

Protest Policy

Right to Protest - Any actual or prospective bidder or proposer, who is aggrieved in connection with a solicitation or award of a bid or contract may protest to the Purchasing Manager.

Remedy - The Purchasing Manager is authorized to settle any protest regarding the solicitation or award of a City contract, any claim arising out of the performance of a City contract prior to an appeal to the City Manager or City Council, or the commencement of an action in court of competent jurisdiction.

Stay of Procurement - In the event of a timely and properly filed protest, the Purchasing Manager shall not proceed further with the solicitation or award until all administrative remedies have been exhausted, or until the City Manager or City Council, as appropriate, makes a determination on the record that the award of a contract is necessary to protect substantial interests of the City.

Definitions

Interested Party - A party that is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the third party contract at issue.

Note: A subcontractor does not qualify as an “interested party”.

Protest – A formal declaration of disapproval or objection issued by a concerned person, group, or organization that arises during the procurement process. A protest is a potential bidder’s or contractor’s remedy for correcting a perceived wrong in the procurement process.

Protestor – A person, group, or organization that files a formal declaration of disapproval or objection. A protestor must qualify as an “interested party”.

Types of Protests

There are three basic types of protests, pursuant to this policy:

1. Pre-bid Solicitation – Protest is received *prior to the bid opening or proposal due date*. Pre-bid protests are those based on the content of the initial solicitation published by the City requesting bids from vendors or other interested parties.
2. Pre-award – Protest *following recommendation for award* and is received after receipt of bids or proposals, but prior to award of a contract.
3. Post-award – Protest received after *award of a contract*. A post-award generally alleges a violation of applicable federal or State law and/or City policy or procedures relative to the seeking, evaluating, and/or awarding of the contract.

Procedure

PROTEST OF SPECIFICATIONS (*Prior to Bid Opening*)

1. Any protestor (actual or prospective bidder, or contractor), who is aggrieved in connection with the solicitation of a contract or bid, may protest on the grounds of irregularities in specifications or bid procedure. Such protest must be filed within three (3) business days (excluding weekends and holidays) from the time the facts become known and, in any case, at least five (5) business days prior to the opening of the bid.
2. Protest must be made in writing to the Purchasing Manager, and shall state the particular grounds on which it is based and shall include all pertinent documents and evidence. No bid protest shall be accepted unless it complies with the requirements of this manual Section. Failure to timely protest bid specifications, requirements; and/or terms is a waiver of the ability to protest.
3. Stay of Procurement: In the event of a timely protest prior to bid opening, the City may proceed further with the solicitation or with the award of the contract unless the Purchasing Manager makes a written determination that the protest should be sustained.

PROTEST OF AWARD RECOMMENDATION (*After Bid Opening*)

1. Any protest after the bid opening, including challenges to actions of any evaluation of selection committee shall be submitted in writing to the Purchasing Manager.
2. The Notice of Intent to File a protest must be received by the Purchasing Division no later than 4:00 pm on the third business day (excluding weekends and holidays) following the day of the protestor's receipt of the City's notice of award recommendation.
3. The Notice of Intent to File a protest document shall state all grounds being claimed for the protest and clearly indicate, in their document, that they are intending to file a formal written protest.
4. The affected party must then file a Formal Written Protest within ten (10) calendar days after the time for the filing of the Notice of Intent to File a Protest has expired. The Formal Written Protest shall contain the following:
 - a. City bid/proposal identification number and title
 - b. Name and address of the affected party and the title or position of the person submitting the protest
 - c. A statement of all claimed disputed issues of material fact. If there are not disputed facts, the formal protest must so indicate
 - d. A concise statement of the facts alleged and the rules, regulations, statutes, or constitutional provisions which entitle the affected party to relief
 - e. All information, documents, other materials, calculations, and any statutory or case law authority in support of the grounds for the protest
 - f. A statement indicating the relief sought by the affected protesting party
 - g. Any other relevant information that the affected party deems to be material to the protest

5. Stay of Procurement: Upon receipt of timely filed Notice of Intent to File a Protest, the Purchasing Manager will abate the award process of the formal bid/proposal, as appropriate, until the protest is heard pursuant to the informal hearing process as outlined below, unless the City Manager shall find and set forth in writing particular facts and circumstances that would require an immediate award of the formal bid/proposal for the purpose of avoiding a danger to the public's health, safety, or welfare. Upon such written finding by the City Manager, an expedited protest hearing may be authorized.
6. Protest Review Board: A Protest Review Board shall be comprised of: (1) the affected Department Director, (2) Financial Services Director, (3) Purchasing Manager, and (4) Sr Contract Administrator, or their authorized representatives. The Protest Review Board shall conduct an informal hearing within seven (7) business days (excluding weekends and holidays) from receipt of the Formal Written Protest with the protesting firm, to attempt to resolve the protest. The purpose of the informal hearing by the Protest Review Board is to provide an opportunity to review the basis of the protest and to evaluate the facts and merits of the protest. The posting of a Public Notice for this meeting is required.
7. Once a determination is made by the Protest Review Board, the Review Board Chair, or designee, shall forward to the City Manager, their recommendation, which shall include all background information related to the procurement.
8. Upon approval of the recommendation by the City Manager, a City Manager Action Item or City Council Consent Item (depending on approving Purchasing category) shall be submitted for final award.
9. Notice of the final decision of the City Manager or City Council shall be furnished to the protesting party, in writing, by the Purchasing Manager.

PROTEST OF AWARD *(After Bid Award)*

1. A post-award protest must be received within five (5) business days (excluding weekends and holidays) of the award date. Depending on the Purchasing category and/or the awarding authority, the Purchasing Manager, City Manager, or City Council shall have the authority to settle and resolve a post-award protest concerning the award of a bid.
2. If the bid protest is not resolved by mutual agreement, the City Manager and the City Attorney, or their respective designees, shall promptly issue a decision in writing. The decision shall specifically state the reasons for the action taken and inform the protestor of his/her right to challenge the decision.
3. Any person aggrieved by any action or decision of the City Manager, the City Attorney, or their respective designees, with regard to any decision rendered under this section may appeal said decision by filing an original action in the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida, in accordance with the applicable court rules. Any action not brought in good faith shall be subject to sanctions including damages suffered by the City and attorney's fees incurred by the City in defense of such wrongful action.

Filing for Protest

All protests must be filed in writing with the City of Melbourne Purchasing Division, Purchasing Manager, 900 E Strawbridge Avenue, Melbourne, Florida 32901