

**COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject

Protest Procedures for Award of Contracts

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Purpose

To establish a procedure for the resolution of protests of proposed Contract awards.

Background

The County's procurement process exists to provide for a fair and transparent method of procuring goods and services for the County. This policy establishes the exclusive procedure to protest decisions and actions arising from Formal Bidding, Competitive Negotiated Procurements, Reverse Auctions, and Qualifications Based Selections, as set forth below. This policy shall also apply to such decisions and actions taken by a Special District where the Special District is subject to the County's procurement process.

Policy

It is the policy of the Board of Supervisors that protests of Protestable Actions be resolved exclusively in accordance with the procedures of this policy, except as follows: i) where the Board specifically exempts the Protestable Action from this policy; ii) where the Board has established an alternate protest procedure; iii) where State or federal law prohibits a protest procedure or mandates an alternate protest procedure; iv) where the procurement is not subject to this policy and where the Director has established an administrative method for the resolution of protests; v) where County Counsel has awarded a contract pursuant to its authority under the San Diego County Code of Administrative Ordinances.

Definitions

Business Day – The term Business Day, as used in this policy, shall mean Monday through Friday, excluding County observed holidays. For purposes of calculating the first Business Day for any notice, the following rules shall apply:

1. The first Business Day for posted notices shall be determined as follows: the first day is the day of posting if the notice is posted no later than 12:00:00 noon Pacific Time. If it is posted after 12:00:00 noon Pacific Time, the following Business Day shall count as the first Business Day.
2. The first Business Day for notices sent by email, facsimile, or personal delivery shall be determined as follows: if the County sender's email or facsimile demonstrates that it was sent by the County no later than 12:00:00 noon Pacific Time or if personal delivery was delivered in person no later than 12:00:00 noon Pacific Time, the day the email or facsimile was sent or personal delivery was made shall be the first Business Day. If the County sender's email or facsimile demonstrates that it was sent after 12:00:00 noon Pacific Time, or if personal delivery was delivered in person after 12:00:00 noon Pacific Time, the following Business Day shall count as the first Business Day.

Competitive Negotiated Procurement shall have the meanings set forth in Board Policy A-87 (Competitive Procurement).

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Contract - Any contract to which the County of San Diego or a Special District is or will be a party, and which is issued pursuant to the Director's authority under section 401, and following, of the County Code of Administrative Ordinances.

Contracting Officer - The County officer responsible for issuing the solicitation, as identified in the County's solicitation package, and for awarding the resulting Contract.

Contracting Office - The then-current location of the County's Department of Purchasing and Contracting.

Director - The Director of the Department of Purchasing and Contracting.

Formal Bidding or Formal Bid - These terms shall mean "Formal Bidding" as defined in Board Policy A-87 (Competitive Procurement).

Interested Parties - For the purpose of this policy, Interested Parties are defined as:

1. The County department or office, or Special District procuring the subject goods or services.
2. The Director of the Department of Purchasing and Contracting.
3. An Offeror who has filed a timely protest.
4. An Offeror who has been notified of the County's intent to award the Contract to that Offeror.

Managed Competition - A competitive procurement in which a County department competes to provide a service.

Offeror - An individual or entity who has submitted a Submission. The County, its departments, officers, or employees shall not be considered to be an "Offeror" for purposes of this policy when competing as part of a Managed Competition.

Protestable Action - A decision or action made by the County or, if applicable, a Special District, arising from a Formal Bid, Competitive Negotiated Procurement, Reverse Auction, or Qualification-Based Selection. Protestable Action shall not include the cancellation of a procurement or reverse auction, or the rejection of all bids, or in a Managed Competition, the staff recommendation or final decision to have a County provide some or all of the services. An Offeror who has been notified that it was a successful Offeror but has been subsequently disqualified or removed from consideration for award because of a successful protest may protest the subsequent award, unless the Offeror was afforded an opportunity to participate in the protest that resulted in it being disqualified or removed from consideration for award. A decision by the County to cancel and restart a procurement or to have an existing or new committee reevaluate proposals or statements of qualifications is not protestable.

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Protestor - An individual or entity who files a protest of a Protestable Action in accordance with the provisions of this policy.

Qualifications-Based Selection - A method of procurement under the authority of Board Policy F-40 (Procuring Architectural, Engineering, and Related Professional Services).

Reverse Auction – This term shall have the same meaning as set forth in Board Policy A-87 (Competitive Procurement).

Special District – An entity established by State, federal or County law, regulation or ordinance and whose governing body is exclusively comprised of the five members of the Board of Supervisors. The term Special District shall also include any authority whose governing body is exclusively comprised of the five members of the Board of Supervisors.

Submission – An Offeror’s proposal in response to a request for proposal as part of a Competitive Negotiated Procurement, a bid in response to a request for bid as part of a Formal Bid, bids or proposals made as part of a Reverse Auction, or a proposal or submission as part of a Qualifications-Based Selection.

Two-Step Procurement - A method of procurement where there are two distinct stages to the procurement. The first stage establishes whether the potential proposers, bidders or participants meet the minimum qualifications, minimum technical requirements, or both, or establishes a list of most qualified potential bidders, proposers, or participants. The second stage invites those that meet the initial minimum requirements or who are most qualified to submit a bid as part of the Formal Bidding process or proposal in response to request for proposals as part of a Competitive Negotiated Procurement, to participate in a Reverse Auction, or to submit a proposal as part of a Qualifications-Based Selection.

Procedure

1. Standing to Protest – A Protest may be filed only by an Offeror who has made Submission in a Protestable Action. A third party, including a subcontractor, or a manufacturer or association that is not an Offeror does not have standing to protest.
2. Grounds for Protest – Protest must be based upon one or both of the following grounds:
 - a. The County failed to follow the procedures and adhere to the requirements set forth in the solicitation or any addendum thereto.
 - b. The Protestor alleges misconduct or impropriety by County officials or evaluation team members.

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It shall not be a valid basis for protest under this policy to allege that the protester can provide a better value for the goods or services to the County. A determination of economy and efficiency pursuant to Charter Sections 703.10 and 916 shall not be subject to this protest procedure.

3. Time for Filing a Protest: Protests shall be filed on the earliest of the following dates:
 - a. No later than 5:00:00 PM Pacific Time on the fifth Business Day after the County or Special District provides notification that the Offeror's Submission is no longer under consideration.
 - b. No later than 5:00:00 PM Pacific Time on the fifth Business Day after a notice of intent to award the Contract has been posted in a public place in the County's Contracting Office or made available through the County internet website.
 - c. No later than 5:00:00 PM Pacific Time on the fifth Business Day after notice of intent to submit a staff recommendation to the Board of Supervisors or Special District governing body to award a contract has been posted in a public place in the County's Contracting Office or made available through the County internet website.
 - d. No Later than 5:00:00 PM Pacific Time on the fifth Business Day after the County has notified an Offeror that it has been disqualified or removed from consideration for award as a result of a successful protest by another Offeror, and if the Offeror disqualified or removed from consideration for award is entitled to initiate a protest as a Protestable Action.

4. Required Form of Protest
 - a. All protests shall be made in writing, containing the information listed below, and shall be filed with the Contracting Officer identified in the solicitation package. Protests shall contain the following information:
 - i. The Protestor's name, address, telephone numbers, email address, and facsimile number;
 - ii. The solicitation and/or contract number;
 - iii. Facts establishing that the Protestor is an Offeror for the purpose of filing a protest;
 - iv. Identification of the grounds for protest set forth above in Section 2, "Grounds for Protest," with supporting facts and documentation;
 - v. The form of relief requested. A request that the Protestor be awarded the Contract is not a valid request for relief.

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vi. The signature of the Protestor or its legally authorized representative.

- b. Protest submissions should be concise and logically arranged, but no formal briefs or other technical forms of pleading or motion are required. Supporting documentation may include, but is not limited to, the request for proposal or request for bid and any addenda there to, correspondence, and declarations. Protests of different procurements shall be filed separately.

5. First Level Protest Resolution

- a. Summary Dismissal of Protest – The Director may summarily dismiss a protest, or portion thereof, at any time the Director determines that the protest raises issues beyond the scope of the protest procedure as set forth above in Section 2, “Grounds for Protest;” is untimely; is not submitted in the required form of protest, as set forth above in Section 4, “Required Form of Protest;” or is submitted by an individual or entity without standing to protest, as set forth in Section 1, “Procedure”. In such cases, a notice of summary dismissal will be furnished to the Interested Parties.
- b. The Director, any other County representative(s) the Director deems appropriate, and the Protestor shall make reasonable efforts to resolve the protest, and may do so, at the Director’s discretion, by correspondence, telephone or in-person meeting(s). The Director will notify the Protestor in writing of the Director’s decision regarding the protest. If the Protestor seeks to continue the protest to the Second Level, it must notify the Director in writing, by personal delivery, email or facsimile, no later than 5:00.00 PM Pacific Time of the third Business Day following the Director’s notice of decision.

6. Second Level Protest Resolution

- a. Summary Dismissal of Protest - The Chief Administrative Officer (CAO) may summarily dismiss a protest, or specific protest allegations, at any time that the CAO determines that the protest raises issues beyond the scope of this protest procedure as set forth above in Section 2, "Grounds for Protest;" is untimely, frivolous, or without merit; is not submitted in the required form of protest, as set forth above in Section 4, "Required Form of Protest;" or is submitted by an individual or entity within standing to protest, as set forth in Section 1, “Procedure”. In such cases, a notice of summary dismissal will be furnished to the Interested Parties.
- b. Decision by the CAO Based on Written Submissions Only - In reaching a decision on the merits of a protest, the CAO may consider relevant documentation submitted by the Protestor. The CAO may request that the Protestor submit additional information in support of the Protestor’s protest or request documentation from other Interested Parties. Additional information provided that has not been requested by the CAO will not be considered. The CAO will not conduct a "hearing" nor consider oral testimony. The CAO will issue a written decision containing the basis of the decision within 30 days after a protest has been filed with the CAO; however, the time for decision may be extended by the CAO. If the CAO requests additional documentation from the Protestor or other

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Interested Parties, an additional 15 days will automatically be added to the time for decision. A copy of the decision will be furnished to all Interested Parties. The decision shall be final with no right to reconsideration.

c. Decision by the CAO Following Discretionary Oral Presentation

In the CAO's sole discretion, the CAO may request that the Protestor make an oral presentation pertaining to the protest. Oral presentations shall be conducted in accordance with the following procedure:

- i. Notice of Oral Presentation - The CAO will set a date, time, and place for the oral presentation. Written notice will be provided to Interested Parties not less than five Business Days in advance of the oral presentation, unless an earlier date is otherwise agreed to by all parties. The CAO may grant continuances.
 - ii. Guidelines for Oral Presentation - Oral presentations are informal in nature and shall be made by the Protestor or its authorized representative. The CAO will determine how the oral presentations will be conducted and may set time limits for the presentation. The CAO may request additional documentation prior to, during, or after the oral presentation. Unless requested, additional documentation shall not be accepted. Witnesses shall not be called. Technical rules of evidence shall not apply. The CAO may question Interested Parties or provide an opportunity for Interested Parties to make an oral presentation.
 - iii. Record of Oral Presentation - Any Interested Party may request, and in the CAO's sole discretion, the CAO may approve or disapprove of recording of the presentation. If the CAO allows the presentation to be recorded, the Interested Party requesting that the presentation be recorded must pay the cost of recording, including the cost to distribute copies of the recording to the CAO and other Interested Parties. There shall be no cost to the County except where the County's requests that the presentation be recorded.
 - iv. Decisions - The CAO will issue a written decision within 30 days of the oral presentation; however, the time for decision may be extended by the CAO. A copy of the decision will be furnished to the Interested Parties. The decision will be final with no right of the Protestor to seek reconsideration.
- d. Scope of Decision - The scope of the CAO's decision shall be limited to whether the protest should be sustained or denied.
- e. Protest Remedies - If the CAO sustains a protest in whole or in part, the CAO shall have the sole discretion to determine an appropriate remedy.

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7. Effect on Contracts – The failure of a County employee or department or Special District to comply with the provisions stated in this policy shall in no way affect the validity of any Contract entered into by the County or Special District.

8. A Contract that is the subject of a protest shall not be awarded prior to resolution of the protest unless the CAO determines that awarding a Contract is in the County’s best interest. The Director may in accordance with Board Policy A-87 (Competitive Procurement), extend an existing Contract or enter into an interim Contract to provide the same or similar goods, or services that are the subject of the protest until the protest is resolved.

Responsible Departments

1. Department of Purchasing and Contracting
2. County Counsel

Sunset Date

This policy will be reviewed for continuance by 12-31-2020.

References

Board Action
05-15-84 (27)
08-16-88 (6)
12-12-89 (49)
06-5-90 (43)
10-23-90 (45)
05-15-96 (11)
12-08-98 (53)
01-28-2003 (16)
02-27-2007 (9)
12-09-08 (33)
08-06-13 (8)
12-15-15 (21)