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| Chapter: Agency Management and Operations Subchapter: Contracts Title: Protests ACA: N/A Statutes: Gov't Code §2155.076 References: 34 TAC §20.384 | Effective Date: 7/15/14 Page: 1 of 3 Replaces: GAP.385.1109, 7/15/11 |
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RULE

(a) **Purpose.**

The purpose of this rule is to establish the process for which actual or prospective bidders, offerors, or contractors may formally protest an action taken by the Texas Juvenile Justice Department (TJJD) during the contract process.

(b) **Definitions.**

The following words and terms, when used in this rule, shall have the following meanings unless the context clearly indicates otherwise.

- (1) **Agency**--TJJD.
- (2) **Interested Parties**--All vendors who have submitted bids or proposals for the provision of goods or services pursuant to a solicitation with TJJD.

(c) **General Provisions.**

- (1) Any actual or prospective bidder, offeror, or contractor who considers himself/herself to have been aggrieved in connection with the agency's solicitation, evaluation, or award of a contract may formally protest to the chief financial officer (CFO) or his/her designee. Such protests must be made in writing and received in the office of the CFO within 10 workdays after the protesting party knows, or should have known, of the occurrence of the action that is protested. Formal protests must conform to the requirements of this subsection and subsection (d) of this section and will be resolved through use of the procedures that are described in subsections (e) - (g) of this section. The protesting party must mail or deliver copies of the protest to the agency and other interested parties.
- (2) In the event of a timely protest under this rule, the agency will not proceed further with the solicitation or award of the contract unless the CFO, after consultation with appropriate staff, makes a written determination that the contract must be awarded without delay to protect the best interests of the agency.

(d) **Protests.**

A formal protest must be sworn and contain:

- (1) a specific identification of the statutory or regulatory provision that the protesting party alleges has been violated;
- (2) a specific description of each action by the agency that the protesting party alleges to be a violation of the statutory or regulatory provision that the protesting party has identified pursuant to paragraph (1) of this subsection;
- (3) a precise statement of the relevant facts;
- (4) a statement of any issues of law or fact that the protesting party contends must be resolved;

- (5) a statement of the argument and authorities that the protesting party offers in support of the protest; and
- (6) a statement that copies of the protest have been mailed or delivered to the agency and all other identifiable interested parties.

(e) **Resolving Protests.**

- (1) The CFO or his/her designee may settle and resolve the dispute over the solicitation or award of a contract at any time before the matter is submitted on appeal to the agency's general counsel or his/her designee. The CFO or his/her designee may solicit written responses to the protest from other interested parties.
- (2) If the protest is not resolved by mutual agreement, the CFO issues a written determination that resolves the protest.
- (3) If the CFO or his/her designee determines that no violation of statutory or regulatory provisions has occurred, then he/she must inform the protesting party and any other interested parties by a letter that sets forth the reasons for the determination.
- (4) If the CFO or his/her designee determines that a violation of any statutory or regulatory provisions has occurred in a situation in which a contract has not been awarded, then he/she must inform the protesting party and any other interested parties of that determination by letter that details the reasons for the determination and the appropriate remedy.
- (5) If the CFO or his/her designee determines that a violation of any statutory or regulatory provisions has occurred in a situation in which a contract has been awarded, then he/she must inform the protesting party and any other interested parties of that determination by a letter that details the reasons for the determination. This letter may include an order that declares the contract void.

(f) **Appealing a Protest.**

- (1) The protesting party may appeal a determination of a protest by the CFO or his/her designee to the general counsel or his/her designee. An appeal of the CFO's determination must be in writing and be received by the general counsel not later than 10 workdays after the date on which the CFO or his/her designee has sent written notice of his/her determination. The scope of the appeal will be limited to reviewing the determination of the CFO or his/her designee. The protesting party must mail or deliver to the agency and all other interested parties a copy of the appeal, which must contain a certified statement that such copies have been provided.
- (2) The general counsel or his/her designee may refer the matter to the executive director for consideration or may issue a written decision that resolves the protest.

(g) **Referral of a Protest to the Executive Director.**

The following requirements apply to a protest that the general counsel or his/her designee refers to the executive director.

- (1) The general counsel or his/her designee delivers copies of the appeal and any responses by interested parties to the executive director.
- (2) The executive director may consider any documents that agency staff or interested parties have submitted.
- (3) A protest or appeal that is not filed timely will not be considered unless good cause for delay is shown or the executive director determines that an appeal raises issues that are significant to agency procurement practices or procedures in general.

- (4) A written decision that either the executive director or the general counsel or his/her designee has issued is the final administrative action of the agency.

(h) **Documentation Requirements.**

The agency maintains all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the agency's retention schedule.
