

The Instructions Are Wrong! The Ins and Outs of Specification Challenges

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When an agency advertises a solicitation, such as an IFB or RFP or RFQ, sometimes there are problems with the specifications. The specifications may be vague, may contain mistakes, or give one bidder or proposer an unfair advantage, for example. In that case, bidders or proposers may be able to formally challenge the specification to the advertising agency. The purpose of a specification challenge is to allow an agency to correct or clarify plans and specifications before bids or proposals are accepted in order to save time, money and assure the bids or proposals are treated fairly.

Often, the procedure to challenge the specifications is described in the agency's code or even the solicitation itself. For example, the State of Florida's specification challenge rules are found in Florida's Statutes and Florida's Administrative Code. All agencies do not use the same procedure, so it is important to check out the rules that apply on an agency by agency basis. Some agencies codes or rules do not even contemplate specification challenges.

The most important thing to know about many agencies specification challenges is that they are time sensitive. For instance, under Florida's Statutes, a challenge to the specifications must be made within 72 hours after the solicitation is posted. If the challenge is not made within that time-frame, the ability to challenge the specifications may be lost. If a proposer finds a problem with the specifications after an award is made, it may be too late to do so. For example, courts in Florida have said that a bidder who did not make a specifications challenge, but instead submitted its bid based on the advertised specifications, waived its right to protest the specifications.

Therefore, it is usually important to carefully review an agency's solicitation immediately after it is posted to determine if there are any specifications to challenge. Bidders or proposers may also have limited time to challenge amendments or addenda to the solicitations. They usually trigger the same time limitations that are found in the advertising agency's code or rules. If the agency does not require specification challenges, a bidder or proposer may be

able to challenge them pursuant to the general protest procedures established by the agency.

Usually the challenger must be someone who or an entity which is going to bid or make a proposal. It may be hard for an agency to contest that a challenger “lacks standing,” since bidders or proposers usually have to decide to challenge the specifications so early in the procurement process.