

County of Berks Protest Procedure

1. Summary

- 1.1. This section establishes the procedure for addressing protests by vendors for the County of Berks, hereafter “County.”
- 1.2. The protest procedure provides a possible remedy in any procurement when a prospective vendor desires to challenge the award of a contract to another vendor.
- 1.3. A protest must be received in the Purchasing Department within the timelines established herein.
- 1.4. The County may award a contract during the period allowed to protest under certain circumstances.
- 1.5. A protest must be in writing and shall include the basis for the protest and the relief sought. The submitted protest must contain a completed Protest Bond and Protest Acknowledgment, templates for which are incorporated herein as Attachment A and Attachment B.
- 1.6. The County of Berks must issue a written response to the protest within ten (10) calendar days of the receipt of the protest. The response must state the reasons for either denying or upholding the protest.
- 1.7. Failure to timely file the written protest including the protest bond and protest acknowledgment shall constitute a waiver of such protest.
- 1.8. If the protest is upheld, the County shall grant appropriate relief.

2. Right to Protest

Any vendor whom has submitted a bid or proposal may protest the provisions of said formal solicitation for which they submitted, which shall include Invitation to Bid (ITB), Request for Information (RFI), or Request for Proposal (RFP).

3. Non-Eligible Grounds for Protest

- 3.1. No protest shall lie for a claim that the selected vendor is not responsible. Thus, vendor qualifications including, but not limited to, minimum prior experience, expertise, or minimum bonding capacity, are not the proper subject of a protest because those issues pertain to vendor responsibility.
- 3.2. No protest shall lie to challenge the terms and conditions of the solicitation.
- 3.3. No protest shall lie to challenge the relative weight of evaluation criteria or a formula for assigning points.

4. Protest of Specifications or Proceedings Prior to Bid Opening

- 4.1. Any actual or prospective bidder, or contractor, who is aggrieved in connection with the solicitation of a bid, may protest on the grounds or irregularities in specifications or bid procedure.

5. Protest of Recommended Award

- 5.1. Any actual bidder or proposer, who is aggrieved in connection with the evaluation of bids, the evaluation of proposals, or the staff recommendation regarding award of a contract, provided that such bidder or proposer would have been awarded the contract but for the aggrieved action, may protest such evaluation or award recommendation.

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6. Filing a Protest

- 6.1.1. A written protest shall be considered filed, for purposes of this procedure when all related items are actually delivered to and received by the County of Berks Purchasing Department. All protests shall be directed to the attention of the Director of Contracts & Procurement.
- 6.1.2. For protest related to the specifications or proceeding of a formal solicitation, a formal written protest must be filed no later than 5:00 p.m., EST, on the fifth (5th) business day (excluding weekends and holidays) prior to the scheduled bid opening date. Failure to timely file the written protest including the required protest bond and protest acknowledgement shall constitute a waiver of such protest.
- 6.1.3. For protest related to the evaluation of bids, evaluation of proposals, or staff recommendation regarding award of a contract, a written notice of intent to protest must be filed with County of Berks Purchasing Department by 5:00 p.m., EST, on the fifth (5th) business day (excluding weekends and holidays) after posting of the intended recommendation regarding the award. A written protest must be filed with the Purchasing Department no later than 5:00 p.m., EST, on the tenth (10th) calendar day after posting of the intended recommendation regarding the award. In the event that the tenth (10th) calendar day falls on a weekend or holiday, a written protest may be filed by 5:00 p.m., EST, on the earliest business day following the tenth (10th) calendar day. A weekend commences at 12:00 a.m., EST, on Saturday and ends at the same time on the following Monday. A holiday begins at 12:00 a.m., EST, on the observed holiday and ends at the same time on the following day.
- 6.1.4. Such written protest shall state with particularity the facts and grounds upon which the protest is based, and shall include references to applicable laws, statutes, ordinances, policies, or other authority on which the protest is based.
- 6.1.5. Failure to timely file the written protest, including the protest bond and protest acknowledgment, shall constitute a waiver of such protest.

7. Protest Bond & Protest Acknowledgement

- 7.1.1. Any person who files a formal written protest, shall post with the Purchasing Department, at the time of filing the formal written protest, a Protest Bond (“Attachment A”) and Protest Acknowledgement (“Attachment B”), included by reference herein payable to the County of Berks in accordance with the values below:
 - 7.1.1.1. If the resulting contract has an estimated value of less than \$1,000,000, the request to appeal shall include a protest bond as follows:
 - 7.1.1.1.1. If the contract estimated value is less than \$500,000, submit \$1,000 bond.
 - 7.1.1.1.2. If the contract estimated value is \$500,000 to \$999,999.99, submit \$2,000 bond.
 - 7.1.1.2. If the resulting contract has an estimated value of \$1,000,000 or more, the request to appeal shall include a protest bond as follows:
 - 7.1.1.2.1. Submit one-half percent of the estimated value of the contract. The Protest Bond shall not exceed \$10,000.

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7.1.2. Estimated value of the contract” or “estimated value” means the lowest responsible and responsive bid in response to the ITB, or the amount of the responsible proposer whose proposal in response to the RFP is determined most advantageous.

8. Stay of Procurement During Bid Protest

8.1. In the event an intent to file protest or actual protest is filed in accordance with the protest procedures herein, the Purchasing Department shall not proceed further with the solicitation, award and/or execution of the contract until the time period for filing an actual protest has expired, the Director of Contracts & Procurement or has rendered a written decision regarding the protest or the Board of Commissioners or their designee makes a written determination that continuation of the process and award of a contract without delay is necessary to protect the substantial interest of the County of Berks.

9. Final Decision

9.1. The Director of Contracts & Procurement or their designee/agent designee (hereafter Purchasing Agent) may consult with the County Solicitor as to any matter pertaining to the decision to deny or uphold a protest. The Purchasing Agent shall either hand deliver or mail the response to the vendor. If the response is hand delivered, the Purchasing Agent shall prepare a certificate stating the date of such delivery to retain in the contract file. If the response is mailed, it shall be mailed by certified mail, return receipt requested. The decision of the Purchasing Agent shall be final unless the protesting vendor then invokes the judicial appeals process as provided by law within ten (10) days of receipt of the response.

9.2. The condition of the Protest Bond is such that;

9.2.1. if Protestor, after conclusion or termination of the process regarding the protest does not prevail, this Bond shall be forfeited in total to the County of Berks for deposit. Should the County’s expenses as a result of said protest, including attorney fees as well as consultant and expert witness fee cost exceed the protest bond, the Protestor shall be liable for the monetary difference in the amount of the bond versus the County’s expenses.

9.2.2. in the event the Protestor prevails, then the obligation shall be null and void; otherwise it shall remain in full force and effect.

10. Costs

10.1. Any and all costs incurred by a protesting party in connection with a protest pursuant to this procedure shall be the sole responsibility of the protesting party.

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Attachment A, Protest Bond

County of Berks

ITB/RFI/RFP Solicitation Title & No.: _____

KNOW ALL PERSONS BY THESE PRESENTS:

That we, _____
(full legal name and street address of Protestor)

as Protestor, hereinafter called Protestor, is held and firmly bound unto the COUNTY OF BERKS, its successors and assigns, as Obligee, hereinafter called Obligee, in the amount of _____ DOLLARS (\$_____), lawful money of the United States of America, for the payment of which to the said Obligee, well and truly to be made, Protestor binds itself, its heirs, executors, administrators, successors and assigns, firmly by these presents. Said amount is evidenced by:

- Legal tender (Cash);
- Cashier's Check No._____, dated , issued _____

by _____,

drawn on _____,

a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;

WHEREAS:

The Protestor has initiated an administrative protest hearing with the County of Berks regarding the above-named Purchasing decision pertaining to ITB/RFI/RFP No._____. Said protest is conditioned upon posting of a bond at the time of filing the protest.

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Attachment A, Protest Bond

NOW, THEREFORE,

The condition of this Bond is such that, if Protestor, after conclusion or termination of the administrative hearing process regarding the protest does not prevail, this Bond shall be forfeited in total to the County of Berks for deposit. In the event the Protestor prevails, then the obligation shall be null and void; otherwise it shall remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED that suit on this Bond may be brought before a state court of competent jurisdiction in Reading, Pennsylvania, without a jury, and that the sum or sums specified in this Bond shall be forfeited to the Obligee, its successors or assigns, in the event of a breach of any, or all, or any part of, the covenants, agreements, conditions, or stipulations contained in this Bond in accordance with the terms thereof.

Signed this ____ day of _____, _____.

(Seal)

Name of Protestor

*

Signature

Title

***ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC**

PROTESTOR ACKNOWLEDGMENT:

STATE OF _____)

County of Berks Protest Procedure Attachment B, Protestor Acknowledgement

: SS.

_____ COUNTY OF _____)

On this _____ day of _____, 20____, before me appeared _____
and _____ to me known to be the person(s) described in and, who,
being by me duly sworn, did say that he/she/they is/are _____ and _____
_____ of _____ the Protestor named in the foregoing
instrument, and that he/she/they is/are authorized to sign said instrument in behalf of the Protestor, and
acknowledges that he/she/they executed said instrument as the free act and deed of the Protestor.

(Notary Seal)

Notary Public (Signature)

State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit

Doc. Description: _____

Notary Signature

Date