

Section X Bid Protest Procedure

Section 10.1 Policy Statement

Any person or entity whose bid or proposal is rejected, in whole or in part, or who submits a bid or proposal but is not awarded the contract may protest such decision, but only in strict compliance with the following procedures.

Section 10.2 Magnitude

This Policy shall apply to protests by bidders and proposers when the City Manager or a Department Director recommends a purchase of goods, supplies, equipment or services that would cost ten thousand dollars (\$10,000) or more.

Awards for lesser amounts may not be protested using this process. Such protests must be made directly to the Department Director of the concerned department. If the decision of the Department Director is considered unsatisfactory, an appeal may be made to the City Manager. There is no further appeal.

Section 10.3 Written Notices; Timely Submittals

Any person who wishes to file a bid protest hereunder must file a notice of intent to do so, in writing, with the office of the City Manager within twenty-four (24) hours after receipt of the notice of rejection for rejected bids or proposals, or, for contract awards, within twenty-four (24) hours after the City's declaration of its intention with regard to such award.

Within five (5) days after filing the written notice of intent to protest, a formal written protest must be filed with and received by the City Manager, explaining in detail the nature of the protest and the grounds upon which it is based.

The calculation of days shall exclude Saturdays, Sundays, and holidays observed by the City. In computing any period of time prescribed or allowed by this protest policy, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or holiday observed by the City; in which event the period shall run until the end of the next business day which is neither a Saturday nor Sunday, nor a holiday observed by the City.

Service delay of a protest by mail or courier shall not expand the time period allowed for delivery of a protest.

Failure by a bidder to comply with the timelines and requirements set forth herein shall result in an immediate invalidation and termination of the protest and a waiver of the right to seek further redress or to appeal the alleged adverse action in a court of law.

Section 10.4 Notice to other Bidders

A protestor must mail, or hand deliver copies of all notices of protests and formal written protests to all other bidders/responders within two (2) business days after filing the written protest with the City. The protestor shall provide the City with evidence of such mailing or delivery, which may be in the form of a certified mail receipt or affidavit of delivery.

Section 10.5 Protest Standing

A bidder with a "substantial interest" who has been adversely affected by the City's selection of a bidder may protest the selection by complying with the requirements set forth herein. A bidder shall be deemed to have a "substantial interest" if said bidder would have been selected as the lowest responsive and responsible bidder but for the alleged mistake or irregularity described in the protest. If the Department Director determines that a bidder does not have a "substantial interest," that bidder is precluded from bringing a protest pursuant to this section.

Section 10.6 Stay of Award

Upon timely receipt of a protest, and in the absence of emergency circumstances, the City Manager shall ensure that the award is suspended until such protest is resolved. If the City Manager, after consultation with the head of the requisitioning department, determines, in writing, that a bid or contract must be awarded without delay in order to protect the public health, welfare or safety, a bid protest shall not delay or otherwise impede the award of such bid or contract.

Section 10.7 Protest Bond

Each written protest must be accompanied by a protest bond in the form of a certified check, cashier's check or money order made payable to the City of Brooksville, in an amount equal to five percent (5%) of the protestor's bid or \$5,000.00, whichever is less. The condition of the protest bond shall be that, should the protest be determined to be without merit and non-valid, the bond shall be forfeited to the City in its entirety.

If the protest is upheld by the City, the bond will be refunded to the protestor. Any such refund does not accrue interest.

Section 10.8 Protest Contents

The written protest shall contain the following:

- A. Identification of and contact information for the protestor
- B. Company Name, Protestor's Name and Title, physical address of protestor, telephone number and email address of protestor;
- C. The RFP/IFB number and title of the specific solicitation

- D. Clearly state the factual basis upon which the protest is based
- E. State all statutes, laws, ordinances, or other legal authorities supporting such protest. Any grounds not stated shall be deemed waived
- F. The written protest must state with particularity the specific facts and law(s) or ordinance(s) upon which the protest of the proposed award is based and shall include all pertinent documents and evidence
- G. Identify the relief which the protestor seeks. Be specific (e.g. rebid; monetary damages etc.)
- H. Other Information: The written protest shall acknowledge that any and all costs incurred by the protesting party shall be the sole responsibility of the protesting party.

NOTE: A bidder wishing to object to terms, conditions, specifications, procedures, selection criteria, weight of evaluation criteria or other matters set forth in the bid or proposal documents must make such objections in writing during the period of time set forth for questions and answers in the invitation to bid, request for proposal, request for qualifications or request for letters of interest. A bidder who has not raised such objections in writing during the question and answer time may not use the bid protest process to object to these matters once a notice of bid/proposal action has been posted.

Section 10.9 City Manager Review

After receipt of a timely written protest, the City Manager shall consider and attempt to resolve the protest. For the purposes of investigating, reviewing, and resolving a protest, the City Manager may appoint a designee of his/her choosing to represent and act on behalf of the City Manager at all stages of the bid protest review and proceedings. Such designee should have adequate experience and background in public procurement matters and be familiar with the City's procurement procedures. Prior to rendering a decision, the City Manager or designee may schedule and conduct a meeting in order to hear the arguments from the protestor. The time, date and location of the protest meeting will be noticed by the City to the protestor and other bidders/responders.

Section 10.10 Protest Meeting

At the protest meeting, the protestor and any other interested bidders/responders who may be affected by the City's procurement decision or award recommendation, or their designated legal counsel, will be allowed to make a brief oral presentation of evidence and argument. However, neither direct nor cross examination of witnesses will be permitted, although the City Manager or his/her designee may make whatever inquiries deemed pertinent to a determination of the protest. Submission of written or physical materials, objects, statements, affidavits and arguments relevant to the protested matters may be submitted prior to or at the protest meeting. The City Manager or his designee may solicit and receive input from City employees, consultants and other persons not a party to the protest proceeding. The statutory

and judicial rules of evidence shall not apply to the proceedings. Any party may arrange for the proceedings to be steno-graphically recorded and shall bear the expense of such recording.

Section 10.11 Exclusive method of Protest, Objection and Appeal

There is a compelling City interest in procuring goods and services in a timely manner so as to provide City residents and visitors with efficient, cost-effective, and operationally effective City infrastructure, facilities, and services. Consequently, procurement disputes must be resolved with minimal delays. Therefore, the procedure set forth herein is the sole means by which a bidder/responder aggrieved by a decision of the City may seek recourse. Refusal or failure by any aggrieved bidder/responder to pursue its right of protest under these procedures shall constitute a waiver of its right to pursue any further remedies or appeals, either administratively or judicially. Any judicial proceedings that may or could be filed against the City by an aggrieved or adversely affected party shall be filed within thirty (30) days after the City's final decision on a procurement matter. **Failure to timely file a judicial action in accordance with these procedures shall constitute a waiver and invalidation of any protest to the applicable solicitation, bid, or award.**

Section 10.12 City Manager's Decision

In making his/her decision on the protest, the City Manager or his/her designee shall have the authority to uphold the award recommendation, cancel the pending procurement process, re-bid the contract, revise the award recommendation, and take other such actions that are within City's procurement authority. The decision of the City Manager or his designee may be rendered within ten (10) business days of such meeting.

The decision of the City Manager's office may be appealed to the City Council, if such appeal is timely filed.

Section 10.13 Appeal to City Council

Bidders/responders who are adversely affected by the Office of the City Manager's decision with respect to a contract award may appeal the City Manager's decision by filing a written appeal with the City Clerk, no later than 5:00 p.m. on the fifth (5th) full business day following the date of the written decision issued by the City Manager or his/her designee. The written appeal shall substantially conform to the written protest notice content requirements above and shall be sent by the appealing party to all other bidders/responders within three (3) business days after filing the written appeal with the City in the same manner. **Failure to timely file a written appeal shall constitute a waiver and invalidation of any protest to the applicable solicitation, bid, or award.**

Section 10.14 Appeal Hearing

If an appeal is timely received, the appeal shall be heard by the City Council at a public meeting. The time, date and location of the City Council meeting shall be noticed by the City in the same manner as its notices regular City Council meetings. The Council may incorporate the appeal hearing into a regularly scheduled meeting if it so chooses.

The City Council's review of the City Manager's decisions shall consider only the facts and evidence already presented. No new evidence may be presented. The procedure for the City Council's review will be similar to the process specified for the protest meeting above. After conclusion of the presentations, the City Council shall conduct public deliberations, and, upon completion thereof, hold a vote as to the resolution of the appeal. The outcome of such vote and reasons provided therefore shall constitute the City's final determination of the matter.

End of Section X