
Coates' Canons Blog: Protests and ARRA and Bears, Oh My!

By Eileen R Youens

Article: <https://canons.sog.unc.edu/protests-and-arra-and-bears-oh-my/>

This entry was posted on October 27, 2009 and is filed under Federal Grant Requirements, Purchasing, Construction, Property Transactions

Now that local governments are digging in to the requirements that apply to American Recovery and Reinvestment Act grants, I've started to get questions about developing bid protest procedures. Are these procedures required? If so, what should the procedures look like? And where can I find a sample bid protest procedure?

Are bid protest procedures required?

If your local government receives *any* federal grant money (including ARRA grants), you are required to have a bid protest procedure. This requirement is found in something called the "Grants Management Common Rule," which I'll refer to as "the Rule" for purposes of this post. The Rule is a set of regulations (including procurement regulations) that applies to all entities that receive federal grant money.

The Rule is found in the Code of Federal Regulations (CFR), which is a compilation of rules adopted by federal agencies. Each federal agency has its own section of the Code, and the Rule is published, in exactly the same form, in each agency's section of the Code. For example, for the Department of Transportation, the Rule is found in 49 C.F.R. 18, and for the Department of Housing and Urban Development, it's found in 24 C.F.R. 85. You can find a table that shows where each agency has adopted the Rule here. (Note that the link to the Code of Federal Regulations on this page is broken. You can find the Code of Federal Regulations online here.)

What should the bid protest procedures look like?

Here's what the Rule says about the requirement for bid protest procedures:

"Grantees and subgrantees [which includes local governments receiving ARRA funds through grants] will have protest procedures to handle and resolve disputes relating to their procurements." In other words, the Rule doesn't say much about these procedures except that you must have them. So what the protest procedures say is up to you.

Many North Carolina agencies already have bid protest procedures. For example, the State's Division of Purchase and Contract has bid protest procedures that apply to certain state contracts. You can find them here.

If you're looking for some additional guidance, the School of Government and the Carolinas Association of Governmental Purchasing (link) put on a webinar about bid protests a few months ago, and the archive is available for a \$90 fee here. In the webinar, we discussed a few items that should be addressed in your bid protest procedure, specifically:

- The unit's responsibility to notify bidders of the intent to award;
- The deadline to file a protest;
- Where and to whom (title and address) to direct the protest;
- What the protest must contain (specific action(s) resulting in protest, how protester was harmed by that action, and what relief is requested);
- A timeline for the unit's response to the protest; and
- A description of the appeals process (who hears the appeal, how the protestor requests an appeal) and relevant deadlines for the appeal.

So that's where I'd start.

Where can I find a sample bid protest procedure?

The School has not created or collected sample bid protest procedures, but I do recommend looking at procedures developed by other North Carolina state and local agencies. In fact, if you have a protest procedure that you're willing to share, I encourage you to let your colleagues know by posting a comment to this blog, or—even better—I encourage you to upload them to our Local Government Document Warehouse, which allows anyone to upload, search, and download documents that have been developed by North Carolina local governments for their own use.

On a related note

The Grants Management Common Rule also requires entities that receive federal grants to establish a code of conduct. I'll explore this requirement in my next post.

Links

- www.whitehouse.gov/omb/grants_chart/
- www.ecfr.gov/cgi-bin/ECFR?page=browse
- ncrules.state.nc.us/ncac/title%2001%20-%20administration/chapter%2005%20-%20purchase%20and%20contract/subchapter%20b/01%20ncac%2005b%20.1519.html
- www.sog.unc.edu/courses/0411/?q=/courses/0411
- www.sog.unc.edu/nclgdocs/