

CHAPTER 10:

VENDOR PROTEST AND APPEAL POLICY

Revised 4/20

10A) Vendor Protest and Appeal Policy

The purpose of the protest procedures is to protect the public interest in the purchasing process. This section is intended to give bidders/proposers who feel they have been aggrieved in connection with the solicitation, evaluation, or award of a contract the opportunity to protest. It is the intent of the City that this policy applies to all Invitation for bids, Request for Proposals, Request for Qualifications, and any other solicitation process used by the City. The City's objective is to resolve protests as soon as practical. This policy supersedes all prior City of Amarillo Protest of Contract Award policies.

1. A bidder/proposer who is not selected for contract award may protest the award of a contract to another by submitting a written protest.
 - a. For contracts awarded pursuant to an invitation to bid, the protest must be received by the City's Purchasing Department no later than 5:00 p.m. on the fifth business day after the date of the public bid opening and reading with announcement of the apparent low bid.
 - b. For contracts awarded pursuant to a request for proposal, the protest must be received by the City's Purchasing Department no later than 5:00 p.m. on the fifth business day after the City notifies the proposers of the apparent winning proposal.
 - c. If a bid or proposal is rejected as non-responsive and that is basis of appeal, the protest must be received by the City's Purchasing Department no later than 5:00 p.m. on the fifth business day after the City notifies the bidder/proposer that the bid or proposal is being rejected.
 - d. If a bidder/proposer is denied the award of a contract because the bidder/proposer is not considered to be responsible, the protest must be received by the City's Purchasing Department no later than the fifth business day after the City notifies the bidder/proposer that it is deemed to be not a responsible party.
2. Any and all of the several types of notices that are required or allowed by this policy shall be given and effective as follows: by any reasonable means, including but not limited to U.S. mail, electronic mail (email), facsimile, automated phone message or internet posting on the City's website. The effective date of notice by mail is the date that the notice is deposited in the

mail. The effective date of all other means of notice is the date it is transmitted or posted.

3. The protest must be identified as a "bid/proposal protest" in the subject line or title of the document, must include the bid/proposal number, must be sworn to and shall precisely state each and all legal and factual grounds claimed as a basis for the protest. Only protests alleging issues concerning a matter of bias, discrimination or conflict of interest, errors in computing scores, and/or non-compliance with procedures required by law or City policy will be considered. Additionally, the protest must include copies of relevant documents and a statement of the relief sought. Grounds or relief not raised in the written protest are deemed waived by the bidder/proposer.
4. The City shall not award the contract being protested until after the Director of Purchasing issues a written decision on the protest unless the Director of Purchasing makes a written determination that the contract must be awarded without further delay to protect the interests of the City. A decision and written response to the protest will be made by the Director of Purchasing, in consultation with the City department requesting the contract and the City Attorney Office, within ten (10) business days after receipt of the protest, unless Director of Purchasing extends the time by written notice to protester within said ten day period. The decision of the Director of Purchasing shall:
 - a. Find the protest lacking in merit and uphold the City action; or
 - b. Find only immaterial or harmless errors, or waivable technicalities, formalities, or irregularities, in the City's solicitation, selection and award, and reject the protest; or
 - c. Find merit in the protest and proceed with appropriate action, which shall include, but is not limited to, disqualification or rejection of certain bids/proposals, rejecting all bids, re-tabulating proposals, or other appropriate remedy.
5. The decision of the Director of Purchasing may be appealed to the City Manager by filing a written notice of appeal with the City Secretary within five business days after the Director of Purchasing gives notice to the protester of the decision. The scope of the appeal will be limited to a review of the Director of Purchasing's decision based on the legal and factual grounds alleged by the protester and considered by the Director of Purchasing. No new grounds for protest can be raised in the appeal. The City Manager or designee will respond in writing within ten (10) calendar days after receipt of the notice of appeal unless the time is extended in the same manner as provided in Section (d) above. The

written decision of the City Manager or designee shall be final and exhausts the protester's administrative remedies.

6. Nothing herein is intended to prevent the protesting party from withdrawing the protest at any time prior to the Director of Purchasing or City Manager issuing a written decision.
7. The procedure and time limits set forth in this policy are mandatory and are the bidder's/proposers sole and exclusive remedy. Failure to comply with these procedures and time limits shall constitute a waiver of any right to further pursue a protest.
8. The bidder's/proposer's filing of a protest shall not preclude the City from rejecting all bids or proposals and re-advertising. Rejecting all bids or proposals shall render a protest moot and terminate all protest proceedings.
9. The Purchasing Department shall maintain all documentation relevant to the bid/proposal that is the subject of protest and appeal for a minimum period of four years after the date of events identified in Sections (3A) (1)-(3).