

# PROCEDURES FOR PROTESTS OF THE AWARD OF SMALL PURCHASE (INFORMAL) CONTRACTS

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## INTRODUCTION

These Procedures for Protests of the Award of Small Purchase (Informal) Contracts ("Procedures") are established for the Housing Authority of the City of Los Angeles (the "Authority") in support of the Authority's Procurement Policy and in accordance with 2 CFR 200.318(k).

### 1. DEFINED TERMS

For purposes of these Procedures:

"Administrative Authority" means Deputy General Counsel or other person with responsibility for the direct supervision of the Authority's procurement activities or designee.

"Contract Awardee" means the Offeror selected for Contract Award following the close of a solicitation that is subject to these Procedures.

"Contract Award" means the Authority's decision to award a contract or purchase order that follows from a solicitation that is subject to these Procedures.

"Day" or "Days" means calendar days unless expressly stated otherwise. For purposes of computing time for purposes of the deadlines set forth herein, Saturdays, Sundays, and legal holidays observed by the Authority are excluded.

"Notice of Award" means the Notice prepared by the Authority to inform Offerors of the award of the Contract to the Contract Awardee. The issue date for the Notice of Award is the earlier of the date of electronic posting, mailing or other publication.

"Offer" means a response to a solicitation that is subject to these Procedures.

"Offeror" means a person or entity that submitted an Offer in response to a solicitation that resulted in an award of a Small Purchase Contract, and includes bidders and proposers.

"Purchasing Agent" means the Authority employee who, under managerial direction, is responsible for the solicitation and award of the Small Purchase Contract that is the subject of a protest under these Procedures.

"Responsible Offeror" means an Offeror who, at the time of submission of an offer, has affirmatively demonstrated the general standards of contractor responsibility, including, when necessary, the responsibility of its proposed subcontractors. A "Responsible Offeror" is one who meets the following standards: (i) an Offeror who has a satisfactory record of business integrity and has demonstrated the attribute of trustworthiness; (ii) an Offeror who has adequate financial resources or the ability to obtain such resources as required during performance of the contract; (iii) an Offeror who has ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments; (iv) an Offeror who has a satisfactory record of performance; (v) an Offeror who is qualified and eligible to receive an award under applicable laws and regulations; (vi) an Offeror who has the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them; and (vii) an Offeror who has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them.

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“Small Purchase Contract” means a contract or purchase order awarded pursuant to the Authority’s simple and informal procurement method for securing construction and maintenance work, goods and services that do not exceed the yearly aggregate amount of the applicable Simplified Acquisition Threshold, which is specified in the Authority’s Procurement Policy.

## **2. APPLICABILITY**

A. Subject to the limitations stated herein, any award of a Small Purchase Contract may be the subject of a protest under these Procedures.

B. Sole source, piggyback and cooperative purchasing contract awards are not competitively procured contracts and are therefore not subject to these Procedures.

C. Contracts for Services are awarded on the basis of “Best Value.” For purposes of these Procedures, “best value” shall mean a determination that follows from a procurement process in which, based upon the overall evaluation of price and qualitative factors such as qualifications, experience, expertise, work plan, staffing and past performance, as judged against the solicitation’s evaluation criteria, an award selection is made that offers the most advantageous value to the Authority under the circumstances. The Authority has the sole discretion to determine which offer represents the “best value” to the Authority. The Authority’s “best value” determination is not subject to these Procedures.

## **3. STANDING TO PROTEST**

Any Offeror determined eligible for Contract Award as a Responsible Offeror whose offer would have been awarded a Small Purchase Contract but for the one of the grounds in Section 4 below has standing to file a protest of an award of a Small Purchase Contract under these Procedures.

## **4. GROUNDS FOR PROTESTING AN AWARD**

A. Grounds for protesting an award of a Small Purchase Contract under these Procedures shall be based on the following:

- (1) The specifications or scope of services give an unfair advantage to an Offeror;
- (2) Limitations or restrictions imposed by the solicitation effectively exclude small or disadvantaged businesses, including Minority Business Enterprises (MBEs), Women’s Business Enterprises (WBEs) and Labor Surplus Area Businesses;
- (3) The proposed evaluation criteria are contrary to a higher legal authority such as a state or federal statute or regulation;
- (4) Evidence of a material conflict of interest involving the Authority, its officers or employees and the Contract Awardee;
- (5) The Contract Awardee’s Offer imposes conditions that materially modify requirements of the solicitation, contains a variance that gives the Awardee a substantial benefit or advantage not enjoyed by the other Offerors or otherwise fails to conform to the material terms and conditions of the solicitation and/or violates applicable laws, regulations and the Authority’s Procurement Policy; and/or

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(6) In awarding the Small Purchase Contract, the Authority applied different evaluation criteria than were specified in the solicitation and/or there is clear evidence of a miscalculation of pricing that had a material impact on the contract award.

## 5. AVAILABLE RELIEF

Relief for protest of an award of a Small Purchase Contract is limited to reevaluation and reconsideration of all Responsive Offers in light of the Authority's Protest Determination (see Initial Review and Protest Determination section below).

## 6. 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 Offeror filing the protest.

## 7. COST

All protest costs incurred by an Offeror, including but not limited to attorney fees and costs, are considered a cost of the Offer and/or protest and shall be borne entirely by the Offeror, regardless of whether or not the protest is successful.

## 8. PROTEST TIMING

Protests of the award of a Small Purchase Contract must be received by the Authority no later than five (5) days following the earlier of (i) the day the Authority posts the Notice of Award on LA-BAVN, or (ii) the day the Purchasing Agent transmits Notice of Award by email to the Offerors that participated in the solicitation. In the event the Authority either fails to post the Notice of Award on LA-BAVN or the Purchasing Agent fails to transmit Notice of Awards to Offerors that participated in the solicitation, protest of the award must be received by the Authority no later than seven (7) days following the bid submission deadline stated in the solicitation. The deadlines to file a bid protest stated herein shall be extended, if prior to expiration of said periods, an Offeror requests inspection and/or copying of public records necessary to file 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.

## 9. PROTEST FILING, CONTENT AND COMPLETENESS

A. Protests shall be in writing and delivered to the attention of the Authority's Purchasing Agent. Protests may be filed by mail, in-person or electronically, but must be received within the period proscribed in the Protest Timing section above.

B. 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) Sufficient details to enable the Authority to identify the contract that is the subject of the protest.

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(3) Detailed statement of all factual and legal grounds for the protest, which shall be preceded by this language:

The facts stated in this 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)

(4) Supporting evidence or documents to substantiate any allegations.

C. Protests shall be complete at the time of filing. A new protest or amendments to the original protest will not be permitted unless submitted within the originally-permitted protest filing period.

D. Protests shall be signed by the Offeror 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. A protestor's failure to strictly comply with all the requirements of this section 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 section rests solely with the protestor. The Authority is under no obligation to advise protestors of any deficiencies within said original filing period.

### 10. INITIAL REVIEW AND PROTEST DETERMINATION

A. The Purchasing Agent is responsible for the initial review of the protest and determination as to its timeliness and completeness. If a protest is determined untimely or incomplete, the Purchasing Agent will inform the Offeror of the grounds for the rejection in writing within a reasonable period of time. The Authority's determination on the issue of timeliness or completeness is final and non-appealable.

B. The Purchasing Agent is responsible for delivering timely and complete protests along with his/her summary of the merits of the protester's assertions to the Administrative Authority.

C. After examining the merits of the protest, the Administrative Authority will issue the Protest Determination, which will sustain or deny the protest and explain the reasons for the decision. The Administrative Authority's Protest Determination is a final, non-appealable decision.

D. The Protest Determination will be served upon the protesting Offeror within a reasonable period of time following receipt of the protest and protest summary from the Purchasing Agent. If the Administrative Authority denies the protest, the Protest Determination will be accompanied by a cover letter that summarizes the grounds for denial.

E. If the Administrative Authority sustains the protest, the Administrative Authority has the discretion to:

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- (1) Order the solicitation canceled;
- (2) Order all Offers to be reevaluated and reconsidered for contract award in light of the Protest Determination; or
- (3) If the Administrative Authority determines that the re-solicitation or reconsideration of the contract award would not be in the Authority's best interests, the Administrative Authority may set aside the Protest Determination and approve award of the contract to the Contract Awardee. In such cases, the Protest Determination will be accompanied by a cover letter that summarizes the grounds for the Administrative Authority's determination that the re-solicitation or reconsideration of the contract award would not be in the Authority's best interests.

### **11. STAYS PENDING RESOLUTION; SET ASIDE OF SUCCESSFUL PROTEST**

Contract Awards need not be stayed pending resolution of protests unless the Administrative Authority determines such action would be in the best interest of the Authority.