



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

PROCUREMENT PROTEST POLICY

I. Purpose

This document establishes the San Diego Superior Court's policy and procedure for the resolution of procurement protests, including both solicitation specifications protests and award protests. This policy is in conformance with the Administrative Office of the Court's *Trial Court Financial Policy and Procedures Manual* and the *Judicial Branch Contracting Manual*. The court reserves the right to alter and/or supplement this policy in specific solicitations. Any such modifications will be set forth in the solicitation document and will supersede this policy if a conflict exists.

II. Policy

Pursuant to the guidelines set forth in the *Trial Court Financial Policy and Procedures Manual* and *Judicial Branch Contracting Manual*, contracts for goods or services will be solicited by the court in an open and fair manner, and awarded to the provider that is determined to be the most advantageous to the court, with price and other factors considered.

This policy establishes the procedure to be followed in the case of a protest for any procurement issued by the court that falls above the thresholds listed below, unless an alternate process is specified within the solicitation document. Failure of the protester to follow these procedures may render the protest untimely and/or inadequate and may result in rejection. No contract award will be made until completion of the protest process.

A. Protest Thresholds

Procurements that use the Small Business/Disabled Veterans Business Enterprise (SB/DVBE) Option (see the *Judicial Branch Contracting Manual* for more information) or that have a value at or below the thresholds listed below are not subject to this policy, and protests will not be accepted.

TYPE OF PROCUREMENT	THRESHOLD
Non-IT Goods	Over \$50,000
Non-IT Services	Over \$5,000
IT Goods and Services	Over \$100,000

The remainder of this policy applies only to procurements above the protest thresholds.

B. Grounds for Protest

There are two types of procurement protests; solicitation specifications protests and award protests. Protests filed for any reason not included below will not be considered.

1. Solicitation Specifications Protest

- a. A solicitation specifications protest is a protest alleging that a solicitation document contains a technical, administrative, or cost specification or requirement that is defective because it is either onerous, unfair, or illegal, or it imposes unnecessary constraints in proposing less costly or alternate solutions.
- b. Any prospective bidder may submit a solicitation specifications protest.
- c. The protestor bears the burden of proof in showing that the solicitation document contains such a defective technical, administrative, or cost specification or requirement.

2. Award Protest

- a. An award protest is a protest alleging that the court has committed an error in the award process sufficiently material to justify invalidation of the proposed award, or alleging that the court's decisions are lacking a rational basis and are therefore arbitrary and capricious. The following do not constitute the absence of a rational basis:
 - i. The bidder disagrees with the scores assigned by the evaluation team.
 - ii. The evaluation team could have assigned different scores based on the same information.

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- b. An award protest may only be submitted by a person or entity who submitted a bid and who believes the following:
 - i. That their bid is responsive to the solicitation document.
 - ii. That the court incorrectly selected another bidder for the award.
- c. The protestor bears the burden of proof in showing the court has committed an error sufficiently material to justify invalidation of the proposed award or that the court’s decisions lack a rational basis thus rendering them arbitrary and capricious.
- d. In no event will a protest be considered if all bids were rejected or the solicitation was cancelled.

C. Filing a Protest

1. All protests must be submitted in writing and sent by certified or registered mail, overnight courier, or hand-delivered to the Administrative Services Department of the court, located in the Hall of Justice at 330 West Broadway, Room 357. Delivery via email will not be accepted. The correct postal address for protest filings will be included in the original solicitation. Protests will be date- and time-stamped upon receipt and if hand-delivered, an Acknowledgment of Receipt of Bid/Protest (SDSC Form #PUR-002) showing the date/time it was received will be provided.
2. Protests will only be accepted within the timeframes and parameters as stated below, unless otherwise specified in the solicitation document or notice of intent to award. The protestor is solely responsible for ensuring that the protest is received (not post-marked) by the court by the deadline.
3. The timeframes for filing a protest are as follows:
 - a. Solicitation Specifications Protest
 - i. Any protest alleging that a solicitation document, or an addendum to a solicitation document, contains a technical, administrative, or cost specification or requirement that is defective, must be received (not post-marked) by the Administrative Services Department of the court no later than the due date specified in the solicitation document or addendum. If no such date is specified, the protest must be received no later than the Bid Closing Time.
 - ii. All protests must be received (not post-marked) by 2:00 p.m. on the date as specified above. Protests received outside of these timeframes will not be considered.
 - b. Award Protest

Protests alleging that the court has committed an error in the award process or that the court’s decisions are arbitrary and capricious must be received (not postmarked) by the Administrative Services Department of the court as indicated below:

 - i. A solicitation using a Request for Quotation (RFQ): Protest must be received by the court before the contract is executed. In no event will the court consider a protest after the contract has been executed.
 - ii. A solicitation using an Invitation for Bid (IFB) or Request for Proposal (RFP):

NON-IT GOODS	NON-IT SERVICES	IT GOODS AND SERVICES
The award protest must be received by the court within two (2) court days of the court posting the notice of intent to award.	The award protest must be received by the court within five (5) court days of the court posting the notice of intent to award.	The award protest must be received by the court within five (5) court days of the court posting the notice of intent to award.
The bidder will have 10 calendar days after the protest is received, to submit all information to the court.	The bidder will have 10 calendar days after the protest is received, to submit all information to the court.	The bidder will have 10 calendar days after the protest is received, to submit all information to the court.

All protests must be received (not post-marked) by the court by 2:00 p.m. on the date as specified above. Requests for extension of time or protests received outside of these timeframes will not be considered.

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D. Required Form of Protest

All protests must include the following information:

1. Title of the Solicitation Document to which the protest is related.
2. The name, postal and email addresses, and telephone and facsimile numbers of the bidder or its representative.
3. A detailed description of the specific legal and factual grounds of protest and any supporting documentation.
4. The specific alleged deficiency in the solicitation's technical, administrative, or cost specifications or requirements (for solicitation specifications protests) or the specific alleged error or irrational decision made by the court (for award protests).
5. The specific ruling or relief requested.
6. The court waives the requirement for the bidder to assert that it is the lowest responsible bidder meeting specifications for protests of non-IT goods solicitations.

If a protest is missing any of this information by the time the party is required to have delivered it to the court, it may be rejected by the Protest Hearing Officer. A written determination may be issued without requesting further information from the party, therefore, the protest must include all grounds and all evidence available at the time of the protest. If the party later raises new grounds or evidence that was not included in the initial protest submittal but which could have been raised at that time, the court will not consider such new grounds or new evidence.

E. Determination of Protest

1. When a protest is received, the Protest Hearing Officer will evaluate it and provide a written response allowing or denying the protest.
2. The response will be sent as indicated below:
 - a. Solicitation Specifications Protest: A written determination will be issued before the court opens the bids (or evaluates the bids, if the bids are not sealed). The court may extend the Bid Closing Time to allow for time to review the protest.
 - b. Award Protest: A written determination must be issued before the contract is executed, but should be issued within 10 court days of the complete submission of the award protest, or the bidder must be notified that additional time will be required. The court may extend the award date to allow for time to review the protest.

F. Appeal of Decision

1. The Protest Hearing Officer's decision will be considered the final action by the court unless the protesting party timely submits an appeal of the decision. The appeal must be submitted in writing and sent by certified or registered mail, overnight courier, or hand-delivered to the court's Administrative Services Department, located in the Hall of Justice at 330 West Broadway, Room 357, to the attention of the Protest Appeals Officer. Delivery via email will not be accepted. Appeals will be date- and time-stamped upon receipt and if hand-delivered, an Acknowledgment of Receipt of Bid/Protest (SDSC Form #PUR-002) will be issued to the protestor stating the date and time the appeal was received.
2. The protestor bears the burden of proof to show that the Protest Hearing Officer's written determination is incorrect.
3. An appeal must be based on one or both of the following. Appeals filed for any other reason will not be considered.
 - a. The protestor alleges that there are new facts and/or information related to the protest that were not available at the time the protest was submitted.
 - b. The protestor alleges that the decision of the Protest Hearing Officer was in error of law or regulation.
4. Appeals must be received (not post-marked) by 2:00 p.m. on the date as specified below. Any appeal received outside of these timeframes will not be considered.
 - a. Solicitations Specifications Protest: Within two (2) court days of the issuance of the Protest Hearing Officer's written decision.
 - b. Awards Protest: Within five (5) calendar days of the issuance of the Protest Hearing Officer's written determination.

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5. The appeal must include the following:
 - a. The title of the Solicitation Document to which the appeal is related.
 - b. A copy of the Protest Hearing Officer's written determination.
 - c. The name, postal and email addresses, and telephone and facsimile numbers of the protester filing the appeal.
 - d. A detailed description of the specific legal and factual grounds for the appeal and any supporting documentation. See section F.3 above for acceptable reasons for the appeal.
 - e. The specific ruling or relief requested.An appeal lacking any of this information may be rejected.
6. Upon receipt of a request for appeal, the Protest Appeal Officer will review the request and issue a decision within 10 court days or notify the protester that additional time will be required.
7. While the request for appeal is being reviewed, the Protest Appeal Officer may elect to withhold the contract award, or proceed with the contract award and implementation.
8. If the Protest Appeal Officer determines the appeal has merit, the Protest Hearing Officer will be directed to take appropriate remedial action.
9. The Protest Appeal Officer's decision as to the appeal is final.

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