

## **COUNTY OF SANTA CLARA'S PROTEST PROCESS**

Per the County of Santa Clara (County) Board of Supervisors Policy Manual, Chapter 5, Section 5.6.5.3, Protest Process, it is the policy of the County to allow proposers/bidders to submit a protest to an award of a contract to another proposer/bidder or to otherwise challenge any steps taken during a solicitation process. This process is outlined in the procedures below.

### **PROTEST PROCEDURES**

The Procurement Officer will send an email to all entities that responded to the solicitation (collectively, "proposer/bidders") informing each of the proposal(s)/bid(s) that was/were selected or deemed to be a finalist. A proposer/bidder whose proposal/bid was not selected or not deemed to be a finalist may file a written protest within five (5) business days of issuance of the email. The County reserves the right at its sole discretion to continue with the solicitation process including proceeding with negotiations, award, and/or commencement of the contract(s) with the successful proposer(s)/bidder(s) while a protest is pending. Protesters must follow the procedures outlined below.

#### **A. Filing a Protest**

The protest must be in writing and submitted via email. The party filing the protest must be a proposer/bidder of the solicitation referenced. Only proposers/bidders or their authorized representative may file a protest. The protest and all supporting documentation must be emailed to the designated Procurement Officer so that it is **received no later than 5:00 p.m. Pacific Time of the fifth business day after** the email notifying proposers/bidders of the County's recommendation to award or selection. The following must be written on the subject line of the protest email: "Protest Relating to [SOLICITATION NUMBER]." Any protests filed by persons or entities not eligible to protest, not received by the deadline, that do not include correct identifying information or all required information as set forth herein and subsections (B) and (C) below, or are sent to any person other than the designated Procurement Officer may be rejected or dismissed by the County at the County's sole discretion.

#### **B. Contents of Protest**

The written protest must contain the following information: (1) the name, street address, electronic mail address, and telephone number of the protester; (2) authorized signature of the protester or its representative; (3) clearly state the grounds for the protest as set forth below and the evidence and/or credible allegations supporting each ground; (4) copies of any relevant documents; and (5) the form of relief requested. Protests should be concise and logically arranged. All documents submitted by the protester are public records subject to disclosure under the California Public Records Act.

The protester may not present any additional grounds, evidence, allegations, or arguments for protest after submission unless requested by the County.

### **C. Grounds for Protest**

Protests may only be based on one or more of the following grounds, and must be supported by evidence and/or credible allegations of:

1. A material error made by County officials or evaluation team members.
2. misconduct or impropriety by County officials or evaluation team members; or
3. abuse of discretion or process by County officials or evaluation team members.

A difference of opinion regarding the scoring or points awarded a solicitation response in any or all categories does not constitute a material error, abuse of discretion or process, or misconduct, by County officials or evaluation team members.

### **D. Protest Resolution Process**

#### **a. Review and Resolution by Agency/Department**

Upon receipt of a timely protest, the Director or head of the issuing agency/department (Department Head) or designee, in consultation with the Director of Procurement, will review and attempt to resolve the protest. Such person may use all available resources and information, including soliciting information from, and revealing information to, other entities or sources in its attempt to resolve the protest and shall issue a verbal or written response to the protest. The protester may withdraw its protest at any time, including before or after receiving the response.

The Department Head or designee, in consultation with the Director of Procurement, will typically communicate to the protester via email within five (5) business days of receiving the protest. The Department Head in its sole discretion may extend the time for the decision. The protestor must advise the agency/department within two (2) business days of receiving the agency/department's response if they wish to continue with the protest. If the protester wishes to continue with the protest, the protest and agency/department's response will be forwarded to an independent reviewing officer (IRO), and the IRO's contact information will be provided to the agency/department and protestor. .

When the protest relates to a procurement of goods or services affecting multiple departments, the Director of Procurement or designee will act in lieu of the Department Head to review and attempt to resolve the protest.

#### **b. Review by an Independent Review Officer (IRO)**

The IRO shall conduct an independent review of the protest to determine whether the grounds for the protest have merit. The IRO, at its sole discretion, may use any available resources and information, including soliciting information from, and revealing information to, other County and non-County entities and their officers, employees, and agents, in its attempt to resolve the protest. The IRO may also contact the protester or agency/department, or conduct a hearing as needed or if required by law.

The IRO will typically issue a written decision to the protester and the agency/department within 20 business days of receiving a protest. The IRO in its sole discretion may extend the time for

decision. The County will not be deemed to have issued a final decision on the protest until the IRO has issued a written decision on the protest. Protesters may issue a final appeal to the County Executive within 5 business days from the date of the IRO decision. The County Executive may delegate this final decision to a designee. A final response, verbally or in writing, must be issued within 10 business days. No other appeal process is available to the protesting party. Protesters may inquire about the status of their protest after 20 business days have elapsed.

#### **E. Remedies**

The County has no obligation to delay or otherwise postpone an award of contract based on a proposer's/bidder's protest. The remedies available pursuant to these procedures may include, but are not limited to, the reevaluation of proposals/bids by the same or a new evaluation committee or the cancellation of a solicitation. However, no remedy may require the County to execute a contract with any entity.