

 <p>Bid Protest for Competitive Procurements and Grants</p>	Policy Number	AA-5105
	Effective Date	November 30, 2005
	Revision Date	September 1, 2007
	Subject Matter Expert	Contract Oversight and Support Director
	Approval Authority	Chief Operating Officer
	Signed by:	

1.0 Purpose

The purpose of this policy is to ensure that the Department of State Health Services (DSHS) is in compliance with **1 TAC Chapter 391, §391.301** by publishing the availability of formal and informal protest procedures for purchase awards. This policy provides a process to be used by any bidder or applicant who request a review of the award of a DSHS contract or grant.

2.0 Policy

It is the policy of DSHS that a bidder or applicant who alleges that DSHS has failed to follow applicable statutes and rules in the procurement process may file a protest in accordance with the specifications detailed in this policy. The protest must be limited to matters relating to the protestant's qualifications, the suitability of the goods or services offered by the protestant, or alleged irregularities in the procurement process.

3.0 Definition

3.1 **Applicant** - A person or organization that applies for a contract or grant from DSHS.

3.2 **Award** - A final award or tentative award posted on the Electronic State Business Daily (ESBD).

3.3 **Bidder** – An individual or entity that submits a bid. The term includes anyone acting on behalf of the individual or other entity that submits a bid, such as agents, employees, and representatives.

3.4 **Electronic State Business Daily (ESBD)** - The electronic marketplace described in **Texas Government Code, §2155.083**, where state agency procurement opportunities over \$25,000 are posted.

3.5 **Protestant** – The bidder or applicant requesting a review of the award of the contract or grant.

3.6 **Protest Resolution Committee (PRC)** – The central body authorized to settle and resolve the dispute. The PRC is composed of the following:

- Chief Operating Office or designee,
- Chief Financial Officer or designee, and
- Deputy Commissioner or designee.

4.0 Persons Affected

- Bidders or applicants who want to request a review of the award of a DSHS contract or grant
- Contract Oversight and Support Section
- Client Services Contracting Unit
- Contract Management Units
- DSHS Programs
- Protest Resolution Committee
- Office of General Counsel

- DSHS Commissioner.

5.0 Responsibilities

5.1 **Bidders or applicants** who want to request a review of the award of a DSHS contract or grant must submit a protest in writing to COS within ten (10) working days following the date of posting of an award on the **ESBD**. Upon receipt of a request for a review, DSHS will date stamp the request.

- A formal or informal protest must be written and contain the following:
 - A specific identification of the statutory or regulatory provision and/or procurement procedure that the protested action is alleged to have violated.
 - A specific description of each act alleged to have violated the statutory, regulatory and/or procurement provision(s) identified above;
 - A precise statement of the relevant facts;
 - An identification of the issues to be resolved; and
 - The aggrieved party's arguments and supporting documentation.
- If a protest is submitted during the 10 working day period and the protestant wants to amend the protest with additional information, they may do so if the additional information is received by DSHS within the initial 10 working days. After the 10 working days have elapsed, the protestant may not amend the protest by submitting additional unsolicited information.

5.2 **Contract Oversight and Support Section (COS)** Director or designee is responsible for ensuring that a protest is resolved in accordance with this policy.

5.3 **Client Services Contracting Unit (CSCU)** is responsible for ensuring that no contract or grants that are affected by the protest will be executed for a purchase that is the subject of a protest until the agency provides a written disposition of the protest to the protestant. **Exception:** This requirement may be waived in the case of a bona fide emergency, as determined by the DSHS Commissioner or designee, or in the case of an award that is required by state or federal law to be completed by a particular date.

5.4 **Contract Management Unit (CMU)** is responsible for notifying DSHS program staff of the protest and keeping them informed of resolution.

5.5 **DSHS Program** is responsible for providing any requested information to the PRC.

5.6 **Protest Resolution Committee (PRC)** has the authority to settle and resolve the dispute.

5.7 **Office of the General Counsel (OGC)** is responsible for reviewing bid protest to determine if it meets the standard outlined in § 5.1 of this policy.

5.8 **DSHS Commissioner or designee** is responsible for determining whether the procurement in question is a bona fide emergency and, if so, providing written authorization to CSCU to award a contract or grant prior to the final disposition of a protest, if applicable.

6.0 Procedures

6.1 A bidder or applicant must submit a protest in writing to COS within ten (10) working days of posting of the award on the **ESBD**. If the protest is not timely received, it will not be considered and the protestant will be notified in writing. Note: The date that the award is posted on the ESBD is NOT counted as one of the ten working days.

- 6.2 COS Director or designee will forward protest to OGC for legal review within two (2) working days of receipt.
- 6.3 OGC will notify COS within two (2) working days if the protest contains the items listed in § 5.1.
- 6.4 If the protest does not meet the standard per § 5.1 of this policy, COS Director or designee will draft a response informing the applicant or bidder of the decision. Prior to mailing the response, COS will obtain written approval from OGC as well as notify the CMU and CSCU Directors.
- 6.4.1 Should the protest meet the standard per DSHS policy, the COS Director or designee will forward a copy of the protest to the CMU and CSCU Directors to prepare a response within five (5) working days that will be shared with the PRC.
- 6.4.2 COS Director or designee will:
- Forward protest if it meets the standard to the PRC along with DSHS response documents.
 - Record the date when the protest is officially received and transmitted to the PRC.
 - Schedule a meeting of the PRC to review the protest.
 - Provide assistance to the PRC as required.
- 6.4.3 The PRC may solicit written responses, schedule meetings, or arrange to obtain additional information. All information received by the PRC will be copied to the protestant, the COS Director, the CSCU Director and the appropriate CMU and DSHS program. The PRC will issue a written determination within fifteen (15) working days of receipt of the protest. The determination of the PRC is final.
- 6.4.4 Information shall be provided to the PRC by the program procuring services, OGC or the CSCU as needed to ensure protest timelines are met.
- 6.4.5 OGC will draft a response to be mailed notifying the protestant of the PRC's decision.
- 6.4.6 COS Director or designee will notify the CMU and CSCU Directors prior to notifying the protestant of the PRC's decision.
- 6.5 COS Director or designee will monitor the status of the protest (if necessary) and assure that timelines are met and procedures are adhered to.

7.0 Issuance and Revision History

Date	Action	Section
09/01/2007	Added definitions and moved department/division definitions to section 5.0 responsibilities; added Contract Management Unit; added procedures in section 6.0.	3.0; 4.0; 5.0; 6.0
03/01/2006	Provide for delegation of responsibility by PRC; fix section numbering	3.6 & 5.3; 3.1, 3.4 & 5.4
11/30/05	New policy.	