

## **PROTEST AND POST AWARD DISPUTES**

**2636**

(No. 2 September 2005)

Protest rules are established for purchases over \$50,000 and do not apply to purchases under \$50,000. Purchases under \$50,000 are limited to the dispute resolution process outlined in section 2636.1.5 of this handbook.

REV

Included in this [section](#) is a discussion regarding supplier disputes once a contract has been executed.

### **POST AWARD DISPUTES**

**2636.1**

(May 2005)

A post award dispute is a disagreement or conflict between a supplier/contractor and a department after a purchase document has been executed. Most often, contract disputes arise due to contract performance issues on the part of either the contractor or the State.

#### **OCCURRENCES**

**2636.1.1**

(May 2005)

Disputes can occur in any purchasing authority type, non-IT goods and IT goods and services or in any purchasing category. It makes no difference whether the purchase document was the result of a competitive solicitation, LPA order or an NCB contract.

Disputes may also result from not having a clear understanding of the State's [General Provisions](#) or Terms and Conditions or a Statement of Work that is not clearly defined.

#### **PURCHASERS' RESPONSIBILITY**

**2636.1.2**

(May 2005)

[Purchasers](#) are responsible for managing contract performance by monitoring compliance with contract requirements and communicating to department contract administrators the importance of communicating and documenting all performance issues.

Refer to [Section 2690](#) Contract Administration

#### **DISPUTES PROVISIONS**

**2636.1.3**

(May 2005)

The DGS/PD general provisions provide suppliers with the process for disputing after an award has been executed. This language is found in [the General Provisions – Non-IT Commodities \(GSPD-401\)](#), Article #38-Disputes

**DEAL IN GOOD FAITH**  
(May 2005)

**2636.1.4**

Departments and suppliers/contractors encountering a dispute should deal with one another in good faith and attempt to resolve potential disputes informally.

Whenever a dispute occurs, **purchasers** will strive to resolve conflicts quickly and fairly, as disputes are disruptive and expensive to all parties involved.

**Note:** As stated within the DGS/PD **General Provisions** for non-IT goods, the supplier agrees to continue performance of the contract pending final resolution of the dispute.

Failure to do so is considered a material breach of the contract.

**STEPS IN RESOLVING DISPUTES**  
(May 2005)

**2636.1.5**

Disputes, regardless of magnitude, shall always be documented in the procurement file. When informal discussions and negotiations fail to render a satisfactory resolution for all parties, **purchasers** shall follow the process identified below.

Step	Action
1	<b>Purchaser</b> documents all conflicts or disagreements that affect contract performance <b>and notifies Unit Purchasing Coordinator.</b>
Step	Action
2	Discussions shall occur with all principles (supplier, <b>purchaser</b> , contract administrator, project manager, etc.) involved in the conflict.
3	Review dispute language contained within the General Provisions (non-IT or IT) and any additional contract provisions that may impact the dispute.
4	Strive to reach an agreement that is acceptable to all participants.
5	Prepare written summaries of the major points of the dispute. <b>If dispute resolution requires clarification or change to the purchase document, prepare an amendment to document the action and process expeditiously.</b>

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- 6 If purchaser and Unit Purchasing Coordinator are unable to resolve the issue, involve department management and/or department legal counsel at the Region and Business Services Sacramento level as appropriate. The following information should be documented and passed along: vendor name and address; date of purchase; date of delivery; type of purchase - state contract, SPS, or other; document used to purchase - purchase order, etc.; purchasing document number; type of problem; date and method of contact; name of unit personnel involved.
  - 7 If the dispute resolution:
    - Is unsuccessful, then the supplier must submit a written demand for final decision to the department director or designee. The written demand must present all facts of the dispute and be signed by a company officer.
  - 8 The department director or designee renders a final decision within a timely manner not to exceed 90 days of receiving the supplier's demand.
  - 9 If the supplier is not satisfied with the department's final decision, then the supplier may appeal the decision to DGS/PD DRS for resolution.
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[\(see next section\)](#)

[\(see HB Table of Contents\)](#)

[\(see Forms or Forms Samples\)](#)