

## **8. BID PROTEST PROCEDURES**

### **(a) General**

It is the policy of the TTD to consider fully and promptly adjudicate protests filed by bidders or prospective bidders relating to TTD's bidding procedure, contract specifications or award of contract. Protests shall be processed in accordance with the provisions of this section. Bidders shall be advised of these procedures in the contract specifications, and at the pre-bid conference, if any. A bidder's failure to follow these bid protest procedures may result in rejection of the protest by TTD.

The term protest is utilized to describe the controversies that arise, usually during the contract formation process, as an objection to a contract award or to a decision on a specific bid. The protests are challenges to actual or proposed actions of the contracting bidders on specific procurements. These objections are brought by bidders, prospective bidders, or other interested parties who contend that they have been improperly treated in the procurement process. All protests must be submitted in writing, within the prescribed deadlines.

These procedures shall apply to contracts that are awarded by formal competitive bidding and by competitive negotiations. Small purchase contracts are not subject to protest. For procurements involving competitive negotiations under California Public Contract Code Sections 20216 and 20217, TTD shall follow the Protest Procedures set forth in those sections.

A bidder's failure to comply with these procedures shall constitute a waiver of any right to further pursue the bid protest, including filing any legal proceedings. A bidder may not rely on a protest submitted by another bidder, but must timely pursue its own protest.

### **(b) Bid Protest Content Requirements**

The protest filed with TTD shall be in writing and shall include the name, address and telephone number of the protester; the name of a contact person; identify the number, date, and description of the solicitation; contain a statement of the grounds for protest and any supporting documentation; and indicate the ruling or relief desired from TTD. The grounds for the protest must be supported to the fullest extent feasible. Additional materials in support of the protest will be considered only if filed within the time limits specified. If the protestor later raises new grounds or new evidence not previously set forth in written submissions that reasonably could have been raised, TTD will not consider such new grounds or evidence in the determination of the protest.

No formal briefs or other technical forms of pleading or motion are required, but a protest and other submissions should be concise, logically arranged, clear and legible. Any additional information requested or required by TTD from the protestor, or interested parties shall be submitted as expeditiously as possible, but in no case later than forty-eight (48) hours after the receipt of such request unless specifically accepted by TTD. Failure to comply with the time periods for filing protests as set forth herein shall be a basis for rejection of the protest.

**(c) Confidentiality**

Materials submitted by a protestor will not be withheld from any interested party outside of TTD or from any Government agency that may be involved in the protest, except to the extent that the withholding of information is permitted or required by law or regulation. If the protestor believes that the protest contains proprietary materials that should be withheld, a statement advising of this fact may be affixed to the front page of the protest document and the alleged proprietary information must be so identified wherever it appears. If a protestor requests that TTD withhold from disclosure information identified as confidential, and TTD complies with the protestors request, the protestor shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless TTD from and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the protestor information), and pay any and all costs and expenses related to the withholding of the protestor's information. The protestor shall not make a claim, sue, or maintain any legal action against TTD or its directors, officers, employees, or agents concerning the withholding from disclosure of protestor's information.

**(d) Withholding of Award**

When a protest has been filed before the opening of bids, TTD will not open bids prior to the resolution of the protest. Where the protest determination could affect bid responses, an appropriate extension of the bid opening date may be granted.

When a protest has been filed after the opening of bids, TTD will consider the protest prior to taking action to award the contract. Exceptions to the above may occur if TTD determines that: (1) the items to be procured are urgently required; or (2) delivery or performance will be unduly delayed by failure to either make the award promptly or to continue with the procurement; or (3) failure to make prompt award or to continue with the procurement will otherwise cause undue hardship to TTD or other local, state or federal governments.

When a protest has been filed after an award or recommendation for contract award, the award or recommendation shall remain valid and procurement actions shall continue unless the District Manager determines in writing that it is necessary to suspend procurement actions pending time to resolve the protest.

**(e) Protests Filed Before Bid Opening**

Protests based on restrictive or severely defective specifications, or improprieties in any type of solicitations that are apparent or reasonably should have been discovered prior to bid opening or the closing date for proposals, must be received by TTD no later than five days before the scheduled bid opening. Prior to filing a protest based on such criteria, bidders will be required to utilize any procedures in the specifications for requests for clarifications prior to submitting a protest. If the bidder disagrees with TTD's decision on such requests, the bidder may then avail itself of the bid protest procedures.

**(f) Protests Filed After Bid Opening**

Protests based upon the staff recommendation for contract award must be received by TTD

within 48 hours of receipt of notice by TTD advising of the staff's recommendation for award of a contract.

**(g) Protests Filed After Award**

Protests based upon the award of the contract must be filed within five days after the award.

**(h) Protests on Negotiated Procurement**

Protests based on staff's recommendation for a contract award for services procured through negotiated procurement must be filed within five days of notice of the recommendation for contract award. The protest shall contain a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest.

**(i) Review of Protest and Determination on Protest**

TTD's review of any protest will be limited to violations of state or local laws or regulations, violations of TTD's purchasing procedures, or violations of TTD's protest procedures. To the greatest extent permitted by law, the procedures contained in this Policy are the exclusive means for protesting any matter relating to TTD's award or proposed award of a contract. TTD may reject any Contract award bid protest that does not comply with all required bid protest procedures.

Only bidders who TTD otherwise determines are responsive and responsible are eligible to protest a bid; protests from any other bidder (or anyone else, such as prospective subcontractors) will not be considered. In order to determine whether a protesting bidder is responsive and responsible, TTD may open and evaluate information contained in any of protesting bidder's bid envelopes which are not otherwise opened at the public bid opening, and conduct the same investigation and evaluation as TTD is entitled to make regarding an apparent low bidder.

The bidder filing the protest must concurrently transmit a copy of the initial protest document and any attached documentation to all other parties with a direct financial interest that may be adversely affected by the outcome of the protest. Such parties shall include all other bidders who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.

If a protest is not resolved by mutual agreement, TTD shall issue a written decision stating the reason for the action taken to resolve the protest. The District Manager shall consider and resolve any protests of contracts valued at \$75,000 or less. The Board shall consider and resolve any protests valued at more than \$75,000. In conjunction with making a determination on the bid protest, the Board may delegate responsibility to prepare and issue a written decision in conformation with that determination to the District Manager. The decision of the District Manager or Board shall be final.