**Bid and Proposal Protest Procedures**

**Background information regarding protest procedures**

As required by 2 CFR §200.318 *General procurement standards* (k), the School Food Authority (SFA) has incorporated into its Procurement Policy and Procedures Manual and applicable solicitation documents protest procedures relating to our procurements, and SFA shall in all instances disclose information regarding the protest to the Wisconsin Department of Public Instruction (DPI).

A protestor must exhaust all administrative remedies with the SFA before pursuing a protest with DPI. Reviews of protests by the DPI will be limited to:

1. Violations of federal, state, or local regulations under the jurisdiction of DPI or local authorities and
2. Violations of the SFA’s protest procedures for failure to review a complaint or protest. Protests received by DPI other than those specified above will be referred to the SFA.

In accordance with the aforementioned federal regulation, the SFA will prepared and when applicable, provide within the solicitation process, a method for receiving, and reviewing an objective or appeal to the awarding of a contract.

**Why should the SFA have protest procedures prior to awarding a contract?**

Aside from required by federal and state regulation, protest procedures are essential to a solicitation and resulting contract; having them in place provides a foundation for resolution of conflict and contract awarding issues.

The SFA cannot always anticipate or account for all future contractual and contract awarding problems. Even when there are excellent procurement policies and procedures in place, some administrative or contractual issues may eventually arise.

Having protest procedure prepared prior to the procurement and awarding of a contract provides a path for receiving, reviewing and resolving disputes arising when an offeror feels the contract was not fairly awarded.

The SFA should avoid a situation where an awarded contract is being disputed and SFA does not have procedures for handling the dispute. Putting together dispute procedures while responding to an awarded contract dispute could cause a need for the SFA to redo the procurement of the products or services awarded in the disputed contract.

**Protest Procedures**: If any offeror who submitted an offer has an objection to the award of the contract to the apparent offeror who submitted a responsive offer and is a responsible offeror with the lowest costs in the case of a bid or scored the greater number of points on a proposal, the objecting offeror shall notify the SFA within two (2) business days of the intent to dispute the awarded contract and furnish its protest, in writing, to the SFA within five (5) business days of the date of the offeror notification of an awarded contract.

The protest shall describe in detail the basis for the protest and shall request a determination under this section of the manual. If a protest is filed in a timely fashion, the SFA will review the basis for the protest and relevant facts under such terms and conditions, as the SFA considers proper. Upon completion of the review, the SFA shall submit findings and recommendations to the school board members who shall then review the matter under such terms and conditions, as deemed proper. Upon receipt of authority to act from the school board members, the SFA will notify the objecting offeror involved of its decision. The decision shall be final and binding on the objecting offeror.

**Example of protest procedures to include in SFA procurements and awarded contract**

**Protest Procedures**: Offeror’s whose proposal has been timely filed and who is aggrieved by the award of a contract to another offeror may appeal the decision by filing a written notice of appeal. The notice must be filed within five (5) business days of the date of the award of contract, exclusive of Saturdays, Sundays, and legal state holidays. The notice of appeal must clearly and fully identify all issues being contested by reference to the page and section of the solicitation document and/or award of Contract.

An appeal will be heard by the designated the SFA administration unless the petitioner is not an aggrieved party, or a prior request by the same petitioner relating to the same contract award has been granted, or the request is capricious, frivolous, or without merit.

The burden of proof lies with the petitioner. The evidence presented must specifically address and be limited to one or more of the following:

1. Violation of state or federal law;
2. Irregularities creating fundamental unfairness; or
3. Arbitrary or capricious award.

The appeal will be reviewed by the designated SFA administration who will provide a written response within ten (10) business days after hearing the appeal. If the appealing party is not satisfied with the response, the petitioner may appeal to the designated SFA’s Board of Directors for further review. Further review must be requested in writing, and must be received by the Board of Directors within five (5) business days after the date of the administration’s response. The request for further review must state the reasons the administration’s response is being rejected.

The Board of Directors will review the original appeal and supporting documentation, the response and supporting documentation, and the request for review and supporting documentation. The Board of Directors will meet to rule on the appeal no later than ten (10) business days after receipt for further review. The decision of the Board of Directors shall be in writing and shall be the final decision on the matter.