

DHS PROTEST PROCEDURE

BACKGROUND

The Department of Human Service (DHS) Bureau of Contract Management (BCM) procures direct client services pursuant to a limited delegation of authority from the State Division of Purchasing and General Services (State Purchasing). The terms of the delegation require DHS to handle all protests received in connection with its use. The following procedures shall be followed when responding to the protest of a DHS procurement action.

PART 1 -- RECEIPT AND NOTIFICATION

Within 48 hours of receipt of a protest, BCM will:

1. Enter the protest into the DHS Protest Log.
2. Notify the parties identified below of receipt of the protest **and**, in those cases where a stay is necessary pursuant to [63G-6-802](#), of imposition of the stay:
 - a. Protestor,
 - b. The DHS agency on whose behalf the protested procurement was published (Purchasing Agency),
 - c. The DHS Executive Director or the Executive Director's designee, and
 - d. The DHS Assistant Attorney General (Assistant AG) responsible for handling procurement protests on behalf of the Department.
3. Ask the Protestor whether it would like to participate in a debriefing with BCM and agency personnel.

PART 2 -- STAY OF SOLICITATION OR AWARD

If a stay of the solicitation or award is required pursuant to Utah Code § [63G-6-802](#) and the DHS Executive Director or head of the using agency determines an award without delay is necessary to protect the interests of the Department and the State, the Executive Director or head of the using agency may:

1. Contact the Director of State Purchasing to request a written determination that an award without delay is necessary to protect the substantial interests of the State;

OR

2. Ask BCM to draft correspondence to the Director of State Purchasing on their behalf to request a written determination that an award without delay is necessary to protect the substantial interests of the State.

If the Director of State Purchasing approves an award without delay, a copy of the Director of State Purchasing's written determination shall be provided to BCM. BCM will notify the

parties identified in Part 1 of State Purchasing's determination and of the fact DHS will be proceeding "with the solicitation or with the award of the contract".

A lift of the stay imposed by 63G-6-802 may be pursued at any time during the protest process. Attempts to resolve the protest may be pursued at the same time as a request for lift of the stay.

PART 3 -- DEBRIEFING

The purpose of a debriefing is to address any questions the Protestor may have about the solicitation and/or the award in an attempt to resolve the Protestor's concerns informally.

1. If the Protestor wants a debriefing, BCM will schedule and conduct the same within 10 working days or within such other timeframe as the parties may agree upon. At the conclusion of the debriefing:
 - a. If the Protestor wants to withdraw its protest, BCM will:
 - (1) Obtain a written statement of withdrawal signed by the Protestor;
 - (2) Notify the parties identified in Part I above of resolution of the protest;
 - (3) File the statement of withdrawal in the Protestor's original procurement file; and
 - (4) Update the procurement log.
 - b. If the Protestor wants to pursue its protest, proceed to Part 4 below.
2. If the Protestor does not want a debriefing, the protest shall be advanced directly to Part 4 below.

PART 4 -- EXECUTIVE DIRECTOR'S OR DESIGNEE'S DECISION

1. If the Protestor does not want to participate in a debriefing or if the debriefing fails to resolve the protest, BCM will notify the DHS Executive Director or designee of the need for a decision. The DHS Executive Director or designee may do one or more of the following to assist in making a decision:
 - a. Hold an informal conference with the Protestor and, if desired, the Purchasing Agency;
 - b. Investigate the matter; and/or
 - c. Review of the facts in the procurement record without any discussion with the parties.
2. The Executive Director's or designee's decision shall be issued in writing and shall:
 - a. State the reasons for the decision; and

- b. Inform the Protestor of its right to administrative or judicial review as provided in Utah Code §§ [63G-6-810\(2\)](#) and [63G-6-815](#).

The time limit for filing an appeal of the Executive Director's or designee's decision is seven calendar days per § [63G-6-811\(2\)](#) which reads as follows:

For an appeal from a decision regarding a protested solicitation or award, the aggrieved person shall file an appeal within seven calendar days of receipt of a decision rendered or considered to have been rendered pursuant to Section [63G-6-806](#).

3. The Executive Director's or designee's signed original decision shall be sent to the Protestor with copies to the Purchasing Agency, the DHS Purchasing Agent in BCM, and the Assistant AG.
4. The DHS Purchasing Agent shall file a copy of the decision in the Protestor's original procurement file and shall record the result in the Procurement Log.

Pursuant to Utah Code [63G-6-806\(2\)](#), the Executive Director's or designee's decision is "final and conclusive" unless the Protestor appeals administratively to the procurement appeals board or commences an action in district court.