

**CITY OF NEW ORLEANS
CHIEF ADMINISTRATIVE OFFICE**

POLICY MEMORANDUM NO. 130

SEPTEMBER 24, 2014

TO: All Departments, Boards, Agencies and Commissions
FROM: Andrew D. Kopplin, First Deputy Mayor/ Chief Administrative Officer
SUBJECT: PROCUREMENT PROTEST POLICY

I. PURPOSE

This policy ensures the prompt procurement of needed goods and services in accordance with all applicable laws by establishing clear procedures and standards for administrative protests of procurements by the City of New Orleans.

II. APPLICATION

This policy shall apply to the City's competitive procurement of services, including without limitation professional services, goods, materials and supplies, and construction or public works; but does not include cooperative endeavor agreements; contracts let by the State of Louisiana; contracts to satisfy emergency needs during declared emergencies; and any procurements not subject to competitive procurement requirements.

III. DEFINITIONS

"**CPO**" means the Chief Procurement Officer of the City of New Orleans.

"**Person**" means any individual, partnership, corporation, limited liability company, joint venture, or other business entity.

"**Protester**" means the Person submitting a protest to a Solicitation or Selection.

"**Selection**" means the City's identification of the person to whom the City intends to award a contract or to qualify under a request for qualifications.

"**Solicitation**" means the process used for the procurement of services, materials, and supplies by the City through any form, including invitations to bid, requests for qualifications, and requests for proposals, as well as written documents used to request bids, responses, and proposals from prospective contractors.

IV. AUTHORITY

Executive Order MJL 10-04, in accordance with Section 4-206(3)(C) of the Home Rule Charter, establishes the authority of the CPO to develop procedures,

"governing the procurement, management, control, and disposal of any and all supplies, services, and construction procured by the City" and for the procedures to be enacted as Chief Administrative Office Policy Memoranda.

The CPO has the authority to conduct hearings and resolve protests of any City procurement subject to this policy by rejecting protests or by taking any action necessary to cure an error or impropriety, to the extent allowed by law. The CPO's decision is the final and conclusive administrative remedy.

V. EFFECT OF PROTEST

The filing of a protest under this policy will not stay or limit any solicitation, contract, or qualification unless the CPO determines that a delay is in the City's best interests. The deadlines contained in this policy will not be construed to limit in any way the City's ability to make any Selection, enter into any contract, or take any other action with respect to a Solicitation allowed by law.

VI. PROTEST REQUIREMENTS

A. Standing

1. Protests of the content or type of a Solicitation, including, but not limited to, the conditions, specifications and/or requirements thereof, may be filed only by actual or prospective aggrieved Persons who are able to submit a responsible and responsive submission.
2. Protests of a Selection may be filed only by Persons: (1) who actually submitted a bid, response, or proposal in response to the Solicitation; and (2) who would receive the Selection if the protest is successful.

B. Protest deadline

1. A protest of a Solicitation must be filed no later than 72 hours prior to the deadline for the submission of bids, responses, or proposals. Failure to timely protest a Solicitation waives any right to challenge the Solicitation.
2. A protest of a Selection must be filed no later than the earlier of: (1) the close of business fifteen (15) business days after the Protester knew or should have known of the factual basis for the protest; or (2) the City's execution of any contract arising from the Selection. Failure to timely protest a Selection waives any right to challenge the Selection.

These deadlines will not be construed to limit in any way the City's ability to make any Selection, enter into any contract, or take any other action with respect to a Solicitation allowed by law.

C. Required contents: All protests must be in writing and submitted to the CPO via e-mail, facsimile, mail, or hand delivery. All supporting materials must be received by the protest deadline as set forth above. A protest must include the following, at a minimum:

1. Identification of the Solicitation at issue, including any Solicitation number;
2. The Protester's name, address, fax and telephone numbers, and e-mail address;
3. A description of the Protester's standing to submit the protest;
4. A clear and detailed statement of all legal and factual grounds for the protest, including appropriate references to the specific section of any materials, provided a protest of a Selection shall not include any grounds for protesting the Solicitation;
5. All documents, with an index, that the Protester believes are necessary to assess the legal or factual basis of the protest; and
6. A statement of the specific relief requested.

Protests that fail to meet any of the above requirements may be rejected. Grounds for protest not identified in a protest may not be considered.

VII. RESPONSES

- A. The CPO will notify the department requesting the procurement of any protest and invite the department to provide a written response.
- B. The CPO will notify the selected Person(s) of the protest of any Selection and give the selected Person the opportunity to provide a written response within five (5) calendar days of notification.
- C. If the protest is Disadvantaged Business Enterprise-related, the CPO will notify the Office of Supplier Diversity and invite the Office of Supplier Diversity to provide a written response.

VIII. DETERMINATION

- A. The CPO will promptly review and resolve all protests on the basis of the written protest, the Solicitation, the selected Person's response (if applicable), and any response provided by the City department requesting the procurement. No hearing will be provided.

- B. The CPO will provide the Protester, the selected Person(s) (if applicable), and the responsible City department with a written decision stating the reasons for the decision.

IX. WAIVERS

Requests to waive any of these provisions must be approved by the Chief Administrative Officer in writing.

X. INQUIRIES

Questions regarding this memorandum should be forwarded to the Chief Administrative Office at (504) 658-8900.

Andrew D. Kopplin
First Deputy Mayor and
Chief Administrative Officer

ADK/MKZ