

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL DRS45326-LR-78

Short Title: State IT/Procurement Protest Procedures. (Public)

Sponsors: Senators Ballard and Hise (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT ENACTING PROTEST PROCEDURES FOR THE AWARD OF STATE
3 INFORMATION TECHNOLOGY CONTRACTS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Part 4 of Article 15 of Chapter 143B of the General Statutes is amended
6 by adding a new section to read:

7 "**§ 143B-1363. Protest procedures for award of information technology contracts.**

8 (a) The following procedures and requirements apply whenever an offeror protests an
9 information technology contract awarded by an agency if the contract value is twenty-five
10 thousand dollars (\$25,000) or more:

11 (1) The offeror shall deliver a written request for a protest meeting to the agency
12 head or the agency head's designee within 15 calendar days from the date of
13 contract award. The offeror's request shall contain specific reasons and any
14 supporting documentation regarding why there is a concern with the award.
15 The agency head shall furnish a copy of the written request to the State CIO
16 within 10 calendar days of receipt.

17 (2) If the offeror's request does not contain this information or the agency head
18 determines that a meeting would serve no purpose, then the agency head,
19 within 10 calendar days from the date of receipt, may respond in writing to
20 the offeror and refuse the protest meeting request. A copy of the agency head's
21 letter shall be forwarded to the State CIO.

22 (3) If the protest meeting is granted, the agency head shall give written notice to
23 the State CIO and any awarded vendor of the date and time of the protest
24 meeting. The agency shall give notice to the awarded vendor and the State
25 CIO stating whether any purchase order or performance has been suspended
26 or terminated. The agency head shall schedule the meeting within 30 calendar
27 days after receipt of the letter, unless a later date is accepted by the protesting
28 party and the agency.

29 (4) Within 10 calendar days from the date of the protest meeting, the agency head
30 shall respond to the offeror in writing with an agency decision. A copy of the
31 agency head's letter shall be forwarded to the State CIO.

32 (5) If a protest is determined to be valid by the State CIO, then one of following
33 outcomes shall occur:

34 a. The award and issued purchase order shall be canceled and the
35 solicitation for offers to contract is not rebid.



- 1 b. The award and issued purchase order shall be canceled and the
2 solicitation for offers to contract is rebid.
- 3 c. The award and issued purchase order shall be canceled and the contract
4 shall be awarded to the next lowest priced, technically competent,
5 qualified offeror, if that offeror agrees to still honor its submitted bid.
- 6 (b) The following procedures and requirements apply whenever an offeror protests an
7 information technology contract awarded by the State CIO if the contract value is twenty-five
8 thousand dollars (\$25,000) or more:
- 9 (1) The offeror shall deliver a written request for a protest meeting to the State
10 CIO within 15 calendar days from the date of contract award. The offeror's
11 request shall contain specific reasons and any supporting documentation
12 regarding the offeror's concern with the award. If the request does not contain
13 this information or the State CIO determines that a meeting would serve no
14 purpose, then the State CIO, within 10 calendar days from the date of receipt
15 of the offeror's protest, may respond in writing to the offeror and refuse the
16 protest meeting request. A copy of the State CIO's letter shall be forwarded to
17 the designated hearing officer.
- 18 (2) If the protest meeting is granted, the State CIO shall attempt to schedule the
19 meeting within 30 calendar days after receipt of the offeror's protest unless a
20 later date is accepted by the protesting party and the State CIO. Within 10
21 calendar days from the date of the protest meeting, the State CIO shall respond
22 to the offeror in writing with a decision. A copy of the decision shall be
23 forwarded to the designated hearing officer.
- 24 (c) The following procedures and requirements apply whenever an offeror protests a
25 statewide term or convenience contract, or master agreement, established by the State CIO:
- 26 (1) The offeror shall deliver a written request for a protest meeting to the State
27 CIO within 15 calendar days from the date of the contract award. The offeror's
28 request shall contain specific reasons and any supporting documentation
29 regarding the offeror's concern with the award. If the request does not contain
30 this information or the State CIO determines that a meeting would serve no
31 purpose, the State CIO, within 10 calendar days from the date of receipt of the
32 offeror's request, shall respond in writing to the offeror and refuse the protest
33 meeting request. A copy of the State CIO's letter shall be forwarded to the
34 designated hearing officer.
- 35 (2) If the protest meeting is granted, the State CIO shall give written notice to the
36 designated hearing officer and any awarded vendor of the date and time of the
37 protest meeting. Notice shall be given to the awarded vendor and the
38 designated hearing officer stating whether any purchase order or performance
39 has been suspended or terminated. The State CIO shall schedule the meeting
40 within 30 calendar days after receipt of the offeror's protest unless a later date
41 is accepted by the protesting party and the State CIO. Within 10 calendar days
42 from the date of the protest meeting, the State CIO shall respond to the
43 protesting offeror in writing with a decision. A copy of the decision shall be
44 forwarded to the designated hearing officer.
- 45 (d) If a party desires further administrative review after the protest meeting and receipt
46 of the decision under subsection (a), (b), or (c) of this section, the party may, within 60 days from
47 the date the decision is received, request a hearing and final decision by the State CIO under this
48 section and Article 3A of Chapter 150B of the General Statutes. The State CIO shall schedule
49 the hearing within 30 days after receipt of the offeror's request and respond in writing with a final
50 decision within 10 days of the date of the hearing.

1 (e) The State CIO's failure to adhere to the time line and notice requirements for a protest
2 shall render null and void the State CIO's objections or decision related to that protest.

3 (f) The agency shall be a party in the further review processes when the further
4 administrative review involves a contract awarded by an agency that is twenty-five thousand
5 dollars (\$25,000) or more in value.

6 (g) The agency shall establish procedures to address protests by offerors where the award
7 value is less than twenty-five thousand dollars (\$25,000). An agency decision under this
8 subsection is final and subject to review under Article 3A of Chapter 150B of the General
9 Statutes.

10 (h) The signature of an attorney or party on a protest constitutes a certification by the
11 signer that the signer has read such document; that to the best of the signer's knowledge,
12 information, and belief formed after reasonable inquiry, it is well grounded in fact and is
13 warranted by existing law; and that it is not interposed for any improper purpose such as to harass,
14 cause unnecessary delay, or a needless increase in the cost of the procurement or of the litigation.
15 If a protest is determined to be frivolous or to have been filed without any substantial basis or
16 reasonable expectation to believe that the protest was meritorious, the State CIO, upon motion or
17 upon the State CIO's own initiative, may impose any sanction available under Chapter 1A-1 of
18 the General Statutes, the Rules of Civil Procedure. Notification to the affected party shall be
19 made in writing."

20 **SECTION 2.** G.S. 150B-38 reads as rewritten:

21 **"§ 150B-38. Scope; hearing required; notice; venue.**

22 (a) The provisions of this Article shall apply to:

23 ...

24 (4) The State Chief Information Officer in the administration of the provisions of
25 Article 15 of Chapter 143B of the General Statutes.

26 ...

27 (b) Prior to any agency action in a contested case, the agency shall give the parties in the
28 case an opportunity for a hearing without undue delay and notice not less than 15 days before the
29 hearing. Notice to the parties shall include:

30 (1) A statement of the date, hour, place, and nature of the hearing;

31 (2) A reference to the particular sections of the statutes and rules involved; and

32 (3) A short and plain statement of the facts alleged.

33 (c) Notice shall be given by one of the methods for service of process under G.S. 1A-1,
34 Rule 4(j) or Rule 4(j3). If given by registered or certified mail, by signature confirmation as
35 provided by the United States Postal Service, or by designated delivery service authorized
36 pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, notice shall be deemed to have been
37 given on the delivery date appearing on the return receipt, copy of proof of delivery provided by
38 the United States Postal Service, or delivery receipt. If notice cannot be given by one of the
39 methods for service of process under G.S. 1A-1, Rule 4(j) or Rule 4(j3), then notice shall be
40 given in the manner provided in G.S. 1A-1, Rule 4(j1).

41 (d) A party who has been served with a notice of hearing may file a written response with
42 the agency. If a written response is filed, a copy of the response must be mailed to all other parties
43 not less than 10 days before the date set for the hearing.

44 (e) All hearings conducted under this Article shall be open to the public. A hearing
45 conducted by the agency shall be held in the county where the agency maintains its principal
46 office. A hearing conducted for the agency by an administrative law judge requested under
47 G.S. 150B-40 shall be held in a county in this State where any person whose property or rights
48 are the subject matter of the hearing resides. If a different venue would promote the ends of
49 justice or better serve the convenience of witnesses, the agency or the administrative law judge
50 may designate another county. A person whose property or rights are the subject matter of the
51 hearing waives his objection to venue if he proceeds in the hearing.

1 (f) Any person may petition to become a party by filing with the agency or hearing officer
2 a motion to intervene in the manner provided by G.S. 1A-1, Rule 24. In addition, any person
3 interested in a contested case under this Article may intervene and participate to the extent
4 deemed appropriate by the agency hearing officer.

5 (g) When contested cases involving a common question of law or fact or multiple
6 proceedings involving the same or related parties are pending before an agency, the agency may
7 order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make
8 other orders to reduce costs or delay in the proceedings.

9 (h) Every agency shall adopt rules governing the conduct of hearings that are consistent
10 with the provisions of this Article.

11 (i) Standards adopted by the State Chief Information Officer ~~and~~ are applied to
12 information technology as defined in ~~G.S. 143B-1320~~. G.S. 143B-1320. The provisions of
13 G.S. 143B-1363(e) apply if the State CIO fails to adhere to the time line and notice requirements
14 of this Article."

15 **SECTION 3.** This act is effective when it becomes law and applies to protests
16 commenced on or after that date.