

## **BID PROTEST PROCEDURES**

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### **1.0 Purpose.**

The purpose of these procedures is to protect the public purse, not to provide a specific type of forum for bidders, contractors, vendors and anyone who seeks to contract with the District to provide goods and services.

### **2.0 Definitions.**

- A.** "Award" shall mean a decision by the District's Commission to purchase public works, goods, software licenses or services (other than professional services) from a particular bidder or proposer.
- B.** "Federal agency" means any federal government agency that provides grants or funds (directly or indirectly) to the District that the District will use in a procurement.
- C.** "Filing" shall mean physical delivery during regular District business hours to the Operations Center, 1802 75<sup>th</sup> St. SE, Everett, WA 98203-6264, requiring a receipt signed by a staff member of the Contracts Purchasing Dept., using a commercial document courier such as Fed Ex or UPS who obtains a receipt upon delivery. In addition, Filing shall include e-mailing to the following e-mail address: bids@snopud.com.
- D.** "Interested party" means: (1) prior to submission of bids, proposals, or offers to the District, an actual or prospective bidder, proposer or offeror whose direct economic interest would be affected by the procurement; and (2) after submission of bids, proposals or offers to the District, an actual bidder, proposer, or offeror. "Interested party" does not include subcontractors, suppliers, or any person contracting with, or intending to contract with, an actual bidder, proposer, or offeror.
- E.** "Procurement" means: (1) a solicitation, invitation, or other request by the District for offers for a contract for the purchase, lease or acquisition of public works, goods, services (other than professional services) and/or software licenses; and (2) an award or proposed award by the District's Commission of such a contract. "Procurement" does not include the acquisition of any interest in real estate.
- F.** "Protest" means a written objection by an interested party to a procurement.
- G.** "Protestor" means an interested party who files a protest as provided in these procedures.

### **3.0 Protest authorized - Exhaustion of remedies and timeliness required.**

An interested party may protest a procurement only and exclusively as provided for herein. An interested party must exhaust the administrative remedies provided herein before seeking other or additional relief in a court of law, except for temporary measures to preserve the status quo pending exhaustion of the remedies established by this procedure. An interested party who fails to exhaust the remedies provided for herein waives its protest.

### **4.0 Contents**

- A.** A protest must contain the information required in this Section 4.0 and shall be denied if it does not.
- B.** A protest must clearly: (1) identify itself as a protest and (2) identify the procurement protested.
- C.** A protest must be written and contain the following statement signed by a responsible official of the interested party: "I declare under penalty of law for perjury or falsification that the information contained in the protest is true and correct to my personal knowledge, that this protest is filed in good faith and without any intent of delaying the procurement, and that I reasonably believe the protest to be meritorious," and such statement shall be subscribed and sworn before a notary public. A protestor must strictly comply with this requirement.
- D.** The protestor must state in its protest all reasons and bases in law and fact supporting the protest, including, but not limited to: (1) identification of any and all specifications, terms, requirements, conditions, or any other item or process to which the protestor objects; and (2) a complete description of the facts, circumstances and reasons, including legal reasons, why an award should or should not be made.
- E.** The protestor must attach to the protest all documents upon which it relies to support its protest.
- F.** A protestor waives any and all grounds for protest that are not clearly identified or described in the protest initially filed with the District's Contracts/Purchasing Department.

### **5.0 Filings and deadline.**

- A.** Strict Compliance Required. A protestor must strictly comply with the time limits established by these procedures. A protestor waives its protest by failing to comply strictly with the time limits established in these procedures.
- B.** Pre-Bid-Opening Protests. A protest of a specification, term, requirement, condition, or any other item or process in a procurement must be filed with the District's Contracts/Purchasing Department, as more fully set forth in Section 2.C. hereof, within the time limits set forth below.
  - 1.** If the procurement is advertised, a protest of a specification, term, requirement, condition, or any other item or process must be filed no later than five business days prior to the scheduled deadline for submission of bids or proposals.

2. If the procurement is not advertised, a protest of a specification, term, requirement, condition, or any other item or process must be filed no later than three business days prior to the scheduled deadline for submission of bids or proposals.
3. If the District changes the deadline for submission of bids or proposals from the date originally scheduled in the procurement, the time limit for filing a protest shall be determined by using the latest date to which the submission of bids or proposals is changed.

**C. Post-Bid-Opening Protests.** A protest of an award of a bid or proposal must be filed with the District's Contracts/Purchasing Department within the time limits established below.

1. If the District provides at least five business days' notice to bidders or proposers of its intent to award a bid or proposal or to reject all bids or proposals, any protest must be filed with the District's Contracts/Purchasing Department no later than the end of the third business day prior to the date of the proposed award or rejection of all bids or proposals. For the purposes of this subsection, the District may notify bidders or proposers by providing them with a copy of the tabulation of the bids or proposals and/or the staff recommendation regarding such award or rejection, or by publishing such information on its website, in the sole discretion of the District.
2. If the District has not provided at least five business days' notice to bidders or proposers of its intent to award a bid or proposal or to reject all bids or proposals, any protest must be filed with the District's Contracts/Purchasing Department no later than 12 noon on the date of the proposed award or rejection of all bids or proposals.

**D.** The District may choose to proceed with the procurement and execute a contract in the absence of an injunction or restraining order; provided that if the District has received a written protest meeting the requirements set forth herein from a bidder for a public works project which is the subject of competitive bids, the District shall not execute a contract for the project with anyone other than the protesting bidder without first providing at least two full business days' written notice of the District's intent to execute a contract for the project, provided that the protesting bidder has submitted notice of its protest no later than two full business days following bid opening.

**6.0 Determination of protest.**

- A.** The District may request information relating to the procurement or protest from any other source, including, but not limited to, other interested parties. In addition, the protester may provide additional information supplementing its protest until the end of the business day prior to the date on which the District's Commission is scheduled to consider such protest.
- B.** The Commission shall decide the protest based on the information described in Section 6.D. below. A protestor and any other interested party may appear before the Commission to comment upon the protest, provided that such comments shall not include examination of witnesses, the taking of evidence, or the submission of evidence. The Commission's decision on the underlying item/bid award at its regularly scheduled meeting shall be final and

binding with respect to the disposition of the protest.

- C. The decision will be made based upon the protest (including oral testimony provided at the meeting), including documents attached to the protest in support of the protest, and any other pertinent information presented to the Commission by District staff (including but not limited to confidential legal advice) and other interested parties.
- D. Only those issues raised by the protestor in its protest filed with the District's Contracts/Purchasing Department (including any supplementary information provided pursuant to Section 6.A. above) will be considered.

#### **7.0 Remedies.**

- A. A decision on the protest may include, but is not limited to, upholding or denying the protest, in whole or in part. Remedies may include rejection of one or more bids or proposals, a call for new bids or proposals, acceptance of the selected bid or proposal in the event the protest is denied, award of a bid to the protestor or another party if the protest is upheld, and such other relief as may be appropriate.
- B. No protestor or interested party shall be entitled to damages of any kind whatsoever.
- C. No contract is formed until a written contract, agreement, or memorialization has been completely executed by the District and the successful bidder, proposer, or offeror. A bid, proposal, and offer do not create any property right of any kind in a procurement.

#### **8.0 Venue – Notice required.**

- A. Any and all lawsuits arising out of, or relating to, a protest shall be filed in the superior court for Snohomish County, Washington, including, but not limited to, application by an interested party or protestor for temporary measures to preserve the status quo pending exhaustion of the remedies enumerated herein. If concurrent jurisdiction exists between the superior court of Snohomish County and some other court, such as the United States District Court, venue shall lie in the superior court of Snohomish County.
- B. An interested party or protestor who applies to the Snohomish County superior court for temporary measures to preserve the status quo pending exhaustion of remedies granted hereunder shall give notice of such application to the District attorney so as to allow the District to appear before any commissioner or judge hearing such application. Failure to give the District such notice shall constitute a waiver of the protest.

#### **9. Limited appeal of District decision to federal agency.**

A protestor may appeal the District's decision on a protest to the federal agency: (A) if and to the extent allowed by the federal agency's regulations then in existence; and (B) if the procurement is funded in whole or in part by the federal agency allowing such appeal. A protestor must exhaust all administrative remedies with the District as a condition precedent to appealing the District's decision on a protest to the federal agency. The federal agency will only review appeals that allege the District failed to follow the District's protest procedures. Any such appeal to the federal agency must be in writing and received by the appropriate federal agency's regional or headquarters office no later than five business days following a final decision rendered by the District. A copy of any such appeal to the federal agency must be promptly filed with the District's Contracts/Purchasing Department.