

City of Brentwood
Bid Protest Policy

General Provisions:

- (a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a bid or contract may protest to the City of Brentwood.
- (b) The term “protest,” as used in this section, shall refer to an allegation of:
 - i. A violation of a relevant local ordinance, state law, federal statute or other regulation governing the procurement of goods and/or services by the City.
 - ii. A deficiency or impropriety in a bid notice, specifications, request for qualifications or request for proposals issued by the City, or in pre-qualification proceedings conducted by the City in preparation for receiving bids or proposals.
 - iii. An error or impropriety in the award of a bid or contract or other procurement decision, including an allegation that a procurement is not exempt from standard bid procedures when such an exemption is claimed by the City.
- (c) The protest and appeal procedures set forth in this section are mandatory administrative procedures, which all aggrieved actual or prospective bidders, offerors, and contractors must utilize and exhaust prior to seeking judicial review or remedy.

Timely Protest Required:

- (d) To be valid, a protest must be submitted in writing to the head of the department for which the procurement is being carried out, signed by or on behalf of an eligible protestor, and compliant with the following time and content requirements:
 - i. A protest against an alleged solicitation deficiency or impropriety must be filed within three business days of the date notice of the solicitation was published; provided that if the protestor alleges that no notice was published, the protest must be filed within three days of the date the protestor learned that bids, offers or proposals were solicited by the City.
 - ii. A protest against an award must be filed within three business days of the date the protestor is notified by the City staff of the intent to award or the date the name of the party whose bid, offer or proposal is to be recommended for acceptance is posted on the City’s website, whichever occurs earlier; provided that if such information is posted on the City’s website, the City shall have no obligation to provide personal notification to any party. The posting on the City’s website of the name of the party whose bid, offer or proposal is to be

recommended for acceptance may be accomplished by including the information in the Board of Commissioners agenda materials which are posted on the website, or by a separate posting regarding the proposed procurement.

iii. The protest must include:

- a. The name and address of the protestor.
- b. The bid or proposal name, date and any other pertinent identifying information.
- c. A statement of the reason for the protest, including allegations and evidence sufficient, if uncontradicted, to establish the likelihood of:
 1. A violation of a relevant local ordinance, state law, federal statute or other regulation governing the procurement of goods and/or services by the City; or
 2. A deficiency or impropriety in the bid notice, specifications, request for qualifications or request for proposals issued by the City, or in pre-qualification proceedings conducted by the City in preparation for receiving bids or proposals.
 3. An error or impropriety in the award of a bid or contract or other procurement decision, including an allegation that a procurement is not exempt from standard bid procedures when such an exemption is claimed by the City.

(e) The protestor, to be eligible for administrative protest, must show a direct economic interest in the outcome of the procurement. If the protestor is other than an individual, the protest must be signed by an officer or other individual with authority to submit the protest on behalf of the protestor.

Protest Consideration:

- (f) Upon receipt of a valid, written protest, the Department Head responsible for the solicitation or proposed award, after consulting with the City Attorney, shall take one of the following actions:
- i. Reject the protest; or
 - ii. Accept the protest and take appropriate corrective action; or
 - iii. Request additional information or request the protester to present more information in person. At the Department Head's discretion, in-person presentations by the protester may include demonstrations and/or site visits. The protester is required to respond within five days of receipt of the City's

request, unless a longer time period is allowed by the Department Head. If the protester fails to provide a response to the request for additional information, or fails to appear in person as requested, the Department Head may reject the protest.

- (g) The protestor must submit proof that a copy of the protest has been provided to other parties who have submitted a bid, offer or proposal to the City in response to the same solicitation and who have a direct economic interest in the outcome of the protest. Failure to submit such proof shall result in dismissal of the protest. Copies of all documents and other information submitted with the protest or at the request of the Department Head shall also be provided to such other parties. The other parties shall be permitted to respond in writing to the protest, provided that such response shall be submitted within three business days after the other parties' receipt of the protest. The other parties shall also be permitted to participate in any in-person meetings conducted by the Department Head with the protestor in regard to the protest.
- (h) In the event of a timely protest, the City shall not proceed further with the solicitation of bids or proposals, or with the award of the contract, unless the City Manager makes a written determination that the solicitation of bids or proposals or the award of the contract without delay is necessary to protect the best interests of the City.
- (i) If a protest is not resolved by mutual agreement, the Department Head shall promptly issue a decision in writing to the protestor, with copies to be delivered simultaneously to any other parties to whom copies of the protest were provided. The decision shall state the reasons for the action taken.
- (j) The Department Head's decision in response to the protest shall be final and conclusive, unless an appeal is submitted to the City Manager.
- (k) The protester may proceed as if an adverse decision has been received if the protest is not resolved and the Department Head does not issue the written decision required under subsection (i) of this section within one of the time periods established below, whichever is longest:
 - i. Fifteen days following receipt of the protest; or
 - ii. If additional information is requested by the Department Head, 15 days following the Department Head's receipt of such additional information; or
 - iii. Such alternative period as may be agreed upon by the parties.

Appeal to City Manager:

- (l) An appeal of the Department Head's action in regard to a protest may be submitted to the City Manager by any person who can show a direct economic interest in the outcome of the procurement. Any appeal to the City Manager must be submitted within three

business days of notification of the Department Head's action, or if no action has been taken by the Department Head, within three business days of the expiration of time allowed for the Department Head's action.

- (m) Appeals to the City Manager must be submitted in writing and must include:
 - i. The name and address of the appellant.
 - ii. The bid or proposal name, date and any other pertinent identifying information.
 - iii. Evidence as to why the Department Head's action was erroneous.
- (n) Upon receipt of a valid, written appeal, the City Manager, after consulting with the City Attorney, shall take one of the following actions:
 - i. Affirm the Department Head's decision; or
 - ii. Overturn the Department Head's decision and take appropriate corrective action; or
 - iii. Request additional information or request the appellant to present more information in person. At the City Manager's discretion, in-person presentations by the appellant may include demonstrations and/or site visits. The appellant is required to respond within five days of receipt of the City's request, unless a longer time period is allowed by the City Manager. If the appellant fails to provide a response to the request for additional information, or fails to appear in person as requested, the City Manager may deny the appeal.
- (o) If the appellant is someone other than the original protester, the appellant must submit proof that a copy of the appeal has been provided to the original protester. Failure to submit such proof shall result in dismissal of the appeal. Copies of all documents and other information submitted with the appeal or at the request of the City Manager shall also be provided to the original protester. The original protester shall be permitted to respond in writing to the appeal, provided that such response shall be submitted within three business days after receipt of the appeal by the original protester. The original protester shall also be permitted to participate in any in-person meetings conducted by the City Manager with the appellant in regard to the appeal.
- (p) The City Manager's decision in response to the appeal shall be final and conclusive, subject to:
 - i. Approval or disapproval of the procurement by the Board of Commissioners, if required.
 - ii. Such judicial review or remedy as may be available to a party with standing in the matter.

- (q) The appellant may proceed as if an adverse decision has been received if the appeal is not resolved and the City Manager does not issue a written decision within one of the time periods established below, whichever is longest:
 - i. Fifteen days following receipt of the appeal; or
 - ii. If additional information is requested by the City Manager, 15 days following the City Manager's receipt of such additional information; or
 - iii. Such alternative period as may be agreed upon by the parties.
- (r) The City Manager may authorize the Assistant City Manager to process and decide appeals on the City Manager's behalf.

Remedies – Solicitations:

- (s) If it is determined that there has been a deficiency or impropriety in the bid notice, specifications, request for qualifications or request for proposals issued by the City, or in pre-qualification proceedings conducted by the City in preparation for receiving bids or proposals, then the bid notice, specifications, request for qualifications, pre-qualification proceedings or request for proposals may be:
 - i. Cancelled or withdrawn; or
 - ii. Revised to comply with the law, to alter the schedule, or to otherwise eliminate the deficiency or impropriety.

Remedies – Award Challenges:

- (t) If prior to award, it is determined that a proposed award of a contract is in violation of a relevant law or regulation or otherwise erroneous or improper, then the proposed award shall be:
 - i. Cancelled; or
 - ii. Revised to comply with the law or to eliminate errors or improprieties.
- (u) If after an award, it is determined that an award of a contract is in violation of a relevant law or regulation or otherwise erroneous or improper, then:
 - i. If the person receiving the award has acted in good faith:
 - a. The award may be revised to comply with the law, or to eliminate errors or improprieties, and ratified and affirmed, provided it is determined that

doing so is in the best interest of the City; or

b. The contract may be terminated and the person receiving the notice of award may be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination.

ii. If the person receiving the award has acted fraudulently or in bad faith:

a. The award may be declared null and void; or

b. The award may be ratified and affirmed if such action is in the best interest of the City, without prejudice to the City's rights to such damages as may be appropriate.

Deadlines:

(v) Whenever a deadline for the filing of a protest, appeal, information requested by the City or any action to be taken by the City would otherwise fall on a weekend or City holiday, the deadline shall be extended to the next weekday that is not a City holiday.

Bid Protest Timetable

	What the City Does	What the Protestor/Appellant Does
Solicitation 	For purchases of \$4,000 or more, at least 3 bids are obtained if possible. If over \$10,000, notice is published in newspaper. (Not required in certain situations – e.g. professional services, state contract purchases, single source.)	Protest against solicitation deficiency or impropriety must be filed 3 business days after notice publication; or 3 business days after protestor learns bids were solicited without notice. Submit proof that protest has been copied to other bidders who have economic interest.*
Intent to Award 	Finance Dept. posts name of party whose bid is to be recommended on City website OR staff notifies all bidders of intent to award.	Protest against award must be filed 3 business days after website posting or notification of intent to award. Submit proof that protest has been copied to other bidders who have economic interest.*
Department Head Review 	Department Head may request additional info to be delivered or presented by protestor in person. Unless otherwise agreed by parties, decision is due within 15 days of receipt of protest or receipt of additional requested info.	Respond to request for additional info within 5 days, unless longer time is allowed. Provide copies to same bidders copied on protest. (Other bidders may respond within 3 business days, and may participate in in-person meetings.)
Department Head Decision 	• Department Head may reject protest, or accept protest/take corrective action. • May reject protest if protestor fails to provide response to request for additional info, or to appear in person. • Provide written decision within: a. 15 days after receipt of protest b. 15 days after receipt of additional info requested c. Alternative period agreed upon by parties. • If no decision is provided within above time, protestor may proceed as if adverse decision was received.	Protestor or any other person with direct economic interest may appeal to City Manager within 3 days of Department Head's action (or expiration of time for decision.) Submit proof that appeal has been copied to original protestor, if appellant is not original protestor.
City Manager Review 	City Manager may request additional information to be delivered or presented in person.	Respond to request for additional info within 5 days, unless longer time is allowed. Provide copies to others copied on appeal (who may respond within 3 business days, and may participate in in-person meetings.)
City Manager Decision	• City Manager may affirm Department Head's decision, or overturn decision/take corrective action. • May deny appeal if appellant fails to provide response to request for additional info, or to appear in person. • Provide written decision within: a. 15 days after receipt of appeal b. 15 days after receipt of additional info requested c. Alternative period agreed upon by parties. • If no decision is provided within above time, appellant may proceed as if adverse decision was received.	Any party with standing may seek judicial review or remedy in the event of an adverse decision. (If matter is to be taken up by City Commission for approval/disapproval of procurement, parties must wait for City Commission action before seeking judicial review or remedy.)

* If timely protest is submitted, further solicitation and award of contract is suspended, unless City Manager makes written determination that solicitation of bids or award of contract without delay is in best interest of City.