OFFICE OF THE ATTORNEY GENERAL

PROCUREMENT COMPLAINT AND PROTEST PROCESS

I. INTRODUCTION/BACKGROUND

In compliance with RCW 39.26.170 and with Department of Enterprise Services (DES) Policy DES 170-00, the Office of the Attorney General (AGO) has established the following Complaint and Protest Process.

II. GENERAL PROVISIONS

This process addresses the formal mechanism by which the AGO will address complaints and protests and outlines the process for bidders. The AGO recognizes that solicitation documents, even after extensive internal review and posting, may contain issues that do not constitute grounds for a formal complaint. However, the AGO desires to hear concerns and comments early on; they may well lead to a solicitation amendment or clarification. For that reason, the AGO solicitation documents ask potential bidders to pose all questions and concerns early in the solicitation process. Please consult the schedule in the applicable solicitation document to find deadlines for bringing such general concerns to AGO attention.

III. PROCESS

This process applies to all competitive AGO solicitations for goods or services. The following language is to be included in all competitive solicitation documents and outlines the process for bidders to submit a complaint or protest. The AGO reserves the right to modify the following language or process to align with DES policy changes, procedures, or best practices.

COMPLAINT PROCESS

The complaint period is an opportunity for Bidders to voice objections, raise concerns, or suggest changes that were not addressed during the Question & Answer Period or at the Pre-Bid Conference. The complaint period ends five (5) business days before the Proposal due date, and complaints must be received on or before the date and time indicated on the Anticipated Procurement Schedule of the solicitation document.

Criteria for Complaint: A formal complaint may only be based on one or more of the following grounds: (a) The solicitation unnecessarily restricts competition; (b) The solicitation evaluation or scoring process is unfair or flawed; or (c) The solicitation requirements are inadequate or insufficient to prepare a response. Complaints based on other criteria will not be considered or addressed by the AGO. A complaint should clearly articulate the basis of the complaint and include a proposed remedy.

A. Initiating A Complaint: A complaint must be submitted to the [RFP/RFQQ/RFQ] Coordinator via email.

B. Response: When a complaint is received, the [RFP/RFQQ/RFQ] Coordinator (or designee) will consider all the facts available and respond in writing prior to the deadline for proposal submittals, unless more time is needed.

C. Response is Final: The [RFP/RFQQ/RFQ] Coordinator’s response to the complaint is final and not subject to administrative appeal.
D. Other:
   i. Issues raised in a complaint may not be raised again during the protest period.
   ii. Any issue, exception, addition, or omission not brought to the attention of the [RFP/RFQQ/RFQ] Coordinator prior to proposal submittal may be deemed waived for protest purposes.
   iii. The AGO will consider all complaints but is not required to adopt a complaint, in part or full.
   iv. If bidder complaints result in changes to the [RFP/RFQQ/RFQ], written amendments will be issued and posted on WEBS.

DEBRIEF CONFERENCES

A Debrief Conference is an opportunity for a Bidder and the AGO to meet and discuss the Bidder’s Proposal. A request for a debrief conference is a required prerequisite for a Bidder wishing to file a protest.

A. Announcement: Following the evaluation of the bids, the AGO will issue an announcement on WEBS of the Apparent Successful Bidder (ASB) and send a Notification of Unsuccessful Bidder to all unsuccessful Bidders through WEBS.

B. Debrief Request: A Bidder’s request for a debriefing conference must be received via email by the [RFP/RFQQ/RFQ] Coordinator within three (3) business days after the Announcement of ASB and Notification of Unsuccessful Bidder is posted through WEBS.

C. Debrief Conference: When the Debrief Conference request is received, the AGO will offer the requesting Bidder one meeting opportunity and notify the Bidder of the Debrief Conference place, date, and time.

D. The AGO will not allow the debrief process to delay the award. Therefore, Bidders should plan for contingencies and alternate representatives. Bidders who do not attend the Debrief Conference will lose the opportunity to protest.

PROTESTS

The protest procedure is available to Bidders who submitted a response to this solicitation document and have participated in a Debriefing Conference. Bidders protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest constitutes the sole administrative remedy available to Bidders under this procurement.

Upon completing the Debriefing Conference, the Bidder is allowed three (3) business days to file a protest of the acquisition with the AGO Contracts Administrator via email to the [RFP/RFQQ/RFQ] Coordinator at the email address listed on Page 1 of the [RFP/RFQQ/RFQ].

A. Criteria for a protest: A protest may be based only on one or more of the following:
   i. Bias, Discrimination, or conflict of interest on the part of an evaluator;
   ii. Error in computing evaluating scores; or
   iii. Non-compliance with any procedures described in the [RFP/RFQQ/RFQ].

B. Criteria not met: Protests not based on the above three issues will not be considered. Protests will be rejected as without merit if they address issues such as: 1) An evaluator’s professional judgment on the quality of a proposal, or 2) the AGO’s assessment of its own and/or other agencies’ needs or requirements.

C. Initiating a Protest: Any bidder that has filed a Complaint and a Request for Debrief Conference may protest selection of the ASB. A protest must:
   i. Be in writing;
   ii. Include a specific and complete statement of facts forming the basis of the protest;
   iii. Include a description of the relief or corrective action requested;
   iv. Be received by the AGO on or before 5:00 pm on the fifth (5th) business day
after the Bidder’s Debrief Conference (not including the conference day).

D. **Protest Response:** Upon receipt of a protest, the AGO will hold a protest review. The Chief Financial Officer of the AGO or an employee delegated by the Chief Financial Officer who was not involved in the procurement will consider the record and all available facts and issue a decision within ten (10) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay. In the event a protest may affect the interest of another Bidder that submitted a proposal, such Bidder will be given an opportunity to submit its views and any relevant information on the protest to the AGO Contracts Administrator.

E. **Decision is Final:** The protest decision is final and not subject to administrative appeal. If the protesting Bidder does not accept the AGO’s protest response, the Bidder may seek relief in Thurston County Superior Court. The final determination of the protest shall:
   i. Find the protest lacking in merit and uphold the AGO’s action;
   ii. Find only technical or harmless errors in the AGO’s acquisition process and determine the AGO to be in substantial compliance and reject the protest.
   iii. Find merit in the protest and provide options to the AGO, including correcting errors and reevaluating all proposals; reissuing the solicitation document; or making other findings and determining other courses of action as appropriate.

F. After reviewing the protest and available facts, the AGO will issue a written response within ten (10) business days from receipt of the protest, unless additional time is needed.

If the AGO determines that the protest is without merit, the AGO will enter into a contract with the ASB. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

**COMMUNICATION REGARDING COMPLAINTS, DEBRIEFS AND PROTESTS**

All communications about this [RFP/RFQQ/RFQ], including complaints, debriefs, and protests, must be addressed to the [RFP/RFQQ/RFQ] Coordinator, in writing, at the email addresses listed in Section ___ of this [RFP/RFQQ/RFQ].