

MANUAL OF PROCEDURE

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PROCEDURE TITLE: Bid Protest Procedures for Procurement

STATUTORY REFERENCE: FLORIDA STATUTES 120.57, 287.042(2)(c) AND 255.0516

BASED ON POLICY: VI-2 Bidding for Commodities and Services

EFFECTIVE DATE: November 8, 2005

LAST REVISION DATE:

LAST REVIEW DATE: November 8, 2005

This procedure establishes the steps which must be used to protest College bid solicitations, invitations to bid, requests for proposals, requests for qualifications, and College awards relating to the purchase of goods and/or services.

For purposes of this procedure, the term “Bidder” shall include bidders and proposers. The term “Invitation(s) to Bid” and/or bid(s) shall include bid solicitations, requests for proposals and requests for qualifications, unless specifically noted otherwise. All Bidders are required to thoroughly review College Invitations to Bid. Any inquiries or comments should be directed to the individual designated in the applicable document.

I. BID PROTEST PROCESS

A. Notice Requirements

Notice of a decision or intended decision concerning a solicitation, invitation to bid, contract award, or exceptional purchase, shall be by electronic posting at www.mdcc.edu/purchasing/recommendations.htm. The notice shall be effective upon electronic posting. All notices provided shall contain the following statement: Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

B. Time Requirements for Filing Bid Protests and Protest Document

1. Protest of College Decisions or Intended Decisions: Any person who is adversely affected by a College decision or intended decision and who wishes to protest, shall file with the College a written notice of protest within seventy-two (72) hours after the posting of the College decision or intended

decision. The formal written notice of protest must be filed within ten (10) calendar days after the notice of protest is filed.

2. Protest of Terms, Conditions and/or Specifications: With respect to a protest of the terms, conditions and/or specifications contained in an Invitation to Bid, the notice of protest shall be filed in writing within seventy-two (72) hours after the posting of the Invitation to Bid. The formal written protest must be filed within ten (10) calendar days after the notice of protest is filed.
3. Location for Filing Notice of Protest(s) and Formal Written Protest(s): Any notice of protest and/or formal written protest must be filed in the Office of the Director of Purchasing. All notices and/or formal written protests submitted by protestors are considered filed when they are actually received by the Office of the Director of Purchasing.
4. Failure to Timely File a Notice of Protest or Failure to Timely File a Written Protest, Including Notice and Protest under Items 1 and 2 Above: Failure to file a notice of protest or failure to file a formal written protest within the time prescribed in Section 120.57(3), Florida Statutes shall constitute a waiver of proceedings under Chapter 120, Florida Statutes. Saturdays, Sundays and State holidays shall be excluded in the computation of the seventy-two (72) hour time-period.
5. Information Required in the Protest Document: The initial protest notice must contain the following information: (a) College bid or RFP number and title; (b) the protesting Bidder's name, address and telephone number; (c) the name of the duly authorized representative of the protesting Bidder to whom all communications should be directed; and (d) a factual summary outlining the basis for the protest. The formal written protest shall, at a minimum, include all of the information required in the initial notice together with: (a) a statement with particularity of the facts and law upon which the protest is based; (b) a clear and comprehensive statement explaining the protest grounds; (c) the applicable statutes, rules, regulations and other authority supporting the protest; and (d) the relief sought by the protesting Bidder.

C. Timely Filed Formal Written Protest

Upon the College's receipt of a timely filed formal written protest which complies with the requirements of this procedure, the College shall stop the Invitation to Bid or the contract award process until the subject of the protest is resolved by final College action, unless the College sets forth in writing particular facts and circumstances which require continuance of an Invitation to Bid or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety or welfare.

D. Protest Process

The College shall provide an opportunity to resolve the protest by mutual agreement between the parties within seven (7) days, excluding Saturdays, Sundays and State holidays, after the

College's receipt of a formal written protest.

- (1) No disputed issue(s) of Material Fact: If the protest is not resolved within the above time-frame, or such other period as the parties may agree to in writing, and if there is no disputed issue of material fact, an informal proceeding shall be conducted in accordance with applicable laws, rules and regulations, including but not limited to the process set forth in Section 120.57(2), Florida Statutes.
- (2) Disputed Issue(s) of Material Fact: If the protest is not resolved by mutual agreement within seven (7) days, excluding Saturdays, Sundays, and State holidays, after the College's receipt of a formal written protest, and if there is a disputed issue of material fact, the College shall refer the protest to appropriate party designated in Section 120.57(1), Florida Statutes.

Unless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order.

In a competitive-procurement protest, no submissions made after the bid opening amending or supplementing the bid shall be considered. Contracts exempt from competitive bidding by Florida Statutes are not subject to the foregoing rules.

In the event there is any conflict between this procedure and Section 120.57, Florida Statutes relating to bid protests, including any subsequent revisions thereto, the terms of Section 120.57, Florida Statutes shall prevail.

E. Correspondence with Vendors

During any protest period, the "Cone of Silence" requirement applies, as defined in Procedure 6309. No vendor contact is allowed with any College personnel other than the Purchasing Department and/or the Legal Affairs Department.

II. BOND POSTING OR OTHER SECURITY-GOODS AND SERVICES

- A. A formal written protest shall not be considered and shall be dismissed if the Bidder fails to file one of the following with the College before the time for filing a formal protest expires:
 - (a) a bond duly executed by an authorized representative of the Bidder, as principal, and a surety company, as obligor, with the College or
 - (b) a cashier's check or money order in a form acceptable to the College. The bond, cashier's check or money order must be reasonably satisfactory to the College, and should be made payable to the District Board of Trustees of Miami Dade College, Florida in an amount equal to one (1) percent of the College's estimate of the total volume of the applicable contract or \$5,000.00, whichever is less.
- B. The bond, money order or cashier's check shall be conditioned upon payment of all costs and fees which may be adjudged against the protestor in the administrative hearing and any subsequent court proceedings at all levels. If, at the conclusion of the administrative hearing and any subsequent court proceedings, the College prevails, it shall recover all costs and

charges from the protestor. Such costs and charges are not limited to the bond amount. Upon the bidder’s payment of such costs and charges, the bond shall be returned.

- C. If a bond is procured, the surety company issuing the bond must be authorized to do business in the State of Florida and be in compliance with the Florida Insurance Code. Any bond, which is submitted, shall have a duly executed power of attorney attached.

III. BOND POSTING OR OTHER SECURITY-CAPITAL PROJECTS

- A. A formal written protest shall not be considered and shall be dismissed if the Bidder fails to post a bond duly executed by an authorized representative of the Bidder, as principal, and a surety company, as obligor, with the College before the time for protest expires. The bond must be reasonably satisfactory to the College, and should be made payable to the “District Board of Trustees of Miami Dade College, Florida” in the appropriate amount as follows:
 - (1) Twenty-Five Thousand Dollars (\$25,000) or two (2) percent of the lowest accepted bid, whichever is greater, for projects valued over \$500,000; and
 - (2) Five (5) percent of the lowest accepted bid for all other projects.
- B. The Bond shall be conditioned upon payment of all costs and fees which may be adjudged against the protestor in the administrative hearing and any subsequent court proceedings at all levels.
- C. The surety company issuing the bond must be authorized to do business in the State of Florida and be in compliance with the Florida Insurance Code. Any bond, which is submitted, shall have a duly executed power of attorney attached.

	
11/8/05	
PRESIDENT	DATE