

**RESOLUTION ADOPTING PROCEDURES FOR
THE PROTEST OF AN AWARD OF CONTRACT**

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3 WHEREAS, the City Council adopted Resolution R-89-2004 on May 19, 2004, which set forth the
4 procedure to be followed by a bidder desiring to protest an award of contract; and

5 WHEREAS, since the adoption of that Resolution, the State Legislature amended the bid protest
6 requirements contained in NRS Chapters 332 and 338; and

7 WHEREAS, as a result of the passage of that legislation, there is a need to modify the City's
8 current bid protest procedure in order to comply with those legislative requirements; and

9 WHEREAS, with the adoption of this Resolution, the City Council intends to supersede the bid
10 protest procedure previously approved by them with the protest procedures set forth herein.

11 NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAS
12 VEGAS that the procedures set forth in those documents entitled, to-wit: PROCEDURE FOR
13 PROTESTING AN AWARD OF CONTRACT PURSUANT TO COMPETITIVE BIDDING
14 SOLICITATION and PROCEDURE FOR PROTESTING AN AWARD OF CONTRACT PURSUANT
15 TO NON-COMPETITIVE BIDDING SOLICITATION, attached hereto as Attachments A and B,
16 respectively, and incorporated herein as a part hereof, are hereby adopted and approved in connection with
17 the protest filed by a person who submitted a bid or proposal to the City for an award of contract pursuant
18 to the provisions of NRS Chapter 332 and NRS Chapter 338. The protest procedures set forth herein shall
19 become effective with the adoption of this Resolution.

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The City will not review or consider any protest which does not comply with the procedures set forth in Attachments A or B.

PASSED, ADOPTED, AND APPROVED this 18th day of November, 2017.


CITY OF LAS VEGAS

BY 
CAROLYN G. GOODMAN, Mayor

ATTEST:


LUANN D. HOLMES, MMC
City Clerk

APPROVED AS TO FORM

 10/17/17
Deputy City Attorney Date

ATTACHMENT A

PROCEDURE FOR PROTESTING AN AWARD OF CONTRACT PURSUANT TO COMPETITIVE BIDDING SOLICITATION

A. Right to Protest. Any person who submits a bid to the City on a contract that was advertised and subject to award pursuant to the provisions of NRS Chapters 332 and 338 may, after issuance of the written recommendation to award the contract (hereinafter "*Recommendation to Award*"), file a written protest (hereinafter "Protest") of the proposed award of such contract with the Manager of the Purchasing and Contracts Division (hereinafter "Manager") of the Finance Department of the City provided such person (hereinafter "Protester") complies, as a condition precedent to consideration of such Protest, with the procedures set forth herein.

B. Stay of Contract Award. No award will be made of a contract until a final determination of the Protest has been made by the City Council or its authorized representative. A final determination is the determination made by the City Council after hearing an appeal on the Protest, or the determination by the authorized representative that is not appealed to the City Council within the time period provided under Section G below. For purposes of this Procedure, "authorized representative" means the Manager, or the person designated by the Manager, to issue a written determination on the Protest. After a final determination has been made by the City Council, or its authorized representative, on the Protest, if the Protest has not been upheld, the City will proceed with the award of contract as recommended by the Manager. If the Protestor fails to seek and obtain judicial relief prior to the execution of such contract as recommended, such failure shall constitute a waiver of any and all claims against the City for the award of such contract, and shall preclude the Protestor from seeking any further judicial relief.

C. Time for Filing Protest. The Protest must be submitted in writing to the attention of the Manager within five business days after the date the *Recommendation to Award* has been issued by the City.

D. Protest Information. The Protest must state with specificity the reasons the Protester objects to the proposed award of the contract. The Protest shall contain, at a minimum, the following information:

- a. Bid identification number and title,
- b. The name, mailing address, and email address of the Protester and the title or position of the person submitting the protest on behalf of the Protester,
- c. A statement setting forth with specificity all of the reasons the Protester believes the applicable provisions of law were violated and including as a part thereof the following:

(i) A detailed description explaining how the issue or issues protested created an advantage to the other bidders, or a disadvantage to the Protester, or both,

(ii) A detailed statement explaining how the issue or issues protested resulted in a higher bid being submitted by the Protester along with evidence showing the amount of the increase, and

(iii) A detailed statement explaining how the issue or issues protested resulted in a lower bid being submitted by the other bidders along with evidence showing the amount of the increase,

d. A statement describing the relief sought by the Protester, and

e. Such other information as the Protester deems to be material.

The Protester shall provide such additional information the City deems pertinent to the consideration of the Protest. The Protest shall identify all of the issues and arguments which support the Protester's claim that award of the contract should not be made as proposed by the Manager. Any subsequent appeals, administrative or judicial, of the decision rendered in connection with the Protest shall be limited solely to the issues and arguments set forth therein, and shall not include any new or additional issues or arguments.

E. Protest Security. Prior to any consideration of the Protest, the Protester must post a security (the "Protest Security") in the form of a bond, cashier's check, certified check or money order made payable to the City. If the Protester elects to post a bond, it must be from a good and solvent surety authorized to do business in the State of Nevada, which surety is acceptable to the City. The amount of the Protest Security shall be in the amount of (i) 25% of the total value of the Protester's bid amount, or (ii) \$250,000, whichever is less. The City will hold the Protest Security until a final determination is made by the City Council, or its authorized representative, on the Protest. If the Protester seeks judicial relief from the final determination of the City, the City will retain the Protest Security until a determination is made by a court of competent jurisdiction.

F. Protest Determination. After receipt of the Protest Security, the Manager will review the Protest and, will issue a written determination of the Protest (hereinafter "*Protest Determination*") within ten calendar days thereof, unless the nature and complexity of the Protest requires additional time. In lieu of issuing the *Protest Determination*, the Manager may forward the Protest directly to (i) another appropriate executive person of the City, who shall issue the written *Protest Determination* in lieu of the Manager, or (ii) the City Council, whichever the Manager considers to be in the best interest of the City.

G. Administrative Appeal. The *Protest Determination* issued by the Manager or such other executive person, may be appealed to the City Council provided the Protester delivers

written notice to the Manager within three business days of Protester's receipt of the written Protest Determination. If an appeal is made to the City Council, the matter will be placed on the agenda of the City Council as soon as possible taking into account the administrative deadlines in effect within the City. After a final determination has been made by the City Council on the Protest, the City will proceed with the award of contract. **The City Council will not consider any appeal unless the Protester has complied with the procedures set forth herein.**

H. Judicial Relief. Neither an unsuccessful bidder nor Protester may seek any type of judicial intervention until the City Council has made a determination on the Protest and awarded the contract.

I. Disposition of Protest Security.

1. If the Protest is upheld by the City; or the City decides to reject all Bids after considering the Protest, the full amount of the Protest Security will be returned to the Protester without deduction.

2. If the Protest is rejected by the City after the Protester has exhausted the administrative appeal process, and the Protester does not seek any further judicial relief, the City will release or return the balance of the Protest Security after deducting the administrative costs and expenses incurred by the City in considering the Protest. Such administrative costs may include, without limitation, the cost of staff time spent in processing the Protest, costs of any consultants or experts retained to assist the City in connection with the Protest, and any other costs incurred by the City in connection with the Protest.

3. If the Protester seeks judicial relief from the decision of the City Council, the City will retain the Protest Security until a determination is made by a court of competent jurisdiction. If the court upholds the decision of the City Council, the City will return the balance of the Protest Security after deducting the administrative costs set forth in subsection 2 above, and the costs of the City incurred in connection with the judicial appeal, including, but not limited to, court costs, expert fees and attorney fees (including those of private council retained to defend the decision of the City Council). If the Protester prevails in court, the full amount of the Protest Security will be returned to the Protester.

J. Waiver of Liability. Neither the City, nor any officer, employee, or authorized representative is liable for any costs, expenses, attorney fees, loss of income, or other damages sustained by a person who makes a bid, whether or not the person files Protest.

ATTACHMENT B

PROCEDURE FOR PROTESTING AN AWARD OF CONTRACT PURSUANT TO NON-COMPETITIVE BIDDING SOLICITATION

A. Consent to Protest Procedure. The City has adopted the protest procedures set forth herein for each solicitation for proposals (hereinafter "Solicitation") that is not subject to the competitive bidding requirements of NRS Chapters 332 and 338, including the statutory protest procedures set forth therein. Any person who submits a proposal to the City in response to a Solicitation, which is not subject to competitive bidding requirements is deemed by such submission to consent and agree to the protest and appeal provisions set forth herein (hereinafter "Protest Procedure") concerning any protest, and to the waiver of rights if such person fails to comply with the requirements, including deadlines, set forth hereinafter.

Any person who submits a proposal in response to such a Solicitation may, after issuance of the written recommendation to award the contract (hereinafter "*Recommendation to Award*") by the City, file a written protest (hereinafter "Protest") of the proposed award of such contract with the Manager of the Purchasing and Contracts Division (hereinafter "Manager") of the Finance Department of the City provided such person (hereinafter "Protester") complies, as a condition precedent to consideration of such Protest, with the procedures set forth herein.

B. Stay of Contract Award. No award will be made of a contract while a protest or administrative appeal is pending before the City. The Protester may not seek any type of judicial intervention until such person has exhausted all administrative remedies, which would require a final determination by the City Council on the Protest, or a determination made by the Manager, or the executive person designated by the Manager, which is not appealed to the City Council within the time provided under Section G below. After a final determination by the City has been made, if the Protest has not been upheld, the City will proceed with the award of the contract as recommended by the Manager. If the Protester fails to seek and obtain judicial relief prior to the execution of such contract as recommended, such failure shall constitute a waiver of any and all claims against the City for the award of such contract, and shall preclude the Protester from seeking any further judicial relief.

C. Time for Filing Protest. The Protest must be submitted in writing to the attention of the Manager within five business days after the date the *Recommendation to Award* has been issued by the City.

D. Protest Information. The Protest must state with specificity the reasons the Protester objects to the proposed award of the contract. The Protest shall contain, at a minimum, the following information:

- (i) Solicitation number and title;
- (ii) The name, mailing address, and email address of the Protester and the title or position of the person submitting the Protest;
- (iii) A statement describing in detail all of the issues being protested, the underlying specific provision(s) or procedure(s) of the Solicitation that was violated and how it adversely affected or disadvantaged the Protester; and the reasons the award of the contract should not be made as proposed;

- (iv) A statement describing the relief sought by the Protester; and
- (v) Such other information as the Protester deems to be material.

The Protester shall provide such additional information the City deems pertinent to the consideration of the Protest. The Protest shall identify all of the issues and arguments supporting the Protester's claim that the award of the contract should not be made as proposed by the Manager. Any subsequent appeals of the decision rendered in connection with the Protest shall be limited solely to the issues and arguments set forth therein, and shall not include any new or additional issues or arguments.

E. Protest Security. Prior to any consideration of the Protest, the Protester must post a security (the "Protest Security") in the form of a bond, cashier's check, certified check or money order made payable to the City. If the Protester elects to post a bond, it must be from a good and solvent surety authorized to do business in the State of Nevada, which surety is acceptable to the City. The amount of the Protest Security shall be in the amount of (i) 25% of the total value of the Protester's proposal amount, or (ii) \$250,000, whichever is less. The City will hold the Protest Security until a determination is made by the City Council on the Protest. If the Protester seeks judicial relief, from the decision of the City Council, the City will retain the Protest Security until a determination is made by a court of competent jurisdiction.

F. Protest Determination. After receipt of the Protest Security, the Manager will review the Protest with appropriate City representatives and, after review and consideration of the merits of the Protest, will issue a written determination of the Protest (hereinafter "*Protest Determination*"). In lieu of issuing the *Protest Determination*, the Manager may forward the Protest for consideration and determination directly to (i) another appropriate executive person of the City for review and determination, who shall issue the written *Protest Determination* in lieu of the Manager, or (ii) the City Council, whichever the Manager considers to be in the best interest of the City.

G. Administrative Appeal. The *Protest Determination* issued by the Manager, or such other executive person, may be appealed to the City Council provided the Protester delivers written notice to the Manager within three business days of Protester's receipt of the written *Protest Determination*. If an appeal is made to the City Council, the matter will be placed on the agenda of the City Council as soon as possible taking into account the administrative deadlines in effect within the City. The City Council will not consider any appeal unless the Protester has complied with the procedures set forth herein.

H. Disposition of Protest Security

1. If the Protest is upheld by the City; or the City decides to reject all Proposals after considering the Protest, the full amount of the Protest Security will be returned to the Protester without deduction.

2. If the Protest is deemed to be without merit and is rejected by the City after the Protester has exhausted the administrative appeal process, and the Protester does not seek any further judicial relief, the City will release or return the balance of the Protest Security after deducting the administrative costs and expenses incurred by the City in considering the Protest. Such administrative costs may include, without limitation, the cost of staff time spent in processing the Protest, costs of any consultants or experts

retained to assist the City in connection with the Protest, and any other costs incurred by the City in connection with the Protest.

3. If the Protester seeks judicial relief from the decision of the City Council, the City will retain the Protest Security until a determination is made by a court of competent jurisdiction. If the court upholds the decision of the City Council, the City will return the balance of the Protest Security after deducting the administrative costs set forth in subsection 2 above, and the costs the City incurred in connection with the judicial appeal, including, but not limited to, court costs, expert fees and attorney fees (including those of private council retained to defend the decision of the City Council). If the Protester prevails in court, the full amount of the Protest Security will be returned to the Protester.

I. Right to Reject All Proposals. At any time during the Protest procedure, including the pending appeal to the City Council, the City shall have the right to reject all proposals if the City determines in its sole discretion to be in its best interest, and the reasons for such rejection need not be provided to the Protester, or to any other person submitting a proposal in response to a Solicitation.

J. Waiver of Liability. Neither the City, nor any officer, employee or authorized representative, is liable for any costs, expenses, attorney's fees, loss of income, or other damages sustained by a person who submits a proposal, whether or not the person files a Protest.