

Protest Denied - So What's Next?

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Suppose you file a protest. You and your lawyer pinpoint one or more air-tight protest grounds, cite Florida court decisions to support your arguments, and demand the top bidder's bid or top proposer's ranking be thrown out. You even go through a hearing, have witnesses testify, and make great arguments to a hearing officer (who is usually retained by the awarding agency). And then somehow you lose. Now you may be thinking a couple of things. First, 'I am going to appeal that hearing officer's decision;' and second, 'if this situation ever happens again, I'm going right to court.' Well, as to both, you likely cannot.

Administrative remedies must be exhausted before you can seek relief from the courts. This means that you have to go through the protest procedure, and see it through to the end. A hearing officer's recommended award is just that, a recommendation. The order is not automatically reviewable as a matter of right. There may be times where a protestor can have a non-final order reviewed, but likely only if there are immediate negative consequences and review of the administrative agency's action will not be good enough.

For local agency protests, the losing protestor generally can file a de novo action in the circuit civil court in the jurisdiction where the agency is headquartered, where a party resides, or as otherwise provided by law. Challenges of final agency action subject to the Florida Administrative Procedures Act are appellate in nature. Unlike a protest, a challenge to the agency's decision following an unsuccessful protest does not stay the enforcement of the agency's decision. In other words, the show must go on and the agency and the successful vendor may begin performing the project at issue under a contract. The losing protestor may seek to enjoin the agency from doing so in court, through a request for injunction or demand for a stay.