

# Government Contracts Update

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May 2009

*Government Contracts Update* is complimentary for clients, friends and colleagues of Shutts & Bowen LLP.

It provides timely and practical information and should not be considered legal advice on a specific matter or transaction.

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## Changes to Broward County Bid Protest Rules: The Good, The Bad, and The Ugly

Broward County recently made changes to its Procurement Code regarding bid protests. These changes are likely to reduce the amount of bid protests received by the County because they eliminate the automatic stay upon the filing of a bid protest and greatly increase the cost to initiate a bid protest.

### Time to File Protests: – The Good

**Challenges to the Solicitation – 7 Days.** The County modified the time to file a bid protest and the event triggering the starting of the clock. For challenges to the terms of a solicitation, a vendor must file its protest “within seven (7) business days from the posting of the solicitation or addendum on the Purchasing Division’s website.”

**Challenges to Proposed Awards – 5 Days.** For challenges to a proposed award, a disappointed vendor must file its protest “within five (5) business days from the posting of the recommendation of award on the Purchasing Division’s website.”

**Posting is Triggering Event.** The County revised the triggering event from a subjective event (“from the time the facts became known”) to an objective event: the posting of the solicitation or award on Purchasing’s website.

A disappointed vendor must commence its protest within 5 days of the County posting the recommendation for award on its website

**Practice Tip:** Obtain the solicitation immediately upon issuance so you can timely file a protest, if necessary. Likewise, actively monitor Purchasing’s website for posting of addenda and the intended award decision.

### Stay of Procurements – The Bad

Broward County is no longer required to stop the procurement process upon the filing of a bid protest. Such a “stay” will not occur until a vendor files an appeal of the Purchasing Director’s bid protest determination, seeking a hearing before a hearing officer.



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## Stay of Procurements

In a specification bid protest, stays are not permitted under any circumstances. Presumably, Purchasing may achieve a de facto stay for a meritorious specification protest by issuing an addendum to the solicitation delaying the bid opening.

In a post-award protest, a stay is permitted if it is in the best interest of the County as determined by the Purchasing Director in consultation with the County Attorney's Office.

While a protest is pending before Purchasing (or the time to appeal has not run), hopefully the County Commission will not consider a contract award.

The County has eliminated the mandatory stay of the procurement process upon the filing of a bid protest with the Purchasing Director

## Bid Protest Filing Fees – The Ugly

**The Initial Protest:** The County added a new fee for bid protests. As a condition of initiating a protest, a vendor must pay a nonrefundable fee based on the estimated contract award, ranging from \$500 to \$5,000.

<u>Estimated Contract Award</u>	<u>Filing Fee</u>
\$30,000 to \$250,000	\$500
\$250,001 to \$500,000	\$1,000
\$500,001 to \$5,000,000	\$3,000
Over \$5,000,000	\$5,000

**The Bid Protest Appeal:** The County has increased the filing fee for a bid protest appeal from \$800 to 1% of the estimated contract amount, without any limit.

**Suggestion for Best Practice:** Rather than require protests to the Purchasing Director, the County should eliminate this step. To give the Purchasing Director the ability to take corrective action where appropriate, the County should provide the parties an opportunity to resolve the protest by agreement, consistent with state law, before assigning a hearing officer. See FLA. STAT. § 120.57(3)(c) (2009).

The County has drastically increased bid protest fees, even for initial consideration by Staff, which is likely to deter protests