

Bid Protest Policy for Public Project Contracts¹

PROCEDURE FOR CONTRACTS OF MORE THAN \$5,000 AND LESS THAN \$250,000

1. A bidder on a contract may file a bid protest based on any of the following: (1) failure to follow the requirements of the solicitation; (2) failure to comply with applicable law; (3) alleged error or misconduct in the solicitation process or documents; or (4) any grounds specified in this policy. Only a bidder may file a bid protest. Notwithstanding the foregoing, a Bid Protest cannot be filed to challenge the City's administrative determination regarding whether a bidder failed to meet the established Disadvantaged Business Enterprise (DBE) Goal for the project, or demonstrated a Good Faith Effort (GFE) to meet the City's Disadvantaged Business Enterprise (DBE) goal established pursuant to Caltrans' Local Assistance Procedures Manual and Title 49 of the Code of Federal Regulations, § 26.45.²
2. The bid protest shall be in writing and shall be filed with the Contracts Manager not later than five business days after City staff provides notice of the recommended contract award to the bidders. The bid protest shall provide the name, address, telephone and email address of the protesting bidder, shall identify the contract to which the bid protest pertains, including the contract number and date that bids for such contract were received by the City, and shall identify the City department or division requesting bids. The bid protest shall identify and explain the factual and legal grounds for the protest, and shall include and attach any written materials that the protesting bidder wishes to have considered in determining the protest.
3. At the time a bid protest is filed, the protesting bidder is also required to remit payment to the Contracts Manager of a bid protest fee in the amount established by resolution of the City Council, which fee shall be used to pay the City's costs of processing the protest as provided herein. **The fee amount currently established is \$750.**
4. Any bid protest that is received by the Contracts Manager after the time period specified above, or that is not accompanied by the bid protest fee, shall be untimely and invalid, and shall not be considered.
5. The protesting bidder and any other bidder(s) potentially affected by the bid protest shall be provided written notice of an informal hearing to be held not less than five business days after receipt of the bid

¹ Unless otherwise stated in this Policy, terms used herein shall have the same meaning as set forth in Chapter 3.56 of the Sacramento City Code.

² A bidder may contest the City's determination regarding whether that bidder failed to meet the established DBE Goal or regarding the adequacy of that bidder's Good Faith Efforts pursuant to the City's reconsideration procedure adopted pursuant to 49 C.F.R. § 26.53(d). A copy of the City's Procedure for Administrative Reconsideration of GFEs to meet DBE goals can be found [here](#).

protest. The hearing shall be conducted by the Director of the Department requesting bids or his or her authorized designee. The protesting bidder and any other bidder on the contract shall promptly provide any information requested by City staff prior to the informal hearing.

6. As soon as practicable after the informal hearing, the Department Director or authorized designee shall issue a written response to the bid protest, including an explanation of the reason or reasons for the decision made. The written response shall be provided to the protesting bidder and any other bidder(s) potentially affected by the bid protest. The decision of the Department Director or authorized designee shall be final and no appeal shall be heard.
7. Any bid protest, notice or bid protest response provided by or to the City shall be provided by registered or certified mail (return receipt requested), personal delivery, or any other method that provides reliable evidence of the date of receipt. Written notice provided by personal delivery shall be deemed received on the date of delivery.
8. Any protest that does not comply with this Bid Protest Policy is invalid and shall not be considered.

PROCEDURE FOR CONTRACTS OF \$250,000 OR MORE

1. Application. This procedure applies to:
 - A. Contracts for public construction that are required to be competitively bid and awarded by the City Council; and
 - B. Any other public construction contract awarded if the solicitation for bids specifically provides that the protest policy set forth in Chapter 3.56 or Chapter 3.60 of the City Code applies.
2. For the purpose of this procedure, “bid protest” means a protest filed by a bidder based on any of the following: (1) failure to follow the requirements of the solicitation; (2) failure to comply with applicable law; (3) alleged error or misconduct in the solicitation process or documents; or (4) any grounds specified in this policy. Only a bidder on a contract, or the bidder’s authorized representative, may file a bid protest on the contract. A Bid Protest cannot be filed to challenge the City’s determination regarding whether a bidder demonstrated a Good Faith Effort (GFE) to meet the City’s Disadvantaged Business Enterprise (DBE) goal established pursuant to Caltrans’ Local Assistance Procedures Manual and Title 49 of the Code of Federal Regulations, § 26.45.³
3. Form of bid protest. Protests must be in writing and must include the following:
 - a. The name, address, e-mail address, and telephone number of the protester;
 - b. A description of the contract to which the protest pertains, including the contract number and date that bids or proposals for the contract were received by the City;
 - c. The City department or division issuing the solicitation;

³ A bidder may contest the City’s determination regarding the whether that bidder failed to meet the established DBE Goal or regarding the adequacy of that bidder’s Good Faith Efforts pursuant to the City’s reconsideration procedure adopted pursuant to 49 C.F.R. § 26.53(d). A copy of the City’s Procedure for Administrative Reconsideration of GFEs to meet DBE goals can be found [here](#).

- d. The factual and legal grounds for the protest;
- e. The desired relief sought by the protester; and
- f. Any written materials that the protester wishes to have considered.

Protests shall be addressed to the City Clerk, 915 I Street, New City Hall, Sacramento, CA 95814, or to the contract manager, as set forth in this Bid Protest Policy. Any protest that does not comply with Chapter 3.56 of the City Code and this Bid Protest Policy is invalid and shall not be considered.

4. Submission of bid protest to City. Within the time period specified in subsection 5, below, the bid protest shall be filed with the City Clerk. Bid protests may be filed by personal delivery or by registered or certified mail (return receipt requested). At the time a bid protest is filed, the protesting bidder shall also deposit with the City Clerk a bid protest fee in an amount established by resolution of the City Council. **The fee amount currently established is \$750.** The fee shall be used to pay the costs of a hearing and hearing examiner as set forth in subsection 7, below. Any bid protest that is received by the City Clerk after the time period specified in section subsection 5, below, or that is not accompanied by the bid protest fee, is untimely and invalid, and shall not be considered.
5. Time for filing a bid protest. After bids for a contract are received and opened by City, City staff shall provide each bidder a written notice of the City staff's recommendation for award of the contract. Any bid protest shall be received by the City Clerk no later than five business days after the date that the written notice is received by the protesting bidder.
6. Investigation by City.
 - A. If a valid bid protest is timely filed, City staff shall provide a copy of the bid protest to the protested bidder, and shall investigate or cause to be investigated the bid protest. The protesting bidder and any other bidder on the contract shall promptly provide any information requested by City staff as part of the investigation. City staff shall prepare a written response to the bid protest, which shall be provided to the protesting bidder and protested bidder, if any, and to the hearing examiner as provided in subsection 7, below.
 - B. If, as a result of its investigation of the protest, City staff changes its recommendation for award of the contract, City staff shall provide each bidder a written notice of the City staff's revised recommendation, the bid protest shall be deemed withdrawn upon the protesting bidder's receipt of this notice, and the bid protest fee deposited by the protesting bidder shall be refunded. A bid protest in response to the revised recommendation for award of the contract may be filed in accordance with the provisions of this article, and must be received by the City Clerk no later than five business days after the date the City's written notice of revised recommendation is received by the bidder protesting the revised recommendation.
7. Hearing of bid protest by a hearing examiner.
 - A. A bid protest shall be heard by an independent hearing examiner furnished by an entity designated for this purpose by resolution or agreement of the City Council.
 - B. After the hearing examiner is selected, City staff shall set the date of the hearing, and shall mail the protesting bidder and the protested bidder, if any, a written notice that specifies the location, time,

and date of the hearing, which shall be held no sooner than five days after the date of the notice of hearing. The hearing examiner may postpone the hearing at the request of City staff, the protesting bidder, or the protested bidder, if any, or upon the hearing examiner's own motion. If the protesting bidder fails to attend the hearing, the bid protest is deemed withdrawn and shall no longer be considered by the City.

- C. City staff shall provide the hearing examiner with copies of the request for bids, the bid protest, the response of the protested bidder, if any, the City staff response to the bid protest, and any other relevant materials or information in City staff's possession. Any written information that the protesting or protested bidders wish to have considered in determining the protest that has not already been submitted to City staff shall be provided to the hearing examiner and to City staff, and must be received by the hearing examiner and City staff at least two business days prior to the hearing to be considered.
- D. Evidence or argument at the hearing shall be received only from the City, the protesting bidder, and the protested bidder, if any, their witnesses, and authorized representatives. The proceedings at the hearing shall be recorded. Any party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense. The hearing examiner may, upon request of either party, grant continuances for good cause shown, or upon his or her own motion. The hearing examiner shall administer the oath or affirmation. California Government Code section 11513 applies to hearings under this section, except that relevant hearsay evidence may be sufficient in itself to support a finding of fact, even if it would not be admissible over objection in a civil action, if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
- E. At the hearing, the protesting bidder bears the burden of showing the existence of all facts necessary to support the bid protest. The hearing examiner may take official notice, either before or after the close of the hearing, of any fact that may be judicially noticed by the courts of this state or which may appear in any of the official records or documents of the City.
- F. After the close of the hearing, the hearing examiner shall issue a written decision that includes findings of fact based on the record of facts and information presented to the hearing examiner, and also includes a recommended determination of the bid protest based on the findings of fact. The hearing examiner shall email and mail a copy of the decision to the City, the protesting bidder, and the protested bidder, if any.
- G. The City shall use the bid protest fee deposited by the protesting bidder pursuant to subsection 4, above, to pay costs incurred by the City for the hearing and hearing examiner. If these costs are less than the bid protest fee deposited by the protesting bidder, the City shall return any unexpended amounts to the protesting bidder. If these costs exceed the bid protest fee deposited by the protesting bidder, and the hearing examiner recommends denial of the bid protest, the City may invoice the protesting bidder for any additional unpaid costs, and the protesting bidder shall pay all costs due no later than 30 calendar days after the date of the invoice. Any protesting bidder that fails to pay an invoice within 30 days is barred from filing a bid protest on any subsequent City contract until the City receives payment of all costs due plus interest, at the rate of 10% per annum, beginning 30 calendar days after the date of the invoice.

8. Reconsideration of bid protest by the City Council. The protesting or protested bidder may submit a request for reconsideration of the hearing examiner's decision. The request for reconsideration must be submitted to the City Clerk within three business days of the date the hearing examiner's decision was emailed to all parties pursuant to subsection 7.F. above. Requests for reconsideration may be filed by personal delivery or by registered or certified mail (return receipt requested).

If a timely request for reconsideration is received by the City Clerk, the City Council will consider the protest at a public meeting. The City Council may hear the request for reconsideration as part of the City Council's consideration of the award of the contract to which the bid protest relates or as a separate item, as recommended by City staff. The City Council may take action on the request for reconsideration at the meeting when the award of the contract is considered or it may continue the matter of the protest and contract award to a future date.

9. Conduct of the City Council meeting.

- A. The scope of the request for reconsideration considered by the City Council is limited to the issues and evidence presented to the hearing examiner. The City Council may exercise its discretion to take any of the following actions prior to taking final action on the request for reconsideration:

- (1) Adopt the findings of fact issued by the hearing examiner, without hearing factual evidence from any party; or

- (2) Review the recording of the hearing, or a transcript of the hearing, prior to adopting or rejecting, in whole or in part, the findings of fact issued by the hearing examiner, without hearing factual evidence from any party; or

- (3) In addition to or in lieu of reviewing the recording or transcript of the hearing, hear factual evidence from any party prior to adopting or rejecting, in whole or in part, the findings of fact issued by the hearing examiner.

- B. In addition to the foregoing actions, the City Council may at any time exercise its discretion to reject all bids without adopting or rejecting the hearing examiner's findings of fact. The City Council may take any action on the bid protest that is authorized by law, including adoption of the hearing examiner's recommended determination of the bid protest, adoption of a determination different from that recommended by the hearing examiner, or the rejection of all bids without deciding the bid protest. The decision of the City Council on a bid protest is the City's final administrative action on the protest. (Former City Code section 3.60.540.)

10. Providing written notice. Unless otherwise stated herein, whenever this policy requires that written notice be provided by or to the City or the hearing examiner, the written notice shall be provided by registered or certified mail (return receipt requested), by personal delivery, or by e-mail if the e-mail delivery includes confirmation of receipt, or by any other method that provides reliable evidence of the date of receipt. Written notice provided by personal delivery is deemed received on the date of delivery. Written notice provided by e-mail is deemed received on the date of e-mail transmission if the sender receives e-mail confirmation of receipt.

11. Information in solicitations for bids. Every solicitation for bids issued by the City for a contract shall indicate that any bid protest related to the contract must be filed and maintained in accordance with the provisions of this policy.