

# ATTACHMENT A



## **Board of Governors Procedure: Procurement Protests**

*Applies to protests commenced on July 1, 2014 and thereafter regarding the purchase of commodities and contractual services.*

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### **4-1.00 SCOPE**

These procedures are applicable to purchases of \$35,000 or more, which are subject to competitive procurement under section 287.057, Florida Statutes. These procedures implement Section 627.351(6)(e), Florida Statutes, and apply to hearings on procurement protests of intended

decisions of Citizens Property Insurance Corporation.

#### 4-2.00

#### **DEFINITIONS**

- (1) “Board” means Citizens Property Insurance Corporation’s Board of Governors.
- (2) “Division” means Division of Administrative Hearings.
- (3) “Exception” means a statement of objection by a party to a ruling of an administrative law judge on a finding of fact or conclusion of law set forth in a Recommended Order.
- (4) “‘File’ or ‘filed’ or ‘filing’ with Citizens” means such filing is received by Citizens’ Clerk at 2101 Maryland Circle, Tallahassee, FL 32303 electronically, by facsimile, by mail or by hand delivery during business hours (8:00 a.m.-5:00 p.m., EST).
- (5) “‘File’ or ‘filed’ or ‘filing’ with the Division” means such filing is filed with the clerk of the Division.
- (6) “Final Order” means a written final action taken by the Board after consideration of a Recommended Order issued by an administrative law judge.
- (7) “Recommended Order” means the official recommendation of an administrative law judge assigned by the Division, for the disposition of a proceeding under Section 627.351(6)(e), Florida Statutes.
- (8) “Procurement Decision” means
  - (a) The contents of a solicitation, including addenda;
  - (b) A determination that a specified procurement can only be made from a single source;
  - (c) Rejection of all responses to a solicitation; or
  - (d) Intention to award a contract pursuant to a competitive solicitation.
- (9) “Record” means
  - (a) All notices, pleadings, motions, and intermediate rulings;
  - (b) Evidence admitted;
  - (c) Those matters officially recognized;

- (d) Proffers of proof and objections and rulings thereon;
- (e) Proposed findings and exceptions;
- (f) Any decision, opinion, order, or report by an administrative law judge;
- (g) All matters placed on the record after an ex parte communication; and
- (h) The official transcript.

**4-3.00      NOTICES OF PROCUREMENT DECISIONS**

Citizens will post notices of all Procurement Decisions on its website, [www.citizensfla.com](http://www.citizensfla.com), in accordance with the notice requirements in Section 627.351(6)(e), Florida Statutes. Each such notice of a Procurement Decision must contain information sufficient to allow the opportunity for adversely affected parties to file a notice of intent to protest a Procurement Decision within 72 hours of the electronic posting, along with information regarding where the notice of intent to protest must be filed. The notice must also contain the following statement: "Failure to file a protest within the time prescribed in this section constitutes a waiver of proceedings."

A short-listing of vendors in an invitation to negotiate or board approval of a contract does not constitute a Procurement Decision.

A Procurement Decision will become final upon the occurrence of any of the following events:

- (1) Expiration of the 72-hour period, if no notice of intent to protest is filed;
- (2) Expiration of 10 days following a timely filed notice of intent to protest, if no formal written protest meeting the requirements set forth in this Procedure is filed; or
- (3) Issuance of a Final Order by the Board.

**4-4.00      NOTICES OF INTENT TO PROTEST**

A notice of intent to protest by an adversely affected party must be filed with Citizens within 72 hours of the posting of a notice of Procurement Decision. The executive director has assigned to the Citizens' Clerk the

responsibility of accepting on the executive director's behalf filings relating to a procurement protest. Saturdays, Sundays and state holidays are excluded in the computation of the 72-hour period.

The notice of intent must identify the challenged solicitation or purchase, the Procurement Decision being challenged, and provide information sufficient to identify the person or entity filing the notice of intent. All notices of intent must be received by Citizens' Clerk within 72 hours of the posting of a Procurement Decision. Any party filing a notice of intent to protest must demonstrate compliance with the 72-hour filing deadline through the use of certified mail return receipt requested or another method of delivery which provides proof of receipt. The 72-hour period is not extended by service of the notice of intent by mail.

**Citizens' Clerk's address for mailing and hand deliveries is:**

**Clerk**

2101 Maryland Circle

Tallahassee, FL 32303

**Telephone: (850) 513-3992**

**Facsimile: (850) 513-3903**

**E-mail: [Agency.Clerk@citizensfla.com](mailto:Agency.Clerk@citizensfla.com)**

**4-5.00**

**FORMAL WRITTEN PROTESTS AND CONFERENCES**

Formal written protests must be filed with Citizens by a protesting party with within 10 days after the party has timely filed with Citizens a notice of intent to protest. The 10-day time period includes intervening weekends and holidays; however, should the tenth day fall on a weekend or state holiday, the formal written protest is due on the following regular business day. A formal written protest must contain the following required information and if it does not, it is subject to dismissal:

- (1) The name, address, email address, and telephone number of the protesting party and the protesting party's representative or attorney, if applicable;
- (2) A concise statement of the ultimate facts alleged, including the specific facts the protesting party contends warrant reversal or modification of the Procurement Decision;
- (3) A statement of the specific statutes, policies or procedures the protesting party contends require reversal or modification of Citizens' proposed Procurement Decision, including an explanation of how the alleged facts relate to the specific statutes, policies, or procedures; and

(4) A statement of the relief sought by the protesting party, stating precisely the action the protesting party wishes Citizens to take with respect to the proposed Procurement Decision.

Upon receipt of a formal written protest that substantially meets the above requirements and that has been timely filed, Citizens will stop the solicitation or contract award process until the protest is resolved, unless the executive director or designee sets forth in writing particular facts and circumstances which necessitate continuing the solicitation or contract award process without delay to avoid an immediate and serious danger to the public health, safety, or welfare.

Citizens will convene a conference with the protesting party within seven business days of receipt of a formal written protest to discuss whether the protest may be resolved without the need for a hearing. If the subject of the protest is not resolved by mutual agreement within the seven-day period, Citizens' Clerk must transmit the protest to the Division to conduct a hearing to determine the merits of the protest and to issue a Recommended Order.

#### **4-6.00      BOND**

No bid protest bond is required to initiate these proceedings.

#### **4-7.00      DIVISION HEARING PROCEDURES**

Final hearings will be held within 30 days of receipt of the formal written protest by the Division. The Division will enter a Recommended Order within 30 days of the conclusion of the hearings or within 30 days of receipt of the transcript, whichever is later.

In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the administrative law judge must conduct a de novo proceeding to determine whether Citizens' proposed action is contrary to Citizens' governing statutes, Citizens' rules or policies, or the solicitation specifications. The standard of proof for the proceeding is whether Citizens' action was clearly erroneous, contrary to competition, arbitrary, or capricious. In any bid-protest proceeding contesting an intended action of Citizens to reject all bids, proposals, or replies, the standard of review by the Board is whether Citizens' intended action is illegal, arbitrary, dishonest, or fraudulent.

Findings of fact in the Recommended Order must be based on a preponderance of the evidence.

#### **4-8.00**      **AMENDMENT OF FORMAL WRITTEN PROTESTS**

A formal written protest may be amended prior to the designation of the administrative law judge by filing with Citizens and serving an amended formal written protest in the same manner prescribed in 4-5.00 for a formal written protest. Thereafter the protestor may amend the formal written protest only upon order of the administrative law judge.

#### **4-9.00**      **ANSWER**

A respondent may file with the Division an answer to a formal written protest, or to an amended formal written protest.

#### **4-10.00**      **MOTIONS**

- (1) All requests for relief shall be by motion. All motions shall be in writing unless made on the record during a hearing, and shall fully state the action requested and the grounds relied upon. The original written motion shall be filed with the Division. When time allows, the other parties may file responses in opposition to the motion with the Division within seven days of service of a written motion. No reply to the response is permitted unless leave is sought from and given by the administrative law judge. Written motions will normally be disposed of after the response period has expired, based on the motion, together with any supporting or opposing memoranda. The administrative law judge shall conduct such proceedings and enter such orders as are deemed necessary to dispose of issues raised by the motion.
- (2) Unless otherwise provided by law, motions to dismiss the formal written protest shall be filed with the Division no later than 20 days after assignment of the administrative law judge, unless the motion is based upon a lack of jurisdiction or incurable errors in the formal written protest.
- (3) All motions, other than a motion to dismiss, shall include a statement that the movant has conferred with all other parties of record and shall state as to each party whether the party has any objection to the motion. Any statement that the movant was unable to contact the other party or parties before filing the motion must provide information regarding the date(s) and method(s) by which contact was attempted.
- (4) Motions for extension of time shall be filed with the Division prior to the expiration of the deadline sought to be extended and shall state good cause for the request.

#### **4-11.00      INTERVENTION**

- (1) Persons other than the original parties to a pending proceeding whose substantial interest will be affected by the proceeding and who desire to become parties may move the administrative law judge for leave to intervene. Except for good cause shown, motions for leave to intervene must be filed with the Division at least 20 days before the final hearing unless otherwise provided by law. The parties may, within seven days of service of the motion, file with the Division a response in opposition. The administrative law judge may impose terms and conditions on the intervenor to limit prejudice to other parties.
- (2) The motion to intervene shall contain the following information:
  - (a) The name, address, e-mail address, telephone number, and any facsimile number of the intervenor, if the intervenor is not represented by an attorney;
  - (b) The name, address, e-mail address, telephone number, and any facsimile number of the intervenor's attorney;
  - (c) Allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right, or that the substantial interests of the intervenor are subject to determination or will be affected by the proceeding;
  - (d) A statement as to whether the intervenor supports or opposes the preliminary action;
  - (e) The statement required by Rule 28-106.204(3), Florida Administrative Code;
  - (f) The signature of the intervenor or intervenor's attorney or qualified representative; and
  - (g) The date.
- (3) Specifically-named persons, whose substantial interests are being determined in the proceeding, may become a party by entering an appearance and need not request leave to intervene.

#### **4-12.00      DISCOVERY**

After commencement of a proceeding, parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure. The administrative law judge may issue appropriate orders to effectuate the purposes of discovery and to

prevent delay, including the imposition of sanctions in accordance with the Florida Rules of Civil Procedure, except contempt.

**4-13.00**      **VENUE**

(1) Hearings shall be held in Leon County, Florida, unless the administrative law judge determines that another venue is more convenient to all parties.

(2) Failure to respond timely to any order requiring or allowing the parties to suggest an appropriate locality for final hearing may constitute a waiver of venue.

**4-14.00**      **NOTICE OF HEARING**

The administrative law judge shall set the time and place for all hearings and shall serve written notice on all parties at their address of record. No less than 14 days notice shall be given for the hearing on the merits of the formal written protest unless otherwise agreed by the parties or unless otherwise provided by law. The Division must establish a procedure for noticing the hearing to the public pursuant to Section 627.351(6)(e), Florida Statutes.

**4-15.00**      **PRE-HEARING CONFERENCES**

At any time after a matter has been filed with the Division, the administrative law judge may direct the parties to confer for the purpose of clarifying and simplifying issues, discussing the possibilities of settlement, examining documents and other exhibits, exchanging names and addresses of witnesses, resolving other procedural matters, and entering into a pre-hearing stipulation.

**4-16.00**      **CONTINUANCES**

The administrative law judge may grant a continuance of a hearing for good cause shown. Except in cases of emergency, requests for continuance must be made at least five days prior to the date noticed for the hearing.

**4-17.00**      **CONDUCT OF PROCEEDINGS**

The administrative law judge before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case, including bifurcating the proceeding.



#### **4-18.00**      **SUBPOENAS**

- (1) Upon the request of any party, an administrative law judge shall issue subpoenas for the attendance of witnesses for deposition or at the hearing. The requesting party shall specify whether the witness is also requested to bring documents.
- (2) A subpoena may be served by any person specified by law to serve process or by any person who is not a party and who is 18 years of age or older. Service shall be made by delivering a copy to the person named in the subpoena. Proof of service shall be made by affidavit of the person making service if not served by a person specified by law to serve process.
- (3) Any motion to quash or limit the subpoena shall be filed with the Division and shall state the grounds relied upon.

#### **4-19.00**      **EVIDENCE**

- (1) Oral evidence may be taken only on oath or affirmation.
- (2) Each party has the right to impeach any witness regardless of which party called the witness to testify.
- (3) Hearsay evidence, whether received in evidence over objection or not, may be used to supplement or explain other evidence, but is not sufficient in itself to support a finding unless the evidence falls within an exception to the hearsay rule as found in Sections 90.801-.805, Florida Statutes.
- (4) The rules of privilege apply to the same extent as in civil actions under Florida law.
- (5) If requested and if the necessary equipment is reasonably available, testimony may be taken by means of video teleconference or by telephone.
  - (a) If a party cross-examining the witness desires to have the witness review documents or other items not reasonably available for the witness to review at that time, then the party shall be given a reasonable opportunity to complete the cross-examination at a later time or date for the purpose of making those documents or other items available to the witness.
  - (b) For any testimony taken by telephone, a notary public must be physically present with the witness to administer the oath. The

notary public shall provide a written certification to be filed with the Division confirming the identity of the witness, and confirming the affirmation or oath by the witness. It is the responsibility of the party calling the witness to secure the services of a notary public.

- (6) When official recognition is requested, the parties shall be notified and given an opportunity to examine and contest the material. Requests for official recognition are by motion and are considered in accordance with the provisions governing judicial notice in Sections 90.201-.203, Florida Statutes.

**4-20.00      RECORDATION**

- (1) Citizens is responsible for preserving the testimony at final hearings. Proceedings shall be recorded by a certified court reporter or by recording instruments.
- (2) No later than 10 days prior to the final hearing, Citizens shall notify the parties of the method by which Citizens will record the testimony at the final hearing. Any party to a hearing may, at its own expense, provide a certified court reporter if Citizens does not. The administrative law judge may provide a certified court reporter. At hearings reported by a court reporter, any party who wishes a transcript of the testimony shall order the same at its own expense. If a court reporter records the proceedings, the recordation is the official transcript.

**4-21.00      POST-HEARING SUBMITTALS**

All parties may submit proposed findings of fact, conclusions of law, orders, and memoranda on the issues within a time designated by the administrative law judge. Unless authorized by the administrative law judge, proposed orders are limited to 40 pages.

**4-22.00      ENTRY OF RECOMMENDED ORDER**

- (1) The administrative law judge shall file a Recommended Order with Citizens within 30 days after the hearing, or receipt of the hearing transcript, whichever is later. The Recommended Order must include a caption, time and place of hearing, appearances entered at the hearing, statement of the issues, findings of fact and conclusions of law, separately stated, and recommendation for final action by the Citizens' Board.
- (2) By agreeing to a deadline for filing post-hearing submissions that is more than 10 days after the conclusion of the hearing or the filing of the hearing transcript, whichever is later, a party waives the provisions

of subsection (1) above.

#### **4-23.00**      **EXCEPTIONS AND RESPONSES**

- (1) Parties may file with Citizens any Exceptions to findings of fact and conclusions of law contained in Recommended Orders within 10 days of entry of the Recommended Order. Exceptions shall identify the disputed portion of the Recommended Order by page number or paragraph, shall identify the legal basis for the Exception, and shall include any appropriate and specific citations to the record.
- (2) Exceptions shall be provided to all parties by facsimile or electronic mail, if a facsimile number or e-mail address has been provided, the day they are filed with Citizens.
- (3) Any party may file with Citizens responses to another party's Exceptions within 10 days from the date the Exceptions were filed with Citizens.
- (4) No additional time shall be added to the time limits for filing with Citizens Exceptions, or responses to Exceptions, when service has been made by mail.

#### **4-24.00**      **BOARD ACTION**

The Board must consider the Recommended Order and any Exceptions filed at the next regularly scheduled Board meeting which provides for adequate public notice of the pending final action.

The Board may adopt the Recommended Order as the Final Order. The Board in its Final Order may reject or modify the conclusions of law over which it has substantive jurisdiction as well as interpretations of its own policies and procedures. When rejecting or modifying such conclusion of law or interpretation of its own policies and procedures, the Board must state with particularity its reasons for such rejections or modifications and must make a finding that its substituted conclusion of law or interpretation of its policies and procedures is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact.

The Board may not reject or modify the findings of fact unless the Board first determines from a review of the record, and states with particularity in the Final Order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

The Board may accept the recommendation set forth in the Recommended Order. The Board may not reject such recommendation without a review of the record and without stating with particularity its reasons therefor by citing to appropriate portions of the record justifying such final action.

**4-25.00**      **FINAL ORDER POSTING**

Decisions by the Board are final as of the date the Final Order is posted on Citizens' website. Citizens will transmit the Final Order to the Division.

**4-26.00**      **APPELLATE JURISDICTION**

Any further legal remedy must be sought with the First District Court of Appeal. After entry of the Final Order, the party seeking review of a Final Order before the First District Court of Appeal must do so by filing with Citizens and the First District Court of Appeal a notice of appeal within 30 days of entry of the Final Order.

**Approved** by the Board of Governors at its meeting on June 25, 2014.