

R33. Government Operations, Division of Purchasing and General Services.

R33-16. Protests.

R33-16-101. Conduct.

(1) Protests shall be conducted in accordance with the requirements set forth in Utah Code 63G-6a, Part 16. All definitions in the Utah Procurement Code shall apply to this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-16-101a. Grounds for a Protest.

- (1) This rule applies to protests filed under Section 63G-6a-1602.
- (2) In accordance with the requirements in Section 63G-6a-1602, a person filing a protest must include a concise statement of the grounds upon which the protest is made.
 - (a) A concise statement of the grounds for a protest must include the relevant facts and evidence leading the protestor to contend that a grievance has occurred, including:
 - (i) an alleged violation of Title 63G, Chapter 6a, Utah Procurement Code;
 - (ii) an alleged violation of Title R33 or other applicable rule;
 - (iii) a provision of the solicitation allegedly not being followed;
 - (iv) a provision of the solicitation alleged to be:
 - (A) ambiguous;
 - (B) confusing;
 - (C) contradictory;
 - (D) unduly restrictive;
 - (E) erroneous;
 - (F) anticompetitive; or
 - (G) unlawful;
 - (v) an alleged error made by the evaluation committee or procurement unit;
 - (vi) an allegation of bias or discrimination by officials representing the procurement unit or the evaluation committee or an individual committee member; or
 - (vii) a scoring criterion allegedly not being correctly applied or calculated.
 - (b) "Relevant Facts and Evidence" as referred to in Section 63G-6a-1602, must be specific enough to enable the protest officer to determine, if such facts and evidence are proven to be true, whether a legitimate basis for the protest exists.
 - (c) None of the following qualify as a concise statement of the grounds for a protest:
 - (i) claims made after the applicable deadlines set forth in law, rule, or the solicitation document, that the specifications, terms and conditions, or other elements of a solicitation are ambiguous, confusing, contradictory, unduly restrictive, erroneous, or anticompetitive;
 - (ii) vague or unsubstantiated claims or allegations that do not reference specific facts and evidence including, but not limited to, vague or unsubstantiated claims or allegations such as:
 - (A) the protestor should have received a higher score;
 - (B) another vendor should have received a lower score;
 - (C) a service or product provided by a protestor is better than another vendor's service or product;
 - (D) another vendor cannot provide the procurement item for the price bid or perform the services described in the solicitation;
 - (E) the procurement unit's eProcurement system or other electronic procurement system:
 - (I) was slow, not operating properly, or was difficult to use or understand;
 - (II) could not be accessed or did not allow documents to be downloaded; or
 - (III) did not allow a response to be submitted after the deadline for receiving responses expired;
 - (F) the protestor did not receive individual notice of a solicitation or was otherwise unaware of a solicitation when a procurement unit has complied with the public notice requirement in Section 63G-6a-112; or
 - (G) officials representing the procurement unit or the evaluation committee or an individual committee member acted in a biased or discriminatory manner against the protestor;
 - (iii) filing a protest requesting:
 - (A) a detailed explanation of the thinking and scoring of evaluation committee members, beyond the official justification statement described in Section 63G-6a-708;
 - (B) protected information beyond what is provided under the disclosure provisions of Title 63G, Chapter 6a; or
 - (C) other information, documents, or explanations reasonably deemed to be not in compliance with the Utah Code or this rule by the protest officer.
- (3) Each of the claims and allegations listed in Subsection (2)(c)(ii) could serve as legitimate grounds for filing a protest if properly supported by relevant facts and evidence.
- (4) In accordance with Section 63G-6a-1603, a protest officer may dismiss a protest if the concise statement of the grounds for filing a protest does not comply with Title 63G, Chapter 6a, Part 16, Protests, or this rule.

R33-16-201. Verification of Legal Authority.

(1) A person filing a protest may be asked to verify that the person has legal authority to file a protest on behalf of the public or private corporation, governmental entity, sole proprietorship, partnership, or unincorporated association. A person without legal authority shall be deemed to not have standing to file a protest.

R33-16-301. Intervention in a Protest.

(1) Application. This Rule contains provisions applicable to intervention in a protest, including who may intervene and the time and manner of intervention.

(2) Period of Time to File. After a timely protest is filed in accordance with the Utah Procurement Code, the Protest Officer shall notify awardees of the subject procurement and may notify others of the protest. A Motion to Intervene must be filed with the Protest Officer no later than ten days from the date such notice is sent by the Protest Officer. Only those Motions to Intervene made within the time prescribed in this Rule will be considered timely. The entity or entities who conducted the procurement and those who are the intended beneficiaries of the procurement are automatically considered a Party of Record and need not file any Motion to Intervene.

(3) Contents of a Motion to Intervene. A copy of the Motion to Intervene shall also be mailed or emailed to the person protesting the procurement.

(4) Any Motion to Intervene must state, to the extent known, the position taken by the person seeking intervention and the basis in fact and law for that position. A motion to intervene must also state the person's interest in sufficient factual detail to demonstrate that:

(a) the person seeking to intervene has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;

(b) the person seeking to intervene has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:

(i) consumer;

(ii) customer;

(iii) competitor;

(iv) security holder of a party; or

(v) the person's participation is in the public interest.

(5) Granting of Status. If no written objection to the timely Motion to Intervene is filed with the Protest Officer within seven calendar days after the Motion to Intervene is received by the protesting person, the person seeking intervention becomes a party at the end of this seven day period. If an objection is timely filed, the person seeking intervention becomes a party only when the motion is expressly granted by the Protest Officer based on a determination that a reason for intervention exists as stated in this Rule. Notwithstanding any provision of this Rule, an awardee of the procurement that is the subject of a protest will not be denied their Motion to Intervene, regardless of its content, unless it is not timely filed with the Protest Officer.

(6) Late Motions. If a motion to intervene is not timely filed, the motion shall be denied by the Protest Officer.

R33-16-401. Protest Officer May Correct Noncompliance, Errors and Discrepancies.

(1) At any time during the protest process, if it is discovered that a procurement is out of compliance with any part of Title 63G, Chapter 6a, or rules established by the applicable rule making authority, including errors or discrepancies, the protest officer, procurement official may take administrative action to correct or amend the procurement to bring it into compliance, correct errors or discrepancies or cancel the procurement.

KEY: conduct, controversies, government purchasing, protests

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Authorizing, and Implemented or Interpreted Law: 63G-6a