

## California Code of Regulations, Title 1, Division 2.

### Chapter 5. Procedures for Conducting Protests Under the Alternative Protest Process

#### Article 1. General Provisions

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#### **§1400. Purpose; Scope of Chapter.**

Protests under the Alternative Protest Project (AB 1159, Chapter 762 of 1997 Statutes, Public Contract Code Division 2, Part 2, Chapter 3.6 (sections 12125-12130)) shall be resolved by arbitration as defined and established by this chapter.

##### NOTE

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

##### HISTORY

1. New chapter 5 (articles 1-3), article 1 (sections 1400-1404) and section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

#### **§1402. Definitions.**

- (a) Arbitration, as used in this chapter, means a dispute resolution procedure in which the Department of General Services, Office of Administrative Hearings provides a neutral third party who decides the merits of a protest and issues a binding decision to the Parties.
- (b) Awardee includes Proposed Awardee and means the person or entity that was a successful bidder to a Solicitation and has been, or is intended to be, awarded the contract.
- (c) Close of Business, as used in this chapter, means 5p.m. Pacific Standard Time (PST) or Pacific Daylight Time (PDT), as applicable.
- (d) Contracting Department means either Procurement or the department which has applied and been approved by the Department of General Services to conduct the Solicitation under the Alternative Protest Project (Public Contract Code sections 12125-12130.).
- (e) Coordinator means the person designated as the Alternative Protest Project Coordinator by the Department of General Services, Procurement Division, to coordinate all aspects of the Solicitation under the Alternative Protest Project (Public Contract Code sections 12125-12130).
- (f) Estimated Contract Value means the value of Protestant's bid.
- (g) Frivolous means a protest with any or all of the following characteristics:
  - (1) It is wholly without merit.
  - (2) It is insufficient on its face.
  - (3) The Protestant has not submitted a rational argument based upon the evidence or law which supports the protest.
  - (4) The protest is based on grounds other than those specified in section 1410.
- (h) Major Information Technology Acquisition means the purchase of goods or services, or both, by a state agency, through contract, from non-governmental sources, that has significant mission criticality, risk, impact, complexity, or value attributes or characteristics. Pursuant to subdivision (e) of Section 11702 of the Government Code, these purchases shall include, but not be limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications that include voice, video, and data communications, requisite system controls, simulation, electronic commerce, and all related interactions between people and machines.
- (i) OAH means the Department of General Services, Office of Administrative Hearings.
- (j) Party means the Procurement Division of the Department of General Services, the Contracting Department, the Awardee, and Protestant(s).

- (k) Procurement means the Procurement Division of the Department of General Services.
- (l) Protestant means a person or entity that was an unsuccessful bidder to a Solicitation under the Alternative Protest Project (Public Contract Code sections 12125-12130) and that protests the award.
- (m) Small Business means a Certified California Small Business, pursuant to Government Code Division 3, Part 5.5, Chapter 6.5 (commencing with section 14835) and Title 2, California Code of Regulations, section 1896.
- (n) Solicitation means the document that describes the goods or services to be purchased, details the contract terms and conditions under which the goods or services are to be purchased, and establishes the method of evaluation and selection.
- (o) Solicitation File means the Solicitation and the documents used by the Contracting Department in the Solicitation process, including documents used to evaluate bidders and select a Proposed Awardee. The Solicitation File shall remain available to the public except information that is confidential or proprietary.

## NOTE

Authority cited: Section 12126, Public Contract Code. Reference: Section 11702, Government Code; and Sections 12125-12130, Public Contract Code.

## HISTORY

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

#### **§1404. Notice of Intent to Award Contract.**

The Contracting Department shall post a Notice of Intent to Award Contract in a public place specified in the Solicitation, send rejection facsimiles to rejected bidders, and send Notice of Intent to Award Contract facsimiles to any bidder who made a written request for notice and provided a facsimile number. The Contracting Department shall indicate that the Solicitation File is available for inspection. The Contracting Department has the discretion to award a contract immediately, upon approval by the Director of the Department of General Services and, if the Solicitation was for a Major Information Technology Acquisition, the Director of the Department of Information Technology.

## NOTE

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

## HISTORY

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

## **Article 2. Protest Procedure**

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#### **§1406. Notice of Intent to Protest; Service List.**

- (a) An unsuccessful bidder who intends to protest the awarded contract pursuant to this chapter must inform the Coordinator. The Notice of Intent to Protest must be in writing and must reach the Coordinator within the number of days specified in the Solicitation, which shall be not less than 1 working day and not more than 5 working days after the posting of the Notice of Intent to Award Contract, as specified in the Solicitation. Failure to give written notice by Close of Business on that day shall waive the right to protest.
- (b) On the day after the final day to submit a Notice of Intent to Protest, the Coordinator shall make a service list consisting of those bidders who did submit a Notice of Intent to Protest, the Awardee, and the Contracting Department. The Coordinator shall include addresses and facsimile numbers on this list and shall forward this service list to those bidders who submitted a Notice of Intent to Protest.

## NOTE

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

HISTORY

1. New article 2 (sections 1406-1418) and section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

**§1408. Filing a Protest.**

- (a) A protest is filed by the submission of: the Detailed Written Statement of Protest and any exhibits specified in section 1412; a check or money order made payable to the Office of Administrative Hearings for the OAH filing fee of \$50; and the arbitration deposit as specified in subsection (c) or (d) to the Coordinator by the Close of Business on the 7th working day after the time specified in the Solicitation for written Notice of Intent to Protest under section 1406. A copy of the Detailed Written Statement of Protest and exhibits must also be served on all Parties named in the service list as specified in section 1406. A Protestant who fails to comply with this subsection waives Protestant's right to protest.
- (b) Protestant(s) must provide a FAX (facsimile) number. Notification by facsimile is sufficient for service. If the Detailed Written Statement of Protest is sent to the Coordinator by facsimile, Protestant must:
- (1) Verify that the pages sent were all received by the Coordinator; and
  - (2) Remit the required deposit and filing fee to Coordinator by any reasonable means. If sending via carrier, the postmark date or equivalent shall be used to determine timeliness.
- (c) Each Protestant not certified as a Small Business shall make a deposit of the estimated arbitration costs, by check or money order made payable to the Office of Administrative Hearings, as determined by the Estimated Contract Value.
- (1) For contracts up to \$100,000.00, the deposit shall be \$1500.00.
  - (2) For contracts of \$100,000.00 up to \$250,000.00, the deposit shall be \$3,000.00.
  - (3) For contracts of \$250,000.00 up to \$500,000.00, the deposit shall be \$5,000.00.
  - (4) For contracts of \$500,000.00 and above, the deposit shall be \$7,000.00.
  - (5) Failure to remit a timely required deposit waives the right of protest.
  - (6) Any refund to Protestant(s) shall be made per section 1436.
- (d) Each Protestant certified as a Small Business shall submit a copy of the Small Business Certification in lieu of the deposit specified in subsection (c). If Protestant is a Small Business and the protest is denied by the arbitrator, the Contracting Department shall collect the costs of the arbitration from Protestant. If Protestant does not remit the costs due, the Contracting Department may offset any unpaid arbitration costs from other contracts with Protestant and/or may declare Protestant to be a non-responsible bidder on subsequent solicitations.

NOTE

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

HISTORY

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

**§1410. Grounds for Protest.**

- (a) The Public Contract Code, at section 12126(d) provides: Authority to protest under this chapter shall be limited to participating bidders.
- (1) Grounds for Major Information Technology Acquisition protests shall be limited to violations of the Solicitation procedures and that the Protestant should have been selected.
  - (2) Any other acquisition protest filed pursuant to this chapter shall be based on the ground that the bid or proposal should have been selected in accordance with selection criteria in the Solicitation document.
- (b) The burden of proof for protests filed under this chapter is preponderance of the evidence, and Protestant(s) must bear this burden.

NOTE

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

## HISTORY

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

**§1412. Detailed Written Statement of Protest.**

- (a) The Detailed Written Statement of Protest must include the grounds upon which the protest is made, as specified in 1410(a).
- (b) The Detailed Written Statement of Protest shall contain reasons why Protestant should have been awarded the contract.
  - (1) For Major Information Technology Acquisition protests, the Detailed Written Statement of Protest must specify each and every Solicitation procedure which was violated and the manner of such violation by specific references to the parts of the Solicitation attached as exhibits and why, but for that violation, Protestant would have been selected.
  - (2) For other acquisition protests, the Detailed Written Statement of Protest must specify each and every selection criterion on which Protestant bases the protest by specific references to the parts of the Solicitation attached as exhibits.
  - (3) For all protests, Protestant must specify each and every reason that all other bidders who may be in line for the contract award should not be awarded the contract.
- (c) The Detailed Written Statement of Protest must be limited to 50 typewritten or computer generated pages, excluding exhibits, at a font of no less than 12 point or pica (10 characters per inch), on 8 1/2 inch by 11-inch paper of customary weight and quality. The color of the type shall be blue-black or black. In addition to a paper copy, the arbitrator may request that a Protestant submit such information on computer compatible diskette or by other electronic means if the Protestant has the ability to do so.
- (d) Any exhibits submitted shall be paginated and the pertinent text highlighted or referred to in the Detailed Written Statement of Protest referenced by page number, section and/or paragraph and line number, as appropriate.
- (e) The Detailed Written Statement of Protest shall not be amended.
- (f) Protestant(s) may not raise issues in hearing which were not addressed in the Detailed Written Statement of Protest.
- (g) A Protestant who fails to comply with this subsection waives Protestant's right to protest.

## NOTE

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

## HISTORY

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

**§1414. Review by Coordinator.**

- (a) Within 2 working days after receipt of the Detailed Written Statement of Protest, the Coordinator shall notify the Contracting Department and the Awardee of a potential protest hearing.
- (b) The Coordinator shall review the Detailed Written Statement of Protest within 5 working days after receipt to preliminarily determine if the protest is Frivolous and notify Protestant of the option to withdraw or proceed in arbitration.
  - (1) If Protestant withdraws the protest within 2 working days after the notification by the Coordinator of a preliminary determination of Frivolousness, the Coordinator shall withdraw the preliminary finding of Frivolousness and refund Protestant's deposit and filing fee.
  - (2) If the Protestant previously filed two protests under the Alternative Protest Project preliminarily determined Frivolous by the Coordinator but then withdrew or waived them before the arbitration decision, the Coordinator shall make final the preliminary determination of Frivolousness for the Department of General Services.

## NOTE

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

## HISTORY

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

**§1416. Review and Response by Contracting Department and Awardee.**

- (a) The Awardee shall have 7 working days after notification by the Coordinator to submit to the Coordinator and Protestant a response to the Detailed Written Statement of Protest.
- (b) The Contracting Department, in conjunction with the Coordinator, shall have 7 days after the filing of the Detailed Written Statement of Protest to send a response to Protestant and Awardee.
- (c) Responses shall follow the standards set forth in section 1412(c) and (d).

NOTE

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

HISTORY

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

**§1418. Bond Requirement.**

- (a) If the Coordinator has determined that a protest is Frivolous and the Protestant does not withdraw the protest, the Protestant shall be required to post a bond in an amount not less than 10% of the Estimated Contract Value.
- (b) The percentage of the bond shall be determined by the Contracting Department and specified in the Solicitation.
- (c) Protestant shall post the bond, pursuant to Chapter 2 (commencing with section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure, within 15 working days of the filing of the Detailed Written Statement of Protest or shall be deemed to have waived the right to protest.
  - (1) If the arbitrator determines that the protest is Frivolous, the bond shall be forfeited to Procurement and the Coordinator will impose Sanctions.
  - (2) If the arbitrator determines that the protest is not Frivolous, the bond will be returned to the Protestant and no Sanctions imposed.

NOTE

Authority cited: Section 12126, Public Contract Code. Reference: Sections 995.010 et. seq., Code of Civil Procedure; and Sections 12125-12130, Public Contract Code.

HISTORY

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

**Article 3. Arbitration Procedure**

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**§1420. Arbitration Process.**

Within 19 calendar days after the Notice of Intent to Award has been posted, the Coordinator shall consolidate all remaining protests under the Solicitation, and send to OAH:

- (a) a copy of all Detailed Written Statements of Protest;
- (b) OAH filing fees;
- (c) arbitration deposits, and/or notice that any Protestant is a Small Business;
- (d) Awardee responses;
- (e) Coordinator/Contracting Department responses;
- (f) the Solicitation File; and
- (g) notice to OAH whether interpreter services will be needed for any Protestant or Awardee.  
 OAH shall arrange interpreter services which shall be paid by the Contracting Department.

NOTE:

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

HISTORY

1. New article 3 (sections 1420-1440) and section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

**§1422. Selection of Arbitrator.**

- (a) Within 2 working days after receipt of the protest from the Coordinator, OAH shall furnish the names of ten arbitrators to Protestant(s), the Awardee, and the Coordinator. The arbitrator list shall include administrative law judges who are employees of OAH and contract private arbitrators who are not employees of the State of California. Protestant(s), the Awardee, and the Coordinator may each strike two of the ten names and notify OAH within 2 working days. Protestant(s) may also indicate if they prefer a contract arbitrator or an OAH administrative law judge. OAH may then select as arbitrator any name not stricken and shall notify Protestant(s), the Awardee, and the Coordinator within 2 working days. If all names are stricken, the Director of OAH shall appoint an arbitrator.
- (b) A proposed arbitrator shall be disqualified on any of the grounds specified in Section 170.1 of the Code of Civil Procedure for the disqualification of a judge.

NOTE

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

HISTORY

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

**§1424. Authority of Arbitrator.**

- (a) Arbitrators are authorized to
- (1) Administer oaths and affirmations;
  - (2) Make rulings and orders as are necessary to the fair, impartial, and efficient conduct of the hearing; and
  - (3) Order additional deposits from Protestant(s) to cover additional estimated costs. If OAH does not receive the required deposit(s) in the time specified, the right to protest will be deemed waived.
- (b) The arbitrator shall have exclusive discretion to determine whether oral testimony will be permitted, the number of witnesses, if any, and the amount of time allocated to witnesses.
- (c) It shall be in the arbitrator's exclusive discretion to determine whether to
- (1) Conduct a prehearing conference; and/or
  - (2) Permit cross-examination and, if so, to what extent; and/or
  - (3) Review documents alone for all or part of the protest.
- (d) It shall be in the arbitrator's exclusive discretion to determine whether additional responses and rebuttals are to be submitted, and the timelines and page limits to be applied.

NOTE

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

HISTORY

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

**§1426. Decision Based in Whole or in Part on Documents Alone.**

Any Party may request that the arbitrator base the arbitrator's decision on documents alone. It shall be the arbitrator's exclusive discretion to do so.

NOTE

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

HISTORY

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

**§1428. Prehearing Conference.**

- (a) If the arbitrator determines that a prehearing conference is necessary, OAH shall set the time and place and notify Protestant(s), the Awardee, and Procurement at least 5 working days prior

to the prehearing conference.

- (b) The prehearing conference shall be held to identify and define issues in dispute and expedite the arbitration. The parties should be prepared to discuss, and the arbitrator may consider and rule on, any of the following matters applicable to the protest:
- (1) Clarification of factual and legal issues in dispute as set forth in the Detailed Written Statement of Protest.
  - (2) The extent to which testimony shall be permitted and the extent to which cross-examination will be allowed.
  - (3) Identity of and limitations on number of witnesses, need for interpreters, scheduling and order of witnesses, etc.
  - (4) Any other matters as shall promote the orderly and efficient conduct of the hearing.
- (c) At the prehearing conference, Protestant(s), the Awardee, and Procurement shall deliver a written statement which contains the name of each witness a party wishes to call at hearing along with a brief written statement of the subject matter of the witness's expected testimony. If the arbitrator, in his or her exclusive discretion, allows an expert witness to be called, the party calling the witness shall provide the name and address of the expert along with a brief statement of the opinion the expert is expected to give. The party shall also attach a statement of qualifications for the expert witness.

NOTE

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

HISTORY

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

#### **§1430. Scheduling the Hearing.**

The arbitrator shall schedule the date, time, and place of hearing and notify all Parties.

NOTE

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

HISTORY

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

#### **§1432. Discovery.**

The arbitrator has exclusive discretion to issue subpoenas and/or subpoena duces tecum. There shall be no right to take depositions, issue interrogatories, or subpoena persons or documents.

NOTE

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

HISTORY

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

#### **§1434. Attendance at Hearings.**

The Arbitration hearings shall be open to the public unless the arbitrator, in his or her exclusive discretion, determines that the attendance of individuals or groups of individuals would disrupt or delay the orderly conduct or timely completion of the proceedings.

NOTE

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

HISTORY

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

#### **§1436. Arbitrator's Decision.**

- (a) The final decision shall be in writing and signed by the arbitrator. It shall include a Statement of the Factual and Legal Basis for the decision, addressing the issues raised in the Detailed

Written Statement(s) of Protest, and shall include an order upholding or denying the protest(s). The arbitrator's order shall not award a contract.

- (b) A copy of the decision shall be sent by regular mail to Procurement, the Contracting Department, the Awardee, and Protestant(s) within 45 calendar days after the filing of the first Detailed Written Statement of Protest. In the arbitrator's exclusive discretion, this timeline may be extended for an additional 15 calendar days. The arbitrator's failure to issue a decision within the time specified by this section shall not be a ground for vacating the decision.

NOTE

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

HISTORY

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

**§1437. Costs.**

- (a) For protests not determined Frivolous by Procurement:
- (1) If the arbitrator denies the protest, Protestant(s) will be liable for all costs of the arbitration.
  - (2) If the arbitrator upholds the protest, the Contracting Department shall pay for all costs of the arbitration and Protestant(s) will be refunded the deposit by OAH.
- (b) If Procurement determined that the protest was Frivolous and the arbitrator affirms that the protest is Frivolous, the bond shall be forfeited to Procurement, the protest will be denied, and Protestant(s) will be liable for all costs of the arbitration.
- (c) If Procurement determined that the protest was Frivolous and the arbitrator determines that the protest is not Frivolous, any bond(s) posted by Protestant(s) shall be returned.
- (1) If the arbitrator denies the protest, Protestant(s) shall be liable for half of the costs of the arbitration. The Contracting Department shall pay the remaining half of the arbitration costs.
  - (2) If the arbitrator upholds the protest, the Contracting Department shall pay for all costs of the arbitration and Protestant(s) will be refunded the deposit by OAH.
- (d) A Protestant who withdraws his or her protest before the arbitrator's decision has been issued will remain liable for all arbitration costs up to the time of withdrawal. These costs include, but are not limited to, the arbitrator's time in preparation, prehearing conferences, and hearing the protest. If Procurement deemed the protest Frivolous, any bond posted shall be forfeited to Procurement.
- (e) Except as provided in (f), if any costs are determined to be payable by Protestant(s), that amount shall be subtracted from deposit(s) of Protestant(s) as ordered by the arbitrator. Any additional costs shall be billed to Protestant(s) and any refunds shall be sent to Protestant(s) by OAH.
- (f) If a Protestant is a Small Business, then the Contracting Department shall pay OAH all arbitration costs and collect the amount due from Protestant.

NOTE

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

HISTORY

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

**§1438. Judicial Review.**

The grounds for judicial review shall be as set forth in Chapter 4 of Title 9 of Part III of the Code of Civil Procedure (commencing with section 1285).

NOTE

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

HISTORY

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).

**§1440. Transcripts.**

- (a) A party desiring a transcript of the proceedings shall contact the OAH Transcript Clerk to make arrangements to pay for preparation of the transcript. Prior to preparation of the transcript, a deposit equal to the estimated cost of the transcript shall be paid. Preparation of the transcript will be arranged by the OAH Transcript Clerk. The deposit shall be applied to the actual cost and any excess shall be returned to the party that submitted the request. Any balance due shall be paid by the party or a representative on behalf of the party requesting the transcript before the transcript is released to the requesting party.
- (b) Unless a record of a proceeding or any portion thereof was sealed, any person may request a transcript or a recording of the proceeding. If a record of a proceeding or any portion thereof was sealed, only parties to the proceeding may request a transcript of the sealed portions, and the sealed portions shall not be disclosed to anyone except in accordance with the order sealing the proceeding or subsequent order.

NOTE

Authority cited: Section 12126, Public Contract Code. Reference: Sections 12125-12130, Public Contract Code.

HISTORY

1. New section filed 8-18-98; operative 8-18-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 34).