

## ***Protests Procedures for ITB or RFP solicitations issued by City Purchasing***

Bidders have the right to protest regarding those solicitations issued by City Purchasing, as described below. Whether concerns are about a Request for Proposal Process (RFP) or an Invitation to Bid (ITB), the following apply. "Bids" shall refer to either an RFP or an ITB process.

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### **Inquiry or Intention does not constitute a Protest:**

A notice to City Purchasing that a company intends to protest does not reserve your right to protest. You must instead actually file a protest within the required deadlines, and following the proper format. A casual inquiry or complaint, or a protest that does not provide the specific facts and issues, and/or does not comply with the form, content or deadlines herein, will not be considered or acted upon as a protest.

### **Protest on items known or that should have been known before the bid deadline:**

- Certain concerns must be filed as a protest before bids are due. Any matter known – or that should have been known - before the bid deadline, must be protested to the Buyer in writing as soon as practical, and at least three business days before the bid deadline.
- Such matters include, but are not limited to:
  - Complaints about decisions or events that occurred before the bids were due,
  - Complaints about the bid specifications, minimum qualifications, or any aspect of the bid that is alleged to unduly constrain competition,
  - Complaints that the pre-bid conference was not fair or accessible,
  - Complaints that questions were not fully or properly addressed by the Buyer,
  - Complaints that the bid did not provide adequate information or contained improper criteria, or
  - Any other matter known or that should have been known, to interested bidders by reading the ITB or RFP.
- Protests over such matters will not be accepted after the bid deadline.

### **Protest on items known after bid deadline:**

After the bid deadline, only vendors that submitted a bid are eligible to protest.

**Grounds for Protest:** Only protests alleging an issue concerning the following subjects shall be considered:

1. A matter of bias, discrimination, or conflict of interest on the part of the evaluator(s);
2. Errors in computing score; and/or
3. Non-compliance with procedures described in the solicitation or City policy.

**Protest Deadlines:** Protests must be filed within three business days after the announcement from the City Buyer.

- The Buyer will announce rejection of a bid for responsiveness or responsibility. This announcement will go to the affected Bidder. Protests concerning rejection must be filed with the City Buyer within three business days after the Buyer announcement that the Bidder has been rejected.
- When solicitations intend to “short list” bidders for interviews and/or demonstrations, the Buyer will announce which Bidders have been selected to proceed. Protests concerning those decisions must be made within three business days after the Buyer announcement.
- The “Intent to Award” announcement shall be made by the City Buyer. Protests regarding award decisions must be made within three business days of the City announcement.

The Buyer shall make efforts to distribute the announcement to 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 announcement from the City in a timely manner. The City is not responsible for assuring the Bidders have learned of the announcement 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 City Buyer. Deliveries by hand, e-mail, mail or fax are acceptable. The City is not responsible to assure the protest is received by the Buyer within the protest deadlines. If the City Buyer does not receive the protest in a timely manner, the protest can be rejected.

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Include the following information in your protest letter. Failure to provide the following information can result in rejection of your protest:

- a. Company name, mailing address, phone number, and name of company individual responsible for submission of the protest;
- b. Specify the City Bid Number and title;
- c. State the specific action or decision protested;
- d. Indicate the basis for the protest including specific facts;
- e. Indicate what relief or corrective action you believe the City should make;

- f. Demonstrate that you made every reasonable effort within the bid schedule 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 and Appeals:**

- a. The Purchasing Supervisor will review the protest. All available facts will be considered and the Purchasing Supervisor shall issue a decision. This decision shall be delivered in writing by e-mail, fax or mailed notice to the protesting bidder.
- b. If the Protesting party believes the Purchasing Supervisor failed to consider a fact and has made an error in the protest decision, the protesting bidder has a right to appeal that decision to the City Purchasing Director. The appeal is limited to only those matters brought forward in the original protest. The appeal must clearly state why the Purchasing Supervisor is in error.
- c. The protesting bidder shall issue a Protest Appeal Statement by 5:00 PM (Pacific Time) by the third (3<sup>rd</sup>) business day following issuance of the Purchasing Supervisor decision. This appeal shall be delivered by the Protesting vendor, in writing through e-mail, fax or mailed notice to the City Purchasing Director.
- d. The City Purchasing Director shall review the appeal request, the facts, and any information the Director seeks to make an appeal determination. The Director shall make a determination in writing to the protesting bidder. This decision shall be delivered in writing through e-mail, fax or mailed notice to the protesting bidder.

**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 acquisition process and therefore reject the protest; or
- c. Find merit in the protest and provide options for correction including but not limited to, correcting the errors through addendum, re-evaluating the bids, reissuing the bid to begin a new process, or entering into a contract to remedy the protest finding; or
- d. Make other findings and determine other courses of action as appropriate.

If the protest process and all appeals determine the Protest is without merit, Seattle may continue with the bid process or to enter into a contract with the apparent successful contractor if the contract has not been previously signed. If the protest is determined to have merit, one of the alternatives noted in the proceeding paragraph will be taken.

Nothing herein shall diminish the authority of the Director of Executive Administration to enter into a contract, whether a protest action or intention to protest has been issued or otherwise.