

By Senator Brandes

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1                   A bill to be entitled  
2       An act relating to procurement procedures; amending s.  
3       120.57, F.S.; specifying the applicability of  
4       procedures for the resolution of protests arising from  
5       the contract solicitation or award process for certain  
6       procurements by specified transportation, expressway,  
7       and bridge authorities; providing an effective date.  
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9 Be It Enacted by the Legislature of the State of Florida:  
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11       Section 1. Subsection (3) of section 120.57, Florida  
12 Statutes, is amended to read:

13       120.57 Additional procedures for particular cases.—

14       (3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO  
15 CONTRACT SOLICITATION OR AWARD.—Agencies subject to this chapter  
16 or an entity created under chapter 343, chapter 348, or chapter  
17 349 when required by this subsection shall use the uniform rules  
18 of procedure, which provide procedures for the resolution of  
19 protests arising from the contract solicitation or award  
20 process. Such rules shall at least provide that:

21       (a) The agency shall provide notice of a decision or  
22 intended decision concerning a solicitation, contract award, or  
23 exceptional purchase by electronic posting. This notice shall  
24 contain the following statement: "Failure to file a protest  
25 within the time prescribed in section 120.57(3), Florida  
26 Statutes, or failure to post the bond or other security required  
27 by law within the time allowed for filing a bond shall  
28 constitute a waiver of proceedings under chapter 120, Florida  
29 Statutes."

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30 (b) Any person who is adversely affected by the agency  
31 decision or intended decision shall file with the agency a  
32 notice of protest in writing within 72 hours after the posting  
33 of the notice of decision or intended decision. With respect to  
34 a protest of the terms, conditions, and specifications contained  
35 in a solicitation, including any provisions governing the  
36 methods for ranking bids, proposals, or replies, awarding  
37 contracts, reserving rights of further negotiation, or modifying  
38 or amending any contract, the notice of protest shall be filed  
39 in writing within 72 hours after the posting of the  
40 solicitation. The formal written protest shall be filed within  
41 10 days after the date the notice of protest is filed. Failure  
42 to file a notice of protest or failure to file a formal written  
43 protest shall constitute a waiver of proceedings under this  
44 chapter. The formal written protest shall state with  
45 particularity the facts and law upon which the protest is based.  
46 Saturdays, Sundays, and state holidays shall be excluded in the  
47 computation of the 72-hour time periods provided by this  
48 paragraph.

49 (c) Upon receipt of the formal written protest that has  
50 been timely filed, the agency shall stop the solicitation or  
51 contract award process until the subject of the protest is  
52 resolved by final agency action, unless the agency head sets  
53 forth in writing particular facts and circumstances which  
54 require the continuance of the solicitation or contract award  
55 process without delay in order to avoid an immediate and serious  
56 danger to the public health, safety, or welfare.

57 (d)1. The agency shall provide an opportunity to resolve  
58 the protest by mutual agreement between the parties within 7

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59 days, excluding Saturdays, Sundays, and state holidays, after  
60 receipt of a formal written protest.

61 2. If the subject of a protest is not resolved by mutual  
62 agreement within 7 days, excluding Saturdays, Sundays, and state  
63 holidays, after receipt of the formal written protest, and if  
64 there is no disputed issue of material fact, an informal  
65 proceeding shall be conducted pursuant to subsection (2) and  
66 applicable agency rules before a person whose qualifications  
67 have been prescribed by rules of the agency.

68 3. If the subject of a protest is not resolved by mutual  
69 agreement within 7 days, excluding Saturdays, Sundays, and state  
70 holidays, after receipt of the formal written protest, and if  
71 there is a disputed issue of material fact, the agency shall  
72 refer the protest to the division by electronic means through  
73 the division's website for proceedings under subsection (1).

74 (e) Upon receipt of a formal written protest referred  
75 pursuant to this subsection, the director of the division shall  
76 expedite the hearing and assign an administrative law judge who  
77 shall commence a hearing within 30 days after the receipt of the  
78 formal written protest by the division and enter a recommended  
79 order within 30 days after the hearing or within 30 days after  
80 receipt of the hearing transcript by the administrative law  
81 judge, whichever is later. Each party shall be allowed 10 days  
82 in which to submit written exceptions to the recommended order.  
83 A final order shall be entered by the agency within 30 days of  
84 the entry of a recommended order. The provisions of this  
85 paragraph may be waived upon stipulation by all parties.

86 (f) In a protest to an invitation to bid or request for  
87 proposals procurement, no submissions made after the bid or

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88 proposal opening which amend or supplement the bid or proposal  
89 shall be considered. In a protest to an invitation to negotiate  
90 procurement, no submissions made after the agency announces its  
91 intent to award a contract, reject all replies, or withdraw the  
92 solicitation which amend or supplement the reply shall be  
93 considered. Unless otherwise provided by statute, the burden of  
94 proof shall rest with the party protesting the proposed agency  
95 action. In a competitive-procurement protest, other than a  
96 rejection of all bids, proposals, or replies, the administrative  
97 law judge shall conduct a de novo proceeding to determine  
98 whether the agency's proposed action is contrary to the agency's  
99 governing statutes, the agency's rules or policies, or the  
100 solicitation specifications. The standard of proof for such  
101 proceedings shall be whether the proposed agency action was  
102 clearly erroneous, contrary to competition, arbitrary, or  
103 capricious. In any bid-protest proceeding contesting an intended  
104 agency action to reject all bids, proposals, or replies, the  
105 standard of review by an administrative law judge shall be  
106 whether the agency's intended action is illegal, arbitrary,  
107 dishonest, or fraudulent.

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109 ~~(g)~~ For purposes of this subsection, the definitions in s.  
110 287.012 apply. This subsection applies to any procurement by an  
111 entity created under chapter 343, chapter 348, or chapter 349  
112 which exceeds the CATEGORY FIVE threshold amount provided in s.  
113 287.017 or if the term of the procurement, including the number  
114 of days specified in the initial contract and the number of days  
115 specified in any authorized contract extension or renewal,  
116 exceeds 365 days.

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Section 2. This act shall take effect July 1, 2018.