

# City of Tacoma

# **Protest Policy**

Excerpt from Purchasing Policy  
Manual

## **XVII. PROTESTS**

### **A. Purpose and Overview**

1. The purpose of the following protest rules, standards, and procedures is to promote the prudent and proper use of public funds and to provide a fair forum for parties participating in the solicitation and award of City contracts. Subject to the limits and procedures set forth in this Section XVII., all parties who have submitted a bid, proposal, quote, or submittal in response to a solicitation by the City shall have the right to timely protest the City's solicitation process and/or a contract award recommendation made by a department/division.
2. For purposes of this Section XVII., the terms "bid," "proposal," "quote," "submittal," and "solicitation" shall be as defined in TMC 1.06.251. Unless otherwise defined or expressed in this Section, the terms "bid" and "bidders" shall be as defined in TMC 1.06.251 and apply to all protest procedures.
3. Protests involving a request for proposals (RFP), request for qualifications (RFQ), or request for information (RFI) shall be limited to the solicitation and/or evaluation process. No RFP, RFQ, or RFI protest will be accepted when based solely on a challenge to the City's exercise of discretion or judgment in selection of finalist(s) or in making a contract award recommendation.
4. The City is authorized to reject any and all submittals and to cancel any solicitation process. The City's decision to cancel the solicitation process and/or reject all submittals is not subject to protest. (Reference City Charter Section 7.11; TMC 1.06.266 E)
5. Protests involving solicitations, selection of finalist(s), and/or an award recommendation for contracts of \$200,000 or less must be filed with and heard exclusively by the Procurement and Payables Division manager. Protests involving solicitations, selection of finalist(s), and/or an award recommendation for contracts over \$200,000 must be filed with the Procurement and Payables Division manager and are heard by the C&A Board. The decision of the C&A Board may be appealed to the City Council or the Public Utility Board on a quasi-judicial de novo basis on the record below.
6. Protests shall be filed with the Procurement and Payables Division manager according to the timelines, and are limited to the subject matter(s), specified in this Section XVII. A protest not made in the required manner or by the required deadlines set forth below shall not be considered or acted upon by the City – regardless of whether such matter is intended to be a protest to the Procurement and Payables Division manager, to the C&A Board, or as a request for quasi-judicial hearing to the City Council or Public Utility Board.

**B. Protests Prior To Submittal Deadline – Contracts Over \$50,000.** Objections asserted before submittals are due shall be considered and processed as a formal protest if asserted according to the following rules and procedures:

1. Pre-Submittal protests shall be limited to the following objections:
  - a. The solicitation specifications, minimum qualifications, terms and conditions, or any aspect of the solicitation that is alleged to unduly constrain competition;

- b. The fairness or accessibility of the pre-bid/pre-submittal conference;
  - c. Concerns that the protestor's questions were not fully or properly addressed by the originating division/department or Purchasing;
  - d. Concerns that the solicitation documents did not provide adequate information or contained improper criteria; or
  - e. Any other matter known or that should have been known to interested bidders by reading the solicitation documents.
2. The protestor shall notify, in writing, the Procurement and Payables Division manager of any permissible objection (per subsection B. 1. immediately above) as soon as practical, but no later than 5:00 p.m. three (3) business days before the submittal deadline. Untimely objections shall not be accepted or processed as a protest. Purchasing will promptly forward all timely written objections onto the department/division.
3. Failure to assert a pre-submittal protest according to the rules and procedures of this subsection B. shall result in the waiver of any further right to protest the matters specified in subsection B. 1. Protests filed later than 5:00 p.m. three (3) business days prior to the submittal deadline will be rejected by Procurement and Payables Division manager or will be limited by Procurement and Payables Division manager to issues that are allowed to be asserted under subsection C. below.
4. The Procurement and Payables Division manager, in coordination with the originating department/division, will evaluate pre-submittal protests.
- a. The protesting bidder(s) and recommended awardee(s) shall be advised, in writing, of the Procurement and Payables Division manager's determination on the matter as soon as practicable after a decision (including a decision to reject the protest as improper) is reached.
  - b. The written determination of the protest by the Procurement and Payables Division manager shall:
    - 1) Find the protest lacking in merit and uphold the division/department recommendation; or
    - 2) Find only immaterial or harmless errors in the City's acquisition process and therefore reject the protest; or
    - 3) Find merit in the protest and issue an addendum to correct the confirmed error; or
    - 4) Find merit in the protest and cancel the solicitation.
  - c. If the Procurement and Payables Division manager finds the protest without merit the City may continue the solicitation process.
  - d. No pre-submittal protest shall require the City to extend a submittal deadline or cancel a solicitation request; however, the City reserves the right to do so at the sole discretion of the Procurement and Payables Division manager.

**C. Grounds for Protests Following Submittal Deadline.** A bidder/respondent to a City solicitation may, after the submittal deadline, submit a protest involving the following City actions and/or alleging the following grounds:

1. City's rejection of submittal as non-responsive;
2. City's rejection of a bidder as not responsible;
3. Allegations the City failed to follow its published evaluation or scoring process;
4. Allegations the City made mathematical errors;
5. Allegations the City engaged in unlawful bias or discrimination and/or has a conflict of interest in the competitive solicitation process; and/or
6. Allegations the competitive solicitation process as conducted by the City, and/or the resulting award recommendation or award, was arbitrary and capricious or contrary to law.

NOTE: Protests not raising any of the grounds listed above shall be rejected by the Procurement and Payables Division manager or will be limited by the Procurement and Payables Division manager to consideration of permissible grounds for protest. Any part of a protest that has been rejected by Purchasing on this basis will not be further considered by the City.

**D. Notice of Non-Selection.** Purchasing will issue a Notice of Non-Selection as follows:

- a. For Request for Bids over \$200,000, the notice will be sent to the low bidder(s) not selected for award and the recommended awardee(s) at the time award recommendation is made.
- b. For Request for Bids for public works and improvements over \$50,000, the notice will be sent to the low bidder(s) not selected for award and the recommended awardee(s) at the time award recommendation is made.
- c. For Request for Proposals and Request for Qualifications over \$50,000, the notice will be sent to respondents not selected for further evaluation or contract award at the time finalist(s) is/are selected, prior to negotiations and/or award recommendation(s).

**E. General Requirements for Protests Following Submittal Deadline:**

1. All Protests Shall be in Writing and Specify the Grounds for Protest. A protest shall be in writing, state that the bidder is submitting a formal protest, and specify as the subject of the protest one or more of the grounds set forth in subsection C. above.
2. All Protests Shall be Timely Filed With the Procurement and Payables Division Manager. A protest shall be submitted within the applicable time specified in this subsection G. and H. below, or as directed in a written notice issued by Purchasing. If the protest is not timely received by Purchasing, it will be rejected.

Protests shall be directed to the Procurement and Payables Division manager and may be delivered by hand, e-mail, or facsimile. The City is not responsible for, and does not assure, timely receipt of a protest when delivered anywhere other than to the following address:

Procurement and Payables Division - Purchasing  
Tacoma Public Utilities Administration Building North, Main Floor  
3628 South 35<sup>th</sup> Street  
Tacoma, WA 98409  
253-502-8372 FAX  
[purchasingprotests@cityoftacoma.org](mailto:purchasingprotests@cityoftacoma.org)  
Monday-Friday, 8:00 a.m. - 5:00 p.m., excluding legal holidays

**F. Protest Process Exclusive Means.** The rules, standards, and procedures contained in this Section XVII. are the exclusive means by which aggrieved parties may protest the City's solicitation process, the selection of finalist(s) by a department/division, and any award recommendation made by a department/division, Procurement and Payables Division manager, and/or the C&A Board. No person or party may pursue any judicial proceedings challenging the solicitation or award of a contract by the City without first fully exhausting the administrative procedures and remedies specified in this Section XVII.

1. Aggrieved parties (or recommended awardees) shall submit their protest(s) and all inquiries regarding a pending protest to the Procurement and Payables Division manager.
2. Communication by vendors (including their agents, representatives, and associates) with the following City offices, officials, and employees regarding potential and/or pending protests is discouraged and said offices, officials, and employees shall promptly refer all protest communications to the Procurement and Payables Division manager for proper processing and resolution pursuant to this Section XVII.:
  - a. City Manager's office, TPU Director's office, City Council and/or Public Utility Board members; or
  - b. C&A Board members; or
  - c. Any other City personnel who influence or may be seen to influence the contract award process.
3. City personnel shall remain fair, ethical, and unbiased in their approach and decision making throughout the protest process.
4. In the event the protest process is disrupted, circumvented or otherwise not observed, the City reserves the right to reject all bids.

**G. Specific Protest Procedures – Contracts \$200,000 or Less**

1. Matters Subject to Protest, including surplus sales, may be protested to the Procurement and Payables Division manager, whose decision shall be final.
2. Procedure and Deadlines – Protests to Procurement and Payables Division Manager
  - a. Purchasing will issue, by e-mail or fax, a Notice of Non-Selection and option to protest to the Procurement and Payables Division manager as follows:

- 1) For contracts of \$50,001 - \$200,000 for public works and improvements resulting from a Request for Bids, notice is given to the low bidder(s) not selected for award and the recommended awardee(s).
  - 2) For contracts of \$50,001 - \$200,000 resulting from a Request for Proposals or Request for Qualifications, notice is given to all non-selected respondents.
- b. A protesting bidder shall submit in writing to the Procurement and Payables Division manager the basis for the protest and the remedy sought. The protest shall be received by Purchasing no later than two (2) business days (excluding holidays) after issuance of Notice of Non-Selection.
  - c. The Procurement and Payables Division manager, in coordination with the originating department/division, will evaluate such protests.
  - d. The protesting bidder(s) and recommended awardee(s) shall be advised, in writing, of the Procurement and Payables Division manager's determination on the matter as soon as practicable after a decision (including a decision to reject the protest as improper) is reached.
  - e. The written determination of the protest by the Procurement and Payables Division manager shall:
    - 1) Find the protest lacking in merit and uphold the division/department recommendation; or
    - 2) Find only immaterial or harmless errors in the City's acquisition process and therefore reject the protest; or
    - 3) Find merit in the protest and proceed with appropriate action, which may include, but is not limited to, rejecting all bids, re-tabulating or rescoring bids, or otherwise modifying the original award recommendation.
  - f. If the Procurement and Payables Division manager finds the protest without merit the City may continue the bid process or enter into a contract with the recommended bidder if a contract has not been previously signed.

#### **H. Specific Protest Procedures – Contracts Over \$200,000**

1. Protests of recommendations for awards of contracts over \$200,000 shall be filed with to the Procurement and Payables Division manager for processing. Such processing includes review and determination of whether the protest is proper and, if so, scheduling the matter for hearing by the Contracts and Awards Board. The C&A Board will hear the protest and either concur with or reject award recommendation by the department/division prior to presentation of the award recommendation to City Council and/or Public Utility Board for contract award approval.
2. Procedure – Protests to C&A Board
  - a. Purchasing shall, at least three (3) business days prior to the matter being considered by the C&A Board, issue by email or fax a Notice of Non-Selection and option to protest to the C&A Board.
    - 1) For contract of over \$200,000 resulting from a Request for Bids, notice is given to the lowest bidder(s) in price and recommended awardee(s).

- 2) For contract over \$200,000 resulting from a Request for Proposals or Request for Qualifications, notice is given to all non-selected respondents.
  - b. Purchasing shall inform those notified of the proper grounds for protest.
  - c. Protesting bidders shall submit in writing to Purchasing the basis for the protest and the remedy sought, including all supporting documents the protestor wants considered. The protest must be received by Purchasing no later than 9:00 a.m. two (2) business days after notice is given (effectively, the third business day).
  - d. The Procurement and Payables Division manager will review the protest and will reject those determined to be improper, or will limit the protest to proper grounds. Purchasing will inform bidders of any rejected or limited protests.
  - e. Purchasing shall schedule a hearing before the C&A Board. Usually the hearing will be at the next scheduled C&A Board, but at the discretion of Procurement and Payables Division manager the hearing could be set for a future C&A Board date.
  - f. Purchasing shall provide written notification by fax or e-mail to the protesting party(ies), recommended awardee(s), and department/division of the protest process and timelines.
  - g. Purchasing shall provide copies of any written submissions to all parties, including the originating division/department.
  - h. The recommended awardee may submit responsive documentation no later than 9:00 a.m. one (1) business day after the notice in f. above is given.
  - i. The C&A Board shall not consider any documentation submitted past the deadlines.
  - j. A protestor's failure to timely submit a protest to the Procurement and Payables Division manager and/or state permissible grounds for the protest as required shall result in a waiver of further protest rights.
3. Hearing and Recommendation by C&A Board. The C&A Board's hearing of the protest shall proceed as follows:
    - a. The originating department/division will briefly describe the purchase, project, solicitation process, and basis for its award recommendation. The department/division may wish to consult with the Legal Department and request representation at the hearing.
    - b. The protesting party will have up to 10 minutes, or more as allowed by the Board Chair, to state the basis of its protest.
    - c. The recommended awardee, if present, will have up to 10 minutes, or more as allowed by the Board, to state its response to the protest.
    - d. The department/division, protestor, or recommended awardee may reserve a portion of their time for rebuttal.
    - e. The C&A Board may conduct such further inquiry of the parties and of the originating department/division as it deems necessary. The C&A Board will be advised by and may

consult with its Legal Department representative, who may not be the same attorney representing the department/division at the hearing.

- f. The C&A Board, at its discretion, may call for a recess to deliberate in closed session before taking action. If the Board chooses a closed session deliberation, it will clear the room of all but Board members and Board's attorney.
- g. At the close of its deliberations the C&A Board will go back on the record and resume the meeting.
- h. The C&A Board's disposition options include, but are not limited to:
  - 1) Voting to accept the department/division's recommendation and to advance that recommendation to the City Council or Public Utility Board.
  - 2) Voting to take other action in light of the protest, including:
    - i. returning the matter to the department/division with instructions to gather additional information and re-submit an award recommendation;
    - ii. recommending the department/division to reject, re-tabulate, or rescore all bids.
- i. Minutes will be kept reflecting the presentation to and recommendation(s) of the C&A Board.
- j. Purchasing, on behalf of the C&A Board, will issue written notice of the C&A Board's decision (including the option to request a quasi-judicial hearing before the City Council/Public Utility Board if aggrieved by the results of the C&A Board decision) to the recommended awardee, all protesting parties, and the department/division on the same day as the C&A Board meeting.
- k. In the event of further appeal, Purchasing will prepare and forward a written summary of the proceedings before the C&A Board, including the reasons for the C&A Board recommendation, to the City Council or Public Utility Board. Purchasing will also forward all of the written materials considered at the C&A Board meeting to the City Council or Public Utility Board and will provide a copy of the summary and written materials to the department/division.

#### 4. Impact of Protest on Award Recommendation Timeframes

Whenever a protest is filed with the C&A Board, award recommendations to the City Council and Public Utility Board will be delayed by one meeting. Exceptions to the delay may be made to the Procurement and Payables Division manager and will be determined on a case-by-case basis. Departments/Divisions should plan accordingly, especially when bid or pricing expiration dates or grant deadlines are involved.

- a. For TPU, award recommendations should be submitted for a C&A meeting scheduled the week prior to the desired Public Utility Board meeting.
- b. For General Government, award recommendations should be submitted for a C&A meeting scheduled two weeks prior to the desired City Council meeting to accommodate delays caused by protests.

## **I. Protests To City Council and/or Public Utility Board**

1. If the C&A Board affirms the department/division recommendation, the protesting party has until 12:00 noon of the second business day after the C&A Board meeting to request a quasi-judicial hearing before the City Council/Public Utility Board.
  - a. For example, if the C&A Board denies a protest at a Wednesday meeting, the request must be delivered by 12:00 noon on Friday.
  - b. The request for quasi-judicial hearing shall be filed with the Procurement and Payable Division manager, and Purchasing will deliver any timely filed requests for quasi-judicial hearings to the City Clerk's office for consideration by the City Council; or to Clerk of the Board, Director of Utilities office, for consideration by the Public Utility Board.
2. Appeals to City Council/Public Utility Board at quasi-judicial hearings are limited in scope to issues and documentation considered by the C&A Board. Questions and comments by City Council members and Public Utility Board members are limited to the same issues and documentation considered by the C&A Board.
3. Summaries of the protest before the C&A Board will be prepared by C&A Board staff (Purchasing) with the assistance of C&A Board legal counsel.
4. Purchasing will assemble the record of the protest before the C&A Board which will consist of at least the following:
  - a. Solicitation documents;
  - b. Submittals in response to solicitations (bids or proposals);
  - c. Documentation department/division relied upon to make award recommendation; and
  - d. Materials presented to C&A Board.
5. Purchasing staff will forward copies of the C&A Board record to:
  - a. The City Clerk's office for appeals to City Council and to the Director of Utilities office for appeals to the Public Utility Board for inclusion in the meeting materials distributed to City Council members or Public Utility Board members, as applicable;
  - b. The originating division/department;
  - c. All parties to the protest; and
  - d. The attorney for the C&A Board.
6. Communication to and from the parties regarding the anticipated process before the City Council or the Public Utility Board shall be generated by and directed to Purchasing.
7. Quasi-judicial hearings are conducted by City Council/Public Utility Board. The Legal Department will provide hearings procedures and guidance as needed to the members of the City Council or the members of the Public Utility Board.

8. The originating department/division and their legal counsel, if desired by the department/division, C&A Board Chair (or designee), and C&A Board's legal counsel, will attend quasi-judicial hearings. In addition, appropriate Purchasing staff will attend to answer City Council or Public Utility Board questions.
9. The C&A Board, by and through its chair, legal advisor, or other appropriate representative will present a summary of the proceedings to date to the City Council or the Public Utility Board and will summarize the issue before the City Council or Public Utility Board.
10. City staff from the originating department/division will be given up to ten minutes to present its contract award recommendation. The legal advisor for requesting department/division may make the presentation on behalf of the department/division or may assist with such presentation as requested.
11. The protestor and recommended contract awardee will each have ten minutes to present, with the protesting party being given the opportunity to reserve a portion of that time for rebuttal.
12. Following testimony, members of the City Council or the Public Utility Board may ask questions, limited in scope to issues and documentation considered by the C&A Board, of City staff and of the parties or their representatives.
13. At the close of the proceedings the City Council or the Public Utility Board at its discretion may retire to a closed session for deliberations.
14. At the close of the deliberations the City Council or the Public Utility Board will make a motion to concur with the recommendation of the C&A Board, to remand to the C&A Board for further consideration, or to take other lawful action.
15. The official result of the quasi-judicial hearing and any further appeal process will be directed by the City Council/Public Utility Board, through the single points of contact:
  - a. City Clerk's office, and/or
  - b. Clerk of the (Public Utility) Board, Director of Utilities office.