
ARTICLE 7 – DETERMINATIONS, PROTESTS, AND CLAIMS

7.1 CONSENT

All parties who respond to an Invitation for Bid or a Request for Proposal agree to be bound by the Garfield County Procurement Code and, in particular this Article 7, which governs all challenges, bid protests and contract claims.

7.2 PROCUREMENT QUESTIONS AND INTERPRETATIONS

The Chief Procurement Officer is authorized to answer all procurement related questions and to interpret the provisions of this Code.

7.3 WAIVERS AND EXCEPTIONS

All requests for waivers or exceptions to this Code shall be directed to the Chief Procurement Officer, who, in collaboration with the County Manager and/or County Attorney, is authorized to approve, modify or deny such requests. The basis for any waiver or exception to this Code shall be documented and shall be reflected in the appropriate contract file.

7.4 DETERMINATION OF NON-RESPONSIBILITY

The Chief Procurement Officer shall not allow any contract to be awarded to a bidder or offeror who is found to be non-responsible. If a bidder who otherwise would have been awarded a contract is found to be non-responsible, the Chief Procurement Officer shall prepare a written determination of non-responsibility setting forth the basis of the finding. A copy of the determination shall be sent promptly to the non-responsible bidder. The final determination shall be made part of the contract file and be made a public record.

7.5 CHALLENGES TO LOCAL BUSINESS DESIGNATION

1. Any person who has been adversely affected in a competitive solicitation process by the designation of a business as a Local Business may file a written protest with the Procurement Department within seven (7) calendar days of the date that person knew or should have known of the adverse effect. The written protest must set forth with specificity facts supporting the allegation that the business should not receive a Local Business designation. The Procurement Department shall investigate the allegations and make a recommendation to the BOCC.
2. Any person who claims to have been wrongfully denied a Local Business designation may file a written protest with the Procurement Department within seven (7) calendar days of the receipt of notice of the denial. The written protest must set forth with specificity facts supporting the allegation that the business should receive a Local Business designation. The Procurement Department shall investigate the allegations and make a recommendation to the BOCC.

7.6 BID PROTESTS

A protest is a grievance that is filed with the Chief Procurement Officer prior to award of a bid or proposal and consists of written objections by an interested party to a solicitation, or a cancellation of a solicitation, for bids or proposals.

Reasons for protest may include, by way of example only, the preparation of specifications, insufficient time to respond, restrictive bonding requirements, excessive or restrictive qualification requirements, and evaluation criteria.

1. **Resolution.** It is the policy of the Procurement Department to resolve all controversies by mutual agreement at the earliest opportunity. Before a protest is filed, therefore, it is recommended that the aggrieved party contact the Chief Procurement Officer.
2. **Right to Protest.** Any bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Chief Procurement Officer.
3. **Effect of Protest.** The filing of a protest will not be allowed to unnecessarily delay the procurement process. The Chief Procurement Officer shall determine whether the protest requires postponement or cancellation of award.
4. **Filing.** All protests shall be submitted in writing to the Chief Procurement Officer and must be received within seven (7) business days from the day the aggrieved party knew or should have known of the facts giving rise to the protest. Protests received after the seven (7) business days will not be formally addressed.
5. **Written Protest.** The protest shall be in writing and shall
 - a. Identify the IFB or RFP number and title;
 - b. State the date of the protest;
 - c. State the basis of the protest and the specific facts supporting the aggrieved party's position;
 - d. Contain the signature of the aggrieved party.
6. **Response.** The Chief Procurement Officer will review the protest with the County Manager, affected Department Head, and other appropriate staff and respond in writing to the aggrieved party within seven (7) business days of receipt of the protest. The Chief Procurement Officer is the only person authorized to respond to the protest. The response shall state the reasons for any decision reached.
7. **Reconsideration.** When an aggrieved party does not agree with the final decision of the Chief Procurement Officer, the party may, within seven (7) days of the final decision, submit a written request for reconsideration stating the reasons for disagreement with the

decision. An original and four (4) copies of the request shall be sent to the BOCC *in care of* the County Attorney. The County Attorney will present the protest or claim to the BOCC for reconsideration. The BOCC shall have 15 business days to send its response to the County Attorney. The County Attorney shall have 5 business days to send the response to the aggrieved party on behalf of the BOCC. The decision of the BOCC is final.

7.7 CONTRACT CLAIMS

A claim is a grievance filed after the award or rejection of a bid or contract and consists of a written objection by an interested party to a bid or contract awarded or rejected by the BOCC as a result of an Invitation for Bids or Request for Proposal.

1. **Resolution.** It is the policy of the Procurement Department to resolve all controversies by mutual agreement at the earliest opportunity. Before a claim is filed, therefore, it is recommended that the aggrieved party contact the Chief Procurement Officer.
2. **Right to File a Claim.** Any bidder, offeror, or contractor who is aggrieved in connection with the award or denial of a contract may file a claim with the Chief Procurement Officer.
3. **Effect of a Claim.** The filing of a claim will not be allowed to unnecessarily delay the procurement process. The Chief Procurement Officer, with the approval of the County Attorney, shall determine whether the protest requires postponement or cancellation of award.
4. **Filing a Claim.** All protests shall be submitted in writing to the Chief Procurement Officer and must be received within seven (7) business days from the day the aggrieved party knew or should have known of the facts giving rise to the claim. Claims received after the seven (7) business days will not be formally addressed.
5. **Written Statement of Claim.** The claim shall be in writing and shall
 - a. Identify the IFB or RFP number and title;
 - b. Date the protest;
 - c. State the basis of the protest and the facts supporting the aggrieved party's position; and
 - d. Contain the signature of the aggrieved party.
6. **Response.** The Chief Procurement Officer will deliver the claim to the County Attorney who will respond to the claim in writing within seven (7) business days. The County Attorney is the only person authorized to respond to the claim. The decision of the County Attorney is final.

7.8 AUTHORITY TO RESOLVE BID PROTESTS AND CONTRACT CLAIMS

1. In collaboration with or at the direction of the County Manager, County Attorney or BOCC, as appropriate, the Chief Procurement Officer is authorized to negotiate the resolution of any protest or claim brought by an aggrieved party.
2. Under no circumstance may legal action to enforce a contract be threatened or initiated on behalf of the County without consultation with the County Manager and County Attorney and approval of BOCC.

7.9 REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

1. **Prior to Bid Opening or Closing Date for Receipt of Proposals.** If, prior to the bid opening or the closing date for receipt of proposals, the Chief Procurement Officer determines that a solicitation is in violation of state or federal law, then the solicitation or proposed award shall be cancelled or revised to comply with applicable law.
2. **Prior to Award.** If, after a bid opening or the closing date for receipt of proposals, the Chief Procurement Officer determines that a solicitation or a proposed award of a contract is in violation of federal or state law, then the solicitation or proposed award of a contract shall be cancelled.
3. **After Award.** If, after an award, the Chief Procurement Officer determines that a solicitation or award of a contract was in violation of applicable law, then the contract is voidable by the County.

7.10 REPORTING OF ANTI-COMPETITIVE PRACTICES

When, for any reason, collusion or other anti-competitive practices are suspected among bidders or offerors, a notice of the relevant facts shall be transmitted to the District Attorney of the Ninth Judicial District and the Garfield County Attorney.