

## Solicitation Protest Procedures

### DEFINITIONS:

1. **Adverse Action** – Any denial or reduction in benefits or services to a party, including displacement from
2. current employment by a workforce center customer.
3. **Appeal** – A written request for a review filed with the Board by a person in response to a determination or a decision.
4. **Board Decision** – The written finding issued by a Board Hearing Officer following a hearing before that.
5. Hearing Office in response to an appeal or complaint.
6. **Complaint** – A written statement alleging a violation of any law, regulation or rule relating to any federal or state-funded workforce service.
7. **Determination** – A written statement issued a workforce center customer by the Board or its contractor(s) relating to an adverse action, or to a provider or contractor relating to denial or termination of eligibility under programs administered by the Board list in §823.1(b).
8. **Hearing Officer** – An impartial individual designated by the Board to conduct hearings and issue administrative decisions.
9. **Informal Resolution** – Any procedure that results in an agreed final settlement between all parties to a complaint or an appeal, in lieu of a formal Board hearing.
10. **Party** – A person who files a complaint or who appeals a determination or the entity against which the complaint is filed or that issued the determination.

WSA is the responsible authority for handling complaints or protests regarding the procurement and proposal selection process. No protest shall be accepted by the grantor (State) until all administrative remedies at the Grantee (Board) level have been exhausted. This includes, but is not limited to the following: disputes, claims, protests of award or non-selection for award, source evaluation, or other matters of a contractual or procurement nature. Matters concerning violation of law shall be referred to such authority as may have proper jurisdiction.

Bidders/proposers who wish to protest a decision must utilize the following process:

#### **Step 1. Request for Debriefing**

A request for a debriefing may be submitted within 15 calendar days of the receipt of notification of the procurement decision by any unsuccessful bidder **not filing an appeal**. The purpose of the debriefing is to promote the exchange of information, explain the procurement process, including proposal evaluation process, and help unsuccessful bidders understand why they were not selected. Debriefings serve an important educational function for proposers, which hopefully will help them to improve the quality of any future proposals. WSA will acknowledge receipt of the request for debriefing in writing within 10 business days of receipt, along with the time, date and place of the scheduled debriefing. The debriefing shall be scheduled as soon as possible but no later than 30 calendar days from the receipt of the Request for Debriefing.

## **Step 2. Debriefing**

The purpose of the debriefing is to promote the exchange of information, explain the proposal evaluation system, and help unsuccessful proposers understand why they were not selected. Debriefings serve an important educational function for new proposers, which hopefully, will help them to improve the quality of any future proposals. Debriefings may occur in person or on verbally on the phone. Materials may be provided in the debriefing to include: a blank copy of the proposal scoring sheet used by readers; rankings provided to the Board of Directors; Bidders/proposers who are selected for contract negotiations are offered similar feedback during negotiations.

Procurement staff will meet with the appealing party and review how the appealing party's proposal or bid was scored or ranked. Bidders/proposers can gain a better understanding of the procurement processes.

## **Step 3. Written Notice of Appeal**

Bidders/proposers not selected by this procurement process may appeal the decision by submitting a written Notice of Appeal to WSA within 10 business days from date of the announcement of the Board's decision. This written notice must clearly state that it is an appeal and identify (1) the solicitation decision being appealed; (2) the specific grounds of the appeal, including a description of any alleged acts or omissions by WSA that forms the basis for the appeal; (3) any written information the appealing party believes relevant to the grant award; (4) the basis for the appealing party interest in the grant award; and (5) the name, address, phone and fax number (if available) of the appealing party(is).

The Notice of Appeal must be addressed to and as follows:

Workforce Solutions Alamo  
Attention: Chief Executive Officer  
100 N. Santa Rosa Street, Suite 120  
San Antonio, Texas 78207

Facsimile or email shall not be accepted at any stage of the appeals process. Written acknowledgement of receipt of the Notice of Appeal will be provided to the appealing party within three (3) business days of receipt of the Notice of Appeal. Such acknowledgement will include specific instructions for completing the appeals process and the date, time and place of the next step, the Informal Hearing.

The filing of an appeal within the specified time frame and in the manner required is a non-waivable requirement. There is no relief accorded to appellants for not filing within the published deadlines or following instructions.

**NOTE: Scoring is not grounds for an appeal unless there were material violations of the procurement process.**

## **Step 4. Informal Hearing**

An Informal Hearing will be held at the offices of WSA within 15 business days of the receipt of the

Notice of Appeal. The CEO of WSA shall act as the Hearing Officer and will meet with the appealing party to discuss their concerns and the specific grounds of the appeal. Materials provided in the Informal Hearing will include a blank copy of the evaluation instrument used by the independent evaluators, rankings provided to the Board, and/or the scoring results summary. The Hearing Officer may recommend to the WSA Board of Directors any appropriate actions allowable under applicable rules and regulations and consistent with agency policies to resolve issues raised at the Informal Hearing. If the appealing party agrees, the appeal may be ended at this point.

#### **Step 5. Request for Formal Hearing**

If the appealing party is not satisfied with the results of the Informal Hearing, they must inform the Hearing Officer, in writing, no later than three (3) business days from the date of the Informal Hearing of intent to proceed with the appeal. Request for Formal Appeal must state the specific grounds for the appeal and the remedy(is) requested. Within 10 business days of the receipt of this written request, the Hearing Officer will respond, in writing, to inform the appealing party of the time, date and place the Formal Hearing.

#### **Step 6. Formal Hearing**

The Formal Hearing shall be conducted within 30 calendar days of the date of the Request for Formal Hearing, or sooner if possible. An independent hearing officer selected by Workforce Solutions Alamo will conduct the Formal Hearing of the appeal. The Hearing Officer will deal only with those issues identified in the Request for Formal Hearing. The Hearing Officer will consider the facts presented as the grounds for the appeal and remedies requested. The Hearing Officer may request additional information from Workforce Solutions Alamo staff or the appealing party. After full review, the Hearing Officer will issue his/her decision not later than 15 business days after the Formal Hearing.

Should the Hearing Officer's determination result in a different outcome for the bidder, such a recommendation shall be presented to the Board for consideration and possible action at its next scheduled meeting. The Board is **NOT** obligated to accept the Hearing Officer's determination and/or recommendations. The Board's decision shall be the final decision and end the appeals process at the local level.

If the Hearing Officer's determination does not result in a different outcome to the appellant, such information need not be presented to the Board and the appellant shall be informed in writing of the determination of the Hearing Officer. In such cases, the Hearing Officer's decision shall be the final decision and end the appeals process at the local level.

In all instances, information regarding a protest/dispute will be disclosed to TWC. TWC's Integrated Complaints, Hearings and Appeals process outlined in 40 TAC §§823, et.seq., and the TWC's FMGC provide for limited appeals of any local decisions. TWC will not accept a protest or appeal until all administrative remedies at the local level have been exhausted. Commission appeal review is limited to:

- Violations of federal law and regulations
- Violations of the Board's protest/dispute procedures or failure to review a protest or dispute.
- Violations of State or local laws shall be under the jurisdiction of State or local authorities.

**Step 7. The Board Decision**

The Board of Directors will render its decision not later than 60 calendar days from the date of the Written Notice of Appeal. The decision shall be the final decision and end the appeals process at the local level.

**Appeals Beyond the Local Level**

Appeals not resolved to the satisfaction of the appealing party by WSA Board of Directors' decision may be pursued through the State Grievance Procedure. Except for complaints alleging fraud or criminal activity, such complaints shall be made within one (1) year of the alleged occurrence.

**Impaired or Corrupted Procurements**

The appeals process may produce facts or evidence that WSA/specific program rules and regulations on procurement were violated. Staff are also obligated to report immediately any major breach, inadvertent or otherwise, of these rules and regulations to the Deputy Executive Director. Such breaches may occur through actions of the Board of Directors, employees, or agents, or through actions of one or more of the bidders.

The CEO shall decide whether the integrity of the WSA procurement process has been impaired, and initiate, or recommend to the Board of Directors, appropriate steps to remedy such impairment.

1. Disqualifying any proposer, bidder, or outside agent found to have deliberately sought "insider" information outside the normal procurement process or in violations of WSA policy as stated in the procurement solicitation.
2. Restoring fairness in cases where insider information or technical assistance was unequally available to one or more potential bidders/proposers by issuance of an amended or supplemental solicitation to make that same information available to all potential bidders/proposers. This may require an extension of the response deadline, or re-issuance of the solicitation, if necessary, to allow bidders time to assess and respond to the newly available information.
3. In cases where the impairment cannot be readily remedied, the procurement may be declared invalid and canceled. In most cases, this would require issuance of a new public notice and solicitation to initiate a new procurement process.
4. In cases where contracts have already been awarded prior to discovery of circumstances or evidence which would indicate impairment or corruption of the process, any other steps which are consistent with the specific program rules, and related Federal, State, and local laws and regulations, may be taken to provide a fair and just remedy.