
Attachment E PROTEST INFORMATION

This attachment is intended to provide Offerors with an overview of the Lead State's protest law, procedures, and requirements, which may be updated and amended without notice. Offerors filing a protest are wholly responsible for locating, understanding, and complying with protest law, procedures, and requirements in effect at the time of the protest.

OAC 260:115-3-19 - Supplier's Protest

1. A supplier may protest a contract award by a state agency or OMES to the State Purchasing Director. All remedies available to suppliers through the sealed bid process pursuant to the Oklahoma Central Purchasing Act are also available to online bidders in an online bidding process.
 1. **Supplier notification.** A supplier shall submit written notice to the State Purchasing Director of a protest of an award of contract by a state agency or OMES within ten (10) business days of contract award. The supplier protest notice shall state all facts and reasons in specificity for protest.
 2. **State Purchasing Director review and determination.** The State Purchasing Director shall review the supplier's protest and contract award documents.
 1. The State Purchasing Director may determine to respond to the protest or delegate the responsibility by written notice to the state agency that awarded the contract.
 2. The State Purchasing Director or state agency, whichever is applicable, shall send written notice of the decision to deny or sustain the protest to the supplier within ten (10) business days of receipt of the protest.
 3. **Supplier appeal of decision to deny protest.** The supplier may appeal against the denial of a protest by the State Purchasing Director or a state agency to the OMES Director.
 1. Such appeal shall be filed by the supplier within ten (10) business days of the date of the State Purchasing Director's or state agency's notice of denial pursuant to [75 O.S. §§309 et seq.](#)
 2. The OMES Director may enter an order staying with contract performance upon such terms and conditions as the OMES Director determines to be proper. Any request for stay of contract performance must be made in writing and filed during the ten (10) business daytime period in which an appeal may be commenced to the OMES Director. The OMES Director shall have continued jurisdiction to modify any such orders made in connection with a stay during the pendency of the appeal as appropriate under the circumstances presented.
 4. **Director's actions and determination.** The OMES director may hear the appeal or assign the supplier's appeal to an Administrative Law Judge retained by the agency.
 1. If the appeal is assigned to an Administrative Law Judge, the Administrative Law Judge shall review the appeal for legal authority and jurisdiction. If legal authority and jurisdictional requirements are met, the Administrative Law Judge shall conduct an administrative hearing and provide proposed findings of fact and conclusions of law to the OMES Director.

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2. If the appeal is heard by the OMES Director, the OMES Director shall have all powers granted by law including all powers delegated to the Administrative Law Judge by this section.
 3. The OMES Director shall send a written notice of the final order sustaining or denying the supplier's appeal to the parties.
 4. The cost of actions necessary to process a supplier's appeal, together with any other expenses incurred due to the appeal, shall be paid by the state agency responsible for the initial solicitation.
 5. **Conduct of administrative hearing.** Administrative hearings shall be conducted in accordance with the [Administrative Procedures Act](#) and the following procedures:
 1. Prehearing conference. A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the supplier in its initial protest to the State Purchasing Director.
 2. Burden of proof. The burden of proof shall be upon the supplier, which must prove its case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.
 3. Representation. Corporations must be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.
 4. Proper parties. In addition to the supplier protesting the contract award, OMES, the supplier awarded the contract and the state agency for which the bid was let may participate in the bid protest proceedings as a proper party.
 5. Discovery. The conduct of discovery is governed by the [Administrative Procedures Act, 75 O.S. §§ 309 et seq.](#) and other applicable laws.
 6. Authority of the Administrative Law Judge. The Administrative Law Judge may:
 1. Establish a scheduling order;
 2. Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;
 3. Rule on all interlocutory motions;
 4. Require briefing on any or all issues;
 5. Conduct hearings;
 6. Rule on the admissibility of all evidence;
 7. Question witnesses; and
 8. Make proposed findings of facts and conclusions of law to the OMES Director.
 7. Remedies. The Administrative Law Judge may recommend that the OMES Director deny the supplier's appeal or that the contract award be cancelled and rebid.

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6. **Supplier appeal of OMES Director decision to deny appeal.** If the OMES Director denies a supplier's appeal, the supplier may appeal pursuant to provisions of [75 O.S. §§ 309 et seq.](#)