

Bid Protests in North Carolina

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Bradley has been publishing an ongoing survey of state-level bid protest processes and procedures (see, e.g., our posts on [“Bid Protests in Georgia,”](#) [“Bid Protests in the District of Columbia,”](#) [“Bid Protests in New York,”](#) [“Bid Protests in Virginia,”](#) and our [“Update on Bid Protests in Alabama”](#)). For the next state in this series, we focus on the bid protest procedures in North Carolina.

What Rules Apply?

- Procurement in the state of North Carolina is governed by the North Carolina General Statutes (G.S.), North Carolina Administrative Codes (NCAC), and various policies and procedures that govern the state’s procurement practices.
- The North Carolina Department of Administration (NCDOA) serves as the business manager for the state and oversees the majority of state procurements, including those of state departments, institutions, agencies, universities, and community colleges.
- The state purchasing officer (SPO) provides different state agencies and institutions with differing “general delegations” of procurement authority, which varies based on the type of state entity, consideration of an agency’s overall capabilities and risk assessment, and fluctuates with the consumer price index. For example, currently, most state agencies have a \$100,000 general delegation from the SPO. This means that, for procurements that are less than an agency’s general delegation, the protest is handled at the agency-level, while procurements that exceed an agency’s general delegation are escalated and handled by the SPO.
- Bid protest procedures are governed by 01 NCAC 05B .1519.

Who May Protest and When?

- Only “vendors” are permitted to submit a bid protest. Vendor is defined as “a contractor, supplier, bidder, company, independent contractor, firm, corporation, partnership, individual or other entity submitting a response to a Solicitation” (01 NCAC 05A .0112). Thus, a vendor must have submitted a response to the procurement at issue in order to submit a bid protest.
- The bid protest procedures are different for procurements valued under an agency’s general delegation and those valued above an agency’s general delegation.

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- If the procurement in question is **valued under an agency's general delegation**, then the agency hears the vendor's protest.
 - Within 30 calendar days from the date of the contract award, a vendor must submit a written request for a protest meeting to the agency's executive officer or their designee.
 - The vendor's request shall contain reasons why it has a concern with the award and any supporting documentation.
 - An agency may reject the meeting request if the protest is not timely, did not contain the required information, or the protest is meritless.
 - If a protest meeting is granted, it must occur within 30 calendar days from receipt of the protest, unless mutually agreed upon.
 - Within 10 calendar days after the meeting, the executive officer must notify the protester of the results of the protest meeting, along with appeal rights under Article 3 of G.S. 150B, with a copy of the executive officer's decision forwarded to the SPO.
 - If the procurement in question is **valued over an agency's general delegation**, then the SPO hears the vendor's protest.
 - Similarly, within 30 calendar days from the date of the contract award, a vendor must submit a written request for a protest meeting to the SPO.
 - The vendor's request shall contain reasons why it has a concern with the award and any supporting documentation.
 - The SPO may reject the meeting request if the protest is not timely, did not contain the required information, or the protest is meritless.
 - If a protest meeting is granted, it must occur within thirty30 calendar days from receipt of the protest, unless mutually agreed upon.
 - Within 10 calendar days after the meeting, the SPO must notify the protester of the results of the protest meeting, along with appeal rights under Article 3 of G.S. 150B.

What Happens at a Bid Protest Meeting?

- Bid protest meetings vary in length, depending on the complexity of the issues raised by the protester.
- Bid protest meetings are intended to be informal, non-adversarial meetings in which the protesting vendor has the opportunity to explain its position to the state.
- Awarded vendors may attend the protest meeting to provide a response to the protest allegations (seemore below regarding intervention).
- Because it is an informal process, evidence does not need to be presented, nor witnesses called.

Is There a Stay During the Protest?

- There is no specific provision for a stay of the procurement pending the resolution of the protest.

What Are the Rules on Intervention?

- There is no specific regulatory provision addressing intervention in the underlying state-level protest.

- However, the awarded vendor may attend the protest meeting and provide a response to the protest allegations, though it is not required to do so. Each party will be given a set period of time in which to present their position.
- If the protest escalates to administrative or judicial appeal, any party may petition to become a party by filing a motion to intervene in the manner provided in G.S. 1A-1, Rule 24 (see G.S. 150B-23(d)). In addition, any person interested in a contested case may intervene and participate in that proceeding to the extent deemed appropriate by the administrative law judge (26 NCAC 03 .0117).

May a Bid Protest Decision Be Appealed?

- Most agency decisions on bid protests may be appealed administratively through the North Carolina Office of Administrative Hearings (OAH) (see G.S. 150B-22 through 150B-37; 26 NCAC Chapter 03).
- Unless a more specific deadline is established by another rule or regulation, a protester must petition the OAH for an appeal within 60 days of the SPO's protest decision.
- The OAH appeal hearing will proceed before an administrative law judge, following the rules of civil procedure and practice established in 26 NCAC Chapter 03.
- The administrative law judge will issue a final decision or order

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National Law Review, Volume XIV, Number 46

Source URL: <https://natlawreview.com/article/bid-protests-north-carolina>