

LEGAL AND CONTRACTUAL REMEDIES

Part A – Pre-Litigation Resolution of Controversies

§1-101 Authority to Resolve Protested Solicitations and Awards.

- (1) *Right to Protest.* Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Chief Procurement Officer, or designee, and the Milwaukee County Behavioral Health Administrator, or designee. The protest shall be submitted in writing to the Milwaukee County Behavioral Health Administrator within 10 calendar days after such aggrieved person knows or should have known of the facts giving rise thereto.
- (2) *Authority to Resolve Protests.* The Chief Procurement Officer and the Milwaukee County Behavioral Health Administrator, or a designee of either officer, shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract.
- (3) *Decision.* If the protest is not resolved by mutual agreement, the Chief Procurement Officer and the Behavioral Health Administrator, or a designee of either officer, shall issue a decision in writing within 60 calendar days. The decision shall,
 - (a) state the reasons for the action taken, including whether the solicitation or award of the contract was in accordance with the terms and conditions of the solicitation; and
 - (b) inform the protestant of its right to judicial review.
- (4) *Notice of Decision.* A copy of the decision under Subsection (3) of this Section shall be mailed or otherwise furnished immediately to the protestant.
- (5) *Finality of Decision.* Subject to judicial review, a decision under Subsection (3) of this Section shall be final and conclusive, unless fraudulent.
- (6) *Stay of Procurements During Protests.* In the event of a timely protest under Subsection (1) of this Section, the Milwaukee County Behavioral Health Division shall not proceed further with the solicitation or with the award of the contract unless the Chief Procurement Officer, after consultation with Milwaukee County Behavioral Health Administrator, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the Milwaukee County Behavioral Health Division.

§1-102 Authority to Resolve Contract and Breach of Contract Controversies.

- (1) *Applicability.* This Section applies to controversies between the Milwaukee County Behavioral Health Division and a contractor which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

Procurement Procedure

ADMINISTRATIVE MANUAL
MILWAUKEE COUNTY
BEHAVIORAL HEALTH DIVISION

REVISION DATE

ORIG ISSUE DATE
08-13-2014

ARTICLE TITLE

Legal & Contractual Remedies

SECTION TITLE

ARTICLE NO.

1

SECTION NOS.

1.101 – 1.401

- (2) *Authority.* The Chief Procurement Officer and the Milwaukee County Behavioral Health Administrator, or a designee of either officer, is authorized, prior to commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in Subsection (1) of this Section.
- (3) *Decision.* If such a controversy is not resolved by mutual agreement, the contractor may request the issuance of a written decision concerning the controversy governed by Subsection (1). If such a request is made, the Chief Procurement Officer, and the Milwaukee County Behavioral Health Administrator, or the designee of either officer, shall issue a decision in writing within 60 calendar days of the request. Notwithstanding the foregoing, the Chief Procurement Officer, and the Milwaukee County Behavioral Health Administrator, or the designee of either officer, may issue a written decision at any time, with or without a request, regarding any controversy governed by Subsection (1). The decision shall:
 - (a) state the reasons for the action taken; and
 - (b) inform the contractor of its right to judicial review.
- (4) *Notice of Decision.* A copy of the decision under Subsection (3) of this Section shall be mailed or otherwise furnished immediately to the contractor.
- (5) *Finality of Decision.* Subject to judicial review, the decision under Subsection (3) of this Section shall be final and conclusive, unless fraudulent.
- (6) *Failure to Render Timely Decision.* If the Chief Procurement Officer and the Milwaukee County Behavioral Health Administrator, or the designee of either officer, does not issue the written decision required under Subsection (3) of this Section within 60 calendar days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

Part B – Solicitations or Awards in Violation of Law

§1-201 Applicability of this Part.

The provisions of this Part apply where it is determined administratively, or upon administrative or judicial review, that a solicitation or award of a contract is in violation of law.

§1-202 Remedies Prior to an Award.

If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:

- (a) cancelled; or
- (b) revised to comply with the law.

§1-203 Remedies After an Award.

If after an award it is determined that a solicitation or award of a contract is in violation of law, then:

- (a) if the person awarded the contract has not acted fraudulently or in bad faith:
 - (i) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the Milwaukee County Behavioral Health Division; or

Procurement Procedure

ADMINISTRATIVE MANUAL
MILWAUKEE COUNTY
BEHAVIORAL HEALTH DIVISION

REVISION DATE

ORIG ISSUE DATE
08-13-2014

ARTICLE TITLE

Legal & Contractual Remedies

SECTION TITLE

ARTICLE NO.

1

SECTION NOS.

1.101 – 1.401

- (ii) the contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination.
- (b) if the person awarded the contract has acted fraudulently or in bad faith:
 - (i) the contract may be declared null and void; or
 - (ii) the contract may be ratified and affirmed if such action is in the best interests of the Milwaukee County Behavioral Health Division, without prejudice to the Milwaukee County Behavioral Health Division's rights to such damages as may be appropriate.

Part C – Interest

§1-301 Interest.

Interest on amounts ultimately determined to be due to a contractor or the Milwaukee County Behavioral Health Division shall be payable at the statutory rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.

Part D –Court Actions

§1-401 Court Actions in Connection with Contracts.

- (1) *Solicitation and Award of Contracts.* The courts of Wisconsin shall have jurisdiction over an action between the Milwaukee County Behavioral Health Division or the Mental Health Board and a bidder, offeror, or contractor, prospective or actual, to determine whether a solicitation or award of a contract is in accordance with the Constitution, statutes, regulations, and the terms and conditions of the solicitation.
- (2) *Actions Under Contracts or for Breach of Contract.* The courts of Wisconsin shall have jurisdiction over an action between the Milwaukee County Behavioral Health Division or the Mental Health Board and a contractor, for any cause of action which arises under, or by virtue of, the contract, whether the action is at law or in equity, whether the action is on the contract or for a breach of the contract, and whether the action is for monetary damages or declaratory, injunctive, or other equitable relief.