

PP-04-09 BID PROTESTS AND APPEALS

I. OVERVIEW

It is the intent of the District to provide an efficient administrative process to bidders and proposers (including in the District's Bond Program) that have participated in a competitive procurement process and believe that the intended award of a contract does not comply with the procurement's terms, conditions, and/or applicable law.

This section also establishes the rules and procedures for vendors and/or suppliers to protest a recommended award resulting from requests for quotes, requests for qualifications, invitations for bids, requests for proposals and other formal procurements. (This section does not apply to non-competitive or informal purchases.) Bidders, proposers, vendors and suppliers are collectively referred to hereinafter as "Bidders."

The District previously had separate procedures for protests relating to Bond Program procurements and for non-Bond Program purchases. This procedure replaces both prior procedures, providing a single process for general procurements above the statutory bid threshold and for contracts procured through the Bond Program.

These procedures extend to bids that are deemed non-responsive and Bidders that are deemed to be non-responsive. Different rules and procedures apply to procurements below and above the statutory bid threshold.

Since most procurements below the statutory bid threshold are delegated to the colleges and procurement regions and are transacted informally, the corresponding protest procedures are abbreviated and college-based. Because procurements equal to or above the bid threshold are transacted in a more formal manner, with resulting contracts requiring approval from the Board of Trustees prior to award, the protest process is correspondingly more formal.

Compliance with these protest procedures is mandatory for all challenges to District awards. Bidders who do not strictly follow these procedures waive any right to challenge the contract award.

II. PROCESS

A. Procurements and purchases above statutory bid threshold

1. Application

This section applies to solicitations that are either (1) estimated to equal or exceed the statutory bid threshold or (2) issued by the Bond Program (Measures A, AA, CC, and/or J)

2. Filing of protest

A Bidder that has timely submitted a bid to the District under a solicitation and wishes to file a protest against an intended award shall comply with the following:

- a. Submit the protest in writing to either:
 - (i) If the solicitation was issued by the Bond Program, then to the Chief Facilities Executive at the District's offices at 770 Wilshire Boulevard, Los Angeles, California 90017 (District Office), with a copy to the Program Management Office, at 1055 Corporate Center Drive, Monterey Park, CA 91754; or
 - (ii) If the solicitation was issued by District's Procurement Unit, then to the Director of Business Services at the District Office at 770 Wilshire Boulevard, Los Angeles, California 90017 .
 - (iii) If the solicitation was issued by the District's Facilities Planning and Development Office, then to the Director of Facilities Planning and Development at the District Office at 770 Wilshire Boulevard, Los Angeles, California 90017.
- b. Protests must be received by the District within five (5) business days of notification to the Bidder in writing of any of the following: 1) of the proposed award 2) that the bid is nonresponsive 3) that the bidder has been determined to be non-responsible or 4) that the bid has or will otherwise be rejected, whichever occurs earlier. In the event that there is no notification then the protest must be submitted within five (5) business days prior to the Board's action approving the award.
 - (i) If District staff determines or intends to recommend that the Board determine a Bidder to be not responsible, then the Bidder shall be given written notice containing the reason(s) for the proposed non-responsibility finding prior to the award of the contract. If a bidder submits a protest of such a proposed non-responsibility finding and requests a hearing on the Bidder's responsibility, it must be submitted within five (5) business days of such notice. District staff shall review any such protest and if a hearing is required, it shall be subject to the hearing procedures set forth in District Administrative Regulation B-29.

- c. The protest must state in writing the basis for the protest, all facts and information in support thereof, and the remedy sought. The protest must be signed under penalty of perjury under the laws of the State of California, and be accompanied by any documents that support the basis of the protest.
- d. The protest must include the e-mail address where further correspondence and notice regarding the protest shall be sent.

3. Initial action on protest

- a. The Chief Facilities Executive or Director of Business Services (whichever is applicable to the procurement) must take one of the following actions within ten (10) business days of timely receipt of a protest:
 - (i) Cancel the notice of intended award and refer the matter back the unit handling the procurement for further action;
 - (ii) Cancel the procurement; or
 - (iii) Reject the protest.
- b. Unless the Chief Facilities Executive or Director of Business Services extends to the time to take action, a failure to act within the time shall be deemed a rejection of the protest at the close of business on the tenth business day.
- c. The Chief Facilities Executive or Director of Business Services may, but shall not be obligated to, request additional information from the protestor or request a response or information from the intended awardee prior to taking action on the protest, in which case the time for acting on the protest shall be extended to ten (10) business days from receipt of the requested information.

4. Appeal

- a. If the action is to reject the protest, the protestor may file a written appeal within three (3) business days from notice of the rejection or the failure to take action on the protest. The appeal must be filed at the same location as the initial protest, and must clearly reference the underlying protest and the request for an appeal hearing.

- b. At any time prior to the appeal hearing, the Chancellor may cancel the notice of intended award or refer the matter back the unit handling the solicitation for further proceedings or cancel the solicitation.

5. Appeal hearing

- a. Notice of the hearing date and time and place of the appeal shall be given in writing within fifteen (15) business days from the date of receipt by the District of a timely written appeal. The hearing shall occur no earlier than five (5) business days after the date that notice of the hearing is given.
- b. The intended awardee shall also be given notice of the hearing and a copy of the protest and shall have the opportunity to attend the hearing and to submit evidence prior to or at the hearing.
- c. The hearing shall be set before either (1) a designated hearing officer, or (2) a standing committee or subcommittee of the Board (“Hearing Officer”). The designation of the Hearing Officer is within the discretion of the Chancellor.
- d. All evidence and testimony supporting the protest and appeal shall be provided at the hearing. The Hearing Officers shall make a determination, which shall be forwarded to the Board.
- e. The Board may uphold or reject the protest or take any other action, in its sole discretion. The Board shall take action within 30 days of receiving the Hearing Officer’s determination.

B. Procurements below statutory bid threshold

1. Filing of protest

A Bidder that has submitted a quote or proposal to a college for an amount less than the statutory bid threshold who desires to protest an award must file a protest in writing to the Vice President of Administrative Services (“Vice President”) of the college to issue the procurement. The protest must be submitted within five (5) business days of notification of the proposed award, and the protest must state the basis for the protest and the remedy sought, and contain any documentation supporting the protest. If no notification of proposed award is given, then the protest must be submitted within five (5) business days of the award. The protest must be signed under penalty of perjury under the laws of the State of California.

Upon receipt of a protest, the Vice President will:

- a. Notify the bidder recommended for award about the protest by providing a copy of the protest; and
- b. Invite such bidder to submit to the Vice President and the protestor, within five (5) business days of receipt of the bid protest, any information in support of the award.

2. Determination of protest

The Vice President may deny or uphold the protest by issuing a written determination to the protestor and the proposed awardee. Alternatively, the Vice President may declare the college's intention to: (a) award to another supplier; (b) cancel the solicitation; or (c) take any other action that is appropriate and/or required by applicable law. An action to cancel the solicitation or otherwise not award the contract will be deemed final and not subject to appeal.

3. Appeal

The protestor may, within five (5) business days of notice, appeal the decision in writing to the President of the college to whom the bid was submitted. The appeal shall include the same information as required for the original protest. The determination of the appeal will be handled in the same manner as the protest. The College President's decision on the appeal will be conveyed in writing and shall be final.

4. District Office transactions

If the protested transaction is for the District Office, the initial protest described above will be directed to the Director of Business Services and the appeal will be to the Deputy Chancellor, whose decision in the matter will be final. In the event the Deputy Chancellor position is vacant, the Chancellor may designate an alternate to handle the appeal. The procedures in this section shall also govern the timing and determination of the protest.

III. TERMS AND CONDITIONS

1. Compliance with these protest procedures is mandatory and is a condition precedent to the filing of any court action. A protestor's failure to raise an issue or basis for relief in the protest process shall be deemed a failure to exhaust its administrative remedies on that issue.
2. The filing of a California Public Records Act request will not extend the five (5) business day deadline within which a protest must be filed.

3. The filing of a protest will not automatically suspend an award. The District retains its discretion to move forward with the intended award as permitted by law. The District may, nonetheless, choose to suspend an intended award while a protest is pending.
4. Any protest filed after the required deadline will not be considered, except in the District's sole discretion.
5. The District may in its sole discretion, but is not obligated to, notify any other Bidders about the institution of protest proceedings and/or allow any other Bidders to participate in the protest proceedings. Notification to a Bidder, or a Bidder's actual participation in protest proceedings, shall not constitute a waiver of the District's right to raise the defense that the Bidder failed to exhaust its administrative remedies by not filing a timely protest/appeal or otherwise complying with this procedure.
6. If any other public entity and/or authority provides funding to a specific procurement subject to this procedure, and mandates protest procedures different from those stated herein as a condition for providing such funding, then these Procedures may be modified to include such requirements, subject to the sole discretion of the District.
7. A true and accurate summary of the rules and procedures for filing a protest as described herein should be included in full or by reference in all requests for bids or requests for proposals and if not, is hereby deemed incorporated therein by reference.