

COUNTY OF MONTEREY ADMINISTRATIVE PROTEST PROCEDURES:

Purpose:

To provide a procedure for the resolution of protests filed by bidders or prospective bidders who believe that they have been aggrieved by the County of Monterey procurement process.

Policy:

The County of Monterey (hereinafter referred to as "County") will entertain protests from interested parties regarding its procurement actions. County will respond to any bona fide protest provided that the administrative protest is not of a frivolous or vexatious nature. County will not allow a protest to delay the procurement of necessary goods or services unless it is apparent that County participated in a practice that granted an unfair advantage to a participant during the procurement process. This policy will not apply if and after the contract has been submitted and approved by the Board of Supervisors.

County reserves the right to consider a protestor's efforts to resolve an issue administratively prior to submission of a formal protest to determine the protestor's intent.

Definitions:

- **"County"**- means County of Monterey
- **"Bidder, Vendor, or Contractor"**- means a business or individual who sells or attempts to sell commodities and/or services to County.
- **"Prospective Bidder, Vendor, or Contractor"**- means a person or business that has the capacity to make a written offer to sell to County.
- **"Deputy Purchasing Agent"**- means a Buyer or Management Analyst within the Contracts/Purchasing Division who is an authorized Deputy Purchasing Agent as recognized by the Contracts/Purchasing Officer.
- **"Contracts/Purchasing Officer"**- means the authorized individual deputized by the County Administrative Officer to act on behalf of County as the Purchasing Agent.
- **"Contract"**- means any contract, agreement, purchase order or order placed by County to receive goods or services from an external source.
- **"Day or Days"**- means a working day or days of County.
- **"Interested Party"**- means a participant or prospective participant in the procurement whose direct economic interest is affected by the award of the contract for the procurement.
- **"Proposal"**- means a response to County procurement solicitation, including but not limited to quotations, bids, proposals and expressions of interest or qualifications.

Rationale:

To encourage maximum participation in County solicitation process, individuals and businesses that desire to do business with County should be provided with an equitable procedure under which they may file a bid protest.

Submission of Protests:

Any interested party may file a bid protest with County on the basis that County failed to comply with a federal or state law, or that County failed to follow its Procurement Regulations. A valid protest must include at a minimum, but not limited to the following information:

- 1) Name and address of the protestor
- 2) Identification of the procurement action being protested
- 3) A statement of the reason for the protest, identifying the federal or state law or the County Procurement Regulation that the protestor alleges has been violated by the County.

Types of Protests and Deadlines to File:

The deadline for a valid protest will be determined by the progress of the procurement. County will recognize the following three types of protests:

1. Protest regarding Solicitation

Any protest regarding the solicitation process must be filed with the Contracts/Purchasing Officer no later than seven (7) business days prior to the deadline to submit offers.

Note: This type of protest includes a claim that the solicitation process contained exclusionary or discriminatory specifications, any challenge to the basis for award or any claim that the procurement documents or the procurement process violates a federal or state law or fails to follow County's Procurement Regulations.

2. Protest regarding Evaluation of Proposals

Any protest regarding the evaluation of proposals must be filed with the Contracts/Purchasing Officer no later than seven (7) business days from the day that County's decision to award is announced. Any protest filed after such date will not be considered.

Note: This type of protest challenges County's determination of responsiveness of proposals and responsibility of proposers, errors in calculation or that County's evaluation of proposals violated a federal or state law or County's Procurement Regulations.

3. Protest regarding Notification of Intent to Award Contract

Any protest regarding the award of a contract must be filed with the Contracts/Purchasing Officer no later than seven (7) business days after the date of

notification of intent to award. Any protest filed after this date will not be considered.

Note: This type of protest will only be entertained by County if the protestor is able to demonstrate that the party awarded the contract fraudulently represented itself as a responsible bidder or that County violated any federal or state law or County's Procurement Regulations in awarding the contract.

The County's Response to Protests:

County will notify a protestor upon receipt of a timely protest and may, where appropriate, request further information for clarification purposes. County may, at its sole discretion, meet with the protestor to review the issues raised in the protest. County's consideration of the protest, except as otherwise provided in the following paragraph "**Decisions by the Contracts/Purchasing Officer**", will be in accordance with the following provisions:

1. Protest regarding Solicitation

Upon receipt of a valid protest regarding a solicitation process, County will postpone the deadline for submission of offers until the protest in question has been resolved.

If the protest regarding the solicitation process includes a claim of unduly restrictive or exclusionary specifications, County will, in considering the protest, consider both the specific needs of the County for the item challenged and any effect on competition of including the specification regarding that item. If County determines that such item was included in the specification in order to meet a legitimate need of County, and was not unduly restrictive of competition or designed to exclude a particular competitor, then County will immediately deny the protest.

2. Protest regarding Proposals

Upon receipt of a valid protest regarding the evaluation of proposals, County will suspend its evaluation of all offers until resolution of the protest. If County determines that the protestor has established reasonable doubts to the process, County will respond.

3. Protest regarding Evaluation of Proposals

Any bid protest regarding the evaluation of proposals by the County must be filed with the Contracts/Purchasing Officer no later than seven (7) business days after the opening of the bids. Any protest filed after this date will not be considered.

This type of protest would include any challenge to determinations by the County of the responsiveness of a bid or the responsibility of a bidder, or any claim that the evaluation of bids violated federal, state law or the County's Procurement Regulations.

4. Protest after Notification of Intent to Award

Upon receipt of a timely protest regarding the award of a contract, County will issue a stop work order, if necessary, until the resolution of the protest. If County determines that the protestor has established a prima facie case that the contract was awarded fraudulently or is in violation of a federal or state law or the County's Procurement Regulations, the County will respond.

5. Protest regarding Notification of Intent to Award Contract

Any protest regarding the award of the contract must be filed with the Contracts/ Purchasing Officer no later than seven (7) business days after the date of notification of intent to award. Any protest regarding the award of the contract filed after that date will not be considered.

This type of protest will only be entertained by the County if the protestor is able to demonstrate that the party awarded the contract fraudulently represented itself as a responsible bidder or that the County violated federal, state law or County Procurement Regulations in the award of the contract.

As indicated above, in most instances, County Contracts/ Purchasing Officer will suspend the procurement action upon receipt of a bona fide bid protest. However, County reserves the right, notwithstanding the presence of a protest, to proceed with the appropriate action in the procurement process including but not limited to the following instances:

- a. When failing to fulfill the need for the items or services would cause irreparable harm to the County or its customers;
- b. When the County determines that the protest is vexatious or frivolous; or
- c. When delivery or performance will be unduly delayed or other undue harm would occur by delaying the award of the contract.

After review of a bid protest submitted under these provisions, County will issue a written decision on the basis of the information provided by the protestor, the result of any meetings with the protestor, and County's investigation of the matter. If the protest is upheld, County will take the appropriate action to correct the procurement to protect the rights of the protestor, including, but not limited to, reissuance of the procurement, revised evaluation of the offers or County's conclusion of the evaluation of the proposals, or termination of the contract.

If the protest is denied, County will terminate the suspension of the procurement that was imposed during the consideration of the protest and will proceed with the procurement.