

PROCEDURES FOR COMPETITIVE SOLICITATION PROTESTS

INTRODUCTION

These Procedures for Competitive Solicitation Protests are authorized by the Contracting Officer and established for the Housing Authority of the City of Los Angeles (the "Authority") in support of the Authority's Procurement Policy provisions for Bid Protests.

1. Defined Terms

A. For purposes of these Procedures:

"Apparent Awardee" means (i) the responsible bidder identified as submitting the lowest price bid under an Invitation for Bid or (ii) the proposer identified as the most qualified under a Request for Proposal or Request for Qualifications.

"Business Day" or "Business Days" means the official working days of the Authority and excludes weekends, holidays and furlough days.

"Contracts Administrator" means Authority employee(s) who, under managerial direction, oversee the preparation and processing of competitive Solicitations and contract administration on behalf of the Authority.

"Contract Award" means the decision of the Board of Commissioners to award a contract that follows from a Solicitation.

"Contracting Officer" means the Authority's President and Chief Executive Officer or designee.

"Day" or "Days" means calendar days unless expressly stated otherwise.

"General Services Director" means the Director of the Authority's General Services Department or designee.

"Manufacturer" means a person or business that sells, produces or manufactures a product that could be utilized in the performance of the work that is the subject of a Solicitation, whether the product is described in or contemplated by the specifications or is deemed equivalent to a product described in or contemplated by the specifications.

"Notice of Intent to Award" means the Notice prepared by the Authority to inform interested persons of the Apparent Awardee. The issue date for the Notice of

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Intent to Award is the earlier of the date of electronic posting, mailing or other publication.

“Offer” means a response to a Solicitation for work and includes bid and proposal.

“Offerer” means a person or entity that filed a bid or proposal in response to a competitive Solicitation for work and includes bidder and proposer.

“Responsible Offerer” means an Offerer who has affirmatively demonstrated, at the time of bid submission, general standards of responsibility, including, when necessary, the responsibility of its proposed subcontractors. Factors affecting an Offerer’s responsibility include:

1. Adequate financial resources to perform the contract or the ability to obtain such resources;
2. Ability to comply with the required or proposed delivery or performance schedule, taking into consideration existing business commitments;
3. Satisfactory performance record;
4. Satisfactory record of integrity and business ethics;
5. Organization, material, equipment, facilities, and personnel resources and expertise (or the ability to obtain them) necessary to carry out the work and to comply with required delivery or performance schedules, taking into consideration other business commitments; and
6. Qualification and eligibility to receive an award under applicable laws and regulations.

“Responsive Offerer” means an Offerer whose response to a Solicitation conforms to all material requirements of the Solicitation.

“Solicitation” means a competitive solicitation for goods or services and includes Invitations for Bid, Requests for Proposal, Requests for Qualification, and any other competitive solicitation process permitted under the Authority’s policies and procedures.

B. For purposes of computing time for purposes of the deadlines set forth herein, Saturdays, Sundays, and legal holidays observed by the Authority shall be excluded.

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2. Applicability

A. Any Solicitation and any Contract Award may be the subject of a bid protest.

B. Any corrective measures taken by the Authority to remedy or otherwise address Solicitation errors or defects may be the subject of a bid protest.

C. Any determination that an Offerer is non-Responsible may be the subject of a bid protest.

3. Standing to Protest

A. Any Offerer has standing to file a bid protest of a Solicitation.

B. Any Offerer has standing to file a bid protest of corrective measures taken by the Authority to remedy or otherwise address Solicitation errors or defects.

C. Any Offerer determined to be non-Responsible has standing to file a bid protest of the non-Responsible determination, provided the Offerer would be the Apparent Awardee if the protest is sustained and the Offerer determined to be Responsible.

D. Any Offerer determined eligible for Contract Award as a Responsible Offerer has standing to file a bid protest of a Contract Award, provided the Offerer would be the Apparent Awardee if the protest is sustained.

E. Any Offerer determined to be non-Responsive or otherwise disqualified from consideration of Contract Award as a Responsible Offerer does not have standing to file a bid protest.

F. Any Manufacturer has standing to file a bid protest of a Solicitation, subject to the limitations set forth at Article 4.0 below.

4. Grounds; Available Relief

A. Grounds for protesting a Solicitation submitted by an Offerer shall be based on the following:

1. The bid specifications give an unfair advantage to an Offerer;

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2. Material irregularities or defects in the bid specifications or bid procedures;

3. Limitations or restrictions imposed by the Solicitation effectively exclude small or disadvantaged businesses; and/or

4. The proposed evaluation criteria are contrary to a higher legal authority such as a state or federal statute or regulation.

B. Grounds for protesting a Solicitation submitted by a Manufacturer shall be based on a claim of a violation under Public Contract Code section 3400 or 24 CFR 85.36(c)(1)(vi) (i.e., the bid specifications limit the bidding, directly or indirectly, to a specific concern (i.e., product) or call for a designated material, product, item, or service by specific brand or trade name without permitting the substitution of an equal material, product, item or service).

C. Grounds for protesting corrective measures taken by the Authority to remedy or otherwise address Solicitation errors or defects shall be based on the following:

1. The corrective measures contain a variance that gives the Apparent Awardee a substantial benefit or advantage not enjoyed by the other Offerers;

2. The corrective measures do not conform to the material terms and conditions of the Solicitation and all material requirements of the specifications; and/or

3. The corrective measures violate applicable laws and/or regulations.

D. Grounds for protesting the Authority's determination that an Offerer is non-Responsible are limited to refuting the reasons cited by the Authority as grounds for determining the Offerer is non-Responsible.

E. Grounds for protesting a Contract Award shall be based on the following:

1. Evidence of a conflict of interest involving the Authority, its officers or employees and the Apparent Awardee;

2. The Apparent Awardee's offer imposes conditions that modify requirements of the Solicitation, contains a variance that gives the Awardee a substantial benefit or advantage not enjoyed by the other Offerers or otherwise fails to conform to the material terms and conditions of the Solicitation and all material requirements of the specifications, and/or violates applicable laws and regulations;

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3. The Authority applied different evaluation criteria than were specified in the Solicitation;

4. The Authority applied the correct evaluation criteria, but weighted the criteria differently than specified; and/or

5. Mathematical errors in the scoring of proposals.

F. Available relief is limited to the following:

1. For protest of a Solicitation, relief is limited to cancelation of the Solicitation, issuance of an addendum clarifying or amending the Solicitation, or cancelation, amendment and rebidding of the Solicitation, the election of which is within the sole discretion of the Authority.

2. For protest of corrective measures taken by the Authority to remedy or otherwise address Solicitation errors or defects, relief is limited to cancelation of the Solicitation, issuance of an addendum clarifying or amending the Solicitation, or cancelation, amendment and rebidding of the Solicitation, the election of which is within the sole discretion of the Authority.

3. For protest of the Authority's determination that an Offerer is non-Responsible, relief is limited to reevaluation and reconsideration of the Offer in light of the administrative decision.

4. For protest of a Contract Award, relief is limited to cancelation of the Solicitation, amendment and re-bidding of the Solicitation, or reevaluation and reconsideration of all Responsive Offers in light of the administrative decision, the election of which is within the sole discretion of the Authority.

5. Burden of Proof

The burden of proof for protests filed under these Procedures is preponderance of the evidence. The burden of proof is to be borne by the Offerer or Manufacturer filing the protest.

6. Cost

All protest costs incurred by an Offerer or Manufacturer, including but not limited to attorneys fees and costs, shall be considered a cost of the Offer and/or Protest and

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shall be borne entirely by the Offerer or Manufacturer, regardless of whether or not the protest is successful.

7. Protest Timing

A. Bid protests of a Solicitation shall be received no later than five business days after the earlier of electronic posting or other publication of the Solicitation.

B. Bid protests of any corrective measures taken by the Authority to remedy or otherwise address Solicitation errors or defects shall be received no later than five business days after electronic posting or other publication of the corrective measures.

C. A protest of the Authority's determination that an Offerer is non-Responsible shall be received no later than the earlier of (i) five business days after email transmission to the Offerer of the letter informing the Offerer of said determination, or (ii) seven business days from the date the letter informing the Offerer of said determination is mailed to the Offerer.

D. A bid protest of a recommended or actual Contract Award issued for an Invitation to Bid shall be received no later than the earlier of (i) five business days after issuance of the Notice of Intent to Award when emailed to the Offerer, or (ii) seven business days from issuance of the Notice of Intent to Award when mailed to the Offerer.

E. A bid protest of a recommended or actual Contract Award issued for a Request for Proposals shall be received no later than the earlier of (i) five business days after issuance of the Notice of Intent to Award when emailed to the Offerer, or (ii) seven business days after issuance of the Notice of Intent to Award when mailed to the Offerer.

F. A bid protest of a recommended or awarded exclusive right to negotiate pursuant to a Request for Qualifications shall be received no later the earlier of (i) five business days after issuance of the Notice of Intent to Award an exclusive right to negotiate when emailed to the Offerer, or (ii) seven business days after issuance of the Notice of Intent to Award an exclusive right to negotiate when mailed to the Offerer.

G. The deadlines set forth in this section shall be extended if, prior to the last day the protest is due an Offerer requests inspection and/or copying of public records

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related to a bid protest. In such cases, the deadline to file the protest will be extended by the number of days it takes the Authority to make the requested records available for inspection and/or reproduction. For example, if on the fifth day after issuance of the Solicitation an Offerer submits a request for records related to the Solicitation, and it takes the Authority two days in which to make the records available for inspection/reproduction, then the Offerer's deadline for filing the bid protest would be extended by two days. Similarly, if on the third day after the Board's decision to award the contract an Offerer submits a request for records related to the Solicitation, and it took the Authority three days in which to make the records available for inspection/reproduction, then the Offerer's deadline for filing the bid protest would be extended by three days. If the Authority makes the records available on the same day the request is received, the deadline for filing a bid protest will not be extended.

Protests of the Authority's determination an Offerer is non-Responsible are not eligible for deadline extension under this provision.

8. Protest Filing, Content and Completeness

A. Bid protests must be in writing and delivered to the attention of the Contracts Administrator as designated in the Solicitation. Protests may be filed by mail or in-person or electronically if indicated in the Solicitation, but must be received within the period proscribed in Article 7 above.

B. Bid protests shall clearly state the basis for the protest. At a minimum, the following information shall be included:

1. Protester's name, address, and phone number.
2. Solicitation number and project title.
3. Detailed statement of all factual and legal grounds for the protest, which shall be preceded by this language:

The facts stated in this Bid Protest are true of my own personal knowledge, except as to any matters stated on information and belief, and as to those matters, I am informed and believe them to be true. I am aware that making false statements is a felony under California law and may result in criminal charges including perjury and filing false documents with a public office. (Penal Code §§ 115, 118)

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4. Supporting evidence or documents to substantiate any allegations.

5. Statement of the form of relief requested, as described in Article 4.0 above.

C. Bid protests must be complete at the time of filing. A new protest or amendments to the original protest will not be permitted unless submitted within the original permitted protest period.

D. Bid protests must be signed by the Offerer under penalty of perjury. The signature block shall be preceded by this statement:

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

E. Bid protest of a Contract Award must be served upon the Apparent Awardee as provided in Article 9.

F. A protestor's failure to strictly comply with all the requirements of this Article shall be deemed forfeiture of the right to protest unless such deficiencies are corrected within the originally-permitted protest filing period. The responsibility to understand and comply with the requirements of this Article rests solely with the protestor and the Authority shall be under no obligation to advise protestors of any deficiencies within said original filing period.

9. Service of Protest of Contract Award to Apparent Awardee

Any Offerer filing a bid protest of a Contract Award shall provide a copy of the protest to the Apparent Awardee within two business days of serving the protest upon the Authority. Proof of timely service of said protest upon the Apparent Awardee shall be provided to the Authority upon demand and may be in the form of email, certified mail, hand delivery, express courier such as FedEx or UPS, or any other form of proof of service acceptable to the Authority in its sole discretion.

10. Initial Review and Protest Determination

A. The Contracts Administrator assigned to the Solicitation, in consultation with legal counsel, shall be responsible for the initial review of bid protests and determination as to the timeliness and completeness of the protest in accordance with

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Articles 7 and 8. If a bid protest is determined untimely or incomplete, the Contracts Administrator shall inform the Offerer or Manufacturer of the grounds for the rejection in writing within a reasonable period of time. The Contracts Administrator's determination on the issue of timeliness or completeness is final.

B. The Contracts Administrator shall deliver timely and complete protest and his/her summary of the merits of the protester's assertions to the General Services Director. After examining the merits of the protest and consulting with legal counsel, the General Services Director shall issue the Protest Determination, which shall sustain or deny the protest and explain the reasons for the decision. The Protest Determination shall be served upon the protesting Offerer or Manufacturer within a reasonable period of time following receipt of the bid protest and protest summary from the Contracts Administrator. If the Protest Determination denies the protest, the Protest Determination shall be accompanied by a cover letter that summarizes the grounds for denial and in the case of a protesting Offerer, apprises the Offerer of their right to appeal. In the case of a protest of a Contract Award, the Protest Determination and cover letter, if applicable, shall also be served upon the Apparent Awardee by the Authority.

C. If the General Services Director denies a bid protest of a Solicitation, corrective measures, determination of non-Responsibility, or Contract Award, the protesting Offerer's sole relief is to file an appeal of the Protest Determination as set forth in Article 11.0 below. A Manufacturer does not have standing to appeal from the General Services Director's Protest Determination, which is a final non-appealable decision, as set forth in Article 11.0 below.

D. If the General Services Director sustains a protest of a Solicitation or corrective measures, the Director has the discretion to do any of the following:

1. Order the Solicitation canceled;
2. Issue an addendum clarifying or amending the Solicitation; or
3. Order the Solicitation to be amended and re-bid.

E. If the General Services Director sustains a protest of a determination that an Offerer is non-Responsible, the Director shall order the Offer reevaluated and reconsidered for Contract Award. In such event, the Authority shall notify the Apparent Awardee of said determination within a reasonable period of time generally not to exceed five business days.

F. If the General Services Director sustains a protest of a Contract Award, the Director has the discretion to do any of the following:

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1. Order the Solicitation canceled;
2. Order the Solicitation to be amended and re-bid; or
3. Order all Offers to be reevaluated and reconsidered for Contract Award in light of the Director's Protest Determination.

11. Standing to Appeal; Consequence of Failing to Appeal

A. Any Offerer that timely files an appeal from the General Services Director's Protest Determination has standing to appeal said Determination, provided the Offerer would be the Apparent Awardee if the appeal is sustained.

B. Any Protest Determination that is not the subject of a timely appeal shall become a final, non-appealable decision.

C. A Manufacturer who files a bid protest of a Solicitation does not have standing to appeal from the General Services Director's Protest Determination, which is a final non-appealable decision.

12. Lodging an Appeal of a Protest Determination

A. Any Offerer with standing may appeal the Protest Determination by lodging a written appeal provided the appeal is received within the earlier of (i) five business days after issuance of the Protest Determination when emailed to the Offerer, or (ii) seven business days after issuance of the Protest Determination when mailed to the Offerer. Appeals not received within the requisite appeal period will not be considered by the Authority.

B. The appeal shall clearly state the basis for the appeal and shall be limited to those grounds for protest raised in the original bid protest. At a minimum, the following information shall be included:

1. Appellant's name, address, and phone number.
2. Solicitation number and project title.
3. Detailed statement of all factual and legal grounds for the appeal, which shall be preceded by this language:

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The facts stated in this Appeal of Protest Determination are true of my own personal knowledge, except as to any matters stated on information and belief, and as to those matters, I am informed and believe them to be true. I am aware that making false statements is a felony under California law and may result in criminal charges including perjury and filing false documents with a public office. (Penal Code §§ 115, 118)

4. Statement of the form of relief requested, as described in Article 4.0 above.

C. The appeal must be complete at the time of filing. Failure to submit a complete appeal shall be treated as a forfeiture of the right to appeal unless such deficiencies are corrected within said five-day period. The responsibility to understand and comply with the requirements of this Article rests solely with the protestor and the Authority shall be under no obligation to advise protestors of any deficiencies within said five-day period.

D. The appealing Offerer has the discretion to request an administrative hearing, which, if requested, shall be scheduled, noticed and conducted as set forth herein.

E. If an administrative hearing is not requested, the Contracting Officer shall make his/her final decision based on the administrative record, which shall be comprised of the Protest Determination and all supporting evidence considered by the General Services Director, the Offerer's written appeal and staff's written analysis of the same, if prepared. If a staff analysis is prepared, a copy of the analysis shall be provided to the Offerer at no charge. Staff shall ensure any portion of the analysis that contains legal advice or work product is redacted to preserve the Authority's attorney client and work product privileges.

13. Notice and Scheduling of Administrative Hearing

A. Upon receipt of an appeal containing a request for administrative hearing, the Contracting Officer shall provide the appealing Offerer with three dates and times for the administrative hearing, which shall be conducted at the Authority's business office at 2600 Wilshire Boulevard, Los Angeles during regular business hours. The hearing should be scheduled as soon as practicable but allow sufficient time to provide notice and a reasonable opportunity to prepare for the hearing.

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B. Once the appealing Offerer and Authority agree upon the date, time and place for the administrative hearing, the Contracting Officer or designee shall prepare a Notice of Administrative Hearing (“Hearing Notice”). No later than ten days prior to the hearing, the Hearing Notice shall be served upon the appealing Offerer and where applicable, the Apparent Awardee.

14. Dismissal of Appeal

A. If the appealing Offerer fails or refuses to accept one of the three suggested hearing dates and times, and following reasonable efforts to accommodate the protester’s schedule (not to exceed ten days) the Contracting Officer is unable to schedule an administrative hearing, the appeal shall be dismissed and all the protest rights otherwise afforded to the appealing Offerer shall be deemed waived unless approved by the Contracting Officer. The Apparent Awardee shall be notified of these circumstances within three days of such determination.

B. If the appealing Offerer fails to appear at a noticed administrative hearing, the appeal shall be dismissed and all the protest rights otherwise afforded to the appealing Offerer shall be deemed waived. In such event, the Apparent Awardee shall be notified within three days.

15. Conducting Appeal of a Protest Determination

A. Prior to the administrative hearing, the Contracting Officer shall be provided with a copy of the administrative record, which shall be comprised of the Protest Determination, all supporting materials considered by the General Services Director, and the Offerer’s written appeal. Staff shall ensure any supporting materials that contain legal advice or work product are redacted to preserve the Authority’s attorney client and work product privileges.

B. At the administrative hearing, the Contracting Officer shall consider the administrative record, and all written and oral testimony offered at the hearing in support or in protest of the proposed action, provided such evidence and testimony is relevant to the issues of the hearing. The Contracting Officer has the authority to determine the relevance of any evidence to the issues of the hearing. The Contracting Officer also has the authority to exclude unduly repetitious and cumulative evidence, regardless of its relevancy.

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16. Contracting Officer's Final Decision

A. The Contracting Officer shall issue a final written decision on the matter within twenty business days of the administrative hearing. The decision shall contain a brief summary of the evidence considered, findings of fact and a determination of the issues presented.

B. If a written decision cannot be made within twenty business days, the appealing Offerer and, if applicable, the Apparent Awardee bidder shall be provided written notice with an estimated date of the decision and reasons for the extension.

17. Stays Pending Resolution; Set Aside of Successful Protest

A. Solicitations and Contract Awards need not be stayed pending resolution of protests unless the Contracting Officer determines such action would be in the best interest of the Authority.

B. In the case of a successful protest, the Contracting Officer has the discretion to set aside the decision and award the contract to the Apparent Awardee if, based on compelling circumstances such as an emergency, serious disruption of the Authority's operations and/or forfeiture of funding, the re-Solicitation or termination of the Contract Award and/or re-award, would not be in the Authority's best interests.

18. Record Production and Recordkeeping

A. The release of public records relating to Solicitations shall be subject to the following:

1. Public records concerning a Solicitation involving an Invitation to Bid shall be made available immediately following bid opening, after sufficient time is allotted to permit staff to remove or redact records in accordance with the Public Records Act.

2. Public records concerning a Solicitation involving a Request for Proposals shall be made available concurrent with the issuance of the Notice of Intent to Award, after sufficient time is allotted to permit staff to remove or redact records in accordance with the Public Records Act.

3. Public records concerning a Solicitation involving a Request for Qualifications (or similar qualification-based Solicitation), shall be made available

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immediately following Contract Award, after sufficient time is allotted to permit staff to remove or redact records in accordance with the Public Records Act.

B. Nothing set forth above shall in any way restrict the Authority from withholding or redacting records to the extent permitted by the California Public Records Act.

C. Official records associated with bid protests conducted under these Procedures, including correspondence, notices and research materials, shall be retained in the Procurement file for the duration of time specified in the Authority's Record Retention and Disposition Schedule. All privileged materials shall be identified in the file to guard against accidental disclosure and unauthorized release.

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