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Expect The Unexpected: How To Navigate State And Local Bid Protests

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Many government contractors are familiar with the well-established processes of federal bid protests. Less known is the dizzying variety of procedures applicable to state and local bid protests, and a rule that is well-established in one jurisdiction may be nonexistent in another. Although there are some unifying themes that pervade protest practice everywhere—namely, fairness and rationality—it is important to understand how those themes are understood and applied in the relevant jurisdiction.

What does that mean for a contractor looking to grow its state and local business? Be prepared. Get to know the rules and practices in the relevant jurisdiction, preferably *before* the clock starts ticking on a protest filing deadline. A contractor that takes this approach will be in a better position to assess whether to protest, or how to respond to another contractor's protest.

This BRIEFING PAPER walks through some of the questions that you should consider when filing, or defending against, a state or local bid protest: (1) Who can protest? (2) Where do you protest? (3) When do you need to file your protest? (4) How do you get access to documents? (5) Can you get a stay of award or performance? (6) What are viable protest issues? (7) Is there a lot of case law—and what do you do if not? (8) What is the standard of review? (9) What about supplemental protests? (10) If you are the awardee, can you intervene? (11) Does prejudice matter? (12) How soon will you get a decision? (13) What relief is available? (14) If you lose, are there higher levels of review? The PAPER concludes with overarching guidelines for state and local protests.[1]

Who Can Protest?

A threshold question in any protest is: Who is allowed to protest? At the U.S. Government Accountability Office (GAO) and the U.S. Court of

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Federal Claims, the answer to this question is known as "interested party" status or, more colloquially, "standing." GAO defines an interested party as "an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract."[2] The Court of Federal Claims' definition is similar.[3]

In post-award protests, GAO's and the Court's definitions generally cover a prime contractor (not subcontractor) that actually bid on the contract and that either is next in line for award or whose chance of award would be affected by the alleged errors that it has identified. In pre-award protests, that definition generally covers a contractor that plans to bid on the contract—and, depending on the issue, whose chance of award would be affected by the alleged errors that it has identified.

As with all things in state and local bid protests, different jurisdictions have different versions of standing. Many state and local jurisdictions adopt an approach similar to GAO and the Court of Federal Claims and allow only offerors with a plausible chance at award to bring a protest.[4] Other jurisdictions allow "aggrieved" offerors to protest[5]—a term that, if left undefined or uninterpreted, might allow offerors with a more remote chance at award to nevertheless bring a bid protest. And still others adopt an even broader formulation of standing that allows "any bidder or proposer" to bring a protest.[6] Moreover, some jurisdictions—such as Delaware, Pennsylvania, and New Jersey—separately permit state taxpayers to pursue bid protests in the interest of protecting the public fisc.[7]

In light of this variation, contractors should not assume that the same standing rules from federal bid protests apply in a state or local protest. Protesters should ensure that they have standing under the relevant rules, and contractors defending an award should consider whether to challenge a protester's standing to protest.

Where Do You Protest?

Another threshold question is: Where do you protest? In many state and local jurisdictions, protesters are required to file their protest initially before some executive branch agency of the state or municipality.[8] The identity of that designated agency varies by jurisdiction.

In some jurisdictions, you have to file your protest with the agency that issued the solicitation.[9] Sometimes that is the agency that actually will be using the goods or services being purchased,[10] but sometimes that is an agency charged with running procurements on behalf of other state agencies.[11]

In other jurisdictions, you have to file your protest with an agency responsible for adjudicating bid protests for all other agencies. In Wyoming, for example, all protests must be submitted to the Wyoming Department of Administration and Information.[12]

In still other jurisdictions, you have the option to file your protest either with the procuring agency or an agency specializing in procurement issues. In Arkansas, for example, protesters have the choice to file either at the procuring agency or the Office of State Procurement.[13]

Protesters should promptly identify the appropriate—and, if there is an option, preferred—forum for protest,

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as that forum may have unique rules, regulations, and practices that could impact nearly every question considered in this PAPER.

When Do You Need to File Your Protest?

Federal bid protests have notoriously quick and unforgiving deadlines, and state and local protests are often no different. In fact, filing deadlines in state and local protests are sometimes even faster than filing deadlines at GAO. Thus, it is critical to figure out exactly how much time you have to protest and to not assume that you have at least as much time as you would at GAO.

For challenges to award decisions, many jurisdictions move quickly. Often, the clock starts running before the award has even been finalized, and instead begins when the notice of intent to award is released. For example, the Cook County, Illinois Procurement Code requires protests to be filed "no later than three business days after the date upon which the [Chief Procurement Officer] posts the recommended Bid for award" or "recommended Bid for execution."[14] The Texas Health and Human Services Commission requires protests to be filed "no later than 10 business days after the notice of award, if the protest concerns the evaluation or award."[15] Virginia requires that protests be filed "no later than ten days after the award or the announcement of the decision to award, whichever occurs first"—unless the protest involves information contained in the public record, in which case different timing rules apply.[16]

Some jurisdictions take a less hurried approach to timing, however. For example, the Kansas Department of Administration requires protests to be filed "within thirty (30) calendar days after the date of the event which gives rise to the vendor's protest."[17] But even where the filing deadline is more accommodating, there still may be reason to file your protest as soon as possible, particularly to prevent the customer from transitioning to the newly awarded contract.[18]

For challenges to solicitation terms—and other types of protests that would be pre-award in the federal system—state and local jurisdictions often differ from the timeliness rules at GAO and the Court of Federal Claims. The well-established rule in federal protests is that challenges to the terms of a solicitation must be filed prior to the deadline for proposal submission.[19] Some state and local jurisdictions follow that same approach.[20] But other jurisdictions have even stricter timeliness rules.

In Alaska, for example, "a protest based on alleged improprieties or ambiguities in a solicitation must be filed at least *10 days before* the due date of the bid or proposal, unless a later protest due date is specifically allowed in the solicitation."[21] In Rhode Island, "[b]id protests regarding the form or content of solicitation documents must be received by the chief purchasing officer not later than *fourteen (14) calendar days before* the date set in the solicitation for receipt of bids."[22] Florida requires a "notice of protest" challenging the terms of the solicitation to be submitted "within 72 hours after the posting of the solicitation"—and then requires the formal written protest to be filed 10 days later.[23]

Other jurisdictions are silent on solicitation challenges and other pre-award protests. The rules and procedures governing protests may not address pre-award protests, and there may be no case law adding any clarity on timing. In those circumstances, would-be protesters are left with a judgment call: File at some point before proposal submission, even though pre-award protests are not expressly permitted, in hopes of preventing the agency from going down the wrong path; or wait to see if you win, raise the argument in a post-award protest if you do not, and hope that it is considered timely. There is no one-size-fits-all approach to this scenario.

One final tip when it comes to timely filing: Some state and local jurisdictions require protests to be submitted in hard copy. And some jurisdictions specify that the hard copy be delivered via a particular common carrier or to a post office box, such that hand delivery is not an option. In those situations, you may need to finalize your protest and deposit it for delivery at some date before the actual protest deadline to get the hard copy delivered in time. For that reason, it is important to figure out the manner of filing as soon as possible.

In sum, as with all things concerning state and local

protests, assume nothing when it comes to filing deadlines, and get prepared early. You may have even less time than in federal protests. Sometimes the rules are unclear, particularly when it comes to pre-award protests. Early preparation helps protesters navigate these sometimes-tricky situations.

How Do You Get Access To Documents?

The strength of a protest often turns on how much information about the procurement the protester can access and review. If a protester is not provided information or documents about the procurement process, it can be next to impossible to identify errors in that process.

Some states and municipalities have procedures for sharing documents and information as part of the protest process, similar to debriefings from federal agencies and document production at GAO and the Court of Federal Claims. Some processes involve sharing documents upon or soon after the notice of award or intent to award,[24] while others contemplate sharing documents as part of the resolution of a protest.[25] In jurisdictions where document production is built into the protest process, parties should be sure to determine what the mechanics are and get access to the documents as soon as possible. Time is usually of the essence in protests—both in terms of filing deadlines and preventing the transition to the newly awarded contract—so it is important to access documents as quickly as you can.

In Virginia, for example, "[a]ny competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the public body decides not to accept any of the proposals and to reopen the contract."[26] And some state and local agencies, such as in Arizona and Kansas, post the procurement file online—including offeror proposals—after award, which makes it very easy to access documents.[27]

In many jurisdictions, however, there is no protest-specific procedure for gaining access to documents. In those situations, protesters are often left with no option but to pursue a Freedom of Information Act (FOIA)-type request to attempt to obtain documents and information related to the procurement. Indeed, Rhode Island's bid protest regulations expressly contemplate that protesters will use the state's FOIA-type statutes to obtain procurement documents—and provides the possibility of delaying a decision on a protest until 30 days after the response to the FOIA request.[28]

There are significant drawbacks to relying on the FOIA process, however. FOIA requests often take a long time to process, and a protester may not receive any documents for months—long after the formal protest deadline has passed and potentially after performance under the new contract has begun. Moreover, significant portions of the procurement record may be exempt from release under the applicable FOIA-type statutes and regulations, on the grounds that the information is proprietary, confidential, trade secrets, or subject to a similar exemption.[29] As a result, even when documents are finally released, they may be heavily redacted.

There is no universal solution for these document production challenges, but a few tips can help.

First, contractors should give careful consideration to the timing of their FOIA request. On the one hand, a protester should submit the request as early as possible, so that it can receive and review the documents in adequate time. On the other hand, if a protester submits a FOIA request too early, it may be rejected as premature. For example, if a contractor submits a FOIA request for the procurement record before an award decision is made, the government likely will deny the request—and the contractor will have to resubmit it at a later date.[30]

Second, contractors should calibrate the scope of their FOIA request to the documents they actually and reasonably need. A request for too many documents—particularly emails and correspondence—may significantly delay how quickly the request is processed. In fact, the government may outright deny the request as overly broad.[31] To reduce the risk of delay, a contractor may want to consider requesting that documents be produced in stages—i.e., bid documents first; emails and correspondence last. There is no guarantee that a state or local government will agree to that approach,

but it may result in the prompt production of the most important documents.

While there are often no easy answers when it comes to document access, anyone thinking about a state or local protest should consider the issue at an early stage and be prepared, if necessary, to litigate their protest based on whatever documents and information they have at the outset.

Can You Get A Stay Of Award Or Performance?

In most protests, time is of the essence. Protesters want to move as quickly as possible to stop the agency from moving forward with the new contract and to prevent the putative awardee from getting entrenched in the work. If work begins under the new contract while the protest is pending, it is possible that there will be no meaningful relief available if and when the protest is sustained. For example, a contract for the delivery of goods may be fully performed within a few weeks, before a protest is decided. And in a contract for services, the putative awardee may quickly transition in and institute its own systems and processes, making it inefficient for the state or local agency to later re-do the transition process if a protest is later sustained.

In federal protests, the solution is a stay of award or performance. At GAO, the stay is automatic as long as the protest is filed according to certain deadlines, and it remains in place for the duration of the protest.[32] At the Court of Federal Claims, the protester can seek a preliminary injunction by order of the Court or negotiate a voluntary stay with the government.[33]

As with all things concerning state and local protests, the availability of a stay differs from jurisdiction to jurisdiction. Some follow an approach similar to GAO and impose an automatic stay on performance as soon as a protest is filed.[34] However, many jurisdictions provide for either no stay at all or only a discretionary stay—i.e., up to the discretion of the procuring agency or protest adjudicator.[35]

The standard for and likelihood of obtaining a discretionary stay varies. New Mexico, for example, has a presumption *against* the stay of contract performance unless there are "exceptional circumstances" or "good cause shown" warranting a stay.[36] Similarly, Alaska has presumption against a stay, which is only rebutted where the awarding agency "determines in writing that (1) a reasonable probability exists that the protest will be sustained; or (2) stay of award is not contrary to the best interests of the state."[37]

In jurisdictions where it is not possible to obtain a stay, or where a discretionary stay has been denied, protesters have a few options, although neither is a sure thing. First, a protester may be able to request emergency injunctive relief from a court pending the resolution of a protest before an agency or other executive branch tribunal. That option is often unappealing, however, because obtaining such relief usually requires an extraordinary showing and can be expensive to litigate—and it may not be possible to obtain an injunction quickly enough to have a meaningful effect. Second, a protester may be able to seek the state or municipality's agreement to cancel the award and reopen the procurement if the protest is sustained, regardless of ongoing performance. That option may not be feasible, however, for truly fast-moving contracts (e.g., for goods) that may be entirely performed by the time a protest is decided.

In light of these variations from jurisdiction to jurisdiction, contractors should be aware of the possibility and likelihood of receiving a stay, and factor that into their decision to file a protest.

What Are Viable Protest Issues?

The universe of protestable issues differs by jurisdiction. A protest ground that is well-established in one state may be a non-starter in another. As a result, it is important to figure out at an early stage what protest arguments are viable in the relevant jurisdiction.

A good place to start are the statutes, rules, regulations, and policies that apply in the relevant jurisdiction. Some jurisdictions have relatively broad rules and generally permit arguments that the agency's actions are unreasonable, contrary to the solicitation, or the like. For example, adjudicators in Pennsylvania will consider whether the agency "determination is arbitrary and capricious, an abuse of discretion or is contrary to

law."[38] Similarly, adjudicators in Rhode Island will consider whether the agency determination was "procured by fraud; in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error or law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; arbitrary; capricious; characterized by an abuse of discretion; or clearly unwarranted exercise of discretion."[39]

Other jurisdictions specify particular issues that are protestable. For example, in Oregon, a protest will be sustained where: "(A) All lower bids or higher ranked proposals are nonresponsive; (B) The contracting agency has failed to conduct the evaluation of proposals in accordance with the criteria or processes described in the solicitation materials; (C) The contracting agency has abused its discretion in rejecting the protestor's bid or proposal as nonresponsive; or (D) The contracting agency's evaluation of bids or proposals or the contracting agency's subsequent determination of award is otherwise in violation of" Oregon procurement law.[40]

Some jurisdictions specify particular issues that are *not* protestable. For example, Virginia statute states that "[n]o protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror."[41] And the Kansas Department of Administration will not "hear protests concerning[] the following omissions: (a) Failure to properly complete the bid form; (b) Failure to submit the bid to the Division of Purchases by the due date or time; (c) Failure to provide samples, descriptive literature, or other required documents by the bid deadline or other specified time; or (d) Failure to provide a required bid deposit or performance bond by the specified date or time."[42]

A word to the wise when consulting the statutes, rules, regulations, and policies that apply in your protest: Identifying those authorities is often easier said than done. State statutes and regulations can be byzantine, and the otherwise-standard procurement laws may contain carve-outs for particular state agencies and particular types of procurements. Even when you find the right statutory and regulatory provisions, you still need to look for other policies and guidance documents that may apply to the protest—manuals, handbooks, procedure documents, and the like. Those policies and guidance documents may simply be PDFs available on a state website, but they can contain critical information that is not found in, and may be inconsistent with, the statutes and regulations. Thus, it can be a complicated process to determine what authorities apply and what those authorities mean.

What About Case Law?

Those familiar with federal protests are accustomed to an extensive body of case law addressing a wide range of protest issues. That is often not the case for state and local protests. Individual states experience far fewer protests than the federal government, and many states have no mechanism for or practice of publishing protest decisions unless or until a case winds its way into state court.[43] Instead, protests before a state or local agency may be resolved through a phone call or an email to the parties directly involved in the case. As a result, it is not uncommon to encounter jurisdictions where there are only a handful of written decisions addressing protests.

Although it is always ideal to have precedent on your side, a lack of case law does not doom a state or local protest. Beyond the protest grounds set forth in the applicable statutes, rules, and regulations (see above), protesters should consider common-sense arguments that would resonate in federal forums. For example, principles of fairness and equal treatment are fairly universal when it comes to procurement matters, as is adherence to the solicitation's terms and ensuring a level playing field for competition.

Protesters also should consider drawing on protest decisions from GAO, the Court of Federal Claims, and the U.S. Court of Appeals for the Federal Circuit, where they would be helpful. Although this federal case law is not binding on states and municipalities, it often has persuasive value, and state adjudicators have relied on it in the past.[44] For example, the Washington Court of Appeals determined that a pre-award protest filed after the submission of bids was waived by applying the Federal Circuit's waiver rule in *Blue & Gold Fleet, LP v. United States*.[45]

But just as protesters should consider relying on federal case law where it would be helpful, they should not feel limited by federal case law where it would be harmful. When fairness or equity demand a different approach than that taken in the federal system, protesters should consider advancing arguments that may be precluded at GAO or the Court of Federal Claims. In short, where there is no binding case law, seize the opportunity and pursue the arguments that help your case.

What's The Standard Of Review?

Another thing for protesters to consider is the level of scrutiny, or deference, that the adjudicator will give to the procuring agency and the award decision. Most jurisdictions apply some variant of the standard of review typical in administrative litigation: Based on the record before the agency, are the agency's actions unreasonable, arbitrary and capricious, an abuse of discretion, or contrary to law?[46] This generally means that adjudicators will employ some level of deference to an agency's exercise of judgment, will not conduct a *de novo* review of the underlying agency action, and usually will limit the taking of new or additional evidence.

Some jurisdictions, however, have their own individual variations on the standard of review. For example, in New Mexico, the adjudicator determines whether "the business awarded the contract acted fraudulently or in bad faith."[47] If so, then the contract will be canceled.[48] If not, then the adjudicator has the option of resolving the protest in favor of the protester or in favor of the awardee, "provided that a written determination is made that doing so is in the best interest of the state."[49]

Other jurisdictions deviate from the typical administrative-law standard and conduct a *de novo*-type review. For example, the Alaska Department of Administration Office of Administrative Hearings has permitted parties to conduct discovery and put on witnesses as part of hearings on bid protests.[50] And in Florida, although the stated standard is "clearly erroneous, contrary to competition, arbitrary, or capricious,"[51] in practice, protests are decided by a hearing where "[a]ll parties shall have an opportunity . . . to present evidence and argument on all issues involved."[52]

These differences in standard of review—and the scope of evidence that can be presented—are one more reason to become familiar with the law in your state or local jurisdiction as soon as possible.

What About Supplemental Protests?

A protester may learn new facts after the filing of its initial protest that raise new protest grounds. This occurs with some frequency in state and local protests because protesters often receive information through a FOIA-style process—which usually takes some time.[53]

In federal protests, there is a well-established procedure for filing supplemental protests upon the discovery of new information that gives rise to new protest grounds. Some state and local jurisdictions are the same. For example, under Virginia law, protests must be filed "no later than ten days after the award or the announcement of the decision to award, whichever occurs first," but if the protest "depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection [under Virginia law], then the time within which the protest shall be submitted shall expire ten days after those records are available for inspection by such bidder or offeror" (absent specific exceptions).[54]

In other state and local jurisdictions, however, there is no express procedure for submitting supplemental protests. Rules are often silent on the idea of any written submission beyond the initial protest. In these situations, a protester should consider filing a supplemental protest anyway. There is no guarantee that the adjudicator will accept or consider the supplemental protest, but there is usually little harm in trying. And if the new facts are significant and the supplemental argument is strong, it may change the outcome of the case, particularly where the initial protest needed to be filed based on very little information in order to be timely.

The question remains, however, on what timeframe a protester should submit a supplemental protest if the applicable rules and policies are silent on supplemental protests. If the standard protest deadline is written in broad terms—for example, based on when a protester knew or should have known a particular ground of protest[55]—a protester may be able to apply that provision in timing the filing of any supplemental protest. And if

the standard protest deadline is written in narrow terms—for example, based on the time of the notice of award or intent to award—a protester's best bet still may be to file any supplemental protest on the same timeline that would apply to an initial protest filing. In other words, if initial protests are due within 10 days of notice of award, a protester may consider filing any supplemental protest on or before 10 days after it knew or should have known the new ground for protest.

Every case is different—and it is a judgment call—but often there is little to lose in filing a supplemental protest, particularly if the protester had few or no documents at the time of the initial protest filing.

Can You Intervene?

What about a contractor that won a state or local contract, but whose award is being protested? In federal protests, awardees are permitted to intervene in protests[56] and can actively participate in the litigation. As an "intervenor," the awardee can submit briefs, participate in motions practice, and sometimes collaborate with government counsel.

At least while protests are before a state or local agency, the role of intervenors varies from jurisdiction to jurisdiction. Some jurisdictions like New York,[57] New Mexico,[58] and Idaho[59] expressly allow the awardee to submit a response to the protest. But just because a jurisdiction permits intervention does not mean that it will look and feel like intervention in a federal protest. For one thing, intervention may be at the discretion of the adjudicator or the awarding agency, rather than as of right.[60] Moreover, some states have strict blackout provisions that limit communication with the government during the pendency of a procurement, and a protest may fall within the blackout period. In those situations, intervenors may be permitted to submit formal filings in response to the protest but may be prohibited from having informal communications with agency counsel or other agency officials.

In other jurisdictions, rules and procedures are silent about intervention while a protest is before a state or local agency. In those situations (like with supplemental protests, discussed above), there is often no harm in asking to intervene. There may be an informal practice of permitting intervention that is not memorialized in written rules and procedures. And the adjudicator may appreciate having the awardee participate, particularly where the protest issues are focused on the awardee's proposal or capabilities.

When protests make their way to state court, the opportunity to intervene is more predictable. Most states have case law setting out standards for intervention as of right and intervention with the court's permission. Contract awardees usually can satisfy the relevant standard for purposes of intervening in a bid protest challenging their award.[61]

In sum, awardees should not assume that they have no choice but to sit on the sidelines during a protest. Even where the rules and procedures do not expressly permit it, awardees should consider requesting to intervene.

Does Prejudice Matter?

In federal protests, it is not enough to show that there was an error in the procurement process. In order to prevail, a protester also needs to show that it was prejudiced by the error—meaning that but for the error, the protester "would have had a substantial chance of receiving the award."[62]

Some state and local jurisdictions take a similar approach to federal protests and require the protester to show that it would have a substantial chance of receiving the award absent the alleged error. For example, the Florida Division of Administrative Hearings explains that "a protester challenging the agency's evaluations and resulting award must show 'competitive prejudice,' " meaning that "the agency committed errors but for which there is a substantial chance [the protester] would have won the contract."[63] And the New Mexico Human Services Department notes that "[t]o establish prejudice, the protestant must show that there was a substantial chance it would have received a contract but for the error."[64] In these jurisdictions and others, it is important to craft protest arguments with an eye toward prejudice to avoid convincing the adjudicator of an error that did not impact your chance of award.[65] Likewise, intervenors also should keep an eye on prejudice

(or, rather, a lack thereof) as a potential defensive argument.

Other state and local jurisdictions do not construe prejudice as strictly as GAO and the Court of Federal Claims—and may not require a protester to demonstrate prejudice at all. In New York, for example, the Office of State Comptroller (OSC) sustained a bid protest even though the protester's proposal suffered from the same kinds of deficiencies that the protester was challenging in the awardee's proposal.[66] Had this been a federal protest, GAO or the Court of Federal Claims likely would have concluded that the protester was not prejudiced because, had the agency caught the errors in the awardee's proposal, that would not have increased the protester's likelihood of receiving the award, given that the protester's proposal had similar errors. The New York OSC did not take that approach, however.

Thus, in jurisdictions where the adjudicator is not focused on prejudice, protesters should consider advancing arguments even if there is no obvious connection between the alleged error and the protester's likelihood of receiving the award.

How Soon Will You Get A Decision?

GAO resolves protests within 100 days of filing, pursuant to the Competition in Contracting Act.[67] Like GAO, some state and local jurisdictions specify the deadline for a protest to be resolved. In Virginia, for example, "[t]he public body or designated official shall issue a decision [on the protest] in writing within ten days stating the reasons for the action taken."[68] In Rhode Island, "[t]he chief purchasing officer shall issue a written determination in response to a bid protest within thirty (30) calendar days of the receipt thereof," unless the circumstances merit an extension.[69] In Pennsylvania, "[t]he determination shall be issued within 60 days of the receipt of the protest unless extended by consent of the head of the purchasing agency or his designee and the protestant."[70] And in Florida, an administrative law judge "shall commence a hearing within 30 days after the receipt of the formal written protest by the division and enter a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript by the administrative law judge, whichever is later."[71]

Other jurisdictions do not specify a timeline for resolving a protest. That means the timing could be anything—days, weeks, or months. However, many state and local protests end up being resolved faster than GAO's 100-day clock, at least at the agency level, because there is often less briefing and fewer procedural steps. An agency's protest procedures may contemplate nothing more than an initial protest filing and the agency's decision—and the agency's decision may be only a sentence long (or may be conveyed orally). Thus, while a protester should be prepared for any timing, state and local protests often move quickly even where the rules and regulations do not specify exact timing for a decision.

What Relief Is Available?

Those familiar with federal protests expect broadly formulated remedies that leave much discretion with the procuring agency. At GAO or the Court of Federal Claims, a typical remedy is to reopen the evaluation, solicit proposal revisions, reopen discussions with offerors, or amend the solicitation. The details of each of those actions are usually left to the procuring agency.

In state and local protests, there is often a similar variety of potential remedies available.[72] For instance, like in federal protests, remedies may include a resolicitation or recompete.[73] In certain circumstances, however, protesters may have the opportunity to seek a more specific and concrete remedy—for example, that award be directed to the protester or that a certain offeror be eliminated from the competition. This is particularly true where state or local law requires award to be made to the lowest-priced responsible bidder, in which case a directed award (to the proper lowest-priced responsible bidder) may be a straightforward remedy, depending on the protest argument being sustained.[74]

Given the variety of available remedies, protesters should think ahead to what relief they want at the time that they are writing their initial protest. If they would like the opportunity to revise their proposal, they should consider arguments that, if sustained, would result in proposal revisions—and expressly ask for that relief. And where there is a chance to get a directed award or the like, protesters should consider seeking it, even if that would not be a typical remedy in a federal protest.

If You Lose, Where Do You Go?

It is also important to know what higher levels of review may be available if the initial protest is decided against you. In state and local protests, there is often an agency-level or intra-Executive Branch appeal available after an initial protest decision is rendered.[75] In some instances, an intra-Executive Branch appeal is required before an appellant can go to state court. For example, in Alaska, "[a]n appeal from a decision of a procurement officer on a protest may be filed by the protester with the commissioner of administration, or for protests involving construction or procurements for the state equipment fleet, the commissioner of transportation and public facilities,"[76] and the decision from either commissioner can then "be appealed to the superior court."[77] And in Arizona, "[a]n interested party may appeal the decision entered or deemed to be entered by the agency chief procurement officer to the [Director of the Arizona Department of Administration] within 30 days after the date the decision is received."[78]

In some jurisdictions, however, a party wishing to appeal from or otherwise challenge an initial protest decision must go directly to state court. In Kansas, for example, "[t]he decision of the Director of Purchases is final and there is no further administrative appeal process," meaning that an appealing party proceeds directly to judicial review.[79] Similarly, in Pennsylvania, protesters may "file an appeal with the Commonwealth Court" after receiving "a final determination denying a protest."[80] In yet other instances, an intra-Executive Branch appeal may be optional, but not required, before an appellant can go to state court.

Once a protester ends up in state court, there is considerable variation in what judicial review looks like. Some jurisdictions permit the equivalent of a bench trial, with opening statements, closing statements, and examination of witnesses.[81] Other courts hold oral argument only, without witnesses or putting on evidence.[82] And in some instances, judicial review is on direct review to an intermediate appellate court, meaning that the case skips the trial-level court entirely.[83]

Guidelines

When it comes to state and local protests, there is no substitute for preparation. Because there is significant variation from jurisdiction to jurisdiction, protesters should not assume that rules and practices are the same in one jurisdiction simply because that is how it is done in another. These *Guidelines* are worth considering in almost any jurisdiction. They are not, however, a substitute for professional representation in any specific situation.

1. Get to know the procedures in your jurisdiction ASAP—particularly filing deadlines.

2. If you are a protester, confirm that you have standing, and if you are an awardee, figure out what is necessary to intervene.

3. Identify the controlling statutes, regulations, and rules in your jurisdiction—which is often easier said than done.

4. Survey viable protest issues, and pull from federal law if you need to.

5. Formulate your protest arguments considering both prejudice (if applicable) and available relief.

6. Determine whether a stay is available—and, if so, how to get one.

7. If there is no mechanism for obtaining documents through the protest process, think about submitting a FOIA-type request.

8. Consider filing a supplemental protest if newly discovered facts give rise to new protest issues.

9. Knowledge is power, so always be prepared to navigate the protest process when you are competing for an important award.

ENDNOTES:

[1]This BRIEFING PAPER is adapted from an Inside Government Contracts blog post available at https://www.insidegovernmentcontracts.com/2019/04/the-topsy-turvy-world-of-state-and-local-bid-protests/. This article is made available by Covington & Burling LLP for educational purposes only and to provide a general

understanding of the law, not for specific legal advice. By reading this article, you understand that there is no attorney-client relationship between you and Covington & Burling LLP. This article should not be used as a substitute for competent legal advice from a licensed professional attorney in your state.

[2]4 C.F.R. § 21.0(a)(1).

[3]See 28 U.S.C.A. § 1491(b)(1) (granting the Court of Federal Claims "jurisdiction to render judgment on an action by an *interested party* objecting to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement" (emphasis added)); Chromalloy San Diego Corp. v. United States, 145 Fed. Cl. 708, 730 (2019) ("Interested parties are those actual or prospective bidders or offerors whose direct economic interest would be affected by the award of the contract or by failure to award the contract." (internal quotation marks omitted)).

[4]See, e.g., 62 Pa. Cons. Stat. Ann. § 1711.1(a) ("A bidder or offeror, a prospective bidder or offeror or a prospective contractor that is aggrieved in connection with the solicitation or award of a contract . . . may protest to the head of the purchasing agency in writing."); Highley v. Dep't of Transp., 195 A.3d 1078, 1082 (Pa. Commw. Ct. 2018) (defining "aggrieved" as having a "substantial, direct, and immediate interest in the outcome of the litigation" (internal quotation marks omitted)).

[5]See, e.g., N.M. Admin. Code 1.4.1.81 ("Any bidder or offeror who is aggrieved in connection with a solicitation or award of a contract, including a sole source procurement, may protest to the state purchasing agent or central purchasing office."); S.C. Code § 11-35-4210(1)(a), (b) ("A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract [or with the intended award] shall protest . . ..").

[6]See, e.g., Commw. Mass. Office of Inspector General, The Chapter 30B Manual: Procuring Supplies, Services and Real Property 119 & n.146 (Nov. 2016) (citing Quincy Ornamental Iron Works, Inc. v. Findlen, 228 N.E.2d 453 (Mass. 1967)).

[7]See, e.g., Gannett Co. v. State, No. Civ. A 12815, 1993 WL 19714, at *3 (Del. Ch. Jan. 11, 1993); American Totalisator Co. v. Seligman, 414 A.2d 1037, 1040 (Pa. 1980); James Petrozello Co. v. Twp. of Chatham, 182 A.2d 572 (N.J. App. Div. 1962).

[8]See, e.g., Fla. Stat. § 120.57(3)(b) ("Any person who is adversely affected by the agency decision or intended decision shall file with the agency a notice of protest in writing within 72 hours after the posting of the notice of decision or intended decision."); 62 Pa. Cons. Stat. Ann. § 1711.1(a) (stating that protests are submitted "to the head of the purchasing agency in writing"); cf. Kan. Stat. Ann. § 77-617 (explaining that Kansas courts can review "an issue that was not raised before the agency" only in limited circumstances).

[9]See, e.g., N.Y. Comp. Codes R. & Regs. tit. 2, § 24.3(a) ("Where the public contracting entity has a written protest procedure and has provided notice of such procedure in the solicitation, a protest shall be filed initially with the public contracting entity."); Or. Admin. R. 125-247-0730(1) ("[B]efore seeking judicial review, a prospective Offeror must file a Written protest with the Authorized Agency and exhaust all administrative remedies.").

[10]See, e.g., N.Y. Comp. Codes R. & Regs. tit. 2, § 24.3(a); Or. Admin. R. 125-247-0730(1).

[11]See, e.g., N.J. Admin. Code § 17:12-2.2, 17:12-3.2; R.I. Gen. Laws § 37-2-52.

[12]See, e.g., Wyo. Admin. Code 006.0006.4 § 1(c).

[13]Ark. Code § 19-11-244(a)(2).

[14]Cook Cnty. Procurement Code § 34-136(i), available at https://library.municode.com/il/cook_county/codes/code_of_ordinances?nodeId=PTIGEOR_CH34FI_ARTIVPRCO.

[15]1 Tex. Admin. Code § 391.405(a)(2).

[16]Va. Code § 2.2-4360(A); see also Va. Code § 2.2-4342; discussion infra "How Do You Get Access To Documents?"

[17]Kan. Dep't of Admin., Vendor Bid Protest Procedure § 1 (effective Feb. 1, 2009), available at https://admin.ks.gov/offices/procurement-and-contracts/procurement-forms (emphasis omitted).

[18]See discussion infra "Can You Get A Stay Of Award Or Performance?"

[19]4 C.F.R. § 21.2(a)(1) (rule for GAO protests); Blue & Gold Fleet, LP v. United States, 492 F.3d 1308 (Fed. Cir. 2007) (rule for Court of Federal Claims protests). There is, however, some nuance in how this rule is applied. For example, "latent ambiguities" which are not clear on the face of the solicitation can be challenged in a post-award protest. See Lee, GAO Sustains Pre-Award Protest Challenging Price Evaluation Scheme, Covington: Inside Government Contracts (Nov. 14, 2014), available at https://www.insidegovernmentcontracts.com/2014/11/gao-sustains-pre-award-protest-challenging-price-evaluation-scheme/.

[20]See, e.g., Ariz. Admin. Code R2-7-A901(C) ("If the protest is based upon alleged improprieties in a solicitation that are apparent before the offer due date and time, the interested party shall file the protest before the offer due date and time."); Md. Code Regs. 21.10.02.03 ("A protest based upon alleged improprieties in a solicitation that are apparent before bid opening or the clos-

ing date for receipt of initial proposals shall be filed before bid opening or the closing date for receipt of initial proposals. For procurement by competitive sealed proposals, alleged improprieties that did not exist in the initial solicitation but which are subsequently incorporated in the solicitation shall be filed not later than the next closing date for receipt of proposals following the incorporation.").

[21]See, e.g., AS § 36.30.565(a) (emphasis added).

[22]220 R.I. Code. R. 30-00-1.6(D)(1)(a) (emphasis added).

[23]Fla. Stat. § 120.57(3)(b).

[24]See, e.g., Va. Code § 2.2-4342(D).

[25]See, e.g., Ariz. Admin. Code R2-7-A908(A) ("The agency chief procurement officer shall file a complete report on the appeal with the director and the state procurement administrator within 21 days after the date the appeal is filed, at the same time furnishing a copy of the report to the interested party.").

[26]Va. Code § 2.2-4342(D).

[27]Ariz. Admin. Code R2-7-C317(D) ("Within 3 days after contract award the agency chief procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential . . .."); K.S.A. § 75-3740(f) ("All bids with the names of the bidders and the amounts thereof, together with all documents pertaining to the award of a contract, shall be made a part of a file or record and retained by the director of purchases for five years . . ., and amendments thereto, and shall be open to public inspection at all reasonable times.").

[28]See 220 R.I. Code R. 30-00-1.6(I) ("In the event that the protestor requests access to documents relating to the solicitation or award pursuant to the 'Access to Public Records Act,' R.I. Gen. Laws § 38-2-1, et seq. in conjunction with the bid protest, then the chief purchasing officer may defer issuing his written determination until thirty (30) days after the response(s) to the [Access to Public Records Act] request has been issued."); see also 220 R.I. Code R. 30-00-1.6(C)(8) (instructing that protests shall include "a statement of whether the protestor has submitted a request for the disclosure of public records that are pertinent to the bid protest, and if such a request has been submitted, a copy thereof").

[29]See, e.g., N.Y. Pub. Off. Law § 87(2) (presenting exceptions to the New York Freedom of Information Law).

[30]See, e.g., 5 Ill. Comp Stat. 140/7(h) (making exempt from disclosure "[p]roposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the body, until an award or final selection is made. Information prepared by or for the body in preparation of a bid solicitation shall be exempt until an award or final selection is made.").

[31]See, e.g., N.Y. Pub. Off. Law § 89(3)(a) (contemplating that "circumstances [may] prevent disclosure to the person requesting the record or records within twenty business days from the date of the acknowledgement of the receipt of the request").

[32]See 31 U.S.C.A. § 3553(d)(4)(A).

[33]See RCFC 65(a).

[34]See, e.g., Fla. Stat. § 120.57(3)(c) ("[T]he agency shall stop the solicitation or contract award process until the subject of the protest is resolved by final agency action, unless the agency head sets forth in writing particular facts and circumstances which require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare."); 62 Pa. Cons. Stat. Ann. § 1711.1(k) ("In the event a protest is filed timely under this section and until the time has elapsed for the protestant to file an appeal with Commonwealth Court, the purchasing agency shall not proceed further with the solicitation or with the award of the contract unless and until the head of the purchasing agency, after consultation with the head of the using agency, makes a written determination that the protest is clearly without merit or that award of the contract without delay is necessary to protect substantial interests of the Commonwealth."); R.I. Gen. Laws § 37-2-53 ("In the event of a protest timely filed under § 37-2-52(b), the state shall not proceed further with the solicitation or award involved until the chief purchasing officer makes a written and adequately supported determination that continuation of the procurement is necessary to protect a substantial interest of the state."); S.C. Code § 11-35-4210(7) ("In the event of a timely protest pursuant to subsection (1), the State shall not proceed further with the solicitation or award of the contract until ten days after a decision is posted by the appropriate chief procurement officer, or, in the event of timely appeal to the Procurement Review Panel, until a decision is rendered by the panel except that solicitation or award of a protested contract is not stayed if the appropriate chief procurement officer, after consultation with the head of the using agency, makes a written determination that the solicitation or award of the contract without further delay is necessary to protect the best interests of the State.").

[35]See, e.g., Ariz. Admin. Code R2-7-A902(A) ("If a protest is filed before the solicitation due date, before the award of a contract, or before performance of a contract has begun, the agency chief procurement officer shall make a written determination to either: (1) Proceed with the award or contract performance, or (2) Stay all or part of the procurement if there is a reasonable probability the protest will be upheld or that a stay

is in the best interest of the state.").

[36]N.M. Admin. Code 1.4.1.83(B) ("A procurement shall not be halted after a contract has been awarded merely because a protest has been filed. After a contract has been awarded, the state purchasing agent or central purchasing office may, in its sole discretion, halt a procurement in exceptional circumstances or for good cause shown.").

[37]AS § 36.30.575.

[38]62 Pa. Cons. Stat. Ann. § 1711.1(i).

[39]R.I. Gen. Laws § 37-2-51; see also discussion infra "What's The Standard Of Review?"

[40]Or. Rev. Stat. § 279B.410(1)(b).

[41]Va. Code § 2.2-4360(A); see also Banner Detective Agency, Ltd. v. City of Norfolk, 10 Va. Cir. 53, at *1 (Va. Cir. Ct. 1986) (concluding that "the expertise of the successful bidder is not the subject of any protest by the loser").

[42]Kan. Dep't of Admin., Vendor Bid Protest Procedure § 5 (effective Feb. 1, 2009), available at https://admin.ks.gov/offices/procurement-and-contracts/procurement-forms.

[43]There are exceptions. For example, in Alaska, the Department of Administration Office of Administrative Hearings publishes written protest decisions on its website. See https://aws.state.ak.us/OAH/Category/Item?cat=109.

[44]See, e.g., Int'l Display Sys., Inc. v. Okimoto, 300 P.3d 601, 614 (Hawaii App. Ct. 2013) (observing that a rule barring bid preparation costs in certain circumstances "would also be consistent with the approach taken by the United States Court of Federal Claims and the United States Court of Claims in federal procurement cases"); State v. Bowers Office Prods., Inc., 621 P.2d 11, 14 n.5 (Alaska 1980) (citing a GAO decision as persuasive authority); AHF MCO of Fla., Inc. d/b/a Fla. HIV/AIDS Specialty Plan, et al., Case No. 18-3507BID et al., ¶ 55, 2018 WL 6137004, at *18 (Fla. Div. Admin. Hrgs. Oct. 29, 2018) ("I therefore agree with the Court of Federal Claims and Government Accountability Office bid protest decisions which hold that a challenge to an agency's selection of its evaluators will not be considered unless it alleges bad faith, bias, conflict of interest, or fraud on the part of an evaluator."); World Wide Parking, Inc., DCCAB No. P-0927, 2013 WL 3762232 (June 28, 2013) (declaring that the Washington, D.C. Contract Appeals Board "finds [GAO decisions] to be persuasive authority").

[45]Seattle-Tacoma Int'l Taxi Ass'n v. Port of Seattle, 156 Wash. App. 1025 (Wash. Ct. App. June 7, 2010) (citing Blue & Gold Fleet, LP v. United States, 492 F.3d 1308 (Fed. Cir. 2007)).

[46]See, e.g., 62 Pa. Cons. Stat. Ann. § 1711.1(i) ("The court shall affirm the determination of the purchasing agency unless it finds from the record that the determination is arbitrary and capricious, an abuse of discretion or is contrary to law."); Va. Code § 2.2-4360(B) (discussing a determination "that the decision to award is arbitrary and capricious").

[47]N.M. Admin. Code 1.4.1.88(B).

[48]N.M. Admin. Code 1.4.1.88(B)(2).

[49]N.M. Admin. Code 1.4.1.88(B)(1).

[50]See Data Transfer Solutions, LLC v. Dep't of Transp. & Pub. Facilities, OAH No. 15-1545-PRO, at 1 (Alaska Office Admin. Hrgs. Apr. 26, 2016) (basing decision on "[t]he evidence taken at hearing and in the record as a whole"); Bowers Office Prods., Inc. v. Div. of Gen. Servs., OAH No. 13-0226-PRO, at 1 (Alaska Office Admin. Hrgs. Sept. 5, 2013) (reaching decision "[a]fter considering the briefs and reweighing the record as a whole"); In re Powercorp Alaska, LLC, OAH No. 05-0074-PRO at 1 (Alaska Office Admin. Hrgs. Dec. 12, 2005) (discussing how its decision was "based on the testimony at the hearing and the evidence in the record").

[51]Fla. Stat. § 120.57(3)(f).

[52]Fla. Stat. § 120.57(1)(b) (describing hearing procedures); Fla. Stat. § 120.57(3)(d)(3) ("[I]f there is a disputed issue of material fact, the agency shall refer the protest to the division by electronic means through the division's website for proceedings under subsection (1).").

[53]See 220 R.I. Code R. 30-00-1.6(I) ("In the event that the protestor requests access to documents relating to the solicitation or award pursuant to the 'Access to Public Records Act,' R.I. Gen. Laws § 38-2-1, et seq. in conjunction with the bid protest, then the chief purchasing officer may defer issuing his written determination until thirty (30) days after the response(s) to the APRA request has been issued.").

[54]Va. Code § 2.2-4360(A).

[55]See, e.g., Ill. Admin. Code tit. 44, § 8.2075(c)(3) ("All protests shall be in writing and filed with the Chief Procurement Officer within 14 days after the protester knows or should have known of the facts giving rise to the protest."); R.I. Gen. Laws § 37-2-52(b) ("A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after the aggrieved person knows or should have known of the facts giving rise thereto.").

[56]See, e.g., 4 C.F.R. § 21.3.

[57]N.Y. Comp. Codes R. & Regs. tit. 2, § 24.4(d)(3) ("The successful bidder may file an answer to the protest with the Bureau of Contracts no later than the date that the public contracting entity is required to file its answer.").

[58]N.M. Admin. Code 1.4.1.84(B) ("The protestant

and every business that receives notice pursuant to Subsection A of this section will automatically be parties to any further proceedings before the state purchasing agent or central purchasing office. In addition, any other person or business may move to intervene at any time during the course of the proceedings. Intervention will be granted upon a showing of a substantial interest in the outcome of the proceedings. Interveners shall accept the status of the proceedings at the time of their intervention; in particular, they must abide by all prior rulings and accept all previously established time schedules.").

[59]Idaho Code § 67-9232(1)(b) ("[A]ll vendors, who are invited to bid on the property sought to be acquired, shall be notified of the appeal and the appointment of determinations officer and may indicate in writing their agreement or disagreement with the challenge within five (5) days.").

[60]See, e.g., N.J. Admin. Code § 17:12-3.3(b)(4) ("The Director may request that a bidder file a response to a protest. Responses and replies are at the Director's discretion; the Director may disregard any unsolicited response or reply.").

[61]See, e.g., Gateway Health Plan, Inc. v. Dep't of Human Servs., 172 A.3d 700, 704 (Pa. Commw. 2017) ("The offerors selected by the Department for contract negotiations . . . were granted leave to intervene in this appeal."); Catamaran PBM of Md., Inc. v. State, Office of Grp. Benefits, 174 So. 3d 683, 687 (La. Ct. App. 2015) (observing that awardee had been "permitted to intervene in the lawsuit" at the trial court); Greenhut Constr. Co. v. Henry A. Knott, Inc., 247 So. 2d 517, 519 (Fla. App. 1971) (noting that after awardee sought "permission to intervene as a party defendant because of its interest in the outcome of the case" the "motion was granted").

[62]Olympus Bldg. Servs., B-416599 et al., Oct. 24, 2018, 2018 CPD ¶ 365, at 10; see also Info. Tech. & Application Corp. v. United States, 316 F.3d 1312, 1319 (Fed. Cir. 2003) ("To establish prejudice, [the protester] must show that there was a 'substantial chance' it would have received the contract award but for the alleged error in the procurement process.").

[63]AHF MCO of Fla., Inc. d/b/a PHC Fla. HIV/AIDS Specialty Plan v. Agency for Health Care Adm., Case No. 18-3507BID et al., 2018 WL 6137004, at *15 (Fla. Div. Admin. Hrgs. Oct. 29, 2018).

[64]N.M. Human Servs. Dep't, Discussion Regarding Protest of the RFP No. 18-630-8000-0001 by Molina Healthcare of N.M., Inc., at 12 n.10, available at https://www.hsd.state.nm.us/uploads/FileLinks/c06b4701fbc84ea3938e646301d8c950/Molina_Protest_Discussion_5.17.pdf.

[65]See FirstGuard Health Plan Kan., Inc. v. Kan. Div. of Purchases, No. 06-C-1518, 2006 WL 3721326, at *9 (Kan. 3d Jud. Dist. Ct. Dec. 12, 2006) (denying protest where "the Petitioner was not prejudiced by the alleged flaws").

[66]Grp. Health Inc., SF-20060062, at 1, 13–14 (N.Y. Office of State Comptroller Feb. 26, 2006), available at http://wwe1.osc.state.ny.us/Contracts/Bid_Protest/bpd_SF20060062.pdf.

[67]31 U.S.C.A. § 3554(a)(1). At the Court of Federal Claims, protests usually are resolved on an expedited timeline, pursuant to an agreement among the parties and the Court.

[68]Va. Code § 2.2-4360(A).

[69]220 R.I. Code R. 30-00-1.6(G).

[70]62 Pa. Cons. Stat. Ann. § 1711.1(f).

[71]Fla. Stat. § 120.57(3)(e).

[72]See, e.g., Ariz. Admin. Code R2-7-A904(C) ("An agency chief procurement officer may implement any of the following appropriate remedies: (1) Decline to exercise an option to renew under the contract; (2) Terminate the contract; (3) Amend the solicitation; (4) Issue a new solicitation; (5) Award a contract consistent with procurement statutes and regulations; or (6) Render such other relief as determined necessary to ensure compliance with procurement statutes and regulations."); Ill. Admin. Code tit. 44, § 8.2075(c)(8)(B) ("If the protest is sustained, the remedies available are limited to cancellation or revision of the solicitation, advertisement of the solicitation or award to the protesting party if the protesting party was originally denied award.").

[73]Matter of Protest of Award of On-Line Games Prod. and Operation Servs. Contract, Bid No. 95-X-20175, 279 N.J. Super. 566, 590–91 (App. Div. 1995) (discussing bid protest rules for New Jersey state contracts).

[74]See, e.g., Bodies by Lembo, Inc. v. Cnty. of Middlesex, 286 N.J. Super. 298, 305 (App. Div. 1996) (discussing protest rules for local contracts in the State of New Jersey).

[75]See, e.g., S.C. Code § 11-35-4210(6) (explaining that a bid protester who received an adverse decision can "request[] a further administrative review by the Procurement Review Panel").

[76]AS § 36.30.590(a).

[77]AS § 36.30.685(a).

[78]Ariz. Admin. Code R2-7-A905(A).

[79]Kan. Dep't of Admin., Vendor Bid Protest Procedure § 4 (effective Feb. 1, 2009), available at https://admin.ks.gov/offices/procurement-and-contracts/procurement-forms.

[80]62 Pa. Cons. Stat. Ann. § 1711.1(g).

[81]See, e.g., Amerigroup Kan., Inc. v. Kan. Dep't of Admin., Case No. 2018CV559 (Kan. D. Ct., Shawnee

Cnty., Div. 7, Oct. 12, 2018), available at http://www.shawneecourt.org/DocumentCenter/View/739.

[82]See, e.g., 62 Pa. Cons. Stat. Ann. § 1711.1(h); Script Care v. Ventura Cnty. Medi Cal, Case No. 56-2017-00492349-CU-WM-VTA (Cal. Super Ct., Ventura Cnty.), docket available at http://www.ventura.courts.ca.gov/CivilCaseSearch/CaseReport/56-2017-00492349-CU-WM-VTA.

[83]See, e.g., In re Jasper Seating Co., 967 A.2d 350 (N.J. Super. Ct. App. Div. 2009); Fla. Stat. § 120.68(1)(a).

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