

REGULATIONS OF THE DEPARTMENT OF PROCUREMENT SERVICES FOR RESOLUTION OF DISPUTES BETWEEN CONTRACTORS AND THE CITY OF CHICAGO

1. GENERAL PROVISIONS

1.1 Statement of Authority

Section 2-92-010 of the Municipal Code of Chicago establishes the position of the City’s Chief Procurement Officer, “whose appointment, powers, functions, duties, and obligations are provided for by the ‘Municipal Purchasing Act for Cities of 500,000 or More Population,’ codified at 65 ILCS 5/8-10-1 et seq., as amended” (the “Act”). Specifically, 65 ILCS 5/8-10-16 empowers the chief procurement officer to “(a) adopt, promulgate and from time to time revise rules and regulations for the proper conduct of his office; (b) constitute the sole agent of the municipality in contracting for labor, material, services, or work, the purchase, lease, or sale of personal property, materials, equipment, or supplies, in conformity with the provisions of [the Act]; ... (e) enforce written specifications describing standards established by [the Act]....”

These regulations are issued pursuant to the foregoing of the Act and the Municipal Code of Chicago.

1.2 Statement of Purpose and Applicability

These regulations establish dispute resolution procedures for Contracts. These procedures apply to the resolution of a Contract dispute except to the extent that the subject Contract specifies different procedures.

Disputes may pertain to any issues of fact, or the interpretation of contract language based upon, relating to or arising under the Contract. A declaration of default or the termination of a Contract are not matters that may be addressed under these regulations unless specifically provided for in the Contract.

2. DEFINITIONS

Unless otherwise specified, whenever used in these regulations, the following terms have the following meanings:

“Act” means the Municipal Purchasing Act for Cities of 500,000 or More Population, 65 ILCS 5/8-10-1 et seq., as amended.

“Business day” means any day other than a Saturday, a Sunday or a legal holiday.

“Chief Procurement Officer” means (a) for purposes of Part 1 of these regulations, the City’s Chief Procurement Officer exclusively; and (b) for purposes of other parts of these regulations, the City’s Chief Procurement Officer or his/her designee.

“City” means the City of Chicago.

“Commissioner” means the head of the Using Department directly involved with procuring the goods or services which are the subject of the contract, and any representative duly authorized in writing to act on his or her behalf.

“Contract” means a Contract awarded by the Chief Procurement Officer either pursuant to the Act or pursuant to authorization of the City Council of the City, as well as a Contract authorized by the City Council and including a provision for enforcement and administration in accordance with the Act.

“Contract Dispute” or “Dispute” means any disagreement between a Contractor and the City as to a question of fact or as to the meaning or applicability of any term or provision of a Contract, or as to the extent of compensation due under a Contract.

“Contractor” means a person or other entity that has signed a Contract.

“Party” means any entity involved in the Contract Dispute, including authorized agents, representative and attorneys for such entity. The person or entity requesting a hearing on the Dispute will be designated the “Requesting Party.” All other Parties, including all the Parties to the Contract and any added party required by the Chief Procurement Officer to actively participate in the dispute resolution process, will be designated “Responding Parties.”

“Request” means the written request submitted to the Chief Procurement Officer to initiate the process for resolving contract disputes, alternatively called “Request for Resolution of a Dispute.”

“Using Department” means the department or agency of the City government for which work is performed, for which services are provided, or for which personal property, equipment, materials or supplies are purchased or leased pursuant to the Contract.

3. PROCEDURES

3.1 Initiating the Request

If the Contractor and the Commissioner have attempted, but have been unable to resolve a disputed matter, either Party may submit a written Request for Resolution of a Dispute. As a result, the Chief Procurement Officer may consider issues of fact or interpretation of Contract language in order to render a final decision regarding the disputed matter.

The Request must be delivered to the principal office of the Chief Procurement Officer. If the Request exceeds ten pages, it must be submitted in an electronic format, such as on a USB drive, on a CD, or as an email attachment. Requests must include all of the following:

- A. Summary of the issues being presented for resolution, with what the Requesting Party considers to be the correct relief or interpretation;

- B. The facts underlying the dispute;
- C. Reference to the pages and sections, with copies, of the applicable provisions of the Contract;
- D. A statement of the (presumed) respective positions of the Contractor and Commissioner regarding the issues;
- E. All documentation or material which describes, supports, and relates to the issues in dispute;
- F. The identity of each entity believed to be a Responding Party, including all parties to the Contract and each Using Department;
- G. The identity of any other persons or entities, including subcontractors and suppliers, believed to be necessary to the resolution of the dispute; and
- H. If applicable, a statement explaining why the Requesting Party believes that prior to rendering a final decision, the Chief Procurement Officer should meet with all or some of the Requesting Parties, the Responding Parties, or those named in subsection G of this Section 3.1.

3.2 Notice and Effect

The Request must be submitted no later than 120 days after the expiration of the Contract. Failure to submit a Request either during the contract term or within the 120 day time period after expiration will constitute a waiver of the opportunity to initiate a dispute resolution.

On the same day it is submitted to the Chief Procurement Officer, the Requesting Party must deliver a copy of the Request to the Commissioner and to each Responding Party named in subsection F) of Section 3.1 herein. Other parties may be contacted by the Chief Procurement Officer, as necessary. Proof of the delivery of the Request to all Parties may be required by the Chief Procurement Officer.

The Contractor must not withhold performance of the Contract during the dispute resolution period, including judicial resolution. The Contractor shall prosecute any disputed work with the same diligence and effort as if no dispute existed.

3.3 Response by Other Parties

Each Responding Party shall have 15 Business Days to respond in writing to the Requesting Party's submission by providing to the Chief Procurement Officer supplemental information or by submitting any written information comparable to that described in subsections A) through G) in Section 3.1. A Responding Party may request, and the Chief Procurement Officer may allow, an additional period of time to respond if the dispute is complicated and/or the documentation is voluminous. If the Responding Party's submission exceeds ten pages, it must be submitted in an electronic format, such as on a USB drive, on a CD, or as an email attachment.

3.4 Failure to Respond

Failure by a Responding Party to respond to the Requesting Party's submission, or to any portion of it, shall not be deemed to be an admission of any allegation made in the Request for Dispute Resolution, but shall be deemed to constitute a waiver of the opportunity to respond to such allegation(s), if any, at this stage of the dispute resolution process.

3.5 Addition of Parties

If at any time the Chief Procurement Officer determines that obtaining information or assistance from an additional person or entity is reasonable, desirable and necessary for resolution of the dispute, the Chief Procurement Officer will notify the Parties already of record. Within 6 Business Days after notice, each original Party must deliver to each such added Party a copy of its complete, written submission. Each added Party shall have the opportunity to respond in the same manner and time limits as an original Responding Party.

3.6 Means of Resolution

The Chief Procurement Officer's final decision may be reached on the basis of the written submissions of the Parties alone.

The Chief Procurement Officer may contact any of the Parties to obtain additional information about the dispute, or clarification of or supporting documentation for their submissions. The Chief Procurement Officer shall keep a log of such contacts which shall be made available to any Party, and any Party asked to submit additional documentation or other written information to the Chief Procurement Officer shall send copies of same to all other Parties.

3.7 Request for and Notice of Meeting

The Chief Procurement Officer will consider reasons submitted by any Party requesting a meeting with all or some of the Parties, in order to determine whether to hold such a meeting as part of resolving the dispute.

The purpose of such a meeting is to enable the Chief Procurement Officer to obtain information that is not available in the written submissions of the Parties, or to better understand the positions of the Parties concerning the dispute. For these reasons the Chief Procurement Officer may deem the scheduling of a meeting reasonable, desirable and necessary for reaching a final decision.

The Chief Procurement Officer will schedule a meeting or series of meetings only if a request has been submitted in accordance with Section 3.1 and the Chief Procurement Officer has determined that holding such a meeting is reasonable, desirable and necessary for the resolution of the dispute. The Chief Procurement Officer shall notify all Parties of the date, time and place of the meeting or meetings.

3.8 Conduct at Meetings

The Chief Procurement Officer will preside over the meeting to maintain order and equity, and shall require all Parties to cooperate in achieving the purpose of the meeting. Each Party may be represented by an attorney. The Chief Procurement Officer may meet with any Party separately or in the presence of another Party. The Chief Procurement Officer may question any party in any order. Each Party may be allowed to question another Party, but will be subject to the restrictions of the Chief Procurement Officer. The formal rules of evidence will not apply, but the Parties must avoid the presentation of extraneous or irrelevant material. Each Party will have no more than one hour to state its initial position, unless the Chief Procurement Officer determines that additional time is necessary to allow. Rebuttals of any new material offered in the presentations, answers to questions and summary arguments supporting each Party's position may be required by the Chief Procurement Officer, who shall have sole control over the proceedings, and the time allowed for them. The Responding Parties may consolidate their presentations for convenience. Any Party may record the proceedings, either on tape or through the services of a court reporter. The Chief Procurement Officer will maintain a tape recording of the meeting, which will be the official City record of the meeting, unless all Parties agree to not record the meeting, in which case the meeting notes of the Chief Procurement Officer or his/her designee shall be the City record of the meeting.

3.9 The Chief Procurement Officer's Final Decision

The Chief Procurement Officer's final decision will be rendered in writing no more than 60 Business Days after the last Responding Party's written response was submitted or was due, whichever occurs first, provided, however, that the 60-Business Day period shall not begin until the final submission (such as supplemental information or explanations requested by the Chief Procurement Officer) of any Party has been received. In addition, the Chief Procurement Officer may notify the Contractor and Commissioner before the end of the 60-Business Day period that an additional period is needed for the Chief Procurement Officer to prepare a final decision.

4. FINALITY OF DISPUTE RESOLUTION AND APPEAL

The Chief Procurement Officer's final decision regarding the dispute shall be conclusive, final and binding on all Parties. Within 30 Business Days after issuance of the final decision, any aggrieved Party to the Dispute may appeal the final decision to the Circuit Court of Cook County.

The Parties must comply with the Chief Procurement Officer's final decision, pending judicial resolution of the dispute. Neither the Chief Procurement Officer's determination, nor the continued performance by either party, constitutes an admission as to any factual and/or legal position in connection with the dispute or a waiver of any rights under the Contract.