


<b>Purchasing Services Section Standard Operating Procedure</b> 		
Subject: <b>PROTESTS</b>	Number <b>19</b>	Supersedes
Approval: _____ <b>Nancy Locke</b> <b>City Purchasing Manager, Purchasing Services Section</b>	Effective 10-28-07	Page

**PURPOSE:** To provide a fair, deliberative process for protest complaints that provides a clear understanding of the basis and procedures for protests, while recognizing and preserving the City needs to proceed promptly forward with City acquisitions and the rights to act within the judgment and responsibility authorized to the City.

**DEFINITIONS:**

1. **Bid:** form of solicitation, such as an Invitation to Bid, a Request for Proposal, or a Request for Qualifications.
2. **Buyer:** Any Purchasing Services staff assigned authority to perform buying responsibilities, such as Principal Buyer, Senior Buyer and Buyer.
3. **Complaint:** An objection by an interested party, made before the bid submittal deadline, to any term, condition, instruction, specification, or other matter known prior to the bid submittal deadline.
4. **Inquiry:** An objection by any party to any procedure, form, decision or action of the City, but that does not follow the form or content of a protest or complaint.
5. **Interested Parties:** Parties that have standing due to an interest in the award as defined herein. Prior to a bid submittal deadline, this includes any party who declares an interest in the solicitation. Following the bid submittal deadline, interested parties include only bidders who submitted a bid or response to the solicitation.
6. **Protest:** A formal, written statement that states objection to a bid fact or procedure submitted at the time of or following the bid due date, which is clearly marked as a protest action, compliant to the form and content required by the City and within the deadlines given.
7. **Protesting Party:** An interested party that has officially submitted a complaint to the City.
8. **Protesting Bidder:** A bidder, with standing to submit a protest that has officially submitted a complaint to the City.
9. **Written Notice:** Fax or traditional written correspondence shall satisfy the definition of written notice.

1. **REFERENCE:**
  - a. SMC: 3.18.150
  - b. RCW: NA
  
2. **RESPONSIBILITIES:**

Buyers will maintain records in the Contract File of protest correspondence.
  
3. **POLICY:**
  - a. Purchasing Services shall provide a fair and deliberative opportunity for interested parties with standing, to issue complaints or protests regarding bid or actions by Purchasing Services.
  
  - b. Before Bids/RFP are Due – Complaints: Matters of concern prior to a bid/RFP submittal deadline shall be known as complaints. Purchasing Services encourages complaints to be brought forward as soon as practicable, to allow the City to correct errors or resolve concerns before binding decisions have been made. Purchasing Services shall utilize a complaint process to allow interested parties to issue a complaint over any practice, procedure or specification, that the interested party finds unfair and violating fair and equitable practices. The Buyer receiving a complaint shall investigate and respond, to ensure that the complaint is been properly resolved before the bid submittal deadline.
  
  - c. After Submittal Deadline has passed – Protests: The City has the authority to make responsible decisions and judgments, and to proceed with City business accordingly. Therefore, not all decisions and bid actions shall be available as a matter of protest. Protests submitted after the bid deadline must stipulate an issue of fact concerning the following subjects will be considered:
    1. A matter of bias, discrimination, or conflict of interest on the part of an individual involved in the evaluation of bids;
    2. Errors in computing score;
    3. Non-compliance with procedures described in the solicitation or in City policy.
  
  - d. Purchasing Services shall make available to all vendors the specific instructions for submittal of a protest or complaint.
  
  - e. Purchasing Services shall consider all protests and complaints that are submitted in compliance to the established procedures, to ensure that the City can learn of any concerns and properly correct such matters.
  
  - f. Purchasing will establish time frames for protest submittals that are designed to provide adequate opportunity for a protesting bidder to submit, while also being rapid enough to allow the award process to continue forward without undue delay.
  
  - g. The City retains the right to enter into any contract and nothing herein shall be construed to limit that authority in any manner.

## **PROCEDURES:**

1. **Late Protests and Complaints:** Only protests and complaints received within the required time for protest action are accepted for consideration.
2. **Notification to Purchasing Manager:** The Buyer shall provide prompt notice to the City Purchasing Manager of all complaints, any stated intention to protest, and upon any protest submitted in writing.
3. **Holding Award Actions:** The Buyer and City Purchasing Manager shall normally delay contract execution until the protest and appeal process is exhausted. However, the City Purchasing Manager may direct the Buyer to enter into a contract if necessary and/or appropriate in the interest of the City.
4. **Pre-Bid Complaints:** **Prior to the bid deadline, certain aspects are known to all bidders and complaints on such matters are to be made prior to the bid submittal deadline.** If an interested company believes the solicitation unduly constrains competition, contains inadequate or improper criteria (whether within the solicitation document, terms, conditions, instructions, specifications, pre-bid conference, minimum qualifications, or other solicitation materials), interested parties are to submit a written complaint to the City Buyer by 5:00 PM (Pacific Time) no later than five (5) business days before the solicitation due date, unless stated otherwise in the Bid solicitation document. The form and content shall comply with all procedures named for protests, below. Those that have not indicated a formal complaint in writing to such conditions within this time frame, waive their right to protest such issues after the bid deadline.
5. **Protest Procedure:** The following protest procedures are available to companies that submitted a solicitation bid/response.

**Protest Deadlines:** Protests must be filed in writing no later than 5:00 PM (Pacific Time) on the third (3<sup>rd</sup>) business day following Announcement of Apparent Successful Bidder except as provided immediately below. If the bidder requests and requires materials from a Public Disclosure Request within the protest deadline (3-days) with the intention of reviewing the materials for a protest, the Buyer may delay the protest deadline for that individual bidder to be 3 days following the release of the public information.

If the Bidder wants to protest but needs Public Disclosure materials to finish their protest:

- The Public Disclosure Request must be submitted before the third (3<sup>rd</sup>) business day following the Announcement of Apparent Successful Bidder.
- The protestor must also file a written intention to protest before the close of the third (3<sup>rd</sup>) business day.
- In the event Purchasing can not release the requested materials in time to allow the bidder to reasonably consider the materials before the 3<sup>rd</sup> business day of the protest deadline, Purchasing may extend the protest deadline for one additional

business day after the release of the materials. That delay would only apply to that particular protesting party.

Announcement of Apparent Successful Bidder: The Buyer shall announce the apparent successful bidder. The Buyer can post on the City Website, send by e-mail or fax to responding bidders, or any other appropriate means.

- Purchasing will make efforts to assure that the announcement is distributed to Bidders that may have an interest.
- Once the announcement is released by the Buyer, the protest time frame begins. The timeframe is not based upon when the Bidder receives the information, but rather when the announcement is issued by the Buyer.
- The Buyer is not responsible to assure that vendors receive the announcement. It is the responsibility of the Bidder to obtain the announcement from the Buyer.

Notice of an intention to protest does not substitute for filing of a protest following the form and content required within the deadlines stated, except when Public Disclosure materials are pending as described previously. An inquiry or verbal complaint is also not a substitute for a protest filed within these procedures.

Grounds for Protest: Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination, or conflict of interest on the part of an individual involved in the Evaluation of the Bids;
- Errors in computing score;
- Non-compliance with procedures described in the solicitation or City policy.

Protests must be in Writing: Protests shall be in writing, signed by the company representative, and must clearly state that the bidder is submitting a formal protest. Protests will be filed with the City Purchasing Manager.

Submittal Options: Delivery by hand, e-mail, mail or fax is acceptable. It is not the responsibility of the City to assure the protest is received within the time frame stipulated, and failure of the City to receive the protest in a timely manner will result in rejection of the protest.

Form and Content: Protests must include the following. Failure to respond to each of the following may result in rejection of the protest:

- a. Information about the protesting company: company name, mailing address, phone number, and name of individual responsible for submission of the protest;
- b. Specify the City Solicitation number or identifier and title with sufficient information to clearly identify the Solicitation;
- c. Specific and complete statement of the action(s) protested;
- d. Specific reference to the grounds for the protest
- e. A description of the relief or corrective action being requested must be stated.

- f. Demonstrate that every reasonable effort was made within the schedule provided, to resolve the basis of the protest. Efforts to resolve the protest would include asking questions, seeking clarification, requesting addenda, and otherwise alerting the City to any perceived problems that corrective action may be taken prior to the selection of the apparent successful Vendor.

City Protest and Appeals Process: The Protesting Bidder may appeal a decision issued by the Purchasing Manager. This appeal will be made to the Purchasing & Contracting Services Director as follows:

- a. The City Purchasing Manager shall review the protest upon receipt. All available facts will be considered and the City Purchasing Manager shall issue a decision. This decision shall be delivered in writing to the Protesting Bidder.
- b. The Protesting Bidder has a right of appeal to the Purchasing & Contracting Services Director no later than 5:00 PM (Pacific Time) by the third (3<sup>rd</sup>) business day following issuance of the City Purchasing Manager decision.
- c. The Director shall review the protest. The Director shall make a determination in writing to the Bidder.

Protest Determination: Each review and determination of the protest shall issue a decision that either:

- a. Finds the protest lacking in merit and upholds the City action; or
- b. Finds only technical or harmless errors in the City acquisition process and determines the City to be in substantial compliance and therefore reject the protest; or
- c. Finds merit in the protest and provides options for correction including but not limited to, correcting the errors and re-evaluating the bids, reissuing the bid to begin a new process, or entering into a contract that remedies the protest finding; or
- d. Makes other findings and determines other courses of action as appropriate.

If the protest process and all appeals determine the Protest is without merit, Purchasing Services may continue to enter into a contract with the apparent successful contractor. If the protest is determined to have merit, one of the alternatives noted in the proceeding paragraph will be taken.

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

Bidders have the right to protest as described below. Whether concerns are about a Request for Proposal Process (RFP) or an Invitation to Bid (ITB), the following shall apply.

The term “Bids” shall refer to either an RFP or an ITB process.

#### **Table of Contents:**

- Inquiry or Intention does not Constitute a Protest
- Protest on Items Known – or that should have been known - before the Bid Deadline
- Protest on Items Known After the Bid Deadline
- Form and Content for Protests
- Appeals for Protests

**Inquiry or Intention does not constitute a Protest:** Notice of an intention to protest does not substitute for filing of a protest following the form and content required within the deadlines stated. Further, casual inquiry or complaint that does not specifically identify the purpose as a protest, and does not comply with the form, content and deadlines herein, are also not considered or acted upon as a protest action.

#### **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 events or decisions made before the solicitation deadline,
  - Complaints that the solicitation unduly constrains competition through improper minimum qualifications or specifications,
  - 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 RFP or ITB did not provide adequate information or contained an improper criteria;
  - Other matters known or that should have been known, to interested bidders by reading the solicitation document.
- 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 following issuance of the Intention to Award decision by the City Buyer.

- The Buyer will announce rejection of a bid for responsiveness or responsibility. This announcement will go to the affected Bidder. If the affected Bidder finds cause to file a protest, the protest 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 final “Intent to Award” announcement shall be made by the City Buyer. Protests regarding final award decisions that had not been previously announced by the City Buyer, must be made within three business days of the City Announcement of Apparent Successful Bidder.
- If the Bidder requires public information to declare a protest, the Bidder must request such information within the three business days following issuance of the Intention to Award decision. If a request is filed, the City may chose to extend the protest deadline to three additional days following receipt of the public information.

The Buyer shall make efforts to distribute the announcement to the affected bidder(s), such as posting on the City website or mailing the notice to the affected bidder(s). However, it is the Bidder 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 formats. 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 will be rejected.

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FAX: 206-233-5155

Include the following information in your protest letter. Failure to provide the following information could 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
- e. Indicate what relief or corrective action you believe the City should make.
- f. Demonstrate that every reasonable effort was made within the schedule provided, for you to resolve the basis of the protest during the process, including asking questions, seeking clarification, requesting addenda, and otherwise alerting the City to any perceived problems.
- g. Signed by an authorized agent of the company.

**Protest Process and Appeals:**

- a. The City Purchasing Manager will review the protest. All available facts will be considered and the City Purchasing Manager 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 City Purchasing Manager has 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 Purchasing & Contracting Services Director. The appeal is limited to only those matters brought forward to the City in the original protest. The appeal must clearly state why the City Purchasing Manager decision 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 City Purchasing Manager decision. This appeal shall be delivered by the Protesting vendor, in writing through e-mail, fax or mailed notice to the Purchasing and Contracting Services Director.
- d. The Purchasing and Contracting Services 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.