

55-3 Bid Protests

55-3-1 Purpose • 55-3-2 Policy • 55-3-3 Administration • 55-3-4 Protests • 55-3-5 Stay of Procurement • 55-3-6 Appointment of Hearing Officer • 55-3-7 Parties to the Protest • 55-3-8 Notice • 55-3-9 Conference or Hearing • 55-3-10 Resolution • 55-3-11 Remedies for Improper Solicitation or Awards • 55-3-12 No Money Damages or Attorneys' Fees • 55-3-13 Final Order

1. **Purpose.** This document sets forth the policy and the procedures for protesting bid decisions made by Eastern New Mexico University System (the System).
2. **Policy.** The System allows bid protests within the New Mexico Procurement Code [NMSA 1978, §§ 13-1-172 through 13-1-183 (1984 as amended through 2013).], following System procedures.

The foregoing purpose and policy are implemented by the following.

Procedures

3. **Administration.** These procedures shall be administered by the purchasing director with oversight by the ENMU System chief financial officer (the CFO).
4. **Protests.** Any bidder or offeror who alleges a grievance in connection with solicitation or award of a contract by the System may submit a protest to the purchasing director as follows.
 - A. The protest shall be made in writing within fifteen (15) calendar days after knowledge of the facts or occurrences giving rise to the protest.
 - B. The written protest must include:
 - (1) The name, address and telephone number of protestant;
 - (2) The contracting activity and the number or name of the solicitation and, if a contract has been awarded, the contract number;
 - (3) A concise statement of the reason for the protest, including supporting exhibits, evidence or documents to substantiate any claim, unless the documents are not available within the filing time, in which case the documents shall be identified and the expected availability date shall be indicated;
 - (4) The relief requested and
 - (5) The persons and/or entities eligible for participation in bid protest proceedings as parties, including the purchasing director, the department that ordered the procurement and the otherwise successful bidder.
 - C. Any entity having an interest in the protest may become a party by so informing the purchasing director in writing. Entities becoming parties by so informing the Purchasing Office shall, upon their request and at their own expense, be provided with the documents submitted by the protestant.
5. **Stay of Procurement.** In the event of a timely protest, the purchasing director shall not proceed further with the procurement unless he/she makes a written determination of the reasons that the award of the contract is necessary to protect substantial interests of the System. A copy of the written determination shall be forwarded to all parties to the protest.

6. **Appointment of Hearing Officer.** Upon the filing of a timely protest, the CFO shall designate a hearing officer who shall be selected from the University Council. The hearing officer shall not have been directly involved in the protested procurement.
7. **Parties to the Protest.** Those considered parties to the protest are
 - A. The System department that requested the solicitation;
 - B. The business entity or individual who filed the protest and
 - C. The business entity or individual who was awarded the contract.
8. **Notice.** The hearing officer shall give notice of the protest to the parties.
 - A. **Providing Information on Protests.** The hearing officer shall provide information on protests as follows:
 - (1) A copy of the protest shall immediately be provided for the department that requested the solicitation and the business entity or individual who was awarded the contract. Any information provided to the hearing officer pursuant to sections 8. A. (c) and 8. B. below shall also be provided to the parties.
 - (2) Information bearing on the substance of the protest shall be provided to the parties, except to the extent that withholding information is permitted or required by law.
 - (3) If the hearing officer requires additional information from the protester, such information shall be submitted within a time period established by the hearing officer. Failure to comply in a timely manner shall result in consideration of the protest without the information.
 - B. Any party may file written comments on the information provided by the hearing officer provided such comments are filed within ten (10) days of receipt of the information.
 - C. The hearing officer shall not receive, nor shall any party or other person, department or agency directly or indirectly involved in a protest submit to the hearing officer, ex parte, any evidence, explanation, analysis or advice, whether written or oral, regarding any matter at issue in a protest.
9. **Conference or Hearing.** A conference or hearing on the merits of the protest shall be held at the written request of a party, or may be held at the discretion of the hearing officer. The hearing officer shall establish any necessary procedures for a conference or hearing to all parties. Requests for a conference or hearing must be made within ten (10) days of the filing of the protest.
 - A. In the event of a conference or hearing, it shall be recorded and the proceedings shall become part of the official record of the bid protest.
 - B. Any written comments to be submitted as a result of the conference or hearing must be received by the hearing officer within five (5) days of the date on which the conference or hearing was held, unless the hearing officer provides otherwise.

10. Resolution. The hearing officer shall make a written determination on the merits of the protest no later than fifteen (15) days after all information is due or the date of any conference or hearing on the matter, whichever is later. The determination shall be fully responsive to the allegations of the protest. As a part of the written determination, the hearing officer shall include:

- A. A copy of the protest, the solicitation (including specifications or portions relevant to the protest), the abstract of bids or offers and any other documents relevant to the protest to the parties involved in the protest;
- B. The hearing officer's findings and conclusions in the matter together with any additional evidence or information used by the hearing officer to determine the validity of the protest;
- C. If the award was made after receipt of the protest, the reason of award statement of the purchasing director;
- D. A statement of the relief granted and
- E. Notice to the protestant of the right to judicial review of the final determination pursuant to NMSA 1978, § 13-1-183 (1984 as amended through 1999).

11. Remedies for Improper Solicitations or Awards.

- A. If, prior to award, the hearing officer determines that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be cancelled.
- B. If, after the award, the hearing officer determines that a solicitation or award of a contract is in violation of law and that the contractor awarded the contract has not acted fraudulently or in bad faith, the hearing officer may
 - (1) Ratify or revise the contract to comply with law, provided that a written determination is made that doing so is in the best interest of the System, or
 - (2) Terminate the contract and the contractor shall be compensated for the actual expenses reasonably incurred under the contract (not including costs incurred in response to the protest) plus a reasonable profit on work performed prior to termination.
- C. If, after an award, the hearing officer determines that a solicitation or award of a contract is in violation of law and that the contractor awarded the contract has acted fraudulently or in bad faith, the contract shall be cancelled.

12. No Money Damages or Attorneys' Fees. The hearing officer shall not award money damages or attorneys' fees.

13. Final Order. The hearing officer's written determination shall be included in the procurement file and shall be the final order for purposes of judicial review.

Approved by the Board of Regents on December 16, 2005.
Amendments approved by the Board of Regents on May 8, 2020.