



**Collier County  
Board of County Commissioner's Purchasing Ordinance  
Excerpt of Protest Policy**

**SECTION TWENTY-THREE: Protest of Bid or Proposal Award.**

The purpose of this section is to accommodate legitimate protests concerning formal competitive invitations to bid or requests for proposals and recommended contract awards above the formal competitive bid or proposal thresholds prior to award of a contract by the Board of County Commissioners.

A. Any actual or prospective bidder or respondent to an Invitation to Bid or a Request for Proposal, who has a substantial interest and alleges to be aggrieved in connection with the solicitation or award of a contract, (hereafter referred to as "the protesting party") may protest to the Purchasing Director, who shall serve as the sole recipient of any and all notices of intent to protest and all formal protests.

B. With respect to a protest of the terms, conditions and specifications contained in a solicitation, including any provisions governing the methods for evaluation of bids, proposals or replies, awarding contracts, reserving rights for further negotiation or modifying or amending any contract, the protesting party shall file a notice of intent to protest within three (3) days, excluding weekends and County holidays, after the first publication, whether by posting or formal advertisement of the solicitation. The formal written protest shall be filed within five (5) days of the date the notice of intent is filed. Formal protests of the terms, conditions and specifications shall contain all of the information required for formal protests of recommended contract awards as set forth under subsection C. The Purchasing Director, shall render a decision on the formal protest and determine whether postponement of the bid opening or proposal/response closing time is appropriate. The Purchasing Director's decision shall be considered final and conclusive unless the protesting party files an appeal of the Purchasing Director's decision.

C. Any actual or prospective bidder or respondent to an Invitation to Bid or a Request for Proposal who desires to protest a recommended contract award shall submit a notice of intent to protest to the Purchasing Director within two (2) calendar days, excluding weekends and County holidays, from the date of the initial posting of the recommended award.

D. All formal protests with respect to a recommended contract award shall be submitted in writing to the Purchasing Director for a decision. Said protests shall be submitted within five (5) calendar days, excluding weekends and County holidays, from the date that the notice of intent to protest is received by the Purchasing Director, and accompanied by the fee, as set forth

below. The protesting party must have standing as defined by established Florida case law to maintain a protest.

The formal protest shall contain, but not be limited to the following information:

1. Name and address of County Agency affected and the solicitation number and title.
2. The name and address of the protesting party.
3. A statement of disputed issues of material fact. If there are no disputed material facts, the written letter must so indicate.
4. A concise statement of the ultimate facts alleged and of any relevant rules, regulations, statutes, and constitutional provisions entitling the protesting party to relief.
5. The protesting party's entitled demand for the relief.
6. Such other information as the protesting party deems to be material to the issue.

The formal protest shall contain all arguments, facts or data supporting and advancing the protestor's position. Under no circumstances shall the protestor have the right to amend, supplement or modify its formal protest after the filing thereof. Nothing herein shall preclude the County's authority to request additional information from the protesting party or other bidders or proposers in conjunction with the review and rendering of decisions on the protest, including any subsequent appeal.

E. In the event of a timely protest of contract award consistent with the requirements of this section, the Purchasing Director shall not proceed further with the award of the contract until all appropriate administrative remedies as delineated under this section have been exhausted or until the Board of County Commissioners makes a determination on the record that the award of a contract without delay is in the best interests of the County. During this process, the protesting party shall limit their communications with the County to the Office of the County Attorney, and neither the protesting party, their agents or their representatives shall have any private contact or discussions with individual County Commissioners, the County Manager, other County employees, or any independent hearing officer (where applicable) regarding the protest except such communications as may be required or permitted during a hearing, if applicable, or a meeting of the County Commission wherein the solicitation or award is to be considered.

F. The Purchasing Director shall review the merits of each timely protest and in consultation with the contract manager and other appropriate County staff, issue a decision stating the reasons for the decision and the protesting party's rights of appeal under this section. Said decision shall be in writing and mailed or otherwise furnished to the protesting party. The

decision of the Purchasing Director shall be final and conclusive unless the protesting party delivers a subsequent written notice of appeal to the Purchasing Director within two (2) calendar days, excluding weekends and County holidays from the date of receipt of the decision. In filing a written objection to the Purchasing Director's decision, the protestor shall not introduce new arguments or alter in any other way their protest submission. An appeal of the Purchasing Director's decision shall be limited to a review of the grounds set forth in the formal protest, and no new grounds or arguments will be introduced or considered.

G. In the event of a subsequent appeal pursuant to subsection F, the County Manager shall determine whether to appoint an independent Hearing Officer to review the formal protest and the Purchasing Director's decision. The Hearing Officer's review shall be limited to the grounds set forth in the formal protest, and shall be for the purpose of determining whether the County's intended action is arbitrary, capricious, illegal, dishonest or fraudulent. The protesting party shall have the burden of proof. The Hearing Officer shall consider the formal protest, the Purchasing Director's decision, and supporting documents and evidence presented at the hearing. In any hearing, irrelevant, immaterial or unduly repetitious evidence shall be excluded. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible whether or not such evidence would be admissible in a trial in the courts of Florida. The Hearing Officer may grant the motion of any person having standing under Florida law to intervene in the proceedings. Persons or parties shall have the right to be represented by counsel in the proceedings, to call witnesses, and present evidence; provided, however, that the Hearing Officer shall not have the right to compel attendance of witnesses or to permit or compel any discovery.

The Hearing Officer will have a maximum of 60 days to schedule and conduct a hearing into the matter and issue a recommended finding of fact and an opinion in writing to the County Manager or designee for submission to the Board of County Commissioners. Should the Hearing Officer find in favor of the County, the protesting party pay, in full, the costs of the Hearing Officer. If the Hearing Officer's recommended decision is in favor of the protesting party, then the County will assume this cost.

The County Manager's discretion as to whether to appoint a Hearing Officer shall in no way afford the protestor the right to demand such an appointment or hearing. The decision of a Hearing Officer on a protesting party's appeal shall be submitted to the Board for its consideration as part of a final award decision. Nothing herein shall be construed as creating a right of judicial review of the Hearing Officer's decision, nor shall such decision be binding upon the Board. Additionally, nothing herein shall be construed as limiting the Board's right to reject any and all bids or proposals.

H. **Decisions of the Purchasing Director and Hearing Officer (where applicable) will be provided to the protestor and other interested parties prior to the award recommendation being presented to the Board of County Commissioners. Neither the County Manager's decision nor the Hearing Officer's recommended decision shall be construed as an award recommendation triggering additional rights of protest pursuant to this policy. Notwithstanding anything set forth**

herein to the contrary, the Board of County Commissioners shall retain the authority to make the final award decision.

I. Failure to file a formal protest within the time and manner prescribed by this policy shall constitute a waiver of the right to protest by any protesting party as defined by subsection “A” of this policy.

J. As a condition of filing a formal appeal to the Purchasing Director’s initial finding, the protesting party shall submit a non-refundable filing fee for the purpose of defraying the costs of administering the protest. The filing fee shall be submitted with the formal protest. Failure to pay the filing fee shall result in the denial of the protest. The amount of the filing fee shall be as follows:

<u>Estimated Contract Amount</u>	<u>Filing Fee</u>
\$250,000 or less	\$500
\$250,000.01 to \$500,000	\$1,000
\$500,000.01 to \$5 million	\$3,000
\$5 million or more	\$5,000

This fee may be modified by Resolution of the Board of County Commissioners.