

Administrative Appeals Procedure

1.0 An administrative appeals procedure is hereinafter described that shall be used for hearing protests of a decision to award or an award, appeals from refusals to allow withdrawal of bids, appeals from disqualifications, appeals for debarment or suspension, failure to prequalify, and determinations of non-responsibility, and appeals from decisions or disputes arising during the performance of a contract.

2.0 To initiate the administrative appeals procedure the aggrieved party shall submit, in writing, a protest or appeal to the Purchasing Agent. The protest or appeal shall include the basis for the protest or appeal and the relief sought. A protest of a decision to award or an award shall be submitted within ten (10) days after the award or the announcement of the decision to award, whichever occurs first. An appeal from a refusal to allow withdrawal of a bid shall be submitted within ten (10) days after receipt of the decision. An appeal from a disqualification shall be submitted within thirty (30) days after receipt of the decision. An appeal for debarment or suspension shall be within ten (10) days of receipt of official notice of such actions. An appeal from a determination of non-responsibility shall be submitted within ten (10) days after receipt of the decision. An appeal from a decision resulting from a contract dispute shall be submitted within sixty (60) days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based.

3.0 Upon receipt of a protest or an appeal, the Purchasing Agent or his designated representative, shall respond, in writing to the protest or appeal within ten business (10) days or shall give notice to the protesting or appealing party within ten (10) days that a hearing is required to present the facts concerning the protest or appeal. Such notice need not be in writing. The Purchasing Agent, or his designated representative, shall establish a location, date and time for the hearing. The hearing shall allow for the presentation of relevant facts and shall allow representatives of the City and the aggrieved party to explain their position on the matter. At the conclusion of the hearing, the Purchasing Agent or his designated representative may choose to respond to the aggrieved party's protest or appeal verbally. A verbal response shall be summarized in writing and filed with the other documents concerning the protest or appeal. If a verbal response is not given to the aggrieved party at the conclusion of the hearing, the Purchasing Agent, or his designated representative, shall issue a written response within ten (10) days after the conclusion of the hearing.

4.0 Should the aggrieved party not be satisfied with the response given by the Purchasing Agent, or his designated representative, the aggrieved party may request a panel hearing. A request for a panel hearing shall be submitted in writing to the Purchasing Agent within ten (10) days after receipt of a written response or within ten (10) days of the issuance of a verbal response. Any appeal to a panel must make the claim that the decision by the Purchasing Agent, or his designated representative, was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes, regulations or the terms and conditions of the invitation for bid or the request for proposal or any resulting contract document.

5.0 Upon receipt of a request for a panel hearing, the Purchasing Agent shall advise the City Manager that a panel hearing has been requested. The City Manager will appoint a panel of three (3) or more disinterested persons. The City Manager shall attempt to select a panel which collectively has knowledge of current state and local government procurement laws and regulations, familiarity with the type of product and/or service provided by the aggrieved party and knowledge of the product or service application with a similar environment.

6.0 The panel members shall select a chairman who shall establish a location, date and time for the panel hearing to be conducted. The panel hearing shall allow for the presentation of relevant facts and pertinent information by the aggrieved party and the Purchasing Agent. The Purchasing Agent may require the participation of other City department and City agency employees who have contributed to an evaluation or decision-making process or any persons involved in a contract dispute. Should the aggrieved party elect to be represented by legal counsel, the Purchasing Agent may request assistance from the City Attorney.

7.0 The panel hearing is an administrative process and is not intended to be conducted as a full court proceeding. The panel, by majority vote, may decide procedural questions and rule upon objections raised during the course of the hearing. At the option of the aggrieved party or the Purchasing Agent, opening statements may be made at the beginning of the hearing setting forth the issues and the panel may ask for such statements in order to clarify the issues involved. The panel is not bound by technical rules of evidence, however, since the appeal is based on the decision by the Purchasing Agent, or his designated representative, new issues not presented to the Purchasing Agent, or his designated representative, shall not be allowed as a basis of appeal. However, the panel shall take into account the reliable and substantial relevant facts as presented to the Purchasing Agent, or his designated representative in the original appeal, and pertinent related information produced during the panel hearing. The aggrieved party and the Purchasing Agent shall produce such additional relevant facts and pertinent information, as the panel may deem necessary in understanding and determining a protest or an appeal.

8.0 Within ten (10) days after the conclusion of the panel hearing, the panel shall issue a written decision containing the findings of fact. The findings of fact shall be final and conclusive and shall not be set aside unless the same are fraudulent or arbitrary or capricious, or so grossly erroneous as to imply bad faith.

9.0 The panel, in rendering its decision, shall decide the protest or appeal on the merits. The panel has the responsibility of ensuring the proper application of statutes, regulations, policies and procedures. The panel does not have the authority to formulate or to change policy. Accordingly, the panel shall make its decision within the following parameters:

9.1 A proposed award or an award shall be reversed only if the aggrieved party establishes that the proposed award or the award is not an honest exercise of discretion, but rather is arbitrary or capricious or not in accordance with the Constitution of Virginia, statutes,

regulations or the terms and conditions of the invitation for bids or the request for proposal. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after the award, it is determined that an award of a contract was arbitrary or capricious, the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined by the Purchasing Agent. Where the award has been made and performance has begun, the Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the City. If it is not in the best interest of the City to make the contract void, the Purchasing Agent, at his sole discretion, may allow work to proceed. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits. When a panel determines that there is probable cause to believe that a decision to award was based on fraud or corruption or an act in violation of Article XX, Division 4, of the City Code "Ethics in Public Contracting," the Purchasing Agent may enjoin the award of the contract to a particular bidder.

9.2 A decision denying a bidder withdrawal of a bid under section 2- 564.5 of the City Code shall be reversed only if the aggrieved party establishes that the decision to deny withdrawal of the bid was clearly erroneous.

9.3 A decision denying a bidder or offeror, actual or prospective, permission to participate or disqualification from participation shall be reversed only if the aggrieved party establishes that the decision was arbitrary or capricious.

9.4 A decision to debar or suspend a bidder or offeror, actual or prospective, shall be reversed only if the aggrieved party establishes that the decision to debar or suspend was based upon bad information and was erroneous, or was arbitrary or capricious.

9.5 A decision determining that a bidder or offeror is not a responsible bidder or offeror for a particular contract shall be reversed only if the aggrieved party establishes that the decision was arbitrary or capricious. If it is determined that the decision determining non-responsibility was arbitrary or capricious, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question. If, after an award, it is determined that a determination of non-responsibility was arbitrary or capricious, the Purchasing Agent, upon determining the action in the best interest of the City, may enjoin the performance of a contract where performance has not begun. Where the award has been made and performance has begun the Purchasing Agent may declare the contract void. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

9.6 A decision resulting from a contract dispute shall be reversed only if the aggrieved party establishes that the decision is arbitrary or capricious or not in accordance with the

Constitution of Virginia, statutes, regulations or the terms and conditions of the invitation for bid or the request for proposal or any resulting contract document.

10. Any party to the Administrative Appeals Procedure, including the City, shall be entitled to institute judicial review if such action is brought within thirty (30) days of receipt of the panel's written decision.

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