



# City of Lompoc

## Lompoc City Code Section 2642 Procurement Protest Procedures May 12, 1999

Procurements shall be protested in accordance with this Section. Protests not complying with the provisions of this Section shall not be reviewed.

A. Definitions. For the purposes of this Section:

1. "Interested Party" means an actual bidder or offeror, and any contractor or subcontractor identified by name in any bid, proposal, or response to solicitation.
2. "Bid" includes "offer" and "proposal" in the context of formal, informal, or negotiated procurements.
3. "Filing Date" or "Submission Date" means the date of receipt by the City Clerk or the Purchasing Agent of the City of Lompoc.
4. "Days" means calendar days.
5. "Procurement Staff" means the Purchasing Agent, Community Services Director, other department director initiating the procurement being protested, or the designees of any of these persons.
6. "Reviewing Officer" means the City Administrator or his or her designee.

B. Grounds for Protest. Any interested party may file a written protest on any of the following grounds:

1. The existence of a significant defect, error or omission in the solicitation documents issued by the City;
2. Failure of the City to follow the procedures of this Chapter;
3. Failure of the City to apply correctly the standards of review, evaluation, or scoring of a bid or proposal as specified in the solicitation documents therefore;
4. Award of the contract by the City to a bidder other than the lowest responsive and responsible bidder;  
or
5. Such other grounds as would state a cause of action at law or in equity.

C. Protest Contents and Filing. Protests shall be delivered or sent by registered mail to the Purchasing Agent for protests of purchases of materials, supplies, equipment, and services or to the City Clerk for protests related to public projects and shall:

1. Include the name, address, and business telephone number of the protestor;
2. Identify the project under protest by name, solicitation number, and submission date;
3. Contain a concise statement of the grounds for protest and the facts supporting such grounds;
4. Include all supporting documentation. Documentation submitted after filing will not be reviewed.
5. Be accompanied by a certified check or cashier's check made payable to the City of Lompoc in the amount of \$27.00, or in such other sum as the City Council may establish from time to time. Protests filed without the fee will not be reviewed.

Protestors may be represented by legal counsel at their own expense. Protestors shall bear all costs of the protest other than salary and personnel costs of City employees.

D. Review of Protests.

1. Protests of Solicitation Documents. Interested parties wishing to protest City solicitation documents must do so within seven days after the date of their issuance and in no event later than the date of the bid or proposal opening, unless the interested party did not know of the facts giving rise to the protest prior to bid or proposal opening.

In such cases, protests shall be submitted within seven days after the interested party knew or should have known of such facts.

Upon receipt of a protest, procurement staff shall review all the submitted materials and create and retain a written record of their review.

Not later than twenty days after receipt of the protest, procurement staff shall respond at least generally to each material issue raised in the protest.

- a. Procurement staff may elect, but are not obligated, to attempt to resolve the protest with the affected parties. "Resolution" means the formal withdrawal of a protest by the protestor, or written acknowledgement of protest resolution signed by the City and the protestor. If procurement staff elect to attempt resolution, protestors shall be notified in writing of the date on which their matters shall be considered and shall be afforded an opportunity to present evidence for consideration by the City and such technical or other staff as the City deems necessary. Procurement staff shall then make a formal recommendation for decision to the Reviewing Officer

and shall notify the protestors of that decision. A record of the resolution proceedings shall be made. If procurement staff elects not to attempt such resolution, or if no resolution is achieved, procurement staff shall recommend to the Reviewing Officer a suggested disposition of the protest.

- b. After review and consideration of procurement staff's recommendation and the evidence contained in the record of the proceedings, the Reviewing Officer shall render a written decision in the matter not later than fifteen days after receipt of the recommendation and shall give notice thereof in writing to the protestor and such other interested parties as the Reviewing Officer deems appropriate. Notice of decision may be given by electronic facsimile, U.S. postal service, or in person.
- c. Any protestor excepting to the decision of the Reviewing Officer may appeal in writing to the City Council by filing with the City Clerk a written notice of such appeal not later than fifteen days after dispatch of the Reviewing Officer's decision. The City Clerk will calendar the protest for City Council hearing and give notice of the time and place of the hearing.
- d. Should the City Council deny the protest, the City shall proceed with its procurement in accordance with the established solicitation documents. If the City Council sustains the protest, procurement staff shall proceed as directed by the Council.
- e. In the event of a timely protest, procurement staff shall not proceed with the solicitation until all administrative and judicial remedies have been exhausted or until the City Administrator determines that the award of a contract without delay is necessary to protect substantial interests of the City.

## 2. Protests on Other Grounds.

In cases of protests involving aspects of a City procurement other than solicitation documents, the following procedures apply:

- a. Interested parties shall protest City procurement matters other than solicitation documents within five days after contract award.
- b. All protests timely received shall be considered pursuant to the provisions of this Section.
- c. Protests sustained wholly or partially by the City Council or City Administrator will be rectified as soon as practicable in accordance with the direction of the City Council or the City Administrator.
- d. If a protest sustained by the City Council cannot be settled satisfactorily pursuant to the terms of its decision and applicable law, all procurement activity for the specific project may be suspended by the City. The City reserves the right to continue the procurement, terminate the procurement, repeat the solicitation, cancel all or part of the procurement, postpone the procurement, or take any other lawful action with regard thereto.

## 3. Protests of Procurements Exceeding \$200,000.

- a. Interested parties protesting procurements exceeding \$200,000 shall comply with the procedures contained in this Section except that in lieu of appeal to the Reviewing Officer, a protestor may request that the protest be heard and decided at an administrative hearing.
- b. A written request for administrative hearing shall be accompanied by a certified or cashier's check in the amount of \$1,000, payable to the City of Lompoc, and shall be received by the Purchasing Agent or City Clerk not later than ten days after dispatch of the procurement staff's determination. The request for hearing shall include the specific grounds of the appeal.
- c. The City of Lompoc shall select and engage an impartial and qualified person to act as hearing officer in the pending protest. The protestor shall have the right to twice reject the selected hearing officer, provided that the City is notified of such rejection within three days after notice to the protestor of the name of the hearing officer.
- d. The protest shall be heard not later than 35 days after receipt of the protestor's request for hearing. Protests not heard in a timely manner shall be deemed withdrawn, unless the City and the protestor otherwise mutually agree in writing.
- e. After hearing the protest, the hearing officer shall promptly forward to the City Council his or her written findings and recommendations regarding disposition of the protest. The City Council may adopt or reject all or part of the findings and may accept, reject, or modify the recommendations of the hearing officer or, alternatively, render an independent decision and directions for disposition of the protest and the progress of the solicitation and procurement at issue.
- f. Costs of the hearing officer and expenses of the protest shall be borne by the protestor. The sums deposited with the request for hearing shall be credited to the costs of the hearing officer and other hearing expenses. Any unexpended portion of the deposit shall be refunded to the protestor. Protestors substantially prevailing on all of the material issues of their protests may apply to the City Council for consideration of a reasonable allocation of costs of the protest between protestor and City.

## 4. Protests of Federally Funded Procurements. If the protested procurement involves federal funds, the procurement staff, Reviewing Officer, and hearing officer shall accompany their respective decisions with notice to the protestor of the right to appeal to the appropriate federal agency, which shall be identified by name and address. Such an appeal shall be filed with such agency within five days of the dispatch of the rejection notice to the protestor. Federal agencies may entertain protests alleging that the City has failed to adopt written protest procedures or has failed to follow such procedures. Appeals to the Federal Transit Administration shall comply with FTA Circular 4220.1 or the most current version as amended and supplemented from time to time. (Ord. 1397(94), adopted 7/19/94; Ord. 1435(98), adopted 4/7/98.)