

**OFFICE OF THE ATTORNEY GENERAL**  
**PROCUREMENT COMPLAINT AND PROTEST PROCESS**

**I. INTRODUCTION/BACKGROUND**

In compliance with RCW 39.26.170 and with Department of Enterprise Services (DES) Policy DES 170-00, the Office of the Attorney General (AGO) has established the following Complaint and Protest Process.

**II. GENERAL PROVISIONS**

This process addresses the formal mechanism by which the AGO will address complaints and protests and outlines the process for bidders. The AGO recognizes that solicitation documents, even after extensive internal review and posting, may contain issues that do not constitute grounds for a formal complaint. However, the AGO desires to hear concerns and comments early on; they may well lead to a solicitation amendment or clarification. For that reason, the AGO solicitation documents ask potential bidders to pose all questions and concerns early in the solicitation process. Please consult the schedule in the applicable solicitation document to find deadlines for bringing such general concerns to AGO attention.

**III. PROCESS**

This process applies to all competitive AGO solicitations for goods or services. The following solicitation language is to be included in all competitive solicitation documents and outlines the process for bidders to submit a complaint or protest. The Attorney General will be notified of all complaints and will be provided a copy of the AGO's response. The Attorney General and the Director of the Department of Enterprise Services will be provided a copy of any protest and the AGO's protest response at the time the protest response is issued. The AGO, at its sole discretion, reserves the right to modify the following solicitation language or this process to align with DES policy changes, procedures, or best practices or in any manner deemed necessary or in the best interest of the AGO.

**IV. SOLICITATION LANGUAGE**

Include, in substantially the same form, the following language in AGO competitive solicitations:

**COMPLAINTS**

The complaint period is an opportunity for Bidders to voice objections, raise concerns, or suggest changes that were not addressed during the Question & Answer Period or at the Pre-Bid Conference. The complaint period ends five (5) business days before the Proposal due date, and complaints must be received on or before the date and time indicated on the Anticipated Procurement Schedule of the [RFP, RFQQ, RFQ, etc.].

- A.** *Criteria for Complaint:* A formal complaint may only be based on one or more of the following grounds: (a) The solicitation unnecessarily restricts competition; (b) The solicitation evaluation or scoring process is unfair or flawed; or (c) The solicitation requirements are inadequate or insufficient to prepare a response. Complaints based on other criteria will not be considered

or addressed by the AGO. A complaint should clearly articulate the basis of the complaint and include a proposed remedy.

- B.** *Initiating A Complaint:* A complaint must be submitted to the [RFP, RFQQ, RFQ, etc.] Coordinator via email.
- C.** *Response:* When a complaint is received, the [RFP, RFQQ, RFQ, etc.] Coordinator (or designee) will consider all the facts available and respond in writing prior to the deadline for proposal submittals, unless more time is needed.
- D.** *Response is Final:* The [RFP, RFQQ, RFQ, etc.] Coordinator's response to the complaint is final and not subject to administrative appeal.
- E.** *Other:*
  - i.** Issues raised in a complaint may not be raised again during the protest period.
  - ii.** Any issue, exception, addition, or omission not brought to the attention of the [RFP, RFQQ, RFQ, etc.] Coordinator prior to proposal submittal may be deemed waived for protest purposes.
  - iii.** The AGO will consider all complaints but is not required to adopt a complaint, in part or full.
  - iv.** If Bidder complaints result in changes to the [RFP, RFQQ, RFQ, etc.], written amendments will be issued and posted on WEBS.

## **DEBRIEF CONFERENCES**

A Debrief Conference is an opportunity for a Bidder and the AGO to meet and discuss the Bidder's Proposal. A request for a debrief conference is a required prerequisite for a Bidder wishing to file a protest.

- A.** *Announcement:* Following the evaluation of the bids, the AGO will issue an announcement on WEBS of the Apparent Successful Bidder (ASB) and send a Notification of Unsuccessful Bidder to all unsuccessful Bidders through WEBS.
- B.** *Debrief Request:* A Bidder's request for a debriefing conference must be received via email by the [RFP, RFQQ, RFQ, etc.] Coordinator within three (3) business days after the Announcement of ASB and Notification of Unsuccessful Bidder is posted through WEBS.
- C.** *Debrief Conference:* When the Debrief Conference request is received, the AGO will offer the requesting Bidder one meeting opportunity and notify the Bidder of the Debrief Conference place, date, and time.
- D.** The AGO will not allow the debrief process to delay the award. Therefore, Bidders should plan for contingencies and alternate representatives. Bidders who do not attend the Debrief Conference will lose the opportunity to protest.

## **PROTESTS**

The protest procedure is available to Bidders who submitted a response to this solicitation document and have participated in a Debriefing Conference. Bidders protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest constitutes the sole administrative remedy available to Bidders under this procurement.

Upon completing the Debriefing Conference, the Bidder is allowed five (5) business days to file a protest of the acquisition with the AGO Contracts Administrator via email to the [RFP, RFQQ, RFQ, etc.] Coordinator at the email address listed on Page 1 of the [RFP, RFQQ, RFQ, etc.].

- A.** *Criteria for a protest:* A protest may be based only on one or more of

the following:

- i.* Bias, Discrimination, or conflict of interest on the part of an evaluator;
  - ii.* Error in computing evaluating scores; or
  - iii.* Non-compliance with any procedures described in the [RFP, RFQQ, RFQ, etc.].
- B.** *Criteria not met:* Protests not based on the above three issues will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's professional judgment on the quality of a proposal, or 2) the AGO's assessment of its own and/or other agencies' needs or requirements.
- C.** *Initiating a Protest:* Any bidder that has filed a Complaint and a Request for Debrief Conference may protest selection of the ASB. A protest must:
  - i.* Be in writing;
  - ii.* Include a specific and complete statement of facts forming the basis of the protest;
  - iii.* Include a description of the relief or corrective action requested;
  - iv.* Be received by the AGO on or before 5:00 pm on the fifth (5<sup>th</sup>) business day after the Bidder's Debrief Conference (not including the conference day).
- D.** *Protest Response:* Upon receipt of a protest, the AGO will hold a protest review. The Protest Officer of the AGO, the Chief Financial Officer, or an employee designated by the Chief Financial Officer who was not involved in the procurement will consider the record and all available facts and issue a decision within ten (10) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay. In the event a protest may affect the interest of another Bidder that submitted a Proposal, such Bidder will be given an opportunity to submit its views and any relevant information on the protest to the Protest Officer or other designee.
- E.** *Decision is Final:* The protest decision is final and not subject to administrative appeal. If the protesting Bidder does not accept the AGO's protest response, the Bidder may seek relief in Thurston County Superior Court. The final determination of the protest shall:
  - i.* Find the protest lacking in merit and uphold the AGO's action;
  - ii.* Find only technical or harmless errors in the AGO's acquisition process and determine the AGO to be in substantial compliance and reject the protest.
  - iii.* Find merit in the protest and provide options to the AGO, including correcting errors and reevaluating all proposals; reissuing the solicitation document; or making other findings and determining other courses of action as appropriate.
- F.** After reviewing the protest and available facts, the AGO will issue a written response within ten (10) business days from receipt of the protest, unless additional time is needed.

If the AGO determines that the protest is without merit, the AGO will enter into a contract with the ASB. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

## **COMMUNICATION REGARDING COMPLAINTS, DEBRIEFS AND PROTESTS**

### *A. Communications:*

With the exception of protests, all communications about this RFP, including complaints and debriefs, must be addressed to the Procurement Coordinator unless otherwise directed. Protests must be addresses to the Protest Officer.

- Form, Substance & Other. All complaints, debrief conference requests and protests must:
  - i. Be in writing;
  - ii. Be signed by the complaining, requesting, or protesting bidder or an authorized agent;
  - iii. Be delivered within the time frame(s) outlined herein;
  - iv. Identify the Competitive solicitation number;
  - v. Conspicuously state “Complaint”, “Debrief” or “Protest” in any subject line of any correspondence or email; and
  - vi. Be sent to the address identified below.
- Complaints and Protests. All complaints and protests must (a) state all facts and arguments on which the complaining or protesting Bidder is relying on as the basis for its action; and (b) include any relevant documentation or other supporting evidence.

***B. To Submit a Complaint***

Send an email message to the Procurement Coordinator listed in this Competitive Solicitation (see Section [X], above). The email message must include “Complaint” in the subject line of the email message. Alternatively, mail the complaint to the Procurement Coordinator listed in this Competitive Solicitation at the following address:

Attn: Procurement Coordinator – Complaint  
AGO Contracts Unit  
P.O. Box 40107 Olympia, WA 98504-0107

***C. To Request a Debrief Conference***

Send an email message to the Procurement Coordinator listed in this Competitive Solicitation (see Section [X], above). The email message must include “Debrief” in the subject line of the email message.

***D. To Submit a Protest***

Send an email message to the Protest Officer at the following email address: [Contracts@atg.wa.gov](mailto:Contracts@atg.wa.gov). The message must include “Protest” and the Solicitation number in the subject line of the email message. Alternatively, mail the protest to the Protest Officer at the following address:

Attn: Protest Officer  
AGO Contracts Unit  
P.O. Box 40107 Olympia, WA 98504-0107

**V. REFERENCES/RESOURCES**

[RCW 39.26.170](#); [RCW 39.26.160](#); [RCW 39.26.030](#)  
[Policy DES-170-00 Complaints and Protests \(wa.gov\)](#)  
[Enterprise Services Procedure No. DES-170-00 \(wa.gov\)](#)