

INTRODUCTION

These Procedures for Competitive Solicitation Protests are established for the Housing Authority of the City of Los Angeles (“HACLA”) in support of HACLA’s Procurement Policy and have been authorized by the Contracting Officer.

PART I. ADMINISTRATIVE PROCESS

1. Defined Terms

A. For purposes of these Procedures:

“Apparent Awardee” means (i) the Responsible Bidder identified as submitting the lowest price bid that is Responsive under an Invitation for Bid or (ii) the Responsible Offeror identified as the most qualified or best value to HACLA under a Request for Proposal or Request for Qualifications, as applicable.

“Appeal Determination” means the written decision of a Hearing Officer to sustain or deny an Offeror’s appeal of a Protest Determination.

“Business Day(s)” means the official working days of HACLA and excludes weekends, HACLA holidays and furlough days. HACLA’s Business Days are Monday through Friday, starting at 8:00 a.m. and ending at 4:30 p.m. HACLA will deem communications received after 4:30 p.m. on a Business Day to be received the following Business Day for purposes of complying with these Procedures, regardless of whether receipt was acknowledged outside of HACLA’s Business Day.

“Competitive Solicitation” means a solicitation for goods or services valued in excess of the Simplified Acquisition Threshold as may be adjusted from time to time and includes Invitations for Bid, Requests for Proposal, Requests for Qualification, and such other formal Competitive Solicitations as may be authorized by HACLA’s Procurement Policy.

“Contracts Administrator” means a HACLA employee who, under managerial direction, oversees the preparation and processing of Competitive Solicitations and contract administration on behalf of HACLA.

“Contract Award” means the decision of the Board of Commissioners to award a contract that follows from a Competitive Solicitation.

“Contracting Officer” means HACLA’s President and Chief Executive Officer or designee.

“General Services Director” means the HACLA employee directly responsible for supervision of HACLA’s Contracts and Procurement unit.

“Manufacturer” means a person or business that sells, produces or manufactures a product that is the subject of a Competitive Solicitation, whether the product is described in or contemplated by the specifications, or the product is proposed as equivalent to a product described in or contemplated by the specifications.

“Non-Responsible” means an Offeror that does not qualify as a “Responsible” Offeror.

“Non-Responsive” means a Bid or Offer that does not qualify as a “Responsive” Bid or Offer.

“Notice of Intent to Award” means the written notice prepared by HACLA to inform interested persons of the Apparent Awardee or to convey other contract award information and includes Notices of Preliminary Determination of Non-Responsibility. The issue date for the Notice of Intent to Award is the earlier of the date the Notice is transmitted to the participating Offerors via email or the date of HACLA’s Board of Commissioners meeting at which the contract award will be considered.

“Notice of Preliminary Determination of Non-Responsibility” means the written notice prepared by HACLA to inform an Offeror that it is the subject of a Preliminary Determination of Non-Responsibility. The issue date for the Notice of Preliminary Determination of Non-Responsibility is the date the notice is transmitted to the Offeror via email or other means.

“Offer” means a response to a Competitive Solicitation and includes bids and proposals.

“Offeror” means a person or entity that submitted a bid or proposal in response to a Competitive Solicitation and includes bidders and proposers.

“Preliminary Determination of Non-Responsibility” means a preliminary determination that an Offeror is Non-Responsible. A Preliminary Determination of Non-Responsibility is written by the General Services Director or designee and must be supported by sufficient and credible information or records.

“Protest Determination” means the written decision of the General Services Director to sustain or deny an Offeror’s protest of a Competitive Solicitation or Contract Award.

“Responsible” means an Offeror who affirmatively demonstrates to HACLA’s satisfaction, that its business (and its proposed subcontractors if relevant) satisfies general standards of responsibility. Factors affecting the determination include:

- Adequate financial resources to perform the contract or the ability to obtain such resources;

- Ability to comply with the required or proposed delivery or performance schedule, taking into consideration existing business commitments;
- Satisfactory performance record;
- Satisfactory record of integrity and business ethics;
- Organization, material, equipment, facilities, and personnel resources and expertise (or the ability to obtain them) necessary to carry out the work and to comply with required delivery or performance schedules, taking into consideration other business commitments; and
- Qualification and eligibility to receive an award under applicable laws and regulations.

Prior, but resolved disciplinary action, license suspension or other similar action or activity taken against an Offeror does not, on its face, disqualify a business from being deemed “Responsible” unless HACLA makes such a determination.

“Responsive” means an Offer that conforms to all material requirements of the Competitive Solicitation as determined by HACLA in its sole and absolute discretion.

2. Computation of Time

Saturdays, Sundays, and legal holidays observed by HACLA shall be excluded for purposes of the deadlines set forth herein.

3. Applicability

A. Any Competitive Solicitation may be the subject of a protest filed in accordance with Part II.

B. Any corrective measures taken by HACLA to remedy or otherwise address Competitive Solicitation errors or defects may be the subject of a protest filed in accordance with Part II.

C. Any proposed Contract Award following from a Competitive Solicitation may be the subject of a protest filed in accordance with Part II.

D. A Preliminary Determination of Non-Responsibility may be the subject of a protest filed in accordance with Part IV below.

4. Standing to Protest

A. Any Offeror and any Manufacturer has standing to file a protest of a Competitive Solicitation pursuant to Part II herein. Any such protest filed by a

Manufacturer is subject to the limitations set forth below.

B. Any Offeror has standing to file a protest of corrective measures taken by HACLA to remedy or otherwise address Competitive Solicitation errors or defects pursuant to Part II herein.

C. Any Offeror determined eligible for Contract Award as a Responsible Offeror has standing to file a protest of a Contract Award pursuant to Part II, provided the Offeror would be the Apparent Awardee if the protest is sustained.

D. Any Offeror who receives a Notice of Preliminary Determination of Non-Responsibility has standing to file a protest pursuant to Part IV herein, provided the Offeror would be the Apparent Awardee if the protest is sustained.

E. Any Offeror whose Offer was determined to be Non-Responsive or who is otherwise deemed not eligible for consideration of a Contract Award does not have standing to file a protest.

5. Cost

All protest and appeal costs incurred by an Offeror or Manufacturer, including but not limited to attorney's fees and costs, shall be considered a cost of the Offer and/or Protest and shall be borne entirely by the Offeror or Manufacturer, regardless of whether or not the protest or appeal (if applicable) is successful.

6. Stays Pending Resolution of Protest

A. Competitive Solicitations and Contract Awards need not be stayed pending resolution of protests unless the Contracting Officer determines such action would be in HACLA's best interest.

B. In the case of a successful protest, the Contracting Officer has the discretion to set aside the decision and award the contract to the Apparent Awardee if, based on compelling circumstances such as an emergency, serious disruption of HACLA's operations and/or forfeiture of funding, the re-solicitation or termination of the Contract Award and/or re-award would not be in HACLA's best interests.

7. Record Production and Recordkeeping

A. The release of public records relating to Competitive Solicitations shall be subject to the following:

(1) Public records concerning a Competitive Solicitation involving an Invitation for Bid shall be made available following bid opening after HACLA has sufficient time in which to complete Offeror vetting and remove and/or redact non-disclosable

information or records in accordance with the California Public Records Act (the "PRA," Government Code Section 6254 *et seq.*)

(2) Public records concerning a Competitive Solicitation involving a Request for Proposals shall be made available following issuance of the Notice of Intent to Award and sufficient time thereafter to permit HACLA to remove or redact non-disclosable information or records in accordance with the PRA.

(3) Public records concerning a Competitive Solicitation involving a Request for Qualifications (or similar qualification-based Competitive Solicitation), shall be made available following issuance of the Notice of Intent to Award and sufficient time thereafter to permit HACLA to remove or redact non-disclosable information or records in accordance with the PRA.

B. Nothing set forth above shall in any way restrict HACLA from withholding or redacting records to the extent authorized or required by the PRA.

C. Official records associated with protests conducted under these Procedures, including correspondence, notices and research materials, shall be retained in the Procurement file for the duration of time specified in HACLA's Record Retention and Disposition Schedules. All privileged materials shall be identified in the file to guard against accidental disclosure and unauthorized release.

PART II. PROTESTS OF SOLICITATIONS AND CONTRACT AWARDS

1. Grounds for Protesting

A. Protest of a Competitive Solicitation shall be limited to one or more of the following grounds:

- (1) The bid specifications give an unfair advantage to an Offeror;
- (2) Material irregularities or defects in the bid specifications or bid procedures;
- (3) Limitations or restrictions imposed by the Competitive Solicitation effectively exclude small or disadvantaged businesses; and/or
- (4) The proposed evaluation criteria are contrary to a higher legal authority such as a state or federal statute or regulation.

B. Protest of a Competitive Solicitation submitted by a Manufacturer shall be based on a claim that the bid specifications limit the bidding, directly or indirectly, to a specific concern or designated material, product, item, or service by specific brand or trade name without permitting the substitution of an equal material, product, item or service).

C. Protest of the corrective measures taken by HACLA to remedy or otherwise address Competitive Solicitation errors or defects shall be based on one or more of the following grounds:

- (1) The corrective measures contain a variance that gives the Apparent Awardee a substantial benefit or advantage not enjoyed by the other Offerors;
- (2) The corrective measures do not conform to the material terms and conditions of the Competitive Solicitation and all material requirements of the specifications; and/or
- (3) The corrective measures violate applicable laws and/or regulations.

D. Grounds for protesting a Contract Award shall be limited to one or more of the following:

- (1) Evidence of a conflict of interest involving HACLA, its officers or employees and the Apparent Awardee;
- (2) The Apparent Awardee's Offer imposes conditions that materially modify requirements of the Competitive Solicitation, contains a material variance that gives the Awardee a substantial benefit or advantage not enjoyed by the other Offerors or otherwise fails to conform to the material terms and conditions of the Competitive Solicitation and all material requirements of the specifications, and/or violates applicable laws and regulations;
- (3) HACLA applied different evaluation criteria than were specified in the Competitive Solicitation;
- (4) HACLA applied the correct evaluation criteria, but weighted the criteria differently than specified; and/or
- (5) Mathematical errors in the scoring of Offers.

2. Available Relief

A. For protest of a Competitive Solicitation, relief is limited to cancelation of the Solicitation, issuance of an addendum clarifying or amending the Solicitation, or cancelation, amendment and rebidding of the Solicitation, the election of which is within HACLA's sole discretion.

B. For protest of corrective measures taken by HACLA to remedy or otherwise address Competitive Solicitation errors or defects, relief is limited to cancelation of the Solicitation, issuance of an addendum clarifying or amending the Solicitation, or cancelation, amendment and rebidding of the Solicitation, the election of which is within HACLA's sole discretion.

C. For protest of a Contract Award, relief is limited to cancelation of the Competitive Solicitation, amendment and re-bidding of the Competitive Solicitation, or reevaluation and reconsideration of all Responsive Offers in light of the administrative decision, the election of which is within HACLA's sole discretion.

3. Protest Timing

A. Protests of a Competitive Solicitation shall be received no later than five Business Days after the earlier of electronic posting or other publication of the Competitive Solicitation.

B. Protests of any corrective measures taken by HACLA to remedy or otherwise address Competitive Solicitation errors or defects shall be received no later than three Business Days after electronic posting or other publication of the corrective measures.

C. Protests of a Contract Award issued for an Invitation for Bid shall be received no later than three Business Days after the Notice of Intent to Award is issued.

D. Protest of a Contract Award issued for a Request for Proposals shall be received no later than three Business Days after the Notice of Intent to Award is issued.

E. Protests of a recommended or awarded exclusive right to negotiate pursuant to a Request for Qualifications shall be received no later than three Business Days after the Notice of Intent to Award an exclusive right to negotiate is emailed to participating Offerors.

F. The deadlines set forth in this section shall be extended if, prior to the last day the protest is due an Offeror requests inspection and/or copying of public records related to a protest. In such cases, the deadline to file the protest will be extended by the number of Business Days it takes HACLA to make the requested records available for inspection and/or reproduction. For example, if on the second Business Day after issuance of the Competitive Solicitation an Offeror submits a request for records related to the Solicitation, and it takes HACLA two Business Days to make the records available for inspection/reproduction, then the Offeror's deadline for filing the protest would be extended by two Business Days.

4. Protest Filing, Content and Completeness

A. Protests must be in writing and delivered to the attention of the Contracts Administrator identified in the Competitive Solicitation. The delivery of the protest to any person other than the Contracts Administrator shall be deemed ineffective and a failure to comply with these Procedures unless corrected within the time period required to file the protest. Protests must be received within the period proscribed above.

B. Protests shall clearly state the basis for the protest. At a minimum, the following information shall be included:

- (1) Protester's name, address, and phone number.
- (2) Solicitation number and project title.
- (3) Supporting records or documents to substantiate any allegations.
- (4) Statement of the form of relief requested, as described above.

C. Protests must be complete at the time of filing. A new protest or amendments to the original protest will not be permitted unless submitted prior to the expiration of the protest filing period.

D. Protests of a Contract Award must be served upon the Apparent Awardee as provided below.

E. A protestor's failure to strictly comply with all the requirements of this Part II shall be deemed forfeiture of the right to protest unless such deficiencies are corrected within the protest period. The responsibility to understand and comply with the requirements of this Part II rests solely with the protestor. HACLA is under no obligation to advise protestors of any protest deficiencies.

5. Service of Protest of Contract Award to Apparent Awardee

Any Offeror filing a Protest of a Contract Award shall provide a copy of the protest to the Apparent Awardee within two Business Days of serving the protest upon HACLA. HACLA will provide the Apparent Awardee's contact information within one Business Day of request. Proof of timely service of said protest upon the Apparent Awardee shall be provided to HACLA upon demand and may be in the form of email, certified mail, hand delivery, express courier such as FedEx or UPS, or any other form of proof of service acceptable to HACLA in its sole discretion.

6. Initial Review and Protest Determination

A. The Contracts Administrator assigned to the Competitive Solicitation is responsible for the initial review of protests and determination as to the timeliness and completeness of the protest in accordance with this Part II. If a protest is determined untimely or incomplete, the Offeror or Manufacturer will be informed of the grounds for the rejection in writing. The Contracts Administrator's determination on the issue of timeliness or completeness is a final, non-appealable decision.

B. The Contracts Administrator will deliver timely and complete protests and a summary of the merits of the protesting Offeror's assertions to the General Services Director.

C. The General Services Director will examine the merits of the protest and may request additional information from the Parties and their respective legal counsel.

D. Within a reasonable amount of time not to exceed twenty-one (21) Business days following receipt of the protest, the General Services Director will serve upon the protesting Offeror or Manufacturer a Protest Determination, which will sustain or deny the protest. If the Protest Determination denies the protest, the Protest Determination will summarize the grounds for denial. In the case of a protest of a Contract Award, HACLA will serve the Protest Determination upon the Apparent Awardee.

E. The General Services Director's Protest Determination denying a Manufacturer's protest of a Solicitation is a final non-appealable decision.

F. If the General Services Director denies a bid protest of a Solicitation, corrective measures, or Contract Award, the protesting Offeror's sole relief is to file an appeal of the Protest Determination as set forth in Part IV below.

G. If the General Services Director determines to sustain a protest of a Competitive Solicitation or corrective measures, the Director has the discretion to take the following actions:

- (1) Order the Solicitation canceled;
- (2) Issue an addendum clarifying or amending the Solicitation; or
- (3) Order the Solicitation to be amended (if feasible) and re-bid.

H. If the General Services Director determines to sustain a protest of a Contract Award, the Director has the discretion to take the following actions:

- (1) Order the Solicitation canceled;
- (2) Order the Solicitation to be amended (if feasible) and re-bid; or
- (3) Order all Offers to be reevaluated and reconsidered for Contract Award in light of the Protest Determination.

PART III. Standing to Appeal; Consequence of Failing to Appeal

1. General Requirements

A. Any Offeror that timely files an appeal from the General Services Director's Protest Determination has standing to appeal said Determination, provided the Offeror would be the Apparent Awardee if the appeal is sustained.

B. Any Protest Determination that is not the subject of a timely appeal shall

become a final, non-appealable decision.

C. A Manufacturer who files a bid protest of a Solicitation does not have standing to appeal from the General Services Director's Protest Determination, which is a final non-appealable decision.

2. Lodging an Appeal of a Protest Determination

A. Any Offeror with standing may appeal the Protest Determination by lodging a written appeal provided the appeal is received within three Business Days after issuance of the Protest Determination. Appeals not received within the requisite appeal period will not be considered by the Authority.

B. Appeal periods will not be extended by any further request for records under the California Public Records Act or otherwise.

C. The appeal shall be limited to those grounds for protest raised in the original bid protest and the relief sought therein.

D. The appeal must be complete at the time of filing. Failure to submit a complete and timely appeal shall be treated as a forfeiture of the right to appeal unless such deficiencies are corrected within the time provided to lodge the appeal. The responsibility to understand and comply with the requirements of this Part III rests solely with the protestor and HACLA shall be under no obligation to advise protestors of any deficiencies within said three-day period.

3. Hearing Officer Consideration of Appeal

A. HACLA will select an impartial hearing officer ("Hearing Officer") to consider the appeal. The Hearing Officer will be an executive-level employee who was not involved in the Competitive Solicitation.

B. The Hearing Officer will make their final decision based on the administrative record, which shall be comprised of the following:

(1) The Protest Determination and if requested, all supporting information and documents considered by the General Services Director;

(2) The Offeror's written appeal;

(3) The Contracts Administrator's summary of the merits of the protesting Offeror's assertions, if requested; and

(4) HACLA's legal analysis of the matter, if applicable and requested, which shall remain confidential to preserve HACLA's attorney client and work product privileges.

C. The Hearing Officer has the authority to request additional information from the parties.

4. Appeal Determination

A. Unless the time is extended as provided below, within twenty Business Days of receiving the appeal request, the Hearing Officer shall issue a final Appeal Determination. The Appeal Determination shall contain a brief summary of the records and information considered, findings of fact and a determination of the issues presented.

B. If the Hearing Officer is unable to issue the Appeal Determination within twenty Business Days, the appealing Offeror and, if applicable, the Apparent Awardee shall be provided written notice with an estimated date of the decision and reasons for the extension.

PART IV. PROTEST OF PRELIMINARY DETERMINATION OF NON-RESPONSIBILITY

1. Standing to Protest; Consequence of Failing to Protest

A. Any Offeror that receives Notice of a Preliminary Determination of Non-Responsibility has standing to protest said determination, provided the Offeror would be the Apparent Awardee if the protest is sustained.

B. If an Offeror that has received a Notice of a Preliminary Determination of Non-Responsibility fails to submit a complete and timely protest, the Preliminary Determination of Non-Responsibility shall become a final, non-appealable decision, for purposes of that particular Competitive Solicitation.

2. Grounds for Protesting

Grounds for protesting a Preliminary Determination of Non-Responsibility are limited to refuting the reasons cited by HACLA as grounds for said determination.

3. Available Relief

Relief from a Preliminary Determination of Non-Responsibility is limited to reevaluation and reconsideration of the subject Offer in light of the Contracting Officer's Protest Determination finding that the Offeror qualifies as a Responsible Offeror.

4. Protest Timing

Protest of a Preliminary Determination of Non-Responsibility shall be received no later than three Business Days after the Notice of Preliminary Determination of Non-Responsibility is issued.

5. Protest Filing, Content and Completeness

A. A protest of a Preliminary Determination of Non-Responsibility must be in writing and delivered to the attention of the Contracts Administrator designated in the Competitive Solicitation. The delivery of the protest to any person other than the Contracts Administrator shall be deemed ineffective and noncompliant with these Procedures. Protests must be received within the period proscribed above.

B. At a minimum, a protest of a Preliminary Determination of Non-Responsibility shall include the following:

- (1) Protester's name, address, and phone number;
- (2) Solicitation number and project title;
- (3) Preliminary Determination of Non-Responsibility; and
- (4) Authenticable documents and records demonstrating the Preliminary Determination of Non-Responsibility was in error.

C. A protest of a Preliminary Determination of Non-Responsibility must be complete at the time of filing. A new protest or amendments to the original protest will not be permitted unless submitted prior to the expiration of the protest period.

D. A protestor's failure to strictly comply with all the requirements of this Part IV shall be deemed forfeiture of the right to protest unless such deficiencies are corrected within the protest period. The responsibility to understand and comply with the requirements of this Part IV rests solely with the protestor. HACLA is under no obligation to advise protestors of any protest deficiencies.

6. Transmission of Written Analysis and Supporting Documents

A. Within ten Business Days of receipt of a protest of a Preliminary Determination of Non-Responsibility, HACLA will transmit to the protesting Offeror the General Services Director's written analysis in support of the Preliminary Determination of Non-Responsibility, including any supporting documents or records, and the name and contact information for the impartial hearing officer ("Hearing Officer") selected by HACLA to consider the protest. The Hearing Officer will be an executive-level employee who was not involved in decision to issue the Preliminary Determination of Non-Responsibility.

7. Protest Determination

A. The Hearing Officer will make their decision based on the administrative record, which shall be comprised of the following:

- (1) The protest of Preliminary Determination of Non-Responsibility;
 - (2) The General Services Director's written analysis in support of the Preliminary Determination of Non-Responsibility, including any supporting documents or records; and
 - (3) HACLA's legal analysis of the matter, if applicable and requested, which shall remain confidential to preserve HACLA's attorney client and work product privileges.
- B. The Hearing Officer has the authority to request additional information from the parties.
- C. Unless the time is extended as provided below, within twenty Business Days of the lodging of a protest of Preliminary Determination of Non-Responsibility, the Hearing Officer shall issue a Protest Determination. The Protest Determination, which is a final, non-appealable decision, will explain the reasons for the decision.
- D. If the Hearing Officer is unable to issue the Protest Determination within twenty Business Days, the protesting Offeror shall be provided written notice with an estimated date of receipt of the Protest Determination and reasons for the extension.

Version 4 effective June 30, 2022
Version 3 effective March 3, 2014 - June 29, 2022
Version 2 effective September 13, 2013 – March 2, 2014
Version 1 effective June 24, 2013 – September 12, 2013