

# 12.0 PROTESTS AND APPEALS

## 12.1 Construction Projects – Bid Protests

The provisions of Section 12.1 apply to public projects bid and administered by the General Services Department. Public projects bid and administered by the Public Works Department are covered by procedures promulgated by that department.

- (a) Any actual or prospective bidder, offeror or contractor who is allegedly aggrieved in connection with the solicitation or award of a construction contract for a public work may file a protest. The bid protest shall be filed with the Clerk of the Board within three working days of the bid opening or notification of bid award recommendation, whichever date is later. The Board of Supervisors shall hear the bid protest prior to the execution of the contract, unless subject to (b) below. The protesting party may protest the bid award for the County's or successful bidder's failure to comply with the requirements of County procedures, the bid documents or any other applicable provision of County or State code. The Board shall sustain a bid protest only if it finds evidence that award of the bid would violate County code or other applicable law. The decision of the Board shall be final.
- (b) In the event that the County Administrative Officer, in consultation with County Counsel and the General Services Director, makes a determination that the award of the contract without delay is necessary to protect a substantial interest of the County, then the Board of Supervisors will not hear a bid protest prior to the execution of the contract. In this instance the Board of Supervisors may delegate hearing of the bid protest to the Director of General Services or the Office of the County Administrator.

## 12.2 Protests and Appeals of Other Procurement Awards

Any actual or prospective bidder, offeror or contractor who is allegedly aggrieved in connection with the solicitation or award of a contract other than bid protests as described under Section 12.1 may protest to the General Services Director. The protest shall be submitted in writing to the General Services Director (Purchasing Agent) within five (5) working days after notification of the recommendation of award.

### 12.2.1 Protests to the General Services Director

The General Services Director shall issue a written decision within ten (10) working days after receipt of the protest. The decision shall:

- (a) State the reason for the action taken;
- (b) Inform the protestant that a request for further administrative appeal of an adverse decision must be submitted in writing to the Clerk of the Board of Supervisors within seven (7) working days after receipt of the decision by the General Services Director. If the award is not subject to approval by the Board of Supervisors (contracts for services for up to \$15,000), the General Services Director shall make the final decision on the merits of the protest.

The General Services Director shall discuss with County Counsel all protests prior to issuing a written decision.

## **12.2.2 Appeals to the Board of Supervisors**

If so requested as set forth in Section 12.2.1(b) above, and the award is subject to approval by the Board of Supervisors, the decision of the General Services Director may be appealed to the Board of Supervisors. If the award is not subject to approval by the Board of Supervisors, the General Services Director shall make the final decision on the merits of the protest per Section 12.2.1.

## **12.2.3 Appeal Time Limits**

Appeals of decisions shall be initiated within ten days of the decision. The county shall be considered an interested party. When the appeal period ends on a day when the county offices are not open to the public for business, the time limits shall be extended to the next full working day.

## **12.2.4 Initiation of Appeals**

An appeal shall be filed with the clerk of the board of supervisors by letter that shall state, as appropriate, any of the following:

A determination or interpretation is not in accord with the purpose of these procedures or County Code;

- There was an error or abuse of discretion;
- The record includes inaccurate information; or
- A decision is not supported by the record.

In the event of a timely appeal before the Board of Supervisors under this Section, the County shall not proceed further with the solicitation or with the award of the contract until the appeal is resolved, unless the County Administrative Officer, in consultation with County Counsel, the General Services Director, and the using department, makes a written determination that the award of the contract without delay is necessary to protect a substantial interest of the County

## **12.2.5 Appeal Procedure**

- (a) **Appeal Hearing Date.** An appeal shall be scheduled for a hearing before the Board within thirty days of the County's receipt of an appeal unless the protestor and County consent to a later date.
- (b) **Notice and Public Hearing.** An appeal hearing shall be a public hearing. Notice of the public hearing shall be mailed or delivered to the protestor within ten days of the scheduled hearing date.
- (c) **Hearing.** At the hearing, the Board shall review the record of the decision and hear oral explanations from the protestor and any other interested party.
- (d) **Decision and Notice.** After the hearing, the Board shall affirm, modify or revise the original decision. When a decision is modified or reversed, the Board shall state the specific reasons for modification or reversal. The Clerk of the Board of Supervisors shall mail notice of a County Board decision. Such notice shall be mailed to the protestor within five working days after the date of the decision and to any other party requesting such notice.
- (e) **A decision by the Board regarding an appeal shall become final on the date the decision is announced to the public.**