

ALTERNATIVE PROTEST PROCES REPORT

January 1, 2010

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, 2009. 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 06/30/09**

Award Value	Less Than \$500,000	\$500,000 to Less Than \$1 Million	\$1 Million or More
Number of Solicitations Issued	4515	243	277
Number of Solicitations Protested	211	40	80
Percentage by Dollar Category	5%	16%	29%

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	1150	96	189
Number of Solicitations Protested	39	25	31
Percentage by Dollar Category	3%	26%	17%

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.”

Of the 96 protests filed under the Alternative Protest Process there were eight alternative protests preliminarily 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

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procedures.”

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 0.13 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 0.08 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.”

For the reporting period of July 1, 2000, through June 30, 2009, protests that were closed prior to a decision (for reasons such as the solicitation being canceled, the intended award being withdrawn, or the protestant withdrawing the protest) were resolved in an average of 22 days under the Alternative Protest Process compared to an average of 19¹ days under the traditional protest process.

Protests that were decided by a hearing officer were resolved in an average of 51 days under the Alternative Protest Process compared to an average of 99 days under the traditional protest process.²

CONCLUSION

During the reporting period July 1, 2000, through June 30, 2009, the DGS approved 22 percent of all solicitations for participation in the Alternative Protest Process. The DGS intentionally limited the use of the Alternative Protest Process as this was considered a “pilot” project. Protests administered under the Alternative Protest Process were resolved, on average, in half the time as protests filed under the traditional process, with no significant subsequent challenges in the courts.

¹ In the 2007 Alternative Protest Process Report, the average days under the traditional process was incorrectly reported as 86. The correct average is 16 days.

² During the reporting period July 1, 2000, through June 30, 2009, hearing officers rendered decisions on 87 protests processed under the traditional method, and 22 protests processed under the alternative method. This variation in time noted above is significant not only because the alternative process took about half the time, but also because the types of protests were substantially the same. No single type of solicitation was targeted for inclusion or exclusion from the alternative process. Beginning in 2005, all Food Solicitations were included in the alternative process.

RECOMMENDATION

The DGS recommends the Alternative Protest Process become a permanent process for protests of information technology and commodity solicitations. The Alternative Protest Process has significantly shortened the protest resolution timeframe and continues to assist State agencies to better plan acquisitions avoiding costly delays associated with protracted acquisitions.