

Sec. 18-103. Disputes and legal remedies.

The following procedure in sections 18-104 through 18-107 shall be used for arriving at early settlement of grievances by interested parties who have participated in the city's procurement process.

Sec. 18-104. Resolution of protested solicitations and awards.

- (a) Right to protest. The following procedures shall be used for resolution of protested solicitations and awards except for purchases of goods, supplies, equipment, and services, the estimated cost of which does not exceed \$25,000.

Protests thereon shall be governed by the Administrative Policies and Procedures of Purchasing.

1. Protest of Solicitation.

i. Any prospective proposer who perceives itself aggrieved in connection with the solicitation of a Contract may protest to the Chief Procurement Officer. A written notice of intent to file a protest shall be filed with the Chief Procurement Officer within three days after the Request for Proposals, Request for Qualifications or Request for Letters of Interest is published in a newspaper of general circulation. A notice of intent to file a protest is considered filed when received by the Chief Procurement Officer; or

ii. Any prospective bidder who intends to contest Bid Specifications or a bid solicitation may protest to the Chief Procurement Officer. A written notice of intent to file a protest shall be filed with the Chief Procurement Officer within three days after the bid solicitation is published in a newspaper of general circulation. A notice of intent to file a protest is considered filed when received by the Chief Procurement Officer.

2. Protest of Award.

i. Any actual proposer who perceives itself aggrieved in connection with the recommended award of Contract may protest to the Chief Procurement Officer. A written notice of intent to file a protest shall be filed with the Chief Procurement Officer within two days after receipt by the proposer of the notice of the City Manager's recommendation for award of Contract. The receipt by proposer of such notice shall be confirmed by the city by facsimile or electronic mail or U.S. mail, return receipt requested. A notice of intent to file a protest is considered filed when received by the Chief Procurement Officer; or

ii. Any actual Responsive and Responsible Bidder whose Bid is lower than that of the recommended bidder may protest to the Chief Procurement Officer. A written notice of intent to file a protest shall be filed with the Chief Procurement Officer within two days after receipt by the bidder of the notice of the city's determination of non responsiveness or non responsibility. The receipt by bidder of such notice shall be confirmed by the city by facsimile or electronic mail or U.S. mail, return receipt requested. A notice of intent to file a protest is considered filed when received by the Chief Procurement Officer.

iii. A written protest based on any of the foregoing must be submitted to the Chief Procurement Officer within five (5) days after the date the notice of protest was filed. A written protest is considered filed when received by the Chief Procurement Officer.

The written protest may not challenge the relative weight of the evaluation criteria or the formula for assigning points in making an award determination.

The written protest shall state with particularity the specific facts and law upon which the protest of the solicitation or the award is based, and shall include all pertinent documents and evidence and shall be accompanied by the required Filing Fee as provided in subsection (f). This shall form the basis for review of the written protest and no facts, grounds, documentation or evidence not contained in the protester's submission to the Chief Procurement Officer at the time of filing the protest shall be permitted in the consideration of the written protest.

No time will be added to the above limits for service by mail. In computing any period of time prescribed or allowed by this section, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. Intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation of the time for filing.

(b) Authority to resolve protests. The Chief Procurement Officer shall have the authority, subject to the approval of the City Manager and the city attorney, to settle and resolve any written protest. The Chief Procurement Officer shall obtain the requisite approvals and communicate said decision to the protesting party and shall submit said decision to the City Commission within 30 days after he/she receives the protest. In cases involving more than \$25,000, the decision of the Chief Procurement Officer shall be submitted for approval or disapproval thereof to the City Commission after a favorable recommendation by the city attorney and the City Manager.

(c) Compliance with filing requirements. Failure of a party to timely file either the notice of intent to file a protest or the written protest, together with the required Filing Fee as provided in subsection (f), with the Chief Procurement Officer within the time provided in subsection (a), above, shall constitute a forfeiture of such party's right to file a protest pursuant to this section. The protesting party shall not be entitled to seek judicial relief without first having followed the procedure set forth in this section

(d) Stay of Procurements during protests. Upon receipt of a written protest filed pursuant to the requirements of this section, the city shall not proceed further with the solicitation or with the award of the Contract until the protest is resolved by the Chief Procurement Officer or the City Commission as provided in subsection (b) above, unless the City Manager makes a written determination that the solicitation process or

the Contract award must be continued without delay in order to avoid an immediate and serious danger to the public health, safety or welfare.

(e) Costs. All costs accruing from a protest shall be assumed by the protestor.

(f) Filing Fee. The written protest must be accompanied by a filing fee in the form of a money order or cashier's check payable to the city in an amount equal to one percent of the amount of the Bid or proposed Contract, or \$5000.00, whichever is less, which filing fee shall guarantee the payment of all costs which may be adjudged against the protestor in any administrative or court proceeding. If a protest is upheld by the Chief Procurement Officer and/or the City Commission, as applicable, the filing fee shall be refunded to the protestor less any costs assessed under subsection (e) above. If the protest is denied, the filing fee shall be forfeited to the city in lieu of payment of costs for the administrative proceedings as prescribed by subsection (e) above.

Sec. 18-105. Resolution of Contract disputes.

(a) Authority to resolve Contract disputes. The City Manager, after obtaining the approval of the city attorney, shall have the authority to resolve controversies between the Contractual Party and the city which arise under, or by virtue of, a Contract between them; provided that, in cases involving an amount greater than \$25,000, the City Commission must approve the City Manager's decision. Such authority extends, without limitation, to controversies based upon breach of Contract, mistake, misrepresentation or lack of complete performance, and shall be invoked by a Contractual Party by submission of a protest to the City Manager.

(b) Contract dispute decisions. If a dispute is not resolved by mutual consent, the City Manager shall promptly render a written report stating the reasons for the action taken by the City Commission or the City Manager which shall be final and conclusive. A copy of the decision shall be immediately provided to the protesting party, along with a notice of such party's right to seek judicial relief, provided that the protesting party shall not be entitled to such judicial relief without first having followed the procedure set forth in this section.

Sec. 18-106. Remedies prior to award.

If prior to Contract award it is determined that a solicitation or proposed award is in violation of law, then the solicitation or proposed award shall be cancelled by the City Commission, the City Manager or the Chief Procurement Officer, as may be applicable, or revised to comply with the law.