

Protests Procedures for Public Works Contracts

As outlined in Section 1-03.7 of the Standard Specifications, bidders have the right to protest notice of awards, notice that a bid is non-responsive or a bidder is not responsible. If protesting one of the above, the following apply.

Bidders cannot protest matters that could have been reasonably known before the bid submission deadline, such as specifications, instructions, minimum qualifications, and similar material concerns over such matters must instead be addressed to the City Purchasing and Contracting Services Division (PCSD) before the bid deadline.

After the bid deadline, only bidders that submitted a bid are eligible to protest. Only protests alleging an issue concerning the following subjects shall be considered:

- A matter of bias, discrimination, or conflict of interest;
- Errors in responsiveness or responsibility; and/or
- Non-compliance with procedures described in the solicitation or City policy.

Protest Deadlines: Protests must be filed to the PCSD within two business days after the notice is issued by the City. A complaint, inquiry or a notice that a company intends to protest does not constitute a protest. A protest must reasonably comply with the form, content and deadlines herein so that the City can reasonably understand the protest issues in a timely way. If the protest does not reasonably comply, the City may reject the protest.

Bid/Bidder Protests

- PCSD will determine and notify a Bidder if they are rejected for responsiveness or responsibility. Protests concerning rejection must be filed with PCSD within two business days after the City's notification to the Bidder.

Notice of Award Protests

- The "Notification of Award" will be sent by PCSD. Protests regarding award decisions must be made within two business days of the PCSD announcement.

The City shall make efforts to notify the affected bidder(s), such as posting on the City Web site or mailing the notice to the affected bidder(s). However, it is the Bidder's responsibility to seek out and obtain the notification from the City in a timely manner. The City is not responsible for assuring the Bidders have learned of the notification in time to file a protest.

Protest Form and Content:

All protests shall be in writing and state that the bidder is submitting a formal protest. Protests must be filed with the PCSD. Deliveries by hand, e-mail, mail or fax are acceptable. The protestor accepts all risks of the delivery method they choose. The City is not responsible to

assure the protest is received by the City within the protest deadlines. If the City does not receive the protest in a timely manner, the protest may be rejected.

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Include the following information in your protest letter. The protest must substantially comply with the following, so that the City can reasonably understand the nature of the protest. Failure to reasonably provide the following information could result in PCSD rejecting your protest:

- a. Company name, mailing address, phone number, and name of company individual responsible for submission of the protest;
- b. Specify the City Public Works Number and title;
- c. State the specific action or decision protested;
- d. Indicate the basis and argument for the protest and include specific facts, documentation and all concerns. It is the protestor's responsibility to provide all evidence, additional documentation or information regarding any portion of the bidding or award process to support their protest. Documentation or other evidence will not be accepted after the protest is submitted, unless requested by PCSD.
- e. Indicate what relief or corrective action you believe the City should make;
- f. Demonstrate that you made every reasonable effort within the bidding process to resolve the issue, including asking questions, attending the pre-bid conference, seeking clarification, requesting addenda, and otherwise alerting the City to any perceived problems; and
- g. Signed by an authorized agent of the company.

Protest Process:

- a. PCSD will review the protest and supporting documents and deliver in writing, by e-mail, fax or mailed notice its decision to the protesting bidder.
- b. Such decisions will be final; there will be no further administrative remedies.
- c. The protestor will not be allowed to protest any further decisions or notices associated with this project.

Protest Determination:

Each written determination of the protest shall either:

- a. Find the protest lacking in merit and uphold the City action; or
- b. Find only immaterial or harmless errors in the City's bidding/procurement process and therefore refuse the protest; or
- c. Find merit in the protest and determine the appropriate course of action, including, but not limited to retabulation or rebidding; or
- d. Make other findings and determine other courses of action as appropriate.

If PCSD determines that the Protest lacks merit, the City may continue with the award and execution process. If the protest is determined to have merit, one of the alternatives noted in the protest determination will be taken.

Nothing herein shall diminish the authority of the PCSD to enter into a contract.