

## College Operating Procedures (COP)



**Procedure Title:** Solicitation Protests  
**Procedure Number:** 04-1008  
**Originating Department:** Office of Financial Services

**Specific Authority:**

Board Policy 6Hx6:1.01; 6Hx6:1.02; 6Hx6:4.01  
Florida Statute 120.57(3); 287.042(2)(c); 255.0516  
Florida Administrative Code 6A-14.0734; 6A-1.012

**Procedure Actions:** Adopted: 03/10; Revised: 2/11; 4/16/12

**Purpose Statement:** This procedure describes the protest process that can arise from the competitive procurement process.

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### **Guidelines:**

This procedure establishes the steps which must be used to protest College bid solicitations, invitations to bid, requests for proposals, requests for qualifications, and College awards relating to the purchase of goods and/or services.

For purposes of this procedure, the term “Bidder” shall include bidders and proposers. The term “Invitation(s) to Bid” and/or bid(s) shall include bid solicitations, requests for proposals and requests for qualifications, unless specifically noted otherwise. All Bidders are required to thoroughly review College Invitations to Bid. Any inquiries or comments should be directed to the individual designated in the applicable document. The College reserves the right, at its’ discretion, to waive any informality in the solicitation process and to reject any or all formal responses to a competitive solicitation.

### **Procedures:**

#### Notice Requirements

Notice of a decision or intended decision concerning a solicitation, invitation to bid, contract award, or exceptional purchase, shall be by electronic posting at <http://www.fsw.edu/district/purchasing/bids>. The notice shall be effective upon electronic posting and will remain posted for a period of 72 hours (not including Saturdays, Sundays and state holidays) as prescribed in the solicitation document. All notices provided shall contain the following statement: Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

#### I. Time Requirements for Filing Protests and Requirements for Protest Document

A. Protest of College Decisions or Intended Decisions: Any person who is adversely affected by a College decision or intended decision and who wishes to protest, shall file with the College a written notice of protest within seventy-two (72)

hours after the posting of the College decision or intended decision. The formal written notice of protest must be filed within ten (10) calendar days after the notice of protest is filed.

- B. Protest of Terms, Conditions and/or Specifications: 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 seventy-two (72) hours after the posting of the solicitation. The formal written protest must be filed within ten (10) calendar days after the notice of protest is filed.
- C. Location for Filing Notice of Protest(s) and Formal Written Protest(s): Any notice of protest and/or formal written protest must be filed in the Office of Procurement Services. All notices and/or formal written protests submitted by protestors are considered filed when they are actually received by the Office of Procurement Services.
- D. Failure to Timely File a Notice of Protest or Failure to Timely File a Written Protest, Including Notice and Protest under Items 1 and 2 Above: Failure to file a notice of protest or failure to file a formal written protest within the time prescribed in Section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes. Saturdays, Sundays and State holidays shall be excluded in the computation of the seventy-two (72) hour time-period. The seventy-two (72) hour time-period is not extended by service of the notice of protest by mail.
- E. Information Required In The Initial Protest Notice: The initial protest notice must contain the following information: (a) College bid or RFP (RFQ) number and title; (b) the protesting Bidder's name, address and telephone number; (c) the name of the duly authorized representative of the protesting Bidder to whom all communications should be directed; and (d) a factual summary outlining the basis for the protest.
- F. Information Required in the Formal Written Protest: The formal written protest shall, at a minimum, include all of the information required in the Initial Protest Notice together with: (a) a statement with particularity of the facts and law upon which the protest is based; (b) a clear and comprehensive statement explaining the protest grounds; (c) the applicable statutes, rules, regulations and other authority supporting the protest; and (d) the relief sought by the protesting Bidder.

## II. Timely Filed Formal Written Protest

Upon the College's receipt of a formal written protest that has been timely filed, the College shall stop the solicitation or contract award process until the subject of the protest is resolved by College action, unless the District President or designee sets forth in writing particular facts and circumstances which require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and

serious danger to the public health, safety, or welfare. Additionally, when the award process is stopped due to the filing of a formal written protest, the District President or designee may authorize the extension of any existing contract for the goods or services which may be required as a direct consequence of the delay in the procurement process under whatever terms and conditions are determined by the District President or designee to be in the best interest of the College until such time as the new award under protest can be approved by the District Board of Trustees.

### III. Protest Process

- A. The College shall provide an opportunity to resolve the protest by mutual agreement between the parties within seven (7) days, excluding Saturdays, Sundays and State holidays, after the College's receipt of a formal written protest.
  - 1. No disputed issue(s) of Material Fact: If the protest is not resolved within the above time-frame, or such other period as the parties may agree to in writing, and if there is no disputed issue of material fact, an informal proceeding shall be conducted in accordance with applicable laws, rules and regulations, including but not limited to the process set forth in Section 120.57(2), Florida Statutes.
  - 2. Disputed Issue(s) of Material Fact: If the protest is not resolved by mutual agreement within seven (7) days, excluding Saturdays, Sundays, and State holidays, after the College's receipt of a formal written protest, and if there is a disputed issue of material fact, the College shall refer the protest to appropriate party designated in Section 120.57(1), Florida Statutes.
- B. Unless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order.
- C. In a competitive-procurement protest, no submissions made after the bid opening amending or supplementing the bid shall be considered. Contracts exempt from competitive bidding by Florida Statutes are not subject to the foregoing rules.
- D. In the event there is any conflict between this procedure and Section 120.57, Florida Statutes relating to bid protests, including any subsequent revisions thereto, the terms of Section 120.57, Florida Statutes shall prevail.

### IV. Protest Bond

- A. Except as provided in Subsection B below, any person who files a formal written protest shall post with the College, at the time of filing the formal written protest, a bond, payable to Florida SouthWestern State College in an amount equal to one percent (1%) of the estimated contract amount. The estimated contract amount shall be based upon the contract price submitted by the protestor or, if no contract price was submitted, the College shall estimate the contract amount based on factors including, but not limited to, the price of previous or existing contracts for similar commodities or contractual services, the amount appropriated by the Legislature for the contract, or the fair market value of similar commodities or contractual services may be adjudged against the protestor in an Administrative

Hearing in which the action is brought and in any subsequent appellate court proceeding. In lieu of a bond, the College may accept a cashier's check, official bank check or money order in the amount of the bond. If, after completion of the Administrative Hearing process and any appellate court proceedings, the College prevails, then the College shall recover all costs and charges which shall be included in the Final Order or judgment, including charges made by the Division of Administrative Hearings, but excluding attorney's fees. Upon payment of such costs and charges by the protestant, the remainder of bond shall be returned. If the protestant prevails, then the protestant shall recover from the College all costs and charges which shall be included in the Final Order or judgment, excluding attorney's fees.

- B. "Educational Facilities" means the buildings and equipment, structures, and special educational use areas that are built, installed, or established to serve primarily the educational purposes and secondarily the social and recreational purposes of the community and which may lawfully be used as authorized by the Florida Statutes and approved by boards. The additional provisions set forth in this section shall apply to bid solicitations, invitations to bid, requests for proposals and requests for qualifications pertaining to the construction, reconstruction, remodeling or improvement of Educational Facilities.
1. A formal written protest shall not be considered and shall be dismissed if the Bidder fails to post a bond duly executed by an authorized representative of the Bidder, as principal, and a surety company, as obligor, with the College before the time for protest expires. The bond must be reasonably satisfactory to the College, and should be made payable to the "District Board of Trustees of Florida SouthWestern State College, Florida" in the appropriate amount as follows:
    - a) Twenty-Five Thousand Dollars (\$25,000) or two (2) percent of the lowest accepted bid, whichever is greater, for projects valued over \$500,000; and
    - b) Five (5) percent of the lowest accepted bid for all other projects.
  2. The Bond shall be conditioned upon payment of all costs and fees which may be adjudged against the protestor in the administrative hearing and any subsequent court proceedings at all levels.
  3. The surety company issuing the bond must be authorized to do business in the State of Florida and be in compliance with the Florida Insurance Code. Any bond, which is submitted, shall have a duly executed power of attorney attached.