CITY OF CHICAGO
DEPARTMENT OF PROCUREMENT SERVICES

SOLICITATION AND CONTRACTING PROCESS

PROTEST PROCEDURES

(Applicable to Bids, Request for Qualifications and Request for Proposals)

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SECTION I - CITY OF CHICAGO PROTEST PROCEDURES

The City’s Chief Procurement Officer will consider a protest (as described in subsection C) regarding its procurement actions for City of Chicago projects in accordance with the following procedures. All protests will be evaluated and finally decided by the City’s Chief Procurement Officer. Accordingly, the City intends to provide a thorough review of all protests to the extent they conform with 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 encouraged 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. “Days” refers to working days of the City.

2. “Federal Law” or “Regulation” means any valid requirement imposed by Federal statute or regulation governing contracts awarded pursuant to a grant agreement (including the requirement of FTA Circulator 4220:1B).

3. “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.

4. “Chief Procurement Officer” means the Chief Procurement Officer of the City of Chicago and Chief Executive Officer of the Department of Procurement Services.

5. “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 or State law or with the Local regulations. The Protest must be filed in accordance with the timing requirements set forth in Subsection C herein, and must include:

1. The name, address, telephone and facsimile numbers of the protestor;
2. The number of the specification/contract solicitation;

3. All information indicating that the protestor is an interested party;

4. A written statement of the grounds for the protest and in particular the Federal or State law or local regulation alleged to have been violated. This statement should be accompanied by any relevant support documentation. Include a statement regarding the course of action the protesting party desires that the Chief Procurement Officer takes. Protests should be submitted to:

   Chief Procurement Officer  
   City of Chicago  
   Department of Procurement Services  
   121 North LaSalle, Room 403  
   Chicago, Illinois 60602-1284

5. All information establishing timeliness of the protest; and

6. The signature of the protestor on the written protest.

If the protest does not meet the time or contents requirements, the Chief Procurement Officer may, at his option, reject the protest or allow the protesting party a reasonable time to cover the deficiencies of the protest. The Chief Procurement Officer 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 Chief Procurement Officer 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 RFQ/P), as applicable. Any protest filed after that date which raises issues regarding the solicitation will 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/P). Any protest filed after such date which raises issues regarding the evaluation will 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 will not be considered.

D. City Response

1. Types of Protest

Upon timely receipt of a protest, the City will notify the protestor and may, where appropriate, request additional information from the protestor. The City may, in its discretion meet with the protestor to review the matters raised in the protest. The City’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 City 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 City postpones the opening of bids, submittals or proposal packages, no additional bids will be accepted during the period of postponement.

b. Protest regarding bid evaluation (Pre-Award Protest)

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

c. Protests regarding award (Post-Award Protest)

Upon receipt of a timely and properly filed protest regarding the award of a contract, the City 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 City 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 Chief Procurement Officer 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 Chief Procurement Officer determines that the protest was vexatious or frivolous; and

3) where delivery or performance will be unduly delayed, or other undue harm will occur, by failure to make the award promptly.

b. Informal Conference

Five (5) days after a protest has been timely and properly filed, the protestor may submit a request for an informal conference. The Chief Procurement Officer may, at his 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 Chief Procurement Officer, the Chief Procurement Officer will provide a written decision to the protesting party within ten (10) days. The basis of the decision will be the information submitted by the protestor, the result of any meetings with the protestor, and the Chief Procurement Officer’s own investigation. The Chief Procurement Officer will respond to each substantive issue on the protest submitted with the level of detail deemed appropriate by the Chief Procurement Officer. The Chief Procurement Officer’s decision shall become final within five (5) days unless a timely request for reconsideration is filed as noted below.

d. Reconsideration of Protest Decision

A protesting party may request the Chief Procurement Officer’s reconsideration of a decision if:

1) Information becomes available that was not previously known, or could have reasonably become known, or

2) The Chief Procurement Officer’s decision contains an error of law or regulation.

The request must be submitted in writing to the Chief Procurement Officer 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 protesting party desires that the Chief Procurement Officer 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 Chief Procurement Officer. As referenced in the proceeding sentence, “filed” refers to the date of receipt by FTA and “days” refers to working days of the Federal Government.

Any alleged violation of 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 4220.1D.
e. Actions after the Chief Procurement Officer’s Decision

After a written decision is issued by the Chief Procurement Officer, the appropriate actions will take place. If the protest is upheld, the Chief Procurement Officer’s actions may include but are not limited to any appropriate steps to correct the procurement process, such as: resolicitation of bids, revising evaluation of bids, Chief Procurement Officer’s determination, or termination of the contract. If the protest is denied, the Chief Procurement Officer will lift any imposed suspension and proceed with the procurement process or the contract.

SECTION II - FTA BID PROTEST PROCEDURE (for projects funded by FTA)

Under Circular 4220.1D, promulgated on April 15, 1996, FTA has substantially limited its review of protests recognizing that most protest issues are best resolved at the State and/or Local level. FTA will only accept protests alleging that:

1. The City failed to have or follow its written protest procedures; or
2. The City failed to review a complaint or protest.

If a protest is brought before FTA on either of these allegations, the only remedy recognized by FTA under Circular 4220.1D is to require the City to follow its own protest procedures. FTA does not have the right to change the City’s decision by substituting FTA’s for that of the City.

Based upon local representation to the City and decision a formal written process under local protest procedures, interested parties who disagree with the City’s decision on a substantive matter will have a formal record with which to proceed to an appropriate State or Local administrative or judicial authority.

Any protest to FTA must be filed in accordance with the requirements contained in FTA Circular 4220.1D 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.”