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# CITY OF CHICAGO

## RULES

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### **Solicitation and Contracting Process Protest Procedures**

**UNDER 2-92-010**

**LAST UPDATED: December 11, 2018**



**DEPARTMENT OF  
PROCUREMENT  
SERVICES**

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**Mayor Rahm Emanuel**

**Chief Procurement Officer Shannon E. Andrews**

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BY AUTHORITY VESTED IN THE CHIEF PROCUREMENT OFFICER FOR THE DEPARTMENT OF PROCUREMENT SERVICES PURSUANT TO 2-92-010, THE FOLLOWING RULES REGARDING THE SOLICITATION AND CONTRACTING PROCESS PROTEST PROCEDURES ARE ADOPTED HEREIN.

By Order of the Commissioner:

Signed:   
Chief Procurement Officer *JK*

Date: 11 December 2018

Effective: **DEC 1 1 2018**

## **SECTION I – CITY OF CHICAGO PROTEST PROCEDURES**

The City of Chicago's ("City") Chief Procurement Officer ("CPO") will consider a protest (as described in subsection C) regarding its procurement actions for City projects in accordance with the following procedures ("Procedures"). These procedures are applicable to bids, requests for qualifications, and requests for proposals. All protests will be evaluated and finally decided by the CPO. Accordingly, the City intends to provide a thorough review of all protests to the extent they conform to the requirements herein. The City's primary concern is the timely procurement of needed capital equipment, supplies, or services. The City will not allow the filing of a protest to unnecessarily delay the procurement process, especially if the protest involved is vexatious or frivolous in nature.

Notwithstanding the availability of these protest procedures, any interested party is required to exhaust all methods of resolution described in the contract documents before filing a formal protest. In its consideration of a protest, the City reserves the right to give consideration to the good faith efforts of the protestor to resolve the issue involved through informal methods.

### **A. Definitions**

1. "Chief Procurement Officer" or "CPO" means the Chief Procurement Officer of the City of Chicago.
2. "Days" means those days in which municipal offices are open for conducting city business.
3. "Federal law or regulation" means any valid requirement imposed by Federal statutes or regulations governing contracts awarded pursuant to a grant agreement with the federal government or any of its agencies, including the requirement of FTA Circular 4220.1F.
4. "Interested party" means any person (a) who is an actual bidder or prospective bidder in the procurement involved; (b) whose direct economic interest would be affected by the award of the contract or by a failure to award the contract; and (c) who demonstrates compliance with these Procedures, the terms of the invitation for bids, and the contract documents (if bid) or Request for Qualifications (RFQ) or Request for Proposals (RFP), as applicable.
5. "Protested party" means the interested party that is the subject of a bid protest.
6. "Submit" or "File" means the date of actual receipt by the Chief Procurement Officer.

### **B. Filing of a Protest**

Any interested party may file a protest on the basis that the City has failed to comply with applicable Federal, State, or local laws or regulations. The protest must be filed in accordance with the timing requirements set forth in subsection C of these Procedures, and must include:

1. The name, address, telephone and e-mail address of the protestor;
2. The number of the specification/contract solicitation;
3. All information showing that the protestor is an interested party;



4. A written statement of the grounds for the protest and in particular the Federal, State or local law regulation alleged to have been violated. This statement should be accompanied by all relevant support documentations, and a statement regarding the course of action the protestor desires that the Chief Procurement Officer take. Protests should be submitted to:

Chief Procurement Officer  
City of Chicago  
Department of Procurement Services  
121 North LaSalle Street, Room 806  
Chicago, Illinois 60602

A copy of the protest and all supporting documents must be submitted electronically as an email attachment. If the protest exceeds 25MB, it must be submitted on a USB flash drive or on a CD.

5. All information establishing the timeliness of the protest; and
6. The signature of the protestor.

If the protest does not meet the time or content requirements, the CPO may, at her option, reject the protest, allow the protestor a reasonable time to correct the deficiencies of the protest, or waive the deficiencies of the protest. The CPO shall not be obliged to postpone contract awards in order to allow a protestor an opportunity to correct a deficient protest unless otherwise required by Federal law or regulation.

### **C. Subject of the Protest and Timing**

The requirements for timely filing of a protest with the Chief Procurement Officer will depend upon the type of protest involved. The subject of the protest shall be limited to fraud, corruption, or illegal acts undermining the objective and integrity of the procurement process. For purposes of this section and in accordance with Section I.A.4 of these Procedures, deposit in the mail, postage prepaid does not constitute filing or receipt. A protest is considered filed when physically received by the CPO or duly appointed designee.

The City will consider these types of protests:

1. Protest regarding solicitation (Pre-Bid Protest)

Any protest regarding the solicitation by the City must be filed no later than five (5) days before the opening of bids (if bid) or the due date for submittals or proposals (if RFP/RFQ), as applicable. Any protest filed after that date which raises issues regarding the solicitation shall not be considered.

2. Protests regarding the evaluation of bids, qualifications, or proposals (Pre-Award Protest)

Any protest regarding the evaluation of bids, qualifications, or proposals by the City must be filed with the City no later than ten (10) days after the opening of bids (if bid), or due date (if RFQ/RFP), or notification that the protestor's status as a bidder/responder has changed, such as notification that a bid or proposal has been rejected. Any protest filed after such date which raises issues regarding the evaluation shall not be considered.



### 3. Protest Regarding Award of Contract (Post-Award Protest)

Any protest regarding the award of the contract must be filed no later than ten (10) days after the date of award. Any protest regarding the award of the contract filed after such date shall not be considered.

## D. Protested Party Response

The Chief Procurement Officer may offer a protested party the opportunity to respond to a protest. If the CPO extends such an offer, each protested party shall have 10 days to respond in writing to a protest by providing to the Chief Procurement Officer supplemental information or by submitting any written information comparable to that described in subsection B herein. A copy of the response to the protest and all supporting documents must be submitted electronically as an email attachment. If the response exceeds 25MB, it must be submitted on a USB flash drive or on a CD. A protested party may request, and the Chief Procurement Officer may allow, an additional period of time to respond if the protest is complicated or the documentation is voluminous. In no event shall the additional time exceed 10 days.

Failure by a protested party to respond to a protest, or to any portion of it, shall not be deemed to be an admission of any allegation made in the protest, but shall be deemed to constitute a waiver of the opportunity to respond to such allegation(s), if any, at this stage of the process.

## E. City Response

### 1. Types of Protest

Upon timely receipt of a protest, the CPO may request additional information from the protestor. The CPO may, in its discretion, meet with the protestor to review the matters raised in the protest. The CPO's consideration of the particular types of protests will, except as otherwise provided in Paragraph 2 of this subsection, be in accordance with the following provisions:

#### a. Protest regarding solicitation (Pre-Bid Protest)

Upon receipt of a timely and properly filed protest regarding the solicitation, the CPO may postpone the opening of bids, qualifications, or proposal packages until resolution of the protest, unless otherwise decided by the Chief Procurement Officer in accordance with Section D.2 of this procedure. If the CPO postpones the opening of bids, submittals, or proposal packages, no additional bids will be accepted during the period of postponement.

#### b. Protests regarding the evaluation of bids, qualifications, or proposals (Pre-Award Protest)

Upon receipt of a timely and properly filed protest regarding the evaluation of bids, qualifications, or proposals, the CPO may suspend its evaluation of all bids, qualifications, or proposals submitted until resolution of the protest, unless otherwise determined by the CPO in accordance with Section D.2 below.

#### c. Protest Regarding Award of Contract (Post-Award Protest)

Upon receipt of a timely and properly filed protest regarding the award of a contract, the CPO will not issue a notice to proceed or submit an order for goods to the contractor until the protest has been resolved, unless the work or supplies are necessary to protect the interests of the City in accordance with Section D.2 below. If necessary, the CPO may issue a stop work order until the resolution of the protest.



## 2. Decisions by the Chief Procurement Officer

### a. Continue Process during Protest Resolution

A decision on a protest will be made as expeditiously as possible after receiving all relevant information. The CPO reserves the right, notwithstanding the pendency of a protest, to proceed with the appropriate action in the procurement process or under the contract in the following cases:

- (1) Where the item to be procured is urgently required;
- (2) Where the CPO determines that the protest was vexatious or frivolous;
- (3) Where delivery or performance will be unduly delayed, or other undue harm will occur, by failure to make the award promptly; and
- (4) Where the CPO determines that continuation of the procurement process is in the best interest of the City

### b. Informal Conference

The protestor may submit a request for an informal conference with its timely and properly filed protest. If a protested party submits a written response to the protest pursuant to subsection D herein, it may include any request for an informal conference with its response. The CPO may, at her option, hold an informal conference on the merits of the protest with all interested and available parties. All interested parties will be given at least two (2) days' notice of the informal conference.

### c. Final Determination

Upon receipt of a timely and properly filed protest and review by the CPO, the CPO will provide a written decision to the protestor within thirty (30) days after the last submission has been made (including the submission of supplemental information or explanations requested by the CPO), unless the CPO notifies all parties that have made a submission that an additional period is needed for the CPO to prepare a final decision. The CPO will base her decision based on all available information pertinent to the protest, including the information submitted by the protestor and protested party, the result of any meetings with the protestor and protested party, and the CPO's own investigation. The CPO will respond to each substantive issue on the protest submitted with the level of detail deemed appropriate by the CPO. The CPO's decision shall become final after five (5) days from its issuance unless a timely request for reconsideration is filed as noted below.

### d. Reconsideration of Protest Decision

A protestor or protested party may request the CPO's reconsideration of a decision if:

- (1) Information becomes available that was not previously known, or could have reasonably become known, or
- (2) The CPO's decision contains an error of law or regulation.



The request must be submitted in writing to the CPO within five (5) days of the date of issuance of the initial decision. The request must include a detailed explanation of the basis for reconsideration and state the course of action the protestor or protested party desires that the CPO takes.

If the project is funded by FTA, then no protest may be filed with FTA later than five (5) days after a final decision by the CPO. As referenced in the preceding sentence, "filed" refers to the date of receipt by FTA and "days" refers to working days of the Federal Government.

Any alleged violation of a specified Federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with the applicable Federal regulations instead of the requirements of FTA Circular 4220.1F.

e. Actions after the Chief Procurement Officer's Decision

After the Chief Procurement Officer's decision becomes final, the appropriate actions will take place. If the protest is upheld, the CPO's actions may include, but are not limited to, any appropriate steps to correct the procurement process, such as: re-solicitation of bids, revising evaluation of bids, CPO's determination, or termination of the contract. If the protest is denied, the CPO will lift any imposed suspension and proceed with the procurement process or the contract.

**SECTION II – FTA BID PROTEST PROCEDURES (FOR PROJECTS FUNDED BY FTA)**

Under Circular 4220.1F, FTA substantially limits its review of protests, recognizing that most protest issues are best resolved at the State or Local level. Any protest or appeal to FTA must be filed in accordance with the requirements contained in FTA Circular 4220.1F and may only be made by an "interested party," which FTA has defined as "an actual or prospective bidder or offerer whose direct economic interest would be affected by the award of the contract or by failure to award the [contract]." FTA will only accept protest appeals alleging that:

1. The City failed to have or follow its written protest procedures;
2. The City failed to review a complaint or protest; or
3. A violation of Federal law or regulations has occurred involving issues important to FTA's overall public transportation program.

FTA will not substitute its judgment for that of the City unless the matter is primarily a Federal concern.

