



**Nebraska Public Service Commission Guidance Document:
Protest Process**

Notice

This guidance document is advisory in nature but is binding on the Nebraska Public Service Commission until amended by the Commission. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on the regulated parties or include confidential information or rules and regulations made in accordance with the Nebraska Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of this document.

Pursuant to Neb. Rev. Stat. § 84-901.03

Scope and Availability

This process covers service contracts procured by the Nebraska Public Service Commission through a formal competitive solicitation, such as a Request for Proposals (RFP). It does not cover a solicitation issued by the Department of Administrative Services on behalf of the Public Service Commission nor any other informal competitive process for procurement by the Commission.

Definitions

Bid - A bidder's response to a published solicitation.

Bidder – An entity that timely submits a bid or proposal in response to an RFP or formal competitive solicitation issued by the Commission.

Intent to Award – The document titled as such and posted to the internet that designates a bidder or bidders to which the Commission intends to award a contract.

Protest – A formal pleading by an eligible vendor or bidder that conforms to the requirements set forth within this document and is submitted within the time limits contained herein.

Solicitation or Request for Proposals (RFP) – A document outlining a formal competitive process for awarding a service contract by the Commission. (These terms are used interchangeably.)

Vendor – A bona fide business that provides the services requested by the solicitation or RFP.

Eligible Parties to Protest

1. Any vendor may protest the specifications of a solicitation.
2. Only bidders may submit a protest in response to an Intent to Award.

Eligible Grounds for Protest

There are two ways to protest a solicitation issued by the Public Service Commission: protest of the specifications of an RFP, and protest on the Intent to Award.

1. **A protest of the specifications** may only be on the following grounds:
 - a. The specifications are so restrictive such that only one vendor is eligible to submit a bid; or
 - b. The specifications are so vague that the Commission would not be able to fairly evaluate proposals.
2. **A protest of the Intent to Award** may only be on the following grounds:
 - a. A violation of applicable Nebraska law or federal law;
 - b. Mathematical or clerical error that resulted in an erroneous contract award;
 - c. An actual conflict of interest;
 - d. Collusion between two or more bidders or between a bidder and a vendor; or
 - e. Failure of an Awardee to meet mandatory minimum requirements.

Protest Process

All protests must be submitted electronically to psc.admin@nebraska.gov. They must be in writing and, at a minimum, contain: the solicitation number of the protested solicitation; the legal name of the protestor; the point of contact for the protestor; and the grounds for the protest in accordance with this document.

Protest Process – Specifications

A protest of the specifications must be submitted no later than ten (10) business days after the solicitation has been posted publicly. This may contain any additional evidence the protestor wants to provide to the Commission. The Executive Director or their designee will respond, in writing, no later than ten (10) business days after receiving the protest.

Protest Process – Intent to Award

A protest of an intent to award must be submitted no later than ten (10) days after the posting of an intent to award. This may contain any additional evidence the protestor wants to provide to the Commission. The Executive Director or their designee will respond, in writing, no later than ten (10) business days after receiving the protest. In the Executive Director's (or designee's) discretion, the Executive Director or designee may share the protest and request a written rebuttal from the bidder who is the subject of the Intent to Award; the Executive Director or designee may also share that rebuttal and afford the protestor the opportunity to provide a surrebuttal.

Extension of Deadline

If the Executive Director or designee determines that the issues in the protest are too complex to respond within the timeframes specified above, the Executive Director or designee may extend the deadline for response one time for a period not to exceed thirty (30) business days.

Powers of Executive Director or Designee

The Executive Director, or their designee, may reject or sustain the protest. If the Executive Director or designee sustains the protest, the response may require the Commission to do any one of the following:

1. Rebid the solicitation;
2. Award the contract to another bidder; or
3. Take any other remedy the Executive Director deems fair under the circumstances.

Contested Case


This document does not create a contested case under the Administrative Procedure Act, 84-901(3), or any Commission regulations.

Contract Execution

A contract whose solicitation is subject to this document may be negotiated but shall not be executed until the protest period has expired.

This process takes effect upon the signature below.

Dated this 16th day of September, 2024

A handwritten signature in black ink that reads "Thomas W. Golden". The signature is written in a cursive style with a horizontal line underneath the name.

Thomas W. Golden

Executive Director

Public Service Commission