

VOLUME 5, PART I

CHAPTER 9

PROTESTS DURING THE BIDDING PERIOD

INTRODUCTION

This chapter addresses how to handle bid protests that arise during the competitive bidding period.

9.1 BID PROTESTS

References:

- **Long Form, Instructions to Bidders, September 15, 2003 (see FM4[II])**

A bid protest may be lodged against the lowest bidder, against the next lowest bidder if the Facility rejects the lowest bid, or against the selection of the lowest responsible bidder. The required bidder procedures for filing a protest are described in the Instructions to Bidders (see FM4[II]). This section describes University procedures for resolving bid protests. (See [RD1.5](#), Bid Protest Procedures Flow Chart.)

The University will complete its internal bid protest procedures before award of the contract.

9.1.1 Filing a Bid Protest

Any person or entity may file a protest related to the selection of a bidder by the University for the award of a contract. The protest must state the specific reasons and facts upon which the protest is based and must generally be filed in writing with the Facility office issuing the bidding documents, within three business days of the following:

If the Bid does NOT include Alternates: the date of the bid opening.

If the Bid does include Alternates: the date the bid results identifying the actual names of the bidders are posted in a public place.

9.1.2 Facility Review of the Protest

The Facility office in charge of issuing the bidding documents must investigate the basis for the protest, analyze the facts, hold an informal hearing if deemed appropriate, and issue a written decision within 15 days of receipt of the protest unless factors beyond the Facility's reasonable control prevent such a resolution, in which event such decision will be issued as expeditiously as circumstances reasonably permit. The Facility's decision must state the reasons for the action taken by the University. A copy of the decision shall be furnished to the protestor, the Bidder whose Bid is the subject of the Bid protest, and all Bidders affected by the decision. .

Use the following guidelines for making the decision and writing the decision letter:

1. Verify that statements in the decision letter agree with language in the bidding documents. Repeat the language verbatim, do not paraphrase. Include a reference where found in the Bidding Documents.
2. Assign responsibility for the decision to the Facility administrator responsible for the project. Consult the Office of the General Counsel to helpmake the decision. Do not attribute the decision to the General Counsel (or anyone else).
3. Inform protesters that they have a right to appeal the decision or if the decision upholds the protest. This information requirement is generally satisfied if the Instructions to Bidders is referenced (or, for Design Build, if the RFP is referenced).
4. Send the letter by a means that provides proof of receipt.
5. Include the reasons for the action taken by the University for the denial or upholding of the protest or the rejection of bids.
6. Copy General Counsel, the Chair of the University's Construction Review Board, and the other bidder or bidders.

(See [RD2.21](#), Sample Letter: Bid Protest Decision. Caution: The situations for bid protest decisions vary considerably; adapt this sample letter to the situation at hand.)

9.1.3 Construction Review Board Appeal

Bidder whose Bid is the subject of the protest, all Bidders affected by the Facility's decision on the protest, and the protestor have the right to appeal the Facility's decision regarding the protest to the University's Construction Review Board. The appeal must be in writing and must specify the decision being appealed and the facts and circumstances relied upon in support of the appeal. The request for appeal must be received by the Chair, Construction Review Board, by close of business not later than five days following the appellant's receipt of the written decision of the Facility, at the

following address:

Chair, Construction Review Board
University of California
Office of the President
1111 Franklin St., 6th floor
Oakland, CA 94607-5200
Attention: Assistant Director, Design & Construction Policy

A copy of the appeal shall be sent to all parties involved in the Bid protest and to Facility. An appeal received after close of business is considered received as of the next business day. If the final date for receipt of an appeal falls on a Saturday, Sunday, or University holiday, the appeal will be considered timely only if received by close of business on the following business day.

A protest may be referred by Facility directly to the Chair of the Construction Review Board without prior review by the Facility.

Hearing on the Appeal.

The Chair of the Construction Review Board will review the Facility's decision and the appeal, and issue a written decision, or if appropriate, appoint a Hearing Officer to conduct a hearing and issue a written decision. If a hearing is held, the hearing shall be held not later than the 10th day following the appointment of the Hearing Officer unless the Hearing Officer for good cause determines otherwise. The written decision of the Chair or Hearing Officer will state the basis of the decision, and the decision will be final and not subject to any further appeal to University. The Chair or Hearing Officer may consult with the University's Office of the General Counsel on the decision as to legal form.

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