

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

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SENATE BILL 608

Short Title: State IT/Procurement Protest Procedures. (Public)

Sponsors: Senators Ballard and Hise (Primary Sponsors).

Referred to: Rules and Operations of the Senate

April 7, 2021

1 A BILL TO BE ENTITLED  
2 AN ACT ENACTING PROTEST PROCEDURES FOR THE AWARD OF STATE  
3 INFORMATION TECHNOLOGY CONTRACTS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Part 4 of Article 15 of Chapter 143B of the General Statutes is amended  
6 by adding a new section to read:

7 "**§ 143B-1363. Protest procedures for award of information technology contracts.**

8 (a) The following procedures and requirements apply whenever an offeror protests an  
9 information technology contract awarded by an agency if the contract value is twenty-five  
10 thousand dollars (\$25,000) or more:

11 (1) The offeror shall deliver a written request for a protest meeting to the agency  
12 head or the agency head's designee within 15 calendar days from the date of  
13 contract award. The offeror's request shall contain specific reasons and any  
14 supporting documentation regarding why there is a concern with the award.  
15 The agency head shall furnish a copy of the written request to the State CIO  
16 within 10 calendar days of receipt.

17 (2) If the offeror's request does not contain this information or the agency head  
18 determines that a meeting would serve no purpose, then the agency head,  
19 within 10 calendar days from the date of receipt, may respond in writing to  
20 the offeror and refuse the protest meeting request. A copy of the agency head's  
21 letter shall be forwarded to the State CIO.

22 (3) If the protest meeting is granted, the agency head shall give written notice to  
23 the State CIO and any awarded vendor of the date and time of the protest  
24 meeting. The agency shall give notice to the awarded vendor and the State  
25 CIO stating whether any purchase order or performance has been suspended  
26 or terminated. The agency head shall schedule the meeting within 30 calendar  
27 days after receipt of the letter, unless a later date is accepted by the protesting  
28 party and the agency.

29 (4) Within 10 calendar days from the date of the protest meeting, the agency head  
30 shall respond to the offeror in writing with an agency decision. A copy of the  
31 agency head's letter shall be forwarded to the State CIO.

32 (5) If a protest is determined to be valid by the State CIO, then one of following  
33 outcomes shall occur:

34 a. The award and issued purchase order shall be canceled and the  
35 solicitation for offers to contract is not rebid.



- 1           b. The award and issued purchase order shall be canceled and the  
2           solicitation for offers to contract is rebid.
- 3           c. The award and issued purchase order shall be canceled and the contract  
4           shall be awarded to the next lowest priced, technically competent,  
5           qualified offeror, if that offeror agrees to still honor its submitted bid.
- 6       (b) The following procedures and requirements apply whenever an offeror protests an  
7       information technology contract awarded by the State CIO if the contract value is twenty-five  
8       thousand dollars (\$25,000) or more:
- 9           (1) The offeror shall deliver a written request for a protest meeting to the State  
10          CIO within 15 calendar days from the date of contract award. The offeror's  
11          request shall contain specific reasons and any supporting documentation  
12          regarding the offeror's concern with the award. If the request does not contain  
13          this information or the State CIO determines that a meeting would serve no  
14          purpose, then the State CIO, within 10 calendar days from the date of receipt  
15          of the offeror's protest, may respond in writing to the offeror and refuse the  
16          protest meeting request. A copy of the State CIO's letter shall be forwarded to  
17          the designated hearing officer.
- 18          (2) If the protest meeting is granted, the State CIO shall attempt to schedule the  
19          meeting within 30 calendar days after receipt of the offeror's protest unless a  
20          later date is accepted by the protesting party and the State CIO. Within 10  
21          calendar days from the date of the protest meeting, the State CIO shall respond  
22          to the offeror in writing with a decision. A copy of the decision shall be  
23          forwarded to the designated hearing officer.
- 24       (c) The following procedures and requirements apply whenever an offeror protests a  
25       statewide term or convenience contract, or master agreement, established by the State CIO:
- 26           (1) The offeror shall deliver a written request for a protest meeting to the State  
27           CIO within 15 calendar days from the date of the contract award. The offeror's  
28           request shall contain specific reasons and any supporting documentation  
29           regarding the offeror's concern with the award. If the request does not contain  
30           this information or the State CIO determines that a meeting would serve no  
31           purpose, the State CIO, within 10 calendar days from the date of receipt of the  
32           offeror's request, shall respond in writing to the offeror and refuse the protest  
33           meeting request. A copy of the State CIO's letter shall be forwarded to the  
34           designated hearing officer.
- 35           (2) If the protest meeting is granted, the State CIO shall give written notice to the  
36           designated hearing officer and any awarded vendor of the date and time of the  
37           protest meeting. Notice shall be given to the awarded vendor and the  
38           designated hearing officer stating whether any purchase order or performance  
39           has been suspended or terminated. The State CIO shall schedule the meeting  
40           within 30 calendar days after receipt of the offeror's protest unless a later date  
41           is accepted by the protesting party and the State CIO. Within 10 calendar days  
42           from the date of the protest meeting, the State CIO shall respond to the  
43           protesting offeror in writing with a decision. A copy of the decision shall be  
44           forwarded to the designated hearing officer.
- 45       (d) If a party desires further administrative review after the protest meeting and receipt  
46       of the decision under subsection (a), (b), or (c) of this section, the party may, within 60 days from  
47       the date the decision is received, request a hearing and final decision by the State CIO under this  
48       section and Article 3A of Chapter 150B of the General Statutes. The State CIO shall schedule  
49       the hearing within 30 days after receipt of the offeror's request and respond in writing with a final  
50       decision within 10 days of the date of the hearing.

1       (e)     The State CIO's failure to adhere to the time line and notice requirements for a protest  
2 shall render null and void the State CIO's objections or decision related to that protest.

3       (f)     The agency shall be a party in the further review processes when the further  
4 administrative review involves a contract awarded by an agency that is twenty-five thousand  
5 dollars (\$25,000) or more in value.

6       (g)     The agency shall establish procedures to address protests by offerors where the award  
7 value is less than twenty-five thousand dollars (\$25,000). An agency decision under this  
8 subsection is final and subject to review under Article 3A of Chapter 150B of the General  
9 Statutes.

10       (h)    The signature of an attorney or party on a protest constitutes a certification by the  
11 signer that the signer has read such document; that to the best of the signer's knowledge,  
12 information, and belief formed after reasonable inquiry, it is well grounded in fact and is  
13 warranted by existing law; and that it is not interposed for any improper purpose such as to harass,  
14 cause unnecessary delay, or a needless increase in the cost of the procurement or of the litigation.  
15 If a protest is determined to be frivolous or to have been filed without any substantial basis or  
16 reasonable expectation to believe that the protest was meritorious, the State CIO, upon motion or  
17 upon the State CIO's own initiative, may impose any sanction available under Chapter 1A-1 of  
18 the General Statutes, the Rules of Civil Procedure. Notification to the affected party shall be  
19 made in writing."

20           **SECTION 2.** G.S. 150B-38 reads as rewritten:

21       **"§ 150B-38. Scope; hearing required; notice; venue.**

22       (a)     The provisions of this Article shall apply to:

23           ...

24           (4)    The State Chief Information Officer in the administration of the provisions of  
25           Article 15 of Chapter 143B of the General Statutes.

26           ...

27       (b)     Prior to any agency action in a contested case, the agency shall give the parties in the  
28 case an opportunity for a hearing without undue delay and notice not less than 15 days before the  
29 hearing. Notice to the parties shall include:

30           (1)    A statement of the date, hour, place, and nature of the hearing;

31           (2)    A reference to the particular sections of the statutes and rules involved; and

32           (3)    A short and plain statement of the facts alleged.

33       (c)     Notice shall be given by one of the methods for service of process under G.S. 1A-1,  
34 Rule 4(j) or Rule 4(j3). If given by registered or certified mail, by signature confirmation as  
35 provided by the United States Postal Service, or by designated delivery service authorized  
36 pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, notice shall be deemed to have been  
37 given on the delivery date appearing on the return receipt, copy of proof of delivery provided by  
38 the United States Postal Service, or delivery receipt. If notice cannot be given by one of the  
39 methods for service of process under G.S. 1A-1, Rule 4(j) or Rule 4(j3), then notice shall be  
40 given in the manner provided in G.S. 1A-1, Rule 4(j1).

41       (d)     A party who has been served with a notice of hearing may file a written response with  
42 the agency. If a written response is filed, a copy of the response must be mailed to all other parties  
43 not less than 10 days before the date set for the hearing.

44       (e)     All hearings conducted under this Article shall be open to the public. A hearing  
45 conducted by the agency shall be held in the county where the agency maintains its principal  
46 office. A hearing conducted for the agency by an administrative law judge requested under  
47 G.S. 150B-40 shall be held in a county in this State where any person whose property or rights  
48 are the subject matter of the hearing resides. If a different venue would promote the ends of  
49 justice or better serve the convenience of witnesses, the agency or the administrative law judge  
50 may designate another county. A person whose property or rights are the subject matter of the  
51 hearing waives his objection to venue if he proceeds in the hearing.

1 (f) Any person may petition to become a party by filing with the agency or hearing officer  
2 a motion to intervene in the manner provided by G.S. 1A-1, Rule 24. In addition, any person  
3 interested in a contested case under this Article may intervene and participate to the extent  
4 deemed appropriate by the agency hearing officer.

5 (g) When contested cases involving a common question of law or fact or multiple  
6 proceedings involving the same or related parties are pending before an agency, the agency may  
7 order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make  
8 other orders to reduce costs or delay in the proceedings.

9 (h) Every agency shall adopt rules governing the conduct of hearings that are consistent  
10 with the provisions of this Article.

11 (i) Standards adopted by the State Chief Information Officer ~~and~~ are applied to  
12 information technology as defined in ~~G.S. 143B-1320~~. G.S. 143B-1320. The provisions of  
13 G.S. 143B-1363(e) apply if the State CIO fails to adhere to the time line and notice requirements  
14 of this Article."

15 **SECTION 3.** This act is effective when it becomes law and applies to protests  
16 commenced on or after that date.