

1st Sub. S.B. 114
CONTESTING PUBLIC PROCUREMENTS

Senator **Wayne L. Niederhauser** proposes the following amendments:

1. *Page 12, Line 349:*

349 (viii) [~~an employee of a local district~~] two { representative } representatives of local districts
or special

2. *Page 14, Line 401:*

401 governing body of the local public procurement unit, or a designee of either;

3. *Page 14, Lines 405 through 410:*

405 [~~(1) Any~~] (2) Except as provided in Subsection (3), a person who is an actual or
406 prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation
407 or award of a contract may protest to the { ~~chief procurement officer or, if the solicitation or~~
408 award of the contract is the responsibility of a purchasing agency, the head of [a] the
409 purchasing agency } protest officer [~~. A protest~~], by filing the protest in writing, with the { chief
procurement
410 officer or the head of the purchasing agency } protest officer as follows:

4. *Page 15, Lines 430 through 433:*

430 (4) A person who is debarred or suspended under this chapter may protest the
431 debarment or suspension to the { chief procurement officer or the head of the purchasing
agency } protest officer
432 that ordered the debarment, as applicable, within seven days after the day on which the
433 debarment or suspension is ordered.

5. *Page 15, Lines 437 through 443:*

437 (6) A person described in Subsection (2), (3), or (4) who fails to timely file a protest
438 under this section may not bring a protest, action, or appeal challenging a solicitation or award
439 of a contract, or a debarment or suspension, before the { chief procurement officer, the head of a
440 purchasing agency } protest officer, an appeals panel, a court, or any other forum.
441 (7) Subject to the applicable requirements of Section 63G-10-403, { ~~the chief~~
442 procurement officer, the head of a purchasing agency, or a designee of either } a protest officer, or the
protest officer's designee, may enter into a

443 settlement agreement to resolve a protest.

6. *Page 16, Line 472 through Page 17, Line 491:*

472 (2) for a protest under Section 63G-6-801 or an appeal under Section 63G-6-807:

473 (a) the chief procurement officer, after consultation with the ~~{Attorney General's~~
474 ~~Office}~~ attorney general's office

474 and the head of the using agency [or the head of a purchasing agency], makes a written
475 determination that [the] award of the contract without delay is necessary to protect substantial
476 interests of the state[-];

477 (b) the head of the purchasing agency, after consultation with the ~~{Attorney General's~~
478 ~~Office}~~ attorney general's office , makes a written determination that award of the contract without
delay is necessary to

479 protect substantial interests of the state; or

480 (c) for a local public procurement unit that is not represented by the attorney general's
481 office, the local public procurement unit, after consulting with the attorney for the local public
482 procurement unit, makes a written determination that award of the contract without delay is
483 necessary to protect substantial interests of the local public procurement unit; or

484 (3) for an appeal under Section 63G-6-815, or an appeal to a higher court than district
485 court:

486 (a) the chief procurement officer, after consultation with the ~~{Attorney General's~~
~~Office}~~ attorney general's office

487 and the head of the using agency, makes a written determination that award of the contract
488 without delay is in the best interest of the state;

489 (b) the head of the purchasing agency, after consultation with the ~~{Attorney General's~~
490 ~~Office}~~ attorney general's office , makes a written determination that award of the contract without
delay is in the best

491 interest of the state; or

7. *Page 17, Line 517:*

517 ~~{The chief procurement officer, the head of a purchasing agency, or a designee of either}~~ A
protest officer, or the protest officer's designee,

8. *Page 18, Line 546:*

546 (f) The records described in Subsections (2) ~~{(e) and (f)}~~ (d) and (e) may not be destroyed until
the

9. *Page 18, Lines 551 through 552:*

551 [(+)] (3) ~~{The chief procurement officer, the head of a purchasing agency, or the~~

552 ~~designee of either~~ } A protest officer, or the protest officer's designee [officer], shall promptly issue a
written decision regarding any protest,

10. Page 21, Lines 626 through 627:

626 (ii) mail, email, or hand-deliver the written decision on the appeal to the parties to the
627 appeal {~~the chief procurement officer, and the head of the applicable purchasing agency~~} and to
the protest officer .

11. Page 21, Lines 637 through 645:

637 (c) shall uphold the decision of the {~~chief procurement officer or the head of the~~
638 ~~purchasing agency~~} protest officer , unless the decision is arbitrary and capricious or clearly erroneous.
639 (7) If a procurement appeals panel determines that the decision of the {~~chief~~
640 ~~procurement officer or the head of the purchasing agency~~} protest officer is arbitrary and capricious
or clearly
641 erroneous, the procurement appeals panel:
642 (a) shall remand the matter to the {~~chief procurement officer or the head of the~~
643 ~~purchasing agency, as applicable,~~} protest officer to cure the problem or render a new decision;
644 (b) may recommend action that the {~~chief procurement officer or the head of the~~
645 ~~purchasing agency~~} protest officer should take; and

12. Page 23, Lines 685 through 707:

685 (3) The chair of the {~~procurement policy board~~} Procurement Policy Board shall dismiss a
protest filed under
686 Section 63G-6-807 if the actual or prospective bidder, offeror, or contractor fails to timely pay
687 the security deposit or post the bond required under Subsection (1).
688 (4) The chair of the {~~procurement policy board~~} Procurement Policy Board shall:
689 (a) retain the security deposit or bond until the protest and any appeal of the protest
690 decision is final;
691 (b) as it relates to a security deposit:
692 (i) deposit the security deposit into an interest-bearing account; and
693 (ii) after any appeal of the protest decision becomes final, return the security deposit
694 and the interest it accrues to the person who paid the security deposit, unless the security
695 deposit is forfeited to the {~~general fund~~} General Fund under Subsection (5); and
696 (c) as it relates to a bond:
697 (i) retain the bond until the protest and any appeal of the protest decision becomes
698 final; and
699 (ii) after the protest and any appeal of the protest decision becomes final, return the
700 bond to the person who posted the bond, unless the bond is forfeited to the {~~general fund~~} General

Fund under

701 Subsection (5).

702 (5) A security deposit that is paid, or a bond that is posted, under this section shall

703 forfeit to the ~~{general fund}~~ **General Fund** if:

704 (a) the person who paid the security deposit or posted the bond fails to ultimately
705 prevail on appeal; and

706 (b) the procurement appeals panel finds that the protest or appeal is frivolous or that its
707 primary purpose is to harass or cause a delay.

13. Page 25, Lines 740 through 741:

740 (a) recommended by the ~~{chief procurement officer or the head of the purchasing~~
741 ~~agency}~~ **protest officer** involved; and

14. Page 25, Line 752:

752 (5) The district court shall ~~{also}~~ have original jurisdiction in a cause of action between a

15. Page 28, Line 858:

858 (2) All appeals made to the Procurement Appeals Board on or after February 2, 2012 ~~.~~