

# CHAPTER 81-296

## Senate Bill 224

An act relating to state contract bidding procedures; adding s. 120.53(5), Florida Statutes; requiring certain state agencies to adopt rules for resolution of protest arising from the contract bidding process prior to initiation of formal or informal proceedings under the Administrative Procedure Act; providing minimum requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) is added to section 120.53, Florida Statutes, to read:

120.53 Adoption of rules of procedure and public inspection.--

(5) An agency which enters into a contract pursuant to the provisions of part II of chapter 23, chapter 287, or chapters 334-349, shall adopt rules specifying procedures of the resolution of protests arising from the contract bidding process. Such rules shall at least provide that:

(a) The agency shall provide notice of its decision or intended decision concerning a bid solicitation or a contract award as follows:

(1).For a bid solicitation, notice of a decision or intended decision shall be sent by United States mail or by hand delivery.

(2) For any other agency decision, notice of a decision or intended decision shall be given by posting the bid tabulation at the location where the bids were opened, or by certified United States mail, return receipt requested.

The notice required by this paragraph shall contain the following statement: "Failure to file a protest within the time prescribed in s. 120.53(5), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes."

(b) Any person who is affected adversely by the agency decision or intended decision shall file with the agency a notice of protest in writing within 72 hours after the posting of the bid tabulation or after receipt of the notice of the agency decision or intended decision, and a formal written protest within 10 days after the date he filed the notice of protest. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under chapter 120.

(c) Upon receipt of a notice of protest which has been timely filed, the agency shall stop the bid solicitation process or the contract award process until the

subject of the protest is resolved by final agency action, unless the agency head sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process without delay to avoid an immediate and serious danger to the public health, safety, or welfare.

(d) The agency, on its own initiative or upon the request of a protestor, shall provide an opportunity to resolve the protest by mutual agreement between the parties within 14 days of receipt of a formal written protest.

(1) If the subject of a protest is not resolved by mutual agreement within 14 days of receipt of the formal written protest, and if there is no disputed issue of material fact, an informal proceeding shall be conducted pursuant to s. 120.57(2) and applicable agency rules before a person whose qualifications shall have been prescribed by rules of the agency.

2. If the subject of a protest is not resolved by mutual agreement within 14 days of receipt of the formal written protest, and if there is a disputed issue of material fact, the agency shall refer the protest to the division for proceedings under s. 120.57(1).

Section 2. This act shall take effect October 1, 1981.

Approved by the Governor July 2, 1981.

Filed in Office Secretary of State July 6, 1981.