.</p>
<b>ILLINOIS</b>		
No Response		
<b>INDIANA</b>		
After the State makes a contract award, a bidder or respondent may submit a written letter of protest regarding the procurement methods and/or procedures used during the procurement process. The protest should indicate the specific process that the vendor disputes and the solicitation number.	<p>Protest must be received by the State not more than five (5) business days (as defined by the State work calendar) after the contract award date.</p> <p>The Director of Vendor Management/Protest Coordinator reviews them and responds to the protest.</p>	We acknowledge the protest within 5 business days; then give a formal response typically within 30 days. However, no timeframe is set in policy.
<b>IOWA</b>		
Vendor appeals. 105.20(1) Filing an appeal. Any vendor that filed a timely bid or proposal and that is aggrieved by an award of the department may appeal the decision by filing a written notice of appeal before the Director, Department of Administrative Services, within five calendar Days of the date of award, exclusive of Saturdays, Sundays, and legal state holidays.	Iowa's procedure is available at: <a href="https://www.legis.iowa.gov/DOCS/ACO/IAC/LINC/2-6-2013.Rule.11.105.20.pdf">https://www.legis.iowa.gov/DOCS/ACO/IAC/LINC/2-6-2013.Rule.11.105.20.pdf</a>	Iowa's procedure is available at: <a href="https://www.legis.iowa.gov/DOCS/ACO/IAC/LINC/2-6-2013.Rule.11.105.20.pdf">https://www.legis.iowa.gov/DOCS/ACO/IAC/LINC/2-6-2013.Rule.11.105.20.pdf</a>
<b>KANSAS</b>		
No Response		
<b>KENTUCKY</b>		
KRS 45A.285 Any actual or prospective bidder or offeror in connection with the solicitation or selection for award of a contract may file a protest with the Secretary of Finance and Administration Cabinet.	KRS 45A.285 (1) The Secretary of the Finance and Administration Cabinet, or his designee, shall have authority to determine protests and other controversies of actual or prospective bidders or offerors in connection with the solicitation or selection for award of a contract. (2) A protest or notice of other controversy must be filed promptly and in any event within (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. (3) The Secretary of the Finance and Administration Cabinet shall promptly issue a decision in writing.	<p>There is no time limit for responding to protests.</p> <p>KRS 45A.285 states only that the Secretary of the Finance and Administration Cabinet shall promptly issue a decision in writing.</p>

**APPENDIX I. Bid Protest Policies and Procedures. Definitions and Timing (2013 NASPO Bid Protest Survey)**

State Definition for Bid Protests	Who Hears the Protest and Timing for Filing	Timing for Response and Decision Process
<b>LOUISIANA</b>		
Any person who is aggrieved in connection with the solicitation or award of a contract shall protest to the chief procurement officer (CPO).  Louisiana Revised Statutes 39:1671 and Louisiana Administrative Code 34:1.3101	CPO hears protests.  Protests with respect to a solicitation shall be submitted in writing at least 2 days prior to the opening of bids on all matters except housing of state agencies, their personnel, operations, equipment, or activities pursuant to R.S. 39:1643 for which such protest shall be submitted at least ten days prior to the opening of bids. Protests with respect to the award of a contract shall be submitted in writing within fourteen days after contract award.	A decision will be issued within 14 days.
<b>MAINE</b>		
Persons aggrieved by an agency contract award decision under Title 5 section 1825E may request a hearing of appeal.	Aggrieved persons have to file a protest in writing with the Director of the Bureau of General Services within 15 days of the notification of contract award.	The Director of the Bureau of General Services shall notify the petitioner in writing of the director's decision regarding the request for hearing within 15 days of receipt of the request. If a request for hearing is granted, notification must be made at least 10 days before the hearing date.
<b>MARYLAND</b>		
<b>No Response</b>		
<b>MASSACHUSETTS</b>		
No protests for solicitations issued for goods and services.	N/A	N/A
<b>MICHIGAN</b>		
Bidder Protests of DTMB Purchasing Operations Solicitations:  <u>Protest Instructions:</u> A. Only a bidder on a given solicitation may protest an award decision. A bidder is considered a vendor who has submitted a formal offer which meets all submission requirements and is therefore considered "responsive".  B. A "No Bid" in the context of a protest does not constitute a formal offer.  C. Purchasing Operations will not consider protests filed by manufacturers or suppliers selling through distributors, or businesses listed as subcontractors in a vendor's proposal.  <u>Specification Protests:</u> A vendor should raise concerns about RFP specifications during the RFP Question & Answer period. If any vendor fails to protest a specification issue to the State with regard to proprietary or deficient specifications, prior to the bid deadline, subsequent protests regarding specifications may be held to be without merit. In fairness to bidders who meet specifications and to prevent delays in procurement,	To initiate a protest of an award recommendation a business must follow these steps: A. By the date and time identified in the Notice of Recommendation (NOR) issued in Bid4Michigan, the bidder wishing to protest must submit a written protest to the Chief Procurement Officer, Department of Technology Management & Budget (DTMB), 2nd Floor Mason Building, P.O. Box 30026, Lansing, MI 48909. If the published protest due date falls on a Saturday, Sunday, or State holiday, the protest must be submitted by the posted time on the next State business day to be considered. B. The written protest should include the RFP number and should clearly state the facts believed to constitute an error in the award recommendation, and the desired remedy. Only the information provided within the protest period will be considered in arriving at a decision. The Chief Procurement Officer is not required to take into consideration any material filed by any party after the protest deadline.	Vary based on complexity. C. The Chief Procurement Officer or their designee will provide a written response to the protesting party after investigating the matter or, if more information is needed, will schedule an informal meeting before issuing a decision. This decision is final.  D. Until issuing a final decision on a timely protest, Purchasing Operations will not finalize an award of a contract or purchase order pursuant to a disputed solicitation. However, if there is a threat to public health, safety or welfare, or danger of immediate and substantial harm to state property from delay in making an award, the Chief Procurement Officer may proceed with an award and document the justification for such action.



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State Definition for Bid Protests	Who Hears the Protest and Timing for Filing	Timing for Response and Decision Process
<p>Purchasing Operations will not withdraw a recommendation to award or re-evaluate proposals when a protest maintains that the RFP specifications were faulty or that a proposal exceeding specifications provided a better value than a lower proposal meeting specifications; unless the State determines that this action would be in its best interest.</p> <p><u>Protests without Standing:</u> To maintain the integrity of the procurement process and to ensure that state agencies receive procurements without undue delay, protests requesting waiver of the following omissions and requirements cannot be granted.</p> <p>A. Failure of a bidder to properly follow sealed proposal submission instructions.</p> <p>B. Failure of a bidder to submit the proposal to Purchasing Operations by the due date and time and in the format required (Online vs. Hardcopy).</p> <p>C. Failure of a bidder to provide samples, descriptive literature, or other required documents by the date and time specified.</p> <p>D. Failure of a bidder to provide a required proposal deposit or performance bond by the date and time specified.</p> <p>E. Failure of a bidder to submit a protest within the time stipulated in the Notice of Recommendation or as determined by the Chief Procurement Officer. However, if there are no responsive proposals, these requirements may be waived at the discretion of the Chief Procurement Officer.</p> <p>Bidder Protests of Agency Delegated Solicitations: Subject to the governance of the DTMB Chief Procurement Officer and DTMB policy, Agencies are authorized to review and respond to protests for solicitations done by the Agency within their standard delegation, special delegation letter or the Purchasing Alliance Program (PAL).</p> <p>Vendors should send protest letters to the respective Agencies Purchasing Director or designee, identified in the Notification of Recommendation letter issued on Bid4Michigan, who will conduct the protest review and draft the response. Agencies should forward a copy of all protests to dmb-purchknowledge@michigan.gov upon receipt. The draft responses should also be sent for review at least two (2) business days prior to the mailing of the response to the protesting party.</p>		

**APPENDIX I. Bid Protest Policies and Procedures. Definitions and Timing (2013 NASPO Bid Protest Survey)**

State Definition for Bid Protests	Who Hears the Protest and Timing for Filing	Timing for Response and Decision Process
<b>MINNESOTA</b>		
No formal definition in statute or rule. Unless the solicitation is more prescriptive, any vendor who believes they have been adversely affected can file.	Protests are generally heard by the Chief Procurement Officer or his designee. Any limits on timing deadlines for filing or responding are stated in the solicitation document.	There is no prescribed time limit in statute or rule. The solicitation document will sometimes outline a prescribe time limit (e.g. 14 calendar days).
<b>MISSISSIPPI</b>		
A protest occurs when any actual or prospective bidder, offerer, or contractor feels they are aggrieved in connection with a solicitation or award. They can be filed by any actual or prospective bidder, offerer, or contractor. Mississippi Procurement Manual available at: <a href="http://www.dfa.state.ms.us/Purchasing/ProcurementManual/ProcurementManual.pdf">http://www.dfa.state.ms.us/Purchasing/ProcurementManual/ProcurementManual.pdf</a>	Protests are heard by the Public Procurement Review Board (PPRB). Protests must be submitted in writing by the aggrieved party within 7 days of the person knowing the facts giving rise thereto.	Once a protest is known by the PPRB they schedule a hearing as quickly as possible.
<b>MISSOURI</b>		
Definition of protest resides in rule available at: <a href="http://www.sos.mo.gov/adrules/csr/current/1csr/1c40-1.pdf">http://www.sos.mo.gov/adrules/csr/current/1csr/1c40-1.pdf</a>		No timing requirement
<b>MONTANA</b>		
<b>No Response</b>		
<b>NEBRASKA</b>		
<b>No Response</b>		
<b>NEVADA</b>		
The details can be found below in Nevada Revised Statute (NRS) 333.370: <u><a href="#">Appeal by person making unsuccessful bid or proposal</a></u> .  1. A person who makes an unsuccessful bid or proposal may file a notice of appeal with the Purchasing Division and with the Hearings Division of the Department of Administration.	NRS 333.370 1. A person who makes an unsuccessful bid or proposal may file a notice of appeal with the Purchasing Division and with the Hearings Division of the Department of Administration. within 10 days after: (a) The date of award as entered on the bid record; and (b) The notice of award has been posted in at least three public buildings, including the location of the using agency. The notice of appeal must include a written statement of the issues to be addressed on appeal.  2. A person filing a notice of appeal must post a bond with good and solvent surety authorized to do business in this state or submit other security, in a form approved by the Administrator by regulation, to the Purchasing Division, who shall hold the bond or other security until a determination is made on the appeal. Except as otherwise provided in subsection 3, a bond posted or other security submitted with a notice of appeal must be in an amount equal to 25 percent of the total value of the successful bid submitted.  3. If the total value of the successful bid cannot be determined because the total requirements for the contract are estimated as of the date of award, a bond posted or other security submitted with a notice of appeal must be in an amount equal to 25 percent of the estimated total value of the contract. Upon request, the Administrator shall provide: (a) The estimated total value of the contract; or (b) The method for determining the estimated total value of the contract, based on records of past experience and estimates of anticipated requirements furnished by the using agency.	NRS 333.370 4. Within 20 days after receipt of the notice of appeal, a hearing officer of the Hearings Division of the Department of Administration shall hold a contested hearing on the appeal in substantial compliance with the provisions of NRS 233B.121 to 233B.1235, inclusive, 233B.125 and 233B.126. The successful bidder must be given notice of the hearing in the same manner as the person who filed the notice of appeal. The successful bidder may participate in the hearing.  5. The hearing officer may cancel the award for lack of compliance with the provisions of this chapter. A cancellation of the award requires readvertising for bids and a new award in accordance with the provisions of this chapter.  6. A notice of appeal filed in accordance with the provisions of this section operates as a stay of action in relation to any contract until a determination is made by the hearing officer on the appeal.  7. A person who makes an unsuccessful bid or proposal may not seek any type of judicial intervention until the hearing officer has made a determination on the appeal.

APPENDIX I. Bid Protest Policies and Procedures. Definitions and Timing (2013 NASPO Bid Protest Survey)		
State Definition for Bid Protests	Who Hears the Protest and Timing for Filing	Timing for Response and Decision Process
		<p>8. The Administrator may make as many open market purchases of the commodities or services as are urgently needed to meet the requirements of the Purchasing Division or the using agency until a determination is made on the appeal. With the approval of the Administrator, the using agency may make such purchases for the agency.</p> <p>9. Neither the State of Nevada, nor any agency, contractor, department, division, employee or officer of the State is liable for any costs, expenses, attorney's fees, loss of income or other damages sustained by a person who makes an unsuccessful bid or proposal, whether or not the person files a notice of appeal pursuant to this section.</p> <p>10. If the appeal is upheld and the award is cancelled, the bond posted or other security submitted with the notice of appeal must be returned to the person who posted the bond or submitted the security. If the appeal is rejected and the award is upheld, a claim may be made against the bond or other security by the Purchasing Division and the using agency to the Hearings Division of the Department of Administration in an amount equal to the expenses incurred and other monetary losses suffered by the Purchasing Division and the using agency because of the unsuccessful appeal. The hearing officer shall hold a hearing on the claim in the same manner as prescribed in subsection 4. Any money not awarded by the hearing officer must be returned to the person who posted the bond or submitted the security. [26:333:1951]—(NRS A 1963, 1058; 1971, 14; 1985, 45; 1991, 623; 1995, 378; 1997, 487)</p>
<b>NEW HAMPSHIRE</b>		
The State of NH Purchasing Rules (ADM 600), have specific guidelines for award protests. It is a 4 step process, and very detailed. Any bidder can file.	Protests are first heard by the Purchasing Agent, then the Administrator, an Informal Hearing Officer, and then the State Supreme Court. The protest has to be filed within 5 days after the date of Award, and the time period for each process differs.	
<b>NEW JERSEY</b>		
A protest can be lodged against either the specifications of an RFP or against the award of contract against a solicitation. All citizens can file protests.	Our Division has 2 full-time hearing officers, who will write-up a decision, which is then signed by the Director.	New Jersey has no set time limit for protests (some are a day/week, others are several months)
<b>NEW MEXICO</b>		
<b>No Response</b>		

**APPENDIX I. Bid Protest Policies and Procedures. Definitions and Timing (2013 NASPO Bid Protest Survey)**

State Definition for Bid Protests	Who Hears the Protest and Timing for Filing	Timing for Response and Decision Process
<b>NEW YORK</b>		
<p>Dispute means a written objection by an interested party to any of the following:</p> <ul style="list-style-type: none"> <li>a. A solicitation or other request by PSG for offers for a contract for the procurement of commodities or services.</li> <li>b. The cancellation of the solicitation or other request by PSG.</li> <li>c. An award or proposed award of the contract by PSG.</li> <li>d. A termination or cancellation of an award of the contract by PSG.</li> <li>e. Changes in the Scope of the contract by the Commissioner of OGS.</li> <li>f. Determination of "materiality" in an instance of nonperformance or contractual breach.</li> <li>g. An equitable adjustment in the Contract terms and/or pricing made by the Commissioner during a force majeure event. - Interested party for the purpose of filing a dispute relating to a solicitation, as used in this section, means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. - Interested party for the purpose of filing a dispute relating to a contract award, as used in this section, means an actual bidder or offeror for the subject contract.</li> <li>- Interested party for the purpose of filing a dispute relating to the administration of the contract, as used in this section, means the awarded Contractor for the subject contract.</li> </ul>	<p>OGS Procurement hears disputes (protests) for our bids and contracts.</p> <p>Other agencies deal with their own protests.</p> <p>If an agency does not have a protest policy they must follow the NYS Office of State Comptroller procedures located at: <a href="http://www.osc.state.ny.us/agencies/gbull/attachments/contractawardprotestprocedure.pdf">http://www.osc.state.ny.us/agencies/gbull/attachments/contractawardprotestprocedure.pdf</a></p> <p>However, a dispute may not be filed later than 10 days after issuance of the award.</p> <p>Disputes concerning the administration of the contract after award (see II.A.6 d-g), must be filed within twenty (20) business days by an Interested Party (see II.A.4) after the disputing party knows or should have known of the facts which form the basis of the dispute.</p> <p>Disputes concerning a solicitation shall be filed by an Interested Party (see II.A.2) with PSG no later than ten (10) business days before the date set in the solicitation for receipt of bids. If the date set in the solicitation for receipt of bids is less than ten (10) business days from the date of issue, formal disputes concerning the solicitation document shall be filed with PSG at least twenty-four (24) hours before the time designated for receipt of bids.</p> <p>Disputes concerning a pending or awarded contract must be filed within ten (10) business days by an Interested Party (see II.A.3) after the disputing party knows or should have known of the facts which form the basis of the dispute.</p>	<p>Notice of Decision: A copy of the decision, stating the reason(s) upon which it is based and informing the filer of the right to appeal an unfavorable decision to the Chief Procurement Officer shall be sent to the filer or its agent by regular mail within thirty (30) business days of receipt of the dispute.</p>
<b>NORTH CAROLINA</b>		
<p>A protest is a written claim of error related to a competitive contract award, including specific reasons and supporting documentation.</p> <p>Any bidder aggrieved by an award can file a claim.</p>	<p>Protests are heard by the State Purchasing Officer (SPO) in the first instance (10-day response), then unsatisfied protester may file a Contested Case with the Office of Administrative Hearings.</p>	<p>Ten days, if possible, within which to decide protest or to schedule an informal hearing.</p>



**APPENDIX I. Bid Protest Policies and Procedures. Definitions and Timing (2013 NASPO Bid Protest Survey)**

State Definition for Bid Protests	Who Hears the Protest and Timing for Filing	Timing for Response and Decision Process
<b>NORTH DAKOTA</b>		
<p>An interested party may protest the award of a contract, the notice of intent to award a contract, or a solicitation for commodities or services.</p> <p>“Aggrieved party” can protest a solicitation. “Interested party” means 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</p>	<p>Protests are heard by the procurement officer. Appeals are heard by the Office of Management and Budget</p> <p>Vendors - protest solicitation by deadline for questions or 7 calendar days before deadline for receipt of bids or proposals.</p> <p>Vendors - protest award/notice of award within 7 calendar days.</p> <p>Protest of a solicitation - If deadline for questions, must have brought to the attention of procurement officer by deadline.</p> <p>Otherwise, 7 calendar days before deadline for receipt of bids or proposals.</p> <p>Protests of award/notice of intent to award - vendors have 7 days after award or notice of award to file a protest.</p>	<p>Procurement officer has 7 calendar days to respond, can extend by 7 calendar days with written notice to protestor.</p> <p>Protests of award/notice of intent to award - Procurement officer has 7 calendar days to respond, can extend by 7 calendar days with written notice to protestor.</p> <p>Vendor has 7 calendar days to appeal to OMB.</p> <p>OMB has 7 calendar days to respond to appeal. (No extension provisions)</p>
<b>OHIO</b>		
<p>Anyone can file a protest anytime, with the Office of Procurement Services (OPS).</p>	<p>OPS will respond and address the protest points.</p>	<p>Ohio OPS Purchasing Procedure states we will respond within 10 working days after acknowledging the receipt of the protest.</p>
<b>OKLAHOMA</b>		
<p>Any bidder to a solicitation may file a protest within 10 business days of a contract award.</p>	<p>The initial protest goes to the State Purchasing Director for review.</p>	<p>The State Purchasing Director has 10 days to respond to a formal protest. The Purchasing Director will sustain or deny the protest. Upon notice of denial, within 10 days the bidder may file an appeal to the Director of the Office of Management and Enterprise Services. The Director may handle the protest or hand it off to an ALJ. Proper Parties: In addition to the supplier protesting the contract award, the Department of Central Services (now the Office of Management and Enterprise Services), the supplier awarded the contract and the state agency for which the bid was let may participate in the bid protest proceedings as a proper party. (E) Discovery. The conduct of discovery is governed by the Administrative Procedures Act, 75 O.S. §§ 309 et seq. and other applicable law.</p>
<b>OREGON</b>		
<p>In Oregon, protest processes are customized to each method of solicitation as an administrative review process prior to judicial review. Protests can be filed by “affected persons” - generally, these are offerors or potential offerors.</p> <p>An affected person may protest the procurement process, the contents of a solicitation document or the award or proposed award of an original contract</p>	<p>In all cases, an affected person must file a written protest with the contract review authority for the contracting agency and exhaust all administrative remedies before seeking judicial review. There are several different rules, since Oregon tailors the protest procedure to the solicitation method. A good example is at OAR 125-247-0700 through OAR 125-247-0740.</p>	<p>Generally, the submission of protests is governed by timing specific to the situation. In most situations, the response is not subject to a hard timeline, but expected to be timely. Usually, the process clock stops with a protest, so the contract review authority is motivated to take the matter up promptly so the agency can continue towards its ultimate goal of a timely contract award.</p>

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State Definition for Bid Protests	Who Hears the Protest and Timing for Filing	Timing for Response and Decision Process
<b>PENNSYLVANIA</b>		
<p>Any bidder or prospective bidder who is aggrieved in connection with the IFB, or award of the contract solicitation or award of a contract may file a protest. Protests relating to cancellation of invitations for bids and protests relating to the rejection of all bids are not permitted. A bidder is a person that submits a bid in response to the IFB. A prospective bidder is a person that has not submitted a bid in response to the IFB.</p> <p>Any offeror or prospective offeror or prospective contractor who is aggrieved in connection with the RFP or award of a contract may file a protest. No protest can be filed if the RFP is cancelled or if all proposals received in response to the RFP are rejected.</p>	<p>Protests in connection with an IFB must be filed in writing with the Deputy Secretary for Procurement, Bureau of Procurement Executive Office.</p> <p>Protests in connection with an RFP must be filed with the Issuing Office identified in the RFP.</p> <p>See requirements for filing and timing in Pennsylvania's Protest Procedure at:  <a href="http://www.portal.state.pa.us/portal/server.pt/community/supplier_service_center/5104/resource_toolbox/513216">http://www.portal.state.pa.us/portal/server.pt/community/supplier_service_center/5104/resource_toolbox/513216</a></p>	<p>For protests in connection with IFBs, the Deputy Secretary for Procurement shall promptly, but in no event later than 60 days from the filing of the protest, issue a written decision.</p> <p>For RFPs, within 15 days of protest, the Issuing Officer may submit to the agency head or designee and to the protesting party a response to the protest. The protesting party may file a reply to the Issuing Officer's response within 10 days of the date of the response. The agency head or designee reviews the protest and any response or reply. He or she has the discretion to conduct a hearing. The agency head or designee shall promptly, but in no event later than 60 days from the filing of the protest, issue a written decision.</p>
<b>RHODE ISLAND</b>		
<b>No Response</b>		
<b>SOUTH CAROLINA</b>		
<p>South Carolina Statute SECTION 11-35-4210. Right to protest; procedure; duty and authority to attempt to settle; administrative review; stay of procurement. (1) Right to Protest; Exclusive Remedy. (a) A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(a) within fifteen days of the date of issuance of the Invitation for Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue. (b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.</p>	<p>Protests are heard by one of three chief procurement officers who oversee the primary areas of procurement of (1) construction, (2) IT, and (3) everything else.</p> <p>Timing: For mandatory filing times, see the statute above: 15 days for a protest of a solicitation; 10 days for a protest of an award.</p>	<p>"The appropriate chief procurement officer or his designee shall commence the administrative review no later than fifteen business days after the deadline for receipt of a protest has expired and shall issue a decision in writing within ten days of completion of the review." (11-35-4210(4))</p>
<b>SOUTH DAKOTA</b>		
<p>The State of South Dakota does not have a formal protest policy.</p>	<p>The State of South Dakota does not have a formal protest policy. Vendors may submit their protest to the Office of Procurement Management.</p>	<p>The State of South Dakota does not have a formal protest policy; the Procurement Director will review the protest and make a determination regarding its validity. If a vendor disagrees with the Procurement Director's decision they can pursue litigation.</p>

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State Definition for Bid Protests	Who Hears the Protest and Timing for Filing	Timing for Response and Decision Process
<b>TENNESSEE</b>		
"Protest" means a written complaint filed by an aggrieved party in connection with a solicitation or award of a contract by the Central Procurement Office. Any actual proposer who claims to be aggrieved in connection with a procurement may protest.	The Chief Procurement Officer hears protests in connection with a solicitation or award of a contract by the Central Procurement Office	The Chief Procurement Officer must resolve the protest within sixty (60) days from receipt of the protest. 5. If a protest is not resolved by mutual agreement (between the protestor and Chief Procurement Officer), the decision of the Chief Procurement Officer may be appealed to the Protest Committee. The Protest Committee is comprised of the commissioners of General Services and Finance & Administration and the State Treasurer, or their designees. Following the Chief Procurement Officer's resolution of the protest, the protester may appeal the decision to the Protest Committee. Such appeal must be made within seven (7) days from the Chief Procurement Officer's final determination or within seven (7) days following the CPO's failure to resolve the protest within sixty (60) days of receipt of the protest.
<b>TEXAS</b>		
Protests relate to alleging that the state violated law or rule in soliciting for or awarding a contract.		No deadline set in law or rule.
<b>UTAH</b>		
<b>No Response</b>		
<b>VERMONT</b>		
a) "Appeals", as used in this instance, means a written objection by an interested party to a procurement process or the award of a purchase order or contract. b) "Interested party for the purpose of filing a protest", as used in this instance, means an actual or prospective offeror whose direct economic interest would be affected by the award of the contract or by the failure to award a contract. If an "Interested Party" chooses to appeal a bid award or purchasing procedure, the initial appeal is filed with the Director of Purchasing & Contracting. If the issues are not resolved at this level the appeal is escalated through to the Commissioner of Buildings and General Services. There is no statutorily required appeal process.	The practice that the Office of Purchasing & Contracting follows is for the vendor to file a protest in writing and detail the nature of the protest with the Purchasing & Contracting Director. There is no requirement for a vendor to file an appeal/protest within a specific period of time.	There is no written policy and/or practice that identifies a timeline for responding. We attempt to resolve the protest/appeal in a timely manner.  When a protest is received by the Office of Purchasing & Contracting, the Purchasing & Contracting Director, based on the nature of the protest, conducts a complete review of the entire file which includes a review of RFP process, bid review and evaluation, and contract award to determine any deficiencies that may exist. Once the review process is complete by the Office of Purchasing & Contracting, after findings, if any, are reviewed by the General Counsel, the vendor will be notified of the outcome. If the issues are not resolved at this level of appeal, it is escalated through the Chain of Command to the Commissioner of Buildings and General Services.
<b>VIRGINIA</b>		
A protest is a written complaint about an administrative action or decision brought by a bidder or offeror to the appropriate administrative section with the intention of receiving a remedial result. Any bidder or offeror can file a protest.	The contracting office responsible for the procurement hears the protest. Protests must be filed within 10 calendar days after posting of the notice of award or notice of intent to award.	The contracting office must respond in 10 calendar days of receipt with a decision.

**APPENDIX I. Bid Protest Policies and Procedures. Definitions and Timing (2013 NASPO Bid Protest Survey)**

<b>State Definition for Bid Protests</b>	<b>Who Hears the Protest and Timing for Filing</b>	<b>Timing for Response and Decision Process</b>
<b>WASHINGTON</b>		
After the apparent successful bidder is announced but before the contract is executed a Bidder may protest a) A matter of bias, discrimination, or conflict of interest on the part of an evaluator; b) Errors in computing the scores; or c) Non-compliance with procedures described in the procurement document or agency protest process or policy requirements.  Only a Bidder may file a protest.	The agency is to assign a neutral party that had no involvement in the evaluation and award process to investigate and respond to the protest.	The purchasing agency has 10 business days to respond unless additional time is needed.
<b>WEST VIRGINIA</b>		
Protest means a formal, written complaint filed by a vendor regarding specifications or an award made with the intention of receiving a remedial result.	The director or his designee review the matter of protest and issue a written decision. A hearing is optional at the discretion of the director.	No specific timing required.
<b>WISCONSIN</b>		
<b>No Response</b>		
<b>WYOMING</b>		
Any bidder who does not receive an award is eligible to file a protest regarding a specific procurement.	Bidders/Proposers have ten business days to file their protest. The Procurement Manager reviews the protest.	The Procurement Manager reviews the protest and responds. Investigation commences upon receipt.



**Appendix II Citations and website URLs for formal protest procedures established by statute, regulation, or policy by responding state (2013 NASPO Bid Protest Survey)**

<b>AK</b>	Procurement Statutes: Article 08. LEGAL AND CONTRACTUAL REMEDIES <a href="http://doa.alaska.gov/dgs/docs/as3630.doc">http://doa.alaska.gov/dgs/docs/as3630.doc</a> Purchasing Regulations: Article 13 LEGAL AND CONTRACTUAL REMEDIES <a href="http://doa.alaska.gov/dgs/docs/2aac12.doc">http://doa.alaska.gov/dgs/docs/2aac12.doc</a> Procurement – Administrative Manual AAM 82. PROCUREMENT <a href="http://doa.alaska.gov/dof/manuals/aam/resource/82.pdf">http://doa.alaska.gov/dof/manuals/aam/resource/82.pdf</a> Procurement Information Messages (PIMS) <a href="http://doa.alaska.gov/dgs/pdf/pims-all1.pdf">http://doa.alaska.gov/dgs/pdf/pims-all1.pdf</a>
<b>AL</b>	<a href="http://www.Purchasing.Alabama.Gov">www.Purchasing.Alabama.Gov</a>
<b>AR</b>	<a href="http://www.dfa.arkansas.gov/offices/procurement/Documents/lawsRegs.pdf">http://www.dfa.arkansas.gov/offices/procurement/Documents/lawsRegs.pdf</a> ACA 19-11-244
<b>AZ</b>	<b>No response</b>
<b>CA</b>	§ Protests of Proposed Awards for Goods Contracts (PCC § 10306) § Protests of Proposed Awards and Initial Protests for IT Contracts (PCC § 12102(h)) § Protests of Proposed Awards of non-IT Service Contracts (PCC § 10345) <a href="http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pcc&amp;group=10001-11000&amp;file=10335-10381">http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pcc&amp;group=10001-11000&amp;file=10335-10381</a> § Alternative Protest Pilot Project (PCC § 12125 et seq.) § Office of Administrative Hearings - Arbitration Regulations (California Code of Regulations, Title 1, Division 2, Chapter 5, § 1400 et seq.) § Victim Compensation & Government Claims Board (California Code of Regulations, Title 2, Division , Chapter 1, § 870 et seq.) § California Code of Regulations: <a href="http://government.westlaw.com/linkedslice/search/default.asp?tempinfo=word&amp;RS=GVT1.0&amp;VR=2.0&amp;SP=CCR-1000">http://government.westlaw.com/linkedslice/search/default.asp?tempinfo=word&amp;RS=GVT1.0&amp;VR=2.0&amp;SP=CCR-1000</a> type in 'protest' in the space provided. State Contracting Manual (SCM) Volume 1 for non-IT Services, Chapter 6 <a href="http://www.dgs.ca.gov/ols/Resources/StateContractManual.aspx">http://www.dgs.ca.gov/ols/Resources/StateContractManual.aspx</a> SCM Volume 2 for IT Goods, Chapter 7 <a href="http://www.dgs.ca.gov/pd/Resources/publications/SCM2.aspx">http://www.dgs.ca.gov/pd/Resources/publications/SCM2.aspx</a> SCM Volume 3 for IT Good and Services, Chapter 7
<b>CO</b>	Colorado procurement rule R-24-109-102-01 can be found at <a href="http://www.sos.state.co.us/CCR/Rule.do?deptID=14&amp;deptName=100.800 Department of Personnel and Administration&amp;agencyID=40&amp;agencyName=101Division of Finance and Procurement&amp;ccrDocID=1921&amp;ccrDocName=1 CCR 101-9 PROCUREMENT RULES&amp;subDocID=28116&amp;subDocName=ARTICLE 109 REMEDIES&amp;version=7">http://www.sos.state.co.us/CCR/Rule.do?deptID=14&amp;deptName=100.800 Department of Personnel and Administration&amp;agencyID=40&amp;agencyName=101Division of Finance and Procurement&amp;ccrDocID=1921&amp;ccrDocName=1 CCR 101-9 PROCUREMENT RULES&amp;subDocID=28116&amp;subDocName=ARTICLE 109 REMEDIES&amp;version=7</a>
<b>CT</b>	<b>N/A</b>
<b>DC</b>	<a href="http://government.westlaw.com/linkedslice/default.asp?SP=DCC-1000">http://government.westlaw.com/linkedslice/default.asp?SP=DCC-1000</a> <a href="http://www.dcregs.dc.gov/Gateway/Agencyhome.aspx?SearchType=DCMRAgency&amp;AgencyID=28">http://www.dcregs.dc.gov/Gateway/Agencyhome.aspx?SearchType=DCMRAgency&amp;AgencyID=28</a> <a href="http://cab.dc.gov/page/rules-and-regulations-cab">http://cab.dc.gov/page/rules-and-regulations-cab</a>
<b>DE</b>	These are posted on our intranet site and not accessible outside of the firewall
<b>FL</b>	Section 120.57(3), Florida Statutes and Rule chapter 28-110, Florida Administrative Code <a href="http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&amp;Search_String=&amp;URL=0100-0199/0120/Sections/0120.57.html">http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&amp;Search_String=&amp;URL=0100-0199/0120/Sections/0120.57.html</a> <a href="https://www.flrules.org/gateway/ChapterHome.asp?Chapter=28-110">https://www.flrules.org/gateway/ChapterHome.asp?Chapter=28-110</a>
<b>GA</b>	Georgia Procurement Manual (GPM) <a href="http://pur.doas.ga.gov/gpm/MyWebHelp/GPM_Main_File.htm">http://pur.doas.ga.gov/gpm/MyWebHelp/GPM_Main_File.htm</a>
<b>HI</b>	HRS sec. 103D-701, Authority to resolve protested solicitations and awards <a href="http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0103D/HRS_0103D-0701.htm">http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0103D/HRS_0103D-0701.htm</a>
<b>IA</b>	Iowa's bid protest procedure is available at <a href="https://www.legis.iowa.gov/DOCS/ACO/IAC/LINC/2-6-2013.Rule.11.105.20.pdf">https://www.legis.iowa.gov/DOCS/ACO/IAC/LINC/2-6-2013.Rule.11.105.20.pdf</a>
<b>ID</b>	<a href="http://www.legislature.idaho.gov/idstat/Title67/T67CH57SECT67-5733.htm">www.legislature.idaho.gov/idstat/Title67/T67CH57SECT67-5733.htm</a>

**Appendix II Citations and website URLs for formal protest procedures established by statute, regulation, or policy by responding state (2013 NASPO Bid Protest Survey)**

<b>IN</b>	Procurement Protest Policy at <a href="http://www.in.gov/idoa/files/protest_policy_20091015.pdf">http://www.in.gov/idoa/files/protest_policy_20091015.pdf</a> <a href="http://www.in.gov/idoa/2476.htm">http://www.in.gov/idoa/2476.htm</a>
<b>KY</b>	KRS 45A.285
<b>LA</b>	Louisiana Revised Statutes 39:1671 and Louisiana Administrative Code 34:I.3101
<b>MA</b>	N/A
<b>ME</b>	<a href="http://www.mainelegislature.org/legis/statutes/5/title5sec1825-E.html">http://www.mainelegislature.org/legis/statutes/5/title5sec1825-E.html</a> <a href="http://www.maine.gov/purchases/policies/appeals.shtml">http://www.maine.gov/purchases/policies/appeals.shtml</a> <a href="http://www.maine.gov/purchases/policies/120.shtml">http://www.maine.gov/purchases/policies/120.shtml</a> Title 5 1825 E Chapter 120 (Rule)
<b>MI</b>	The protest policy is located at: <a href="http://www.michigan.gov/micontractconnect/0,4541,7-225-48677-20046--,00.html">http://www.michigan.gov/micontractconnect/0,4541,7-225-48677-20046--,00.html</a>
<b>MN</b>	N/A
<b>MO</b>	<a href="http://www.sos.mo.gov/adrules/csr/current/1csr/1c40-1.pdf">http://www.sos.mo.gov/adrules/csr/current/1csr/1c40-1.pdf</a>
<b>MS</b>	Listed in out procurement manual 6.101 thru 6.209 at <a href="http://www.dfa.state.ms.us/Purchasing/ProcurementManual/ProcurementManual.pdf">http://www.dfa.state.ms.us/Purchasing/ProcurementManual/ProcurementManual.pdf</a>
<b>NC</b>	Administrative Code: 01 NCAC 05B .1519 PROTEST PROCEDURES <a href="http://reports.oah.state.nc.us/ncac/title%2001%20-%20administration/chapter%2005%20-%20purchase%20and%20contract/subchapter%20b/01%20ncac%2005b%20.1519.html">http://reports.oah.state.nc.us/ncac/title%2001%20-%20administration/chapter%2005%20-%20purchase%20and%20contract/subchapter%20b/01%20ncac%2005b%20.1519.html</a>
<b>ND</b>	ND Century Code 54-44.4-12 at <a href="http://www.legis.nd.gov/cencode/t54c44-4.pdf?20130218120851">http://www.legis.nd.gov/cencode/t54c44-4.pdf?20130218120851</a> ND Administrative Code 4-12-14 at <a href="http://www.legis.nd.gov/information/acdata/pdf/4-12-14.pdf?20130218120919">http://www.legis.nd.gov/information/acdata/pdf/4-12-14.pdf?20130218120919</a>
<b>NH</b>	State of NH Administrative Rules, Administrative Rule 600
<b>NJ</b>	<a href="http://www.state.nj.us/treasury/purchase/AdminCode.shtml">http://www.state.nj.us/treasury/purchase/AdminCode.shtml</a>
<b>NV</b>	<a href="http://www.leg.state.nv.us/NRS/NRS-333.html#NRS333Sec370">http://www.leg.state.nv.us/NRS/NRS-333.html#NRS333Sec370</a>
<b>NY</b>	Dispute Resolution Procedures at <a href="http://www.ogs.ny.gov/BU/PC/Docs/VendorDisputePolicy.pdf">http://www.ogs.ny.gov/BU/PC/Docs/VendorDisputePolicy.pdf</a> Contract Award Protest Procedure for contract awards subject to the Comptroller's approval at <a href="http://www.osc.state.ny.us/agencies/gbull/attachments/contractawardprotestprocedure.pdf">http://www.osc.state.ny.us/agencies/gbull/attachments/contractawardprotestprocedure.pdf</a>
<b>OH</b>	No Response
<b>OK</b>	The process is defined in the Central Purchasing Rules and can be found at: <a href="http://www.oar.state.ok.us/oar/codedoc02.nsf/frmMain?OpenFrameSet&amp;Frame=Main&amp;Src=_75tnm2shfcdnm8pb4dthj0chedppmcbq8dtmmak31ctijjrgcln50ob7ckj42tbkdt374obdcli00_">http://www.oar.state.ok.us/oar/codedoc02.nsf/frmMain?OpenFrameSet&amp;Frame=Main&amp;Src=_75tnm2shfcdnm8pb4dthj0chedppmcbq8dtmmak31ctijjrgcln50ob7ckj42tbkdt374obdcli00_</a>
<b>OR</b>	There are several different rules, since Oregon tailors the protest procedure to the solicitation method. A good example is at OAR 125-247-0700 through OAR 125-247-0740.
<b>PA</b>	<a href="http://www.portal.state.pa.us/portal/server.pt/community/supplier_service_center/5104/resource_toolbox/513216">http://www.portal.state.pa.us/portal/server.pt/community/supplier_service_center/5104/resource_toolbox/513216</a>

**Appendix II Citations and website URLs for formal protest procedures established by statute, regulation, or policy by responding state (2013 NASPO Bid Protest Survey)**

<b>SC</b>	S.C. Code Article 17, Legal and Contractual Remedies, Sections 11-35-4210 - 11-35-4420 at <a href="http://www.scstatehouse.gov/code/t11c035.php">http://www.scstatehouse.gov/code/t11c035.php</a>
<b>SD</b>	N/A
<b>TN</b>	Not yet online. Awaiting final approval.
<b>TX</b>	<a href="http://info.sos.state.tx.us/pls/pub/readtac\$ext.TacPage?sl=R&amp;app=9&amp;p_dir=&amp;p_rloc=&amp;p_tloc=&amp;p_ploc=&amp;pg=1&amp;p_tac=&amp;ti=34&amp;pt=1&amp;ch=20&amp;rl=384">http://info.sos.state.tx.us/pls/pub/readtac\$ext.TacPage?sl=R&amp;app=9&amp;p_dir=&amp;p_rloc=&amp;p_tloc=&amp;p_ploc=&amp;pg=1&amp;p_tac=&amp;ti=34&amp;pt=1&amp;ch=20&amp;rl=384</a>
<b>VA</b>	Virginia Public Procurement Act and the Vendors Manual can be found at <a href="http://www.eva.virginia.gov">www.eva.virginia.gov</a> under the Buyer Tab at top of Home Page.
<b>VT</b>	Policy is basically a written practice, it is not available on-line.
<b>WA</b>	<a href="http://www.des.wa.gov/SiteCollectionDocuments/About/Procurement_reform/Policies/Topic5_FinalComplaintAndProtestPolicy.pdf">http://www.des.wa.gov/SiteCollectionDocuments/About/Procurement_reform/Policies/Topic5_FinalComplaintAndProtestPolicy.pdf</a>
<b>WV</b>	<a href="http://apps.sos.wv.gov/adlaw/csr/readfile.aspx?DocId=269&amp;Format=PDF">http://apps.sos.wv.gov/adlaw/csr/readfile.aspx?DocId=269&amp;Format=PDF</a> See section 8.
<b>WY</b>	<a href="http://www.state.wy.us">http://www.state.wy.us</a>

## Appendix III

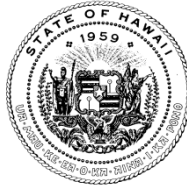
### Federal Acquisition Regulation (FAR) Subpart 15.5 Preaward, Award, and Postaward Notifications, Protests, and Mistakes

#### §15.506 Postaward debriefing of offerors.

- (a)
- (1) An offeror, upon its written request received by the agency within 3 days after the date on which that offeror has received notification of contract award in accordance with 15.503(b), shall be debriefed and furnished the basis for the selection decision and contract award.
  - (2) To the maximum extent practicable, the debriefing should occur within 5 days after receipt of the written request. Offerors that requested a postaward debriefing in lieu of a preaward debriefing, or whose debriefing was delayed for compelling reasons beyond contract award, also should be debriefed within this time period.
  - (3) An offeror that was notified of exclusion from the competition (see 15.505(a)), but failed to submit a timely request, is not entitled to a debriefing.
- (4)
- (i) Untimely debriefing requests may be accommodated.
  - (ii) Government accommodation of a request for delayed debriefing pursuant to 15.505(a)(2), or any untimely debriefing request, does not automatically extend the deadlines for filing protests. Debriefings delayed pursuant to 15.505(a)(2) could affect the timeliness of any protest filed subsequent to the debriefing.
- (b) Debriefings of successful and unsuccessful offerors may be done orally, in writing, or by any other method acceptable to the contracting officer.
- (c) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.
- (d) At a minimum, the debriefing information shall include—
- (1) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;
  - (2) The overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror;
  - (3) The overall ranking of all offerors, when any ranking was developed by the agency during the source selection;
  - (4) A summary of the rationale for award;
  - (5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror; and
  - (6) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.
- (e) The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, the debriefing shall not reveal any information prohibited from disclosure by 24.202 or exempt from release under the Freedom of Information Act (5 U.S.C. 552) including—
- (1) Trade secrets;
  - (2) Privileged or confidential manufacturing processes and techniques;
  - (3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and
  - (4) The names of individuals providing reference information about an offeror's past performance.
- (f) An official summary of the debriefing shall be included in the contract file.



APPENDIX IV Bid Protest Bonds (2013 NASPO Bid Protest Survey)		
State	Bid Protest Bonds Provisions and URLs where available	Bid Protest Bonds Values and How They Are Determined
California	<p><b>Regulation</b> For the Alternative Bid Protest process, see:</p> <p><a href="http://www.dgs.ca.gov/oah/GeneralJurisdiction/BidProtestRegs.aspx">http://www.dgs.ca.gov/oah/GeneralJurisdiction/BidProtestRegs.aspx</a></p>	<p>Under the Alternative Bid Protest process, if the Coordinator makes a preliminary determination that the protest is frivolous protest is deemed frivolous, the Protestant is required to post a bond in an amount not less than 10% of the estimated contract value. In addition, a protestant is required to make a deposit (arbitration fee) ranging from \$1,500 to \$7,000, depending upon the estimated contract value.</p> <p>Under the Alternative Bid Protest process, the bond amount if a protest is deemed frivolous and the arbitration deposit are established in regulation. The amount of the deposit is set in regulation as follows: 1. For contracts up to \$100,000.00, the deposit shall be \$1500.00. 2. For contracts of \$100,000.00 up to \$250,000.00, the deposit shall be \$3,000.00. 3. For contracts of \$250,000.00 up to \$500,000.00, the deposit shall be \$5,000.00. 4. For contracts of \$500,000.00 and above, the deposit shall be \$7,000.00.</p> <p>A Protestant certified as a Small Business may submit a copy of the Small Business Certification in lieu of the deposit specified</p>
Florida	<p><b>Statute</b> Section 87.042(2) (c), Florida Statutes and Rule Chapter 28-110.005, Florida Administrative Code</p> <p><a href="https://www.flrules.org/gateway/ChapterHome.asp?Chapter=28-110">https://www.flrules.org/gateway/ChapterHome.asp?Chapter=28-110</a></p> <p><a href="http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&amp;Search_String=&amp;URL=0200-0299/0287/Sections/0287_042.html">http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&amp;Search_String=&amp;URL=0200-0299/0287/Sections/0287_042.html</a></p>	One percent of the estimated contract amount
Hawaii	<p><b>Statute</b> HRS sec. 103D-709, Administrative proceeding for review.</p> <p><a href="http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0103D/HRS_0103D-0709.htm">http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0103D/HRS_0103D-0709.htm</a></p>	<p>(1) For contracts with an estimated value of less than \$1,000,000, the protest concerns a matter that is greater than \$10,000; or (2) For contracts with an estimated value of \$1,000,000 or more, the protest concerns a matter that is equal to no less than ten per cent of the estimated value of the contract. (e) The party initiating a proceeding falling within subsection (d) shall pay to the department of commerce and consumer affairs a cash or protest bond in the amount of: (1) \$1,000 for a contract with an estimated value of less than \$500,000; (2) \$2,000 for a contract with an estimated value of \$500,000 or more, but less than \$1,000,000; or (3) One-half per cent of the estimated value of the contract if the estimated value of the contract is \$1,000,000 or more; provided that in no event shall the required amount of the cash or protest bond be more than \$10,000.</p>
Nevada	<p><b>Statute</b></p> <p><a href="http://www.leg.state.nv.us/NRS/NRS-333.html#NRS333Sec370">http://www.leg.state.nv.us/NRS/NRS-333.html#NRS333Sec370</a></p>	25% of the expected amount of the contract in question.
South Carolina	<p><b>Statute</b></p> <p><a href="http://www.scstatehouse.gov/code/t11c035.php">http://www.scstatehouse.gov/code/t11c035.php</a></p> <p>S.C. Code Section 11-35-4215</p>	<p>The practice in South Carolina is that the CPOs do not require protest bonds.</p> <p>If required, the Code states: "The agency may request that the appropriate chief procurement officer require any bidder or offeror who files an action protesting the intended award or award of a contract solicited under Article 5 of this code and valued at one million dollars or more to post with the appropriate chief procurement officer a bond or irrevocable letter of credit payable to the State of South Carolina in an amount equal to one percent of the total potential value of the contract as determined by the appropriate chief procurement officer."</p>
Tennessee	<p><b>Tennessee Code</b> Annotated § 4-56-103(c)(3) available at:</p> <p><a href="http://www.capitol.tn.gov/Bills/107/Bill/HB1476.pdf">http://www.capitol.tn.gov/Bills/107/Bill/HB1476.pdf</a></p>	<p>The protest bond shall be payable to the State of Tennessee in the amount of five percent (5%) of the lowest bid evaluated as listed on the "File Open for Inspection" letter pertaining to the solicitation. If a protest letter is received prior to or during the proposal evaluation, the proposer shall be required to provide a protest bond, payable to the State of Tennessee, in the amount of five percent (5%) of the estimated maximum liability provided on the procurement document. The protest bond amount for a revenue contract shall be five percent (5%) of the minimum annual guarantee (MAG). If there is not a MAG, the protest bond for a revenue contract shall be five percent (5%) of the estimated income of the lowest evaluated proposal.</p> <p>They are required unless an exemption is awarded to a small, minority-owned, woman-owned, or Tennessee service-disabled veteran-owned businesses.</p>



**TESTIMONY BY:**

JADE T. BUTAY  
DIRECTOR

Deputy Directors  
LYNN A.S. ARAKI-REGAN  
DEREK J. CHOW  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN

**STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097**

February 28, 2020  
10:45 A.M.  
State Capitol, Room 211

**S.B. 2843, S.D. 1  
RELATING TO PROCUREMENT**

Senate Committee(s) on Judiciary & Ways and Means

The Department of Transportation (DOT) **supports** the proposed revision to Hawaii Revised Statutes (HRS) § 103D-709(e) which revises the protest bond amount for a contract with an estimated value of less than \$500,000 from \$1,000 to one-half of one percent of the estimated value of the contract; replaces the protest bond amount for a contract with an estimated value of \$500,000 or more but less than \$1,000,000 from \$2,000 to one percent of the estimated value of the contract; and increases the protest bond amount when the estimated value of the contract is \$1,000,000 or more from one-half percent to two percent of the estimated value of the contract; repeals the \$10,000 cap on the protest bond amount.

In addition, there is further support that the Comptroller of the Department of Accounting and General Services, the Superintendent of the Department of Education, and the Director of the DOT shall each submit an annual report to the legislature on the number of protests and outcomes resulting from this change in valuation of protest bonds, no later than twenty days prior to the convening of the regular session.

When a project solicitation or project award is protested, the government agency replies either denying or sustaining the protest. The protestor then has an opportunity to appeal the government agency's decision to the Department of Commerce and Consumer Affairs, Office of Administrative Hearings (OAH). Under the current law, if the contract has an estimated value over \$1,000,000, a protest bond of one-half percent capped at \$10,000 is required. If the protestor prevails, the \$10,000 bond is returned, if the protestor does not prevail, the \$10,000 bond is deposited into the general fund.

For the DOT, protests delay our delivery of Highway, Airport, and Harbor improvements. Delays potentially may increase the cost of the project.<sup>1</sup> Since 2012, the DOT received

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<sup>1</sup> The Procurement Code allows only for award to be made at the original lowest responsive, responsible bid (in other words, the increased costs may either be absorbed by the contractor or passed on to the DOT through change orders).

and responded to one hundred twenty-five (125) protests. The average calendar day delay from receipt of protest to protest resolution was one hundred fifteen (115) days.

In the last four (4) years, there have been four (4) DOT protest decisions that went through the OAH administrative hearing process. In each, the protestors did not prevail in the administrative hearing and therefore, each of the \$10,000 protest bond was deposited into the general fund. The estimated contract value was \$11,877,594<sup>2</sup>; \$169,948,741<sup>3</sup>; \$10,460,000<sup>4</sup>; and \$46,000,000<sup>5</sup>. Should the cap on the protest bond be repealed, and the protest bond amount revised from one-half percent to two-percent for an estimated contract value over \$1,000,000, using the examples above, the amount deposited in the general fund instead of \$40,000, might have been \$4,765,727.

As mentioned above, the DOT received and responded to one hundred twenty-five (125) protests since 2012. During this time, four (4) protests were sustained in the protestor's favor and one hundred twenty-one (121) were denied. Seven (7) of the one hundred twenty-one (121) denied protests were appealed to the OAH. The OAH decision in each were dismissed in favor of the DOT.

Thank you for the opportunity to provide testimony.

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<sup>2</sup> Two percent equals \$237,552.

<sup>3</sup> Two percent equals \$3,398,975.

<sup>4</sup> Two percent equals \$209,200.

<sup>5</sup> Two percent equals \$920,000.

DAVID Y. IGE  
GOVERNOR



CURT T. OTAGURO  
COMPTROLLER  
  
AUDREY HIDANO  
DEPUTY COMPTROLLER

**STATE OF HAWAII**  
**DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES**

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY  
OF  
CURT T. OTAGURO, COMPTROLLER  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
TO THE SENATE COMMITTEES ON  
JUDICIARY  
AND  
WAYS AND MEANS

FRIDAY, FEBRUARY 28, 2020, 10:45 A.M.  
CONFERENCE ROOM 211, STATE CAPITOL

S.B. 2843, SD1

RELATING TO PROCUREMENT

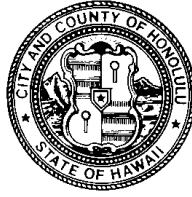
Chairs Rhoads and Dela Cruz, Vice Chairs Keohokalole and Keith-Agaran, and Members of the Committees, thank you for the opportunity to submit testimony on S.B. 2843, SD1. The Department of Accounting and General Services (DAGS) **supports** this bill. In April 2013, a National Association of State Procurement Officials (NASPO) Research Brief noted that the average protest bond is within 1-2% range of the estimated value of the contract.

Thank you for the opportunity to submit testimony on this matter.



DEPARTMENT OF BUDGET AND FISCAL SERVICES  
**CITY AND COUNTY OF HONOLULU**  
530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813  
PHONE: (808) 768-3900 • FAX: (808) 768-3179 • INTERNET: [www.honolulu.gov](http://www.honolulu.gov)

KIRK CALDWELL  
MAYOR



NELSON H. KOYANAGI, JR.  
DIRECTOR

MANUEL T. VALBUENA  
DEPUTY DIRECTOR

TESTIMONY OF NELSON H. KOYANAGI, JR.  
DIRECTOR OF BUDGET AND FISCAL SERVICES  
CITY AND COUNTY OF HONOLULU  
BEFORE THE SENATE COMMITTEE ON JUDICIARY  
AND THE SENATE COMMITTEE ON WAYS AND MEANS  
February 28, 2020, 10:45 AM, Senate Conference Room 211

Position: RECOMMEND MODIFICATION AND IN SUPPORT OF SENATE BILL 2843, SD1,  
RELATING TO PROCUREMENT

TO: The Honorable Karl Rhoads, Chair  
and Members of the Committee on Judiciary

The Honorable Donovan M. Dela Cruz, Chair  
and Members of the Committee on Ways and Means

The Department of Budget and Fiscal Services, City and County of Honolulu, **supports** Senate Bill No. 2843, SD1, Relating to Procurement; however, would like to recommend a modification.

The City believes that a portion of the bond, if an administrative hearing is sustained, shall also be shared with the jurisdiction from which the protest originated. Such fees would alleviate the costs associated with the protest for the jurisdiction.

The City proposed that the following modification should be made in Hawaii Revised Statutes §103D-709, Administrative Hearing, paragraph (e):

"If the initiating party prevails in the administrative proceeding, the cash or protest bond shall be returned to that party. If the initiating party does not prevail in the administrative proceeding, **fifty percent (50%) of** the cash or protest bond shall be deposited in the general fund. **The remaining fifty percent (50%) shall be deposited with the government entity from which the protest originated.**"

Mahalo for the opportunity to testify on this bill. Should you have any questions or concerns, please feel free to contact the Department of Budget & Fiscal Services' Division of Purchasing at 808-768-5535 or [bfspurchasing@honolulu.gov](mailto:bfspurchasing@honolulu.gov).

# ***SAH - Subcontractors Association of Hawaii***

***1188 Bishop St., Ste. 1003\*\*Honolulu, Hawaii 96813-2938***

***Phone: (808) 537-5619 ✦ Fax: (808) 533-2739***

February 28, 2020

Testimony To: Senate Committee on Judiciary  
Senator Karl Rhoads, Chair

Senate Committee on Ways and Means  
Senator Donovan M. Dela Cruz, Chair

Presented By: Tim Lyons, President

Subject: S.B. 2843, SD 1 – RELATING TO PROCUREMENT.

Chair Rhoads, Chair Dela Cruz and Members of the Joint Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. The SAH represents the following nine separate and distinct contracting trade organizations.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL AND AIR CONDITIONING NATIONAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

We are not in support of this bill as written. We think the amounts are too high.

We understand that protests are a problem and that they slow up the process however, we think it is important to remember that a protest is oftentimes a private contractor doing the work of government; that is, calling to attention some irregularity in the procurement process. The amounts referenced in this bill, it would seem to us, are punitive and discouraging, at the very least.

We think the amounts should be sufficiently high to discourage petty protests but not so high to dissuade if one has a rightful case. For a mere \$450,000.00 contract, which in the construction industry is not considered very substantial, a protest bond in the amount of \$2250.00 or a protest bond in the amount of \$9,500.00 for a \$950,000.00 contract (under \$1M) seems to us to be very steep.

Certainly \$40,000 for a \$2M contract is uncalled for. And, this bill eliminates any cap on the bond amount, currently \$10,000. Not only does the initiating party have to go through the process of filing the protest and the accompanying expenses involved in the administrative hearing plus, the time and effort that it will take, and attorney fees they now stand to lose the protest bond amount as well. It is not likely that the initiating party would be able to build in the cost of paying for that bond in its very next project but rather would have to spread it out as a cost of doing business.

The subject of protests has been discussed in tremendous detail over the last few legislative sessions and there are perhaps more efficient and less punitive ways to try and remedy the problem.

Based on the above, we cannot support the bill and the amounts as stated in this bill.

Thank you.

# JHC JOHN H. CONNORS INSURANCE

2 Waterfront Tower # 303  
500 Ala Moana Blvd.  
tel: 808-534-7319 fax: 808-203-2044 cell: 808-927-6774  
Email to: tsofos@connorshawaii.com

February 25, 2020

Members of the Committee for JDC/ WAM  
Hawaii Legislature  
Honolulu, Hawaii

**Re: SB 2843 SD1 Relating to Procurement, Protest Bonds - AGAINST CHANGES**

Dear Ladies and Gentlemen,

As the surety bond manager for John H. Connors Insurance I am against the new language for increasing the protest penalty on disputed contracts. And request that the protest penalties stay as they are now. This change will seriously impact negatively the smaller local contractors who represent local construction workers.

1. The penalties of a PROTEST BOND or Cashier's Check of 1% up to \$500,000 and 2% above \$500,000 are extremely excessive.
2. The reason for the protest is usually due to questions on the licensing of subcontractors due to the Okada Law. ( All subcontract work must be licensed for their kind of work).

There are three (3) reasons to question the bid of the lowest bidder.

- a. The State has to spend its money for projects before the fiscal year end of June 30, so the agencies, Dept. of Education, Dept. of Transportation and Dept. of Accounting and General Services must put out to bid their projects before that end date. So construction projects are "rushed out "for bid. They don't have time to review their specifications.
- b. The contractors are also "rushed "to get their bids by the bid deadline. And they may have three or four bids due on any given bid date.
- c. Because the Okada Law requires all subcontractors to be properly licenses, on multi-faceted bids, there is always a request by the 2<sup>nd</sup> or 3<sup>rd</sup> bidder to review the lowest bidder.

While, no one can blame the State agencies for wanting to reduce the admirative reviews, however, no one can blame the contractors for needing an administrative review when licensing is confused. Unfortunately, the Okada Law is the law of the land. And penalizing the contractor for questioning a final bid because he's abiding by the law is excessive, punishment for obeying the law, is not a solution. It is unreasonable, cruel and excessive punishment for obeying the State Law. The solution is for the agencies to adopt better review procedures and order the specification writers and architects to write better and clearer plans.

Thank you for your time.

Sincerely,



Tom Sofos



February 27, 2020

TO: HONORABLE SENATOR KARL RHOADS, CHAIR, SENATOR  
JARRETT KEOHOKALOLE, VICE CHAIR AND THE  
MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY

HONORABLE SENATOR DONOVAN M. DELA CRUZ, CHAIR,  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE CHAIR  
AND THE MEMBERS OF THE SENATE COMMITTEE ON  
WAYS AND MEANS

SUBJECT: TESTIMONY IN OPPOSITION TO SB2843: RELATING TO  
PROCUREMENT

Hearing

Date: Friday, February 28, 2020  
Time: 10:45 a.m.  
Place: Conference Room 211  
Hawaii State Capitol

Insurance Services  
Risk Management  
Surety Bonds

Dear members of the Committee on Judiciary and Committee on Ways and Means:

T 844.972.6326

My name is Paul Kennedy, I am a Vice President of Risk Solution Partners, LLC a Hawaii based insurance and bonding agency representing many general contractors and subcontractors that provide their services on public construction contracts.

800 Bethel Street, Suite 201  
Honolulu, HI 96813

HI License 342912  
AN ASSUREX GLOBAL & IBN PARTNER

I am writing this letter express my opposition to SB2843 S.D. 1 that proposes to increase the bonding requirement for contractors that are looking to exercise their legal right to formally protest an award of a construction contract.

[risksolutionpartners.com](http://risksolutionpartners.com)

The current law (HRS Section 103D-709) already requires contractors to provide a protest bond up to \$10,000 depending on the size of the contract being protested. Increasing the bond requirement to 2% of an estimated contract value would be prejudicial againts a vast majority of small to middle sized contactors that do not have the liquidity necessary to post bonds that can easily start to reach in the hundreds of thousands of dollars in size. This would make their right to seek due process financially impossible.

Eliminating the ability of a majority of contractors to file valid contract protests is not in the spirity of the original statute which was intended to impose an adequate penalty to dissuade frivolous protests. I fully believe that the current statute accomplishes its intent to dissuade frivolous protests and therefore there is no need make any changes.

I oppose SB2843 S.D. 1. Thank you for the opportunity to share my opposition.

Sincerely,



Paul C. Kennedy  
Vice President

**SB-2843-SD-1**

Submitted on: 2/26/2020 8:43:24 PM

Testimony for JDC on 2/28/2020 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gerard Silva	Individual	Oppose	No

Comments:

**SB-2843-SD-1**

Submitted on: 2/27/2020 8:41:50 AM

Testimony for JDC on 2/28/2020 10:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Danielle Ulmann	Individual	Oppose	No

## Comments:

The bid protest process is essential to insuring government transparency and accountability in the procurement process. As a concerned local citizen, I want to insure my tax dollars are being put to good use in the public construction sector and there remains fair due process for all parties involved. Removing the \$10,000 cap on the protest bond amount and introducing a scaled percentage of estimated contract value scenario undoubtedly serves to dramatically increase the cost of a protest bond. This dramatic increase serves to burden and/or deter qualified contractors from participating in the bid and/or protest process. If the bill is attempting to address frivolous bid protests, there are other measures that government agencies have in place to utilize in lieu of passing down more costs to our contractors and/or deterring contractor's participation--both actions of which increase the cost of public sector construction projects.