

CITY OF LYNNWOOD
POLICY/PROCEDURES

Protest for Bidding or Solicitations		
EFFECTIVE DATE August 2003	SUPERSEDES January 1, 2000	PAGES 3 (with attachments)
MAYOR: <i>[Signature]</i> 9-3-3	Director: <i>[Signature]</i>	Purchasing Manager: <i>[Signature]</i>

Lynnwood Municipal Code: NA
RCW: 39.04 – Public Works as modified in 2003 by ESB HB 2056

PURPOSE: To respond to protests of City bid solicitations and awards in a courteous, timely, fair and professional manner. The purpose is to direct the response so the City and all interested companies have clearly delineated procedures that provide a fair forum through a rational and fair administrative process. In addition, requires protests to occur at the earliest known point in the process to allow prompt resolution of the protest issue and limit disruption to the award process.

POLICY STATEMENT: The City shall respond to all formal, written protests made against the City for bid and contract awards. This applies to all City departments. This applies to all formal sealed bids and informal Small Work quotations, unless an alternative protest procedure has been specified in the bid document; and to other solicitations beyond sealed bids and small work quotations when this protest policy is specified in the solicitation document itself.

Any actual or prospective bidder, including subcontractors and suppliers showing a substantial economic interest in the contract, who is aggrieved in connection with a Lynnwood solicitation or award of a contract may protest to Lynnwood in accordance with procedures herein.

The protesting party must meet all the criteria and procedures herein. Failure to comply with these protest procedures will render a protest untimely or inadequate and will result in rejection thereof by the City.

PROCEDURE; The protesting party must submit a formal written statement to the City Purchasing Manager (unless directed to another individual by the bid solicitation document) signed by the protesting party and submitted in a timely manner. The written protest statement must state the (1) name, address and phone number of the aggrieved person; (2) the bid number and title for which the protest is submitted; (3) the grounds for protest with specific and complete statement of the action(s) being protested; (4) a specific relief or ruling requested.

In no event shall a protest be considered if all bids are rejected, or after the contract in dispute has been awarded by the City.

In no case shall a bidder or protestor contact the Mayor or other elected City officials regarding the protest or a possible protest action, or the protest will be considered void. This criteria is to insure the ability of the City to respond appropriately and independently to the protest action without undue influence to the protest review.

Prior to bid opening or due date:

Parties with a potential economic interest in the outcome of a bid may submit a formal written protest to any condition known or that should reasonably have been known prior to bid opening. This includes conditions and information stated or provided in the solicitation documents, conditions occurring as a result of distribution of the solicitation documents, conditions occurring during the solicitation process, conditions occurring during any pre-bid meetings or conferences, and related matters prior to bid opening.

The City Purchasing Manager (or other City representative if so named in the solicitation document) must receive such written protest at least five (5) full business days prior to the bid submittal deadline. After that time, interested parties shall be considered to have waived their right to protest such issues.

Award:

Except for public work contracts solicited by formal sealed bid, which require a formal award by the Lynnwood City Council, the City may award and sign a contract at any time according to normal City procedures. Once the City has signed a contract, the City shall reject and no longer accept a protest related to that bid and contract award.

After bid opening and prior to award:

Within 2 full business days (the equivalent of 16 business hours) after the advertised date and time of bid opening, as amended (Saturday, Sunday and legal City holidays excluded), any party planning to protest must file written notice of such intention with the City Purchasing Manager (or other City official if so named in the bid document). If no notice is received by the City Purchasing Manager within the 2 business days, all eligible protesters will be considered to have waived their right to protest. Notice of intention must stipulate (1) name, and address and phone number of the aggrieved person; (2) the bid number and title for under which the protest is submitted; (3) the intended grounds for protest.

The complete protest, prepared in accordance with the criteria set forth in this procedure, must be received by the party to whom the original Notice of Protest was submitted within two (2) business days (16 business hours) after the date and time of receipt of the Notice of Protest.

After the two business days have passed from bid opening date/time, the City will proceed as follows.

If a notice of intent to protest was filed with the City during the 2 days following bid opening, the City may, in the City's determination:

- Suspend the award decision to allow consideration of the protest before award is made; or
- Declare intent to award and wait a minimum of 16 business hours (2 business days as defined above) before entering into a contract. Written notice of intent to execute a contract shall be met by either one of the following methods:
 - i. Public Posting by the City with a named intent to award indicated on the posted tabulation, made public or accessible to the public by telephone and/or posting on the City internet location designated for bid results; or
 - o A City Council memorandum request to authorize award to the apparent successful bidder. The first memorandum request that is submitted to Council for work session consideration shall be considered notice of intention to award.

After bid opening, only bidders that submitted a bid, subcontractors, or others that can show substantial economic interest in the bid award and who are aggrieved, are eligible to protest. After bid opening, protests are limited to issues related to bid opening, evaluation of bids, and intention to award decisions, and are further limited to those items that were not known or could not have been reasonably known prior to bid opening. Such issues that were known or should reasonably have been known must have been protested prior to bid opening, and are no longer eligible as an issue of protest. Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination or conflict of interest on the part of the evaluator;
- Errors in computing the score or bid price upon which award decisions are based;

- Non-compliance with procedures described in the solicitation for the opening and award itself.

City response to a written protest:

The City Purchasing Manager will receive the protest, unless otherwise stipulated in the bid document. Available facts will be considered and a decision will be issued by the City. The protesting party shall be notified of the City decision.

The City may give notice of the protest and its basis to other persons, including bidders, involved in or affected by the protest; such other persons may be given an opportunity to submit their views and relevant information.

The City will issue a written decision, stating the reasons for the decision and informing the aggrieved person of his/her right to appeal to the Public Works Director or Finance Director as appropriate to the jurisdiction of the bid and/or as named in the bid documents. The decision shall be mailed, electronically transmitted or otherwise promptly furnished to the aggrieved person and other interested parties. The decision will be considered final and conclusive unless appealed within two (2) business days (16 business hours) of the written decision.

Appeal: Any appeal must be made within two (2) business days of the determination being delivered by the City to the aggrieved party. An appeal must be in writing and submitted to the City Purchasing Manager (unless the bid solicitation document or the determination identified another City official to receive the aggrieved party statement). The written statement of appeal must provide a substantial basis for an appeal, based on the information submitted as part of the original protest. New information or basis of protest will not be considered during the appeal process. This shall be the final appeal provided to the protestor. The protest shall be considered by the Director for the bid jurisdiction (Public Works Director, Finance Director or other), who shall consider all facts and issues, and shall issue a final decision on behalf of the City.

If the aggrieved party appeals the decision, then the subsequent determination shall be final and conclusive.

Determination:

The determination by the City shall either:

- Find the protest lacking in merit and uphold the City's action; or
- Find only technical or harmless errors in the City acquisition process and determine the City to be in substantial compliance and therefore reject the protest; or
- Find merit in the protest and pursue correction including correcting the errors and reevaluating the Bids, and/or reissuing the solicitation to begin a new process; or
- Make other findings and determine other courses of action as appropriate.

City Purchasing Procedures:

The following are procedures recommended to insure proper compliance to the policy. These are advised and not mandatory, and may be used as determined by each department independently.

1. **In the solicitation document**, state when and where the bid results will be made publicly available. This may be by phone or on the Internet, or as otherwise appropriate.
2. **In the solicitation document**, name a contact person for the protest if different than the Purchasing Manager, for example the Public Works Director. ensure the protest policies are either (1) specifically written and included in the instructions; or (2) referenced as available from the City upon request.
3. **Award Information:** Identify when the apparent successful bidder information will be available, and where that information will be available (either by phone, or on the internet). Ensure that bid tabulation and/or award determination is made public and available, consistent with the solicitation document, immediately following award or Council authorization to proceed with award.
4. Strive to resolve all protests "Prior to Award" where feasible. Ensure that each protest is evaluated in an equitable and professional fashion.
5. **Protest:** Ensure that the City Purchasing Manager is immediately apprised of the protest and verbal indication of a potential protest and of all issues pertaining to the protest itself.
6. **Appeal:** Should an appeal be submitted, notify the City Purchasing Manager. Also notify the Public Works Director as appropriate to the solicitation. Coordinate with the Purchasing Manager and the Public Works Director as appropriate to the bid, to insure sufficient information, facts, and materials to respond to the protest appeal in a timely manner.

Upon Receipt of a Protest:

1. Immediately forward a copy of the protest to the Purchasing Manager. The Purchasing Manager shall consult and/or forward the protest to the Public Works Director as appropriate to the jurisdiction of the bid.
2. Complete the attached Protest Form and add to the contract file, to provide a record of the steps followed.
3. Review the issues raised by the protesting bidder to brief the Purchasing Manager and/or designees assigned by the Public Works Director, as appropriate to the bid.
4. Thoroughly document the activity in the contract file and include the timeline reflecting response to the protest. Review file to ensure that documents subject to public disclosure are appropriately included in the file.
5. Upon preparation of a response letter and signature of the Purchasing Manager or Public Works Director as appropriate to the bid, file copies of the response in the contract file and provide to the Purchasing Manager and City Attorney (where applicable).
6. All Public Work Sealed Bid awards shall be withheld for at least 48 hours after the City files an intention to award. Such intention to award shall follow that method named in the bid document, and may include (1) bid tabulations available by phone or by Internet; (2) notice to Council with request for an award.
7. Once the protest decision is sent to the protesting party, the party has two business days for appeal. If written appeal is received, proceed immediately to provide copies to the City Purchasing Manager, and to coordinate the appeal review with the City Finance Director. Ensure that all documentation and responses are included in the contract file. Prepare a draft response for the City Finance Director, and insure that the 2-day timeframe is either met, or that a written response to delay decision is drafted and issued to the protest appellent.
8. After appeal decision has been mailed, proceed with contract award.

PROTEST DATA RECORD
City Purchasing File

Protesting Business Name:			
Contract or Bid Number:			
Bid Title:			
Buyer:			
Dollar Amount:			
Solicitation Process:	Quotation	Bid	Proposals

DATE

1. **Public Posting of Bid.** State exact time, date and location of public bid opening.

2. **Protest Received**

- Was protest received within 48 hours of bid opening?
 - Yes. If yes, proceed below.
 - No. If no, prepare letter to reject protest as non-responsive.

- Copy of protest given to Purchasing Manager _____
- Determination by Purchasing Manager _____
 - Protest Denied, continue with bid process OR
 - Protest Accepted, modify bid process as appropriate

Date of Signed response issued to Protestor _____

3. **Appeal of Determination**

- If appeal received, immediately forward to Purchasing Manager _____
- Upon direction by PM, schedule briefing with PW Director, _____
Finance Director, City Attorney _____

- Determination of Appeal made
 - Protest Denied and Award Continues
 - Protest Upheld and Award is Rejected

- Date Appeal Determination Mailed _____