



Legislation Text

File #: 120741., **Version:** 2

Amendment to Purchasing Procedures to Provide for Bid Protest Bond (B)

City Purchasing Policy provides for any actual or prospective bidder who is aggrieved in connection with a solicitation or award of a contract to file a bid protest in a form which complies with a process outlined in the City's purchasing procedures. In recent years, perhaps precipitated by declining economic conditions, the number of bid protests has increased noticeably.

Protests on solicitations which require approval of the City Commission, i.e. all bids over \$50,000, are heard by the appropriate Department Head and then the City Manager. A protester may appeal the decision of the City Manager to the City Commission. Protests on solicitations not requiring City Commission approval are heard by the Finance Director as the final arbiter. In either case, protests require a great deal of staff time, which is not only costly but interrupts the work flow and delivery of service to City operating departments. Currently, there is no disincentive to prospective bidders filing a bid protest, regardless of whether there is a reasonable basis for the protest. One manner of introducing such a disincentive is through the requirement for a protest to be accompanied by a bid protest bond.

A survey of local governments was conducted to determine which if any included a bid protest bond in their policies. As the table below indicates, of those governments that responded to the survey, all except Alachua County had some form of bid protest bond as part of their policies.

Staff recommends that a bid protest bond be instituted. To accomplish this, the following language would be added to Purchasing Procedures Section 41-582, Format of Protest:

Protests shall be accompanied by a protest bond of an amount equal to one percent of the value of the solicitation but in no case less than \$500.00 or greater than \$5,000.00. This bond shall be by a U.S. postal service money order, certified cashiers or bank check payable to the City of Gainesville. Failure to post such bond within three business days after the filing of the protest shall result in the protest being dismissed by the Purchasing Manager or his or her designee. The bond shall be forfeited at the conclusion of the protest proceedings if the administrative official making the final decision determines that the protest was filed for a frivolous or improper purpose, including but not limited to harassing, causing unnecessary delay, or causing needless cost for the City or other parties.

By including language which mandates the forfeiture of the bid protest bond in instances where the protest is determined to be frivolous, it is staff's intention to reduce the frequency of such frivolous protests while preserving an avenue of recourse for bidders with legitimate concerns regarding a particular solicitation process.

There is no fiscal impact.

The Audit, Finance and Legislative Committee recommends the City Commission approve staff's request to amend the Purchasing Procedures to provide for a bid protest bond. Included in the procedural change will be staff's explanation of the bid protest bond process.

