



City of Tacoma

Policy # COT FIN PROTEST POLICY 2.0

Department Sponsor:
Finance Department Procurement and
Payables Division

Policy: Protesting Competitive Solicitation

1. Policy Statement

To create and sustain a competitive and fair environment for procurement and contracting in compliance with applicable laws, regulations, policies, and procedures.

2. Purpose

To promote prudent and proper use of public funds and to provide a fair forum for parties engaging in the solicitation and award of City contracts. Parties who have timely submitted a bid, proposal, quote, or submittal in response to a City solicitation may timely protest the City's solicitation process or contract award recommendation made by a department/division.

3. Overview

- 3.1. Definitions: For purposes of this policy, the terms "bid," "proposal," "quote," "respondent", "submittal," and "solicitation" shall be as defined in Tacoma Municipal Code (TMC) 1.06.251.
- 3.2. Protests of requests for proposals (RFP), requests for qualifications (RFQ) or requests for information (RFI) are limited to the solicitation or evaluation process. No RFP, RFQ or RFI protest will be accepted when based solely on a challenge to the City's exercise of discretion or judgment in selection of finalist(s) or in making a contract award recommendation.
- 3.3. The City is authorized to reject any and all submittals and to cancel any solicitation process. The City's decision to cancel the solicitation process or reject all submittals is **not** subject to protest (TMC 1.06.266 E).
- 3.4. Pre-submittal or award protests are limited to contracts and purchases valued over \$200,000.
 - 3.4.1. All protests must be filed with the Senior Financial Manager according to the published timelines and are limited to the subject matter(s) specified in this policy.
 - 3.4.2. For all pre-submittal protests or award protests for contracts or purchases between \$200,000 and \$500,000 the decision of the Senior Financial Manager is final.
 - 3.4.3. Award protests for contracts or purchases over \$500,000, if found by the Senior Financial Manager to meet the grounds for protest, will be set for hearing by the Board of Contracts and Awards (C&A Board). The decision of the C&A Board is final.

4. Protests Prior To Submittal Deadline (“Pre-Submittal Protests”)

4.1. Pre-Submittal protests are limited to the following issues:

- 4.1.1. Specific and demonstratable allegations that the solicitation specifications, minimum qualifications, terms and conditions, or any aspect of the solicitation unduly constrain competition.
- 4.1.2. Specific and demonstratable concerns with the fairness or accessibility of the pre-bid/pre-submittal conference or question and answer period.
- 4.1.3. Specific and demonstratable concerns that the solicitation documents did not provide adequate information or contained improper criteria.

4.2. The protestor shall notify, in writing, the Senior Financial Manager, of its assertion of the grounds listed in subsection 4.1 no later than 5:00 p.m. three (3) business days before the submittal deadline. Late protests will be rejected. Failure to assert a pre-submittal protest according to subsection 4 shall result in the waiver of any further right to protest the matters specified in subsection 4.1.

- 4.2.1. The protesting bidder(s) shall be advised, in writing, of the Senior Financial Manager’s determination.
- 4.2.2. The written determination of the protest by the Senior Financial Manager shall:
- 4.2.3. Find the protest fails to demonstrate any of the grounds for protest identified in subsection 4.1 above and allow the bid process to continue; or
- 4.2.4. Find merit in the protest and issue an addendum to correct the confirmed error; or
- 4.2.5. Find merit in the protest and cancel the solicitation.
- 4.2.6. No pre-submittal protest shall require the City to extend a submittal deadline or cancel a solicitation request. However, the City reserves the right to do so at the sole discretion of the Senior Financial Manager.

5. Notice of Award Recommendation and Ability to Protest

On solicitations over \$200,000, any party who has submitted a timely response to the competitive solicitation, in accordance with the published solicitation timelines, may protest. Notice of award recommendation will be sent to all such respondents. For requests for bids (RFB), apparent low bidders being rejected for award recommendation will be informed of the reason for rejection.

6. Protests After Submittal Deadline (“Award Protests”)

A protest submitted after the submittal deadline, will be considered only if the submitting party meets the requirements to submit a protest and demonstrates at least one of the following grounds:

- 6.1. City’s improper rejection of a bidder as non-responsive or non-responsible.
- 6.2. The City failed to follow its published process.
- 6.3. Bias, discrimination, or conflict of interest on the part of an evaluator.
- 6.4. The City made mathematical errors

NOTE: Protests not raising any of the grounds listed above shall be rejected by the Senior Financial Manager or will be limited to consideration of permissible grounds for protest. Any part of a protest that has been rejected by the Senior Financial Manager on this basis will not be further considered by the City.

7. General Requirements for Award Protests After Submittal Deadline

- 7.1. All protests shall be in writing and shall state that the respondent is submitting a formal protest and specify one or more of the grounds set forth in subsection 6 above and the requested remedy.
- 7.2. All protests shall be timely filed with the Senior Financial Manager. A protest shall be submitted no later than 5:00 p.m. two business days following the date of notification of recommended award. Late protests will be rejected.
- 7.3. Protests shall be directed to the Senior Financial Manager and delivered by email to suppliernotifications@cityoftacoma.org. Protests received any other way will not be considered.

8. Award Protest Procedures – Contracts Less Than or Equal to \$500,000

- 8.1. The Senior Financial Manager will evaluate protests and advise, in writing, those involved of their determination on the matter as soon as practicable after a decision (including a decision to reject the protest as improper) is reached.
- 8.2. The written determination of the protest by the Senior Financial Manager shall:
 - 8.2.1. Find the protest fails to raise any of the grounds for protest identified in subsection 6 above and uphold the division/department recommendation; or
 - 8.2.2. Find only immaterial or harmless errors and reject the protest; or
 - 8.2.3. Find merit in the protest and proceed with appropriate action, which may include, but is not limited to, rejecting all bids, retabulating, or rescoring bids, or otherwise modifying the original award recommendation.
- 8.3. If the Senior Financial Manager rejects the protest the City may continue the award process. The decision of the Senior Financial Manager is final.

9. Award Protest Procedures – Contracts Over \$500,000

- 9.1. Award protests for contracts or purchases over \$500,000, if found by the Senior Financial Manager to meet the grounds for protest in accordance with section 6 above, will be set for hearing before the Board of Contracts and Awards (C&A Board).
- 9.2. The C&A Board will hear the protest and either concur with or reject the award recommendation from the department/division. The decision of the C&A Board is final.
 - 9.2.1. For Award protests set for hearing before the C&A Board the Procurement and Payables Office will:
 - 9.2.1.1. Schedule a hearing before the C&A Board. Usually the hearing will be scheduled for the next C&A Board meeting date, but at the discretion of Senior Financial Manager the hearing could be set for a future C&A Board meeting date,
 - 9.2.1.2. Provide notification by e-mail to the protesting party(ies), recommended awardee(s), and department/division of the protest process and timelines,
 - 9.2.1.3. Provide copies of any written submissions to all parties, including the originating division/department.
- 9.3. The recommended awardee may submit documentation for consideration by the C&A Board, including any legal briefing, no later than 9:00 a.m. two business days after the notice of protest hearing is given. The C&A board will reject any documentation submitted after the deadline.
- 9.4. The C&A Board's hearing of the protest shall proceed as follows:
 - 9.4.1. The originating department/division will have up to 10 minutes, or more as allowed by the Board, to briefly describe the purchase, project, solicitation process, and basis for its award recommendation. The department/division may wish to consult with the City Attorney's Office and request representation or assistance at the hearing.
 - 9.4.2. The protesting party will have up to 10 minutes, or more as allowed by the Board Chair, to state the basis of its protest. The protesting party may request to reserve some of its time for rebuttal.
 - 9.4.3. The recommended awardee, if present, will have up to 10 minutes, or more as allowed by the Board Chair, to state any response.
 - 9.4.4. The C&A Board may conduct further inquiry of the parties and of the originating department/division and allow additional presentation as it deems necessary. The C&A Board will be advised by and may consult with City Attorney advisor, who may not be the same attorney representing the department/division at the hearing.
 - 9.4.5. The C&A Board, at its discretion, may call for a recess to deliberate in closed session before taking action. Only the Board members and the Board's advising attorney will be in the closed session.
 - 9.4.6. At the close of its deliberations the C&A Board will go back on the record and resume the meeting.
 - 9.4.7. The C&A Board's disposition options include, but are not limited to:
 - 9.4.7.1. Voting to accept the department/division's recommendation.
 - 9.4.7.2. Voting to return the matter to the department/division with instructions for further action in consideration of the protest.
 - 9.4.8. A record will be kept reflecting the presentation to and recommendation(s) of the C&A Board.
 - 9.4.9. Purchasing, on behalf of the C&A Board, will issue notice of the C&A Board's decision to the recommended awardee, all protesting parties, and the department/division within one business day following the C&A Board meeting.
 - 9.4.10. If the C&A Board votes to support the department/division's recommendation, the award process shall proceed. The decision of the C&A Board is final.

10. Protest Process Exclusive Means

The procedures contained in this policy are the exclusive means to protest the City's solicitation process. No person or party may pursue any judicial proceedings challenging the solicitation or award of a contract by the City without first fully exhausting the steps specified in this policy.

- 10.1. Communication by suppliers (including their agents, representatives, and associates) with the entities listed in 10.1.1, 10.1.2, and 10.1.3 regarding potential and/or pending protests is prohibited for the duration of the protest process and said entities shall promptly refer all protest communications to the Senior Financial Manager for proper processing and resolution pursuant to this policy.
- 10.1.1. City Manager's Office, TPU Director's Office, City Council and/or Public Utility Board members; or
- 10.1.2. C&A Board members; or
- 10.1.3. Any and all other City personnel who influence or may be seen to influence the contract award process.
- 10.2. City personnel shall remain fair, ethical, and unbiased in their approach and decision making throughout the protest process.
- 10.3. In the event the protest process is disrupted, circumvented, or otherwise not observed, the City reserves the right to reject all bids.
- 10.4. The City reserves the right to reject all bids at any time for any reason in its sole discretion.

11. Policy Review

The most current version of this policy replaces all previous versions. The Senior Financial Manager is authorized to make changes and communicate these revisions to City departments and divisions. Significant or substantive changes will be reviewed by the Director of Finance for approval. The policy review shall be completed at least every five years but may be done on a more frequent basis as needed.

Reference:	Purchasing Policy Glossary TMC 1.06.251 Definitions TMC 1.06.266 E Award or Rejection of Submittals Board of Contracts and Awards
Contact Info:	Patsy Best, Senior Financial Manager
Policy History:	New: Protesting Competitive Solicitation Policy Previous: Purchasing Policy Manual
Approval:	Andy Cherullo, Director of Finance DocuSigned by: <i>Andy Cherullo</i> 3/18/2022
Effective Date:	March 15, 2022 1FAFA3DA59164E0...
Review	Every 5 years