

Lompoc City Code

Protest Procedure

5/17/2011

3.36.170 Procurement Protest Procedures.

Procurements for public projects, materials, supplies, goods and services shall be protested in accordance with this Section. Protests not complying with the provisions of this Section shall not be reviewed.

A. Definitions. For the purposes of this Section:

1. "Bid" includes "offer" and "proposal" in the context of formal, informal, or negotiated procurements.
2. "Days" mean business days unless otherwise indicated.
3. "Filing date" or "submission date" means the final date for receipt by the City Clerk or the Purchasing and Materials Manager of the City of Lompoc.
4. "Interested party" means an actual bidder or offeror.
5. "Procurement staff" means the Purchasing and Materials Manager, Public Works Director, Community Development Director, Utilities Director, or other department director initiating the procurement being requested, or the designees of any of these persons.
6. "Reviewing officer" means the City Administrator or designee.
7. "Mail" means any delivery service such as US mail, UPS or FEDEX.

B. Grounds for Protest. Any interested party may file a written protest on any of the following grounds:

1. The existence of a significant defect, error or omission in the solicitation documents issued by the City;
2. Failure of the City to follow the procedures of this Chapter;
3. Failure of the City to apply correctly the standards of review, evaluation, or scoring of a bid or proposal as specified in the solicitation documents therefor;
4. Award of the contract by the City to a bidder other than on the basis stated in the solicitation documents; or
5. Such other grounds as would state a cause of action at law or in equity.

C. Disallowed Protest Grounds. Protests based on the following grounds shall not be considered:

1. An evaluator's professional judgment on the quality of a response; or
2. The proposer's assessment of the agency's needs or requirements; or
3. Any grounds other than those listed above.

D. Protest Filing and Delivery. Protests shall be in writing and hand delivered or sent by certified U.S. mail, return receipt requested.

1. To the Purchasing and Materials Manager (for protests of purchases of materials, supplies, equipment, and services); or
2. To the City Clerk (for protests related to public projects).

E. Protest/Appeal Contents. Protest documents shall:

1. Include the name, address, business telephone, email, and fax number of the protestor;
2. Identify the procurement or project under protest by name, solicitation number, and submission date;
3. Contain a concise statement of the grounds for protest and the facts supporting such grounds; include all supporting documentation. Documentation submitted after filing will not be reviewed;
4. State the form of relief requested;
5. Be accompanied by a certified check or cashier's check made payable to the City of Lompoc in the amount of \$52.00, or in such other sum as the City Council may establish from time to time. Protests filed without the fee will not be reviewed.

Protestors may be represented by legal counsel at their own expense. Protestors shall bear all costs of the protest other than salary and personnel costs of City employees.

F. Pre-Opening Protest Period—Solicitation Documents. Interested parties wishing to protest City solicitation documents must do so before the final date to accept bids and within five business days after the date the solicitation documents are issued or amended.

G. Post-Opening Protest Period—In cases of protests involving aspects of City procurement other than solicitation documents, the following procedures apply:

Interested parties shall protest City procurement matters other than solicitation documents within five business days after notice of intent to award are mailed. In the case of informal public project bids (per Section 3.40.020(B)), interested parties shall protest no later than two business days after notice of intent is mailed.

H. Protest Process.

1. Procurement Staff Review. Upon receipt of a timely protest, procurement staff shall review all the submitted materials and create and retain a written record of their review. Not later than 20 days after receipt of the protest, procurement staff shall respond in writing to the protest and to each material issue raised in the protest.
 - a. In the event of a timely protest, procurement staff shall not proceed with the solicitation or award of the contract until all administrative and judicial remedies have been exhausted unless the City Administrator determines that the award of a contract without delay is necessary to protect substantial interests of the City.

b. Procurement staff may elect, but are not obligated, to attempt to resolve the protest with the affected parties. "Resolution" means the formal withdrawal of a protest by the protestor, or written acknowledgement of protest resolution signed by the City and the protestor.

If procurement staff attempts resolution, protestors shall be notified in writing of the date on which their matters shall be considered and shall be afforded an opportunity to present evidence for consideration to the City and such technical or other staff as the City deems necessary.

c. Procurement staff shall make a formal decision ("Protest Determination") to deny or uphold the protest and shall notify the protestor of that decision by mail. The decision notification shall include a statement that the protestor has the right to appeal within five business days of the decision notification.

2. Administrative Hearings Protests of Procurements.

a. Any protestor may appeal in writing the decision of the procurement staff to an Administrative Hearing Officer within seven days of the date of the procurement staff's written decision in conformity with this Section.

b. A written request for administrative hearing shall be accompanied by a certified or cashier's check in the amount of \$2,500.00, payable to the City of Lompoc, and shall be received by the Purchasing and Materials Manager (for goods or services) or City Clerk (for public projects) not later than seven days after dispatch of the procurement staff's protest determination sent by mail. The request for hearing shall include the specific grounds of the appeal.

c. The City of Lompoc shall select and engage an impartial and qualified person to act as Hearing Officer in the pending protest. The protestor shall have the right to twice reject the selected hearing officer, provided that the City is notified of such rejection in writing within three days after notice to the protestor of the name of the Hearing Officer.

d. Protests not heard within 30 days shall be deemed withdrawn, unless the City and the protestor otherwise mutually agree in writing. Protests shall be heard by a Hearing Officer as soon as possible and not in any event later than 60 days after the receipt of the protestor's request for hearing.

e. Within 14 days after the hearing, the Hearing Officer shall forward to the City Council his or her written findings and recommendations regarding disposition of the protest. The City Council may adopt or reject all or part of the findings and may accept, reject, or modify the recommendations of the Hearing Officer or, alternatively, render an independent decision and directions for disposition of the protest and the progress of the solicitation and procurement at issue.

f. All costs of the Hearing Officer and expenses of the protest shall be borne by the protestor. The sums deposited with the request for hearing shall be credited to the costs of the Hearing Officer and other hearing expenses. Any unexpended portion of the deposit shall be refunded to the protestor within 60 days following the exhaustion of the protestor's remedies.

I. Protests of Federally Funded Procurements. If the protested procurement involves Federal funds, the Hearing Officer shall accompany his or her decision with notice to the protestor of the right to appeal to the appropriate Federal agency, which shall be identified by name and address. Such an appeal shall be filed with such agency within seven days of the date of the Hearing Officer's written decision/notice to the protestor. Appeals to the Federal Transit Administration shall comply with FTA Circular 4220.1 or the most current version as amended and supplemented from time to time. (Ord. 1563(10) § 11; prior code § 2642)

<http://qcode.us/codes/lompoc/view.php?topic=0&frames=off>