

SAMPLE PROTEST RESPONSE (8/2004)

**INSTRUCTIONS: AFTER RECEIVING A PROTEST, REVIEW
N.D.C.C. § 54-44.4-12, AND N.D.A.C. Chapter 4-12-14. CONTACT
YOUR AGENCY ASSISTANT ATTORNEY GENERAL OR SPECIAL
ASSISTANT ATTORNEY GENERAL.**

**IT IS RECOMMENDED THAT YOU ALSO HAVE YOUR AGENCY'S
LEAD PROCUREMENT OFFICER OR YOUR SUPERVISOR
REVIEW THE PROCUREMENT FILE WHEN A PROTEST IS
RECEIVED.**

**YOU MUST RESPOND TO A VENDOR PROTESTING A
SOLICITATION, INTENT TO AWARD, OR CONTRACT AWARD
WITHIN 7 CALENDAR DAYS AFTER RECEIVING THE PROTEST.**

**THE FOLLOWING FORMAT IS RECOMMENDED IN RESPONDING
TO A PROTEST:**

**ISSUE
REFERENCE APPLICABLE LAWS, RULES, DOCUMENTS
APPLY THE REFERENCES TO THE SITUATION
CONCLUSION**

**YOUR RESPONSE MUST PROVIDE A WRITTEN DECISION
CONTAINING THE BASIS FOR THE DECISION AND INFORM THE
PROTESTOR OF THEIR RIGHT TO APPEAL.**

SEND THE PROTEST RESPONSE LETTER BY CERTIFIED MAIL.

**TYPE WORD SELECTIONS IN NORMAL FONT (E.G.
SUSTAIN/DENY = sustain).**

**DELETE THESE INSTRUCTIONS AND ALL EXAMPLES BEFORE
PRINTING.**

**STATE OF NORTH DAKOTA
AGENCY OR INSTITUTION NAME
ADDRESS
CITY, STATE, ZIP**

DATE

**VENDOR NAME
ADDRESS
CITY, STATE, ZIP CODE**

Dear Mr/Mrs/Ms.:

This is in response to your protest regarding ***INSERT THE TYPE OF SOLICITATION (INVITATION FOR BID OR REQUEST FOR PROPOSAL), NUMBER, AND TITLE.*** Your protest was received on ***DATE.*** In preparing this response, I read your letter carefully and examined the solicitation and contents of the procurement file. I find that I must ***SUSTAIN/DENY*** your protest for the reasons set out below.

Issue: Describe the basis of their protest.

Example: You protested the award on the basis that your company was not provided an opportunity to submit a best and final offer. Your company had the highest technical score, but was not awarded the contract.

References: Describe the relevant law, rule, directive, or section of the solicitation that pertains to their protest.

Basis for the Decision: Apply the law, rule, directive, or section of the solicitation to the issue being protested.

Conclusion: State whether the actions taken were appropriate according to the applicable references.

Example: The state may request best and final offers, but is not required to do so. Although your company received the highest technical scores, your cost proposal was not the lowest priced proposal received. You received a score of 15 out of 40 possible points for your cost proposal. Based upon the weighted cost and technical evaluation criteria as forth in the RFP Section 6, your proposal was determined not to be the most advantageous proposal. Therefore, your protest is denied.

Thank you for bringing your concerns to my attention, and I hope this decision does not dissuade you from competing for state contracts in the future.

NAME
Procurement Officer

Dear Mr/Mrs/Ms.:

This is to advise you that I have reviewed (***INSERT PROCUREMENT OFFICER NAME***)'s response to your protest and that I agree with the decision.

If you wish, you may appeal the decision. Appeals must be filed in writing with the Office of Management and Budget (OMB) in accordance with North Dakota Century Code §54-44.4-12 and North Dakota Administrative Code 4-12-14-03. Please address your appeals as follows:

State Procurement Manager
OMB State Procurement Office
14th Floor Capitol Tower
Bismarck, ND 58505-0310

Your appeal must be written, state the basis for the appeal, and be filed within seven calendar days after you received this decision. Faxed copies of the appeal are acceptable (Fax: 701-328-1615), but we ask that you call the OMB State Procurement Office to confirm your appeal was received. The OMB State Procurement Office will respond to your appeal within seven calendar days after it receives your request for appeal.

If you have any questions about the appeal process, please contact the State Procurement Office at 701-328-2683.

Sincerely,

SUPERVISOR NAME
TITLE

EXAMPLE

June 11, 2004

Mr. Thomas Douting, President
Accura Manufacturing.
5 Oaktree Lane, Suite 300
Shreveport, LA 71101

Dear Mr. Douting:

This is in response to your protest regarding our agency's Request for Proposal (RFP) 110.7-04-09 for Procurement Management Software. In preparing this response, I read your letter carefully and examined the solicitation and contents of the bid file. I find that I must deny your protest for the reasons set out below.

Issue: The basis for your protest is that your company received the highest technical score, but was not the highest overall score after the evaluation of a cost proposal. Your protest is based on the fact that the state did not request best and final offers before making the award.

Applicable References: North Dakota Century Code Section 54-44.4-10; RFP 110.7-04-09, Section 2.12 Best and Final Offers

Basis for the Decision: Section 2.12 provides that discussions and best & final offers "may" be held after the initial evaluation of proposals and before award. The state is not required to request best and final offers, so award can be made based upon the evaluations of proposals as submitted by offerors. North Dakota Century Code Section 54-44.4-10 requires that offerors be accorded fair treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and before award for the purpose of obtaining best and final offers. No vendors were given an opportunity to revise their proposals

Conclusion: The State Procurement Office was not required to request best and final offers, and it was fair in its treatment of all vendors. Based upon these facts, your protest is denied

Thank you for bringing your concerns to my attention, and I hope this decision does not dissuade you from competing for state contracts in the future. You have the right to file an appeal of this decision with the Office of Management and Budget (OMB) in accordance with North Dakota Century Code § 54-44.4-12 and North Dakota Administrative Code 4-12-14-03. Appeals may be filed with:

State Procurement Manager
OMB State Procurement Office
14th Floor Capitol Tower
Bismarck, ND 58505-0310

Your appeal must be written, state the basis for the appeal, and be filed within seven calendar days after you received this decision. The OMB State Procurement Office will respond to your appeal within seven calendar days after it receives your request for appeal.

Sincerely,

Faith Foley
Procurement Officer