

**Policy Subject**

Administrative Review of Recommendations for Contract Award

Revision 1

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Policy Number

FP 113

Department

FINANCE

To City Employees

X *Thomas Bonfield*

Thomas J. Bonfield, City Manager

I. Purpose

To establish administrative procedures to consider protests to staff recommendations that certain contracts be awarded.

II. Policy

The City Council is the final authority having the power to award City contracts. The City Council has delegated this authority with respect to some contracts to the City Manager, the City Manager's designee or to some other City employee.

After City staff reviews responses to contract solicitations, a Recommendation of Contract Award is made. It is the policy of the City to allow persons who have submitted bids or proposals to request administrative review of the recommendation before the contract award when the recommendation is being made to the City Council. This policy is intended to apply only to contracts that are subject to a competitive contract process.

III. Definition

Business Day - All calendar days excluding Saturdays, Sundays, and City holidays as defined by City Code § 42-16(a)-(b).

Competitive Contract Process - The solicitation of bids, proposals, or qualifications from more than one person resulting in a Recommendation of Contract Award.

Contract Award - A decision by the City Council or authorized individual to execute a contract.

Interested Person - A Person that has timely submitted a bid, proposal or statement of qualifications in response to the Competitive Contract Process.

Letter of Decision - The final administrative decision of the City in response to a Protest.

Person - An individual, corporation, limited liability company, firm, partnership, association, organization, any group acting as a unit, and governmental entity.

Procurement Contract Reviewer, or the Reviewer - A City employee designated by the City Manager to conduct an administrative review of a Protest made pursuant to this policy.

Protest - A written objection by an Interested Person requesting administrative review of a Recommendation of Contract Award.

Protester - The Person that submits a Protest.

Recommendation of Contract Award, or Recommendation - A request by City staff made to the City Council or to another individual authorized for a Contract Award. For purposes of this policy, therefore, a request that all bids or proposals be rejected is not a Recommendation of Contract Award.

IV. Procedure

A. Recommendations to Which This Policy Applies; Exceptions and Additions. This policy applies to all Recommendations of Contract Award made to City Council. However, City staff may request an exemption from the policy for a Recommendation that is to be brought to City Council, or may request that a Recommendation not going to City Council be made subject to the policy. Those requests may be granted by the City Manager.

B. Notice of Intent. With respect to all Recommendations of Contract Award to which this policy applies: The staff person shall post a notice of intent to make a Recommendation on the Purchasing Division's web page. The notice must be posted no later than the established automated agenda deadline for the City Council meeting during which the Contract Award would be considered. The notice must include a copy of, or a link to, this policy or a summary of the provisions of this policy relevant to the making of a Protest. The notice must also state in substance, "If your business or entity has the right to file a protest but does not file a timely protest, it will not be allowed to prosecute a lawsuit about the award of the contract."

C. How to Protest; Failure to Protest. An Interested Person who desires to obtain administrative review of a Recommendation of Contract Award with respect to a proposed contract for which a notice of intent is posted in accordance with section (IV)(B) has the right to submit a Protest in accordance with this section (IV)(C).

Failure to submit the Protest in accordance with this section (IV)(C) waives the right to administrative review of the Recommendation and the right to judicial review as provided in section (V) below.

1. To Submit a Protest. Within seven Business Days of the posting of a notice of intent to make a Recommendation of Contract Award on the City's official

PURCHASING web page, deliver the Protest by certified mail with the U.S. Postal Service, or by hand delivery with confirmed receipt, to the City Manager or City representative.

2. Contents of Protest. The Protester must copy into the Protest the following from the notice of intent to make a Recommendation of Contract Award: the project name, the name and number of the proposed contract, the City department(s) involved, and the names of individual City employees responsible for the Recommendation. The Protest must also specify the date that the Protester submitted its bid, proposal, or qualifications; the Protester's understanding of the basis for the Recommendation; and the specific facts, circumstances, and grounds that demonstrate that the Contract Award by the City, as requested in the Recommendation, would be unlawful or unfair to the detriment of the Protester.

The Protest must contain a statement that the information contained in it is true to the best of the knowledge and belief of the individual who signs the Protest. An individual authorized to sign for the Protester must sign the Protest.

D. City's Handling of Protest.

1. Referral of Protest by City Manager or Designee. If the Protest is received in accordance with section (IV)(C), the City Manager or the City Manager's designee shall refer the Protest to the Procurement Contract Reviewer to determine whether a hearing is warranted in order to adequately examine the facts and circumstances surrounding the Recommendation of Contract Award.

2. Letter of Decision without Hearing. If the Procurement Contract Reviewer determines, based on the contents of the Protest and an inquiry of involved City departments and City employees, that a final decision can be issued without a hearing, the Reviewer shall, within 10 Business Days of the Reviewer's receipt of the Protest from the City Manager or City Manager's designee, send a Letter of Decision to the Protester.

3. Hearing. If the Procurement Contract Reviewer does not send a Letter of Decision as provided by section (IV)(D)(2), the Reviewer shall schedule a hearing that the Reviewer (or a substitute, if the Deputy City Manager finds that the Reviewer is unavailable) and a Deputy City Manager shall attend. The hearing shall be scheduled to be held within 15 Business Days of the Reviewer's receipt of the Protest from the City Manager or City Manager's designee. The Deputy City Manager shall notify the Protester of the time and place of the hearing. The Protester and its attorney may attend and present additional facts and evidence in support of its Protest at the hearing. The Deputy City Manager shall control all aspects of the hearing, including scheduling, continuances, conduct, witnesses, and evidence, and may request the attendance of witnesses and production of documents. The Protester's failure to comply with this request, to the extent the attendance of witnesses and production of documents are under its reasonable control, may be grounds for denial of relief sought by the Protest.

4. Letter of Decision after Hearing. The Procurement Contract Reviewer shall send a Letter of Decision to the Protester within 10 Business Days of the administrative

hearing.

5. Sending of Letter of Decision. Letters of Decision shall be sent via first-class mail, fax, or email.

V. Other

Protest as Prerequisite to Judicial Review of the Contract Award.

If the City posts a notice of intent to make a Recommendation of Contract Award in the manner described in section (IV)(B), an Interested Person that fails to submit a Protest to the City in accordance with section (IV)(C) waives its rights to judicial review of the Recommendation and of the Contract Award that is made consistent with the Recommendation. Failure of the Interested Person to avail itself of this administrative review procedure constitutes a waiver of all of its claims that could have been the subject of a Protest relating to the Contract Award. When not waived, judicial review will be available only with respect to the grounds stated in a Protest.

VI. Attachment

None