

## **APPENDIX A PROTEST PROCEDURE**

### **PROTEST PRIOR TO AWARD:**

#### **PROTEST PRIOR TO AWARD CRITERIA:**

Protests prior to Award will be considered only if the protest concerns:

1. Proposal acceptance of other Bidders,
2. The specifications or,
3. The manner in which the solicitation process has been conducted.

#### **INITIATING THE PROTEST PROCESS:**

The protesting Bidder must notify OSPI's Procurement Coordinator in charge of the solicitation of his/her intent to file a protest as soon as possible after he/she becomes aware of the reason(s) for the protest. The protest(s) must be received in writing by OSPI's Procurement Coordinator not later than five (5) business days after the Bidder's notification to OSPI's Procurement Coordinator of the intent to protest.

If an Intent to Award is announced, any protest must be received in writing by OSPI's Procurement Coordinator not later than five (5) business days after the announcement or as otherwise specified in the Solicitation document.

If a protest is not received within these time frames it will be untimely and OSPI's Procurement Coordinator may proceed with the award without further obligation.

The Procurement Coordinator will consider all the facts available and issue a decision in writing within ten (10) business days after receipt of the protest, unless more time is needed.

If additional time is necessary OSPI's Procurement Coordinator will notify the protesting Bidder and, where applicable, the Bidder(s) against whom the protest is made.

#### **APPEAL OF PROTEST PRIOR TO AWARD DECISION:**

The protesting Bidder or the Bidder against whom the protest is made has the right to appeal the decision of OSPI's Procurement Coordinator to the Office of Superintendent of Public Instruction Child Nutrition Director in charge of the this procurement.

The appeal must be received by the Office of Superintendent of Public Instruction Child Nutrition Director within five (5) business days after notification of OSPI's Procurement Coordinator's decision.

The Office of Superintendent of Public Instruction Child Nutrition Director will consider all of the facts available and issue a decision in writing within ten (10) business days after receipt of the appeal, unless more time is needed. The appealing Bidder will be notified if additional time is necessary.

Award of the contract will be postponed until after the Office of Superintendent of Public Instruction Child Nutrition Director has issued a decision unless an emergency exists necessitating the award of the contract as determined by the Office of Superintendent of Public Instruction Child Nutrition Director.

The decision of the Office of Superintendent of Public Instruction, Child Nutrition Director on the protest appeal is final. The Office of Superintendent of Public Instruction Child Nutrition Director may issue further clarifications if determined necessary.

**PROTEST AFTER AWARD:**

**PROTEST AFTER AWARD CRITERIA:**

Protests after Award will be considered only if the protest concerns:

1. A matter which arises after the Award or
2. Could not reasonably have been known or discovered prior to Award.

**INITIATING THE PROTEST PROCESS AFTER AWARD:**

The protesting Bidder must notify both OSPI's Procurement Coordinator in charge of the solicitation process and the Bidder that has received the Award that a protest of the Award is being made. This notification must be made as soon as possible after the Notice of Award is issued by an immediate communication method such as telephone or e-mail. The protesting Bidder must provide documentation demonstrating that they have notified the Bidder that has received the Award of their protest.

In addition to the above notification requirement, the written protest must be received by the Office of Superintendent of Public Instruction Child Nutrition Director in charge of this procurement not later than five (5) business days after Notice of Award is issued by OSPI's Procurement Coordinator.

The Office of Superintendent of Public Instruction, Child Nutrition, Director will:

Issue a decision on the protest within ten (10) business days after the protest was received, unless more time is needed.

The protesting Bidder and the Bidder who has received the Award shall be notified of any delay in issuing the Office of Superintendent of Public Instruction, Child Nutrition Director's decision if more time is needed.

The decision of the OSPI Child Nutrition Director is final if the award is upheld. The OSPI Child Nutrition Director may subsequently issue further clarifications, if necessary.

If the OSPI Child Nutrition Director finds that the protest should be upheld and the Award canceled, all Bidders, including the protesting Bidder and the Bidder who received the Award, will be notified of the intent to cancel the Award and the reasons therefore.

## AWARDED BIDDER APPEAL PROCESS

The Bidder who has received the Award has five (5) business days after receipt of notification of the intent to cancel the award in which to appeal the decision to the OSPI assigned Assistant Attorney General. Copies of the Bidder's appeal must also be sent to the OSPI Child Nutrition Director and OSPI's Procurement Coordinator responsible for the solicitation.

The OSPI assigned Assistant Attorney General or designee will:

Issue a decision:

1. To both the appealing Bidder and the original protesting Bidder
2. Within ten (10) business days after receipt of the appeal, unless more time is needed
3. If more time is needed to issue a decision, all Bidders, including the appealing Bidder and the original protesting Bidder, will be notified.

## DECISION FINAL

The appeal decision of the OSPI assigned Assistant Attorney General is final. The OSPI assigned Assistant Attorney General may subsequently issue further clarifications if necessary,

## APPEAL UPHELD AND CONTRACT AWARD UPHELD

If the OSPI assigned Assistant Attorney General upholds the appeal and upholds the contract as awarded, the State Procurement Coordinator will notify all Bidders of the decision.

## APPEAL DENIED AND AWARD CANCELED

If the OSPI assigned Assistant Attorney General upholds the decision of the OSPI Child Nutrition Director will proceed with cancellation of the award.

If the award is cancelled, the OSPI Child Nutrition Director may reject all bids, quotes or proposals pursuant to [RCW 43.1911\(4\)](#) and solicit new bids, quotes or proposals.

If the OSPI Child Nutrition Director does not decide to reject all bids, an award will be made to the next lowest responsive and responsible Bidder.

## PROTEST AND APPEALS – FORM AND SUBSTANCE

All protests and appeals must:

1. Be in writing,
2. Signed by the protesting or appealing Bidder or an authorized agent
3. Delivered within the time frame(s) outlined herein
4. Addressed to that individual within the Office of Superintendent of Public Instruction, Washington State, assigned review responsibilities as specified above.

The protesting or appealing Bidder must:

1. State all facts and arguments on which the protesting or appealing Bidder is relying as the basis for its action.
2. Attach any relevant exhibits related, or referred to in the written protest or appeal.
3. Mail, fax or deliver copies of all protests, appeals, and exhibits to the Bidder or Bidders against whom the protest is made at the same time such protest, appeal, and exhibits are submitted to the Office of Superintendent of Public Instruction.

#### COMMUNICATION DURING PROTESTS AND APPEALS

All communications relative to a solicitation that is being protested or appealed must be coordinated through that person conducting the official review for the Office of Superintendent of Public Instruction.