

# ALTERNATIVE PROTEST PROCES REPORT

January 1, 2007

## BACKGROUND

Under provisions of the Public Contract Code (PCC) for traditional protest processes, any unsuccessful bidder may appeal or protest the proposed award of a contract for the acquisition of goods or information technology. If the issues cannot be resolved between the State department and the unsuccessful bidder, the California Victim Compensation and Government Claims Board (CVCGCB) decides the protest. Under this process, a contract under protest cannot be awarded until the protest is resolved and there is no statutory or regulatory time limitation to resolve protests. This can prove to be an expensive and time-consuming process and often delays the progress of State programs.

Under the provisions of PCC Section 12125 et seq., the Alternative Protest Process, any unsuccessful bidder may appeal or protest the proposed award of a contract for the acquisition of goods or information technology, and the Office of Administrative Hearings (OAH) decides the protest. A contract may be awarded prior to the resolution of the protest and an alternative protest must be resolved within 45 calendar days, as defined by the regulations. At the discretion of the Administrative Law Judge, the timeline may be extended for an additional 15 calendar days. This allows State programs to plan and avoid costly delays.

## REPORT REQUIREMENTS

This report was prepared pursuant to PCC Section 12129. It includes information from all Alternative Protest Process solicitations conducted for goods and information technology, as well as solicitations conducted under existing procedures (traditional protest process), from July 1, 2000, through June 30, 2006. The specific requirements of each subparagraph are noted below.

**PCC Section 12129(a)** requires the DGS to report “the percentage of bids with values under five hundred thousand dollars (\$500,000), under one million dollars (\$1,000,000), and over one million dollars (\$1,000,000) or more that were not subject to the Alternative Protest Process that were protested.”

Table 1, “Solicitations by Award Value,” shows the breakdown of the traditional solicitations during the report period:

**Table 1: Solicitations by Award Value  
Traditional Protest Process  
07/01/00 to 06/30/06**

Award Value	Less Than \$500,000	\$500,000 to Less Than \$1 Million	\$1 Million or More
Number of Solicitations Issued	3434	160	154
Number of Solicitations Protested	196	26	68
Percentage by Dollar Category	6%	16%	44%

**PCC Section 12129(b)** requires the DGS to report “the percentage of bids with values under five hundred thousand dollars (\$500,000), under one million dollars (\$1,000,000), and over one million dollars (\$1,000,000) that were subject to the Alternative Protest Process that were protested.”

Table 2, “Solicitations by Award Value,” shows the breakdown of the Alternative solicitations during the report period:

**Table 2: Solicitations by Award Value  
Alternative Protest Process  
07/01/00 to 06/30/09**

Award Value	Less Than \$500,000	\$500,000 to Less Than \$1 Million	\$1 Million or More
Number of Solicitations Issued	936	35	43
Number of Solicitations Protested	28	16	19
Percentage by Dollar Category	3%	46%	44%

**PCC Section 12129(c)** requires the DGS to report on “the number of protests determined to be frivolous by the Department of General Services, subject to this chapter, with corresponding data for solicitations issued pursuant to existing procedures.”

There were six alternative protests that were determined frivolous by the DGS Alternative Protest Coordinator.

There is no prescribed method to identify a frivolous protest under the traditional protest process, and, therefore no corresponding data.

**PCC Section 12129(d)** requires the DGS to report on “the percentage of contracts awarded under the Alternative Protest Process that were subsequently challenged in a court of law with corresponding data for solicitations issued pursuant to existing procedures.”

## *Alternative Protest Process Report*

There were two awards conducted under the Alternative Protest Process that were subsequently challenged in a court of law and were further litigated after the OAH decision. This reflects 0.19 percent of contracts awarded under the Alternative Protest Process that were subsequently challenged in a court of law.

There were four traditional protests that were decided by the CVCGCB, awarded, that were subsequently challenged in a court of law. This constitutes 0.10 percent of contracts awarded under the traditional protest process were subsequently challenged in a court of law.

**PCC Section 12129(e)** requires the DGS to report on “the length of time to resolve protests pursuant to this chapter and the corresponding data for solicitations issued pursuant to existing procedures.”

Protests that did not go to a hearing were resolved in an average of 27 days under the Alternative Protest Process compared to an average of 86 days under the traditional protest process.

Protests that did go to a hearing were resolved in an average of 49 days under the Alternative Protest Process compared to an average of 100 days under the traditional protest process.

### **CONCLUSION**

The data presented in this report represents the period from July 1, 2000, through June 30, 2006. For this reporting period, 21 percent of all solicitations issued were conducted under the Alternative Protest Process.

As noted in Tables 1 and 2, for transactions less than \$500,000, the percentage of protests filed under the Alternative Protest Process was slightly lower than under the traditional protest process. For transactions from \$500,000 to \$1 million, the percentage of protests filed is higher under the Alternative Protest Process, than under the traditional protest process. For those more than \$1 million, the percentage of protests filed under the Alternative Protest Process is the same as the percentage filed under the traditional protest process.

Clearly, the average length of time to resolve a protest under the Alternative Protest Process continues to be significantly shorter than that of the traditional protest process.

### **RECOMMENDATION**

The DGS recommends that it continue to increase the use of the Alternative Protest Process for information technology and commodity solicitations. The significantly shorter resolution timeframe helps State agencies to better plan acquisitions and avoid costly delays associated with protracted acquisitions.