

ORDINANCE HIGHLIGHTS, AMENDING CHAPTER 2, ARTICLE V, DIVISION 3 OF THE CITY OF TAMPA CODE; CREATING SECTION 2-282, PROCUREMENT PROTEST PROCEDURES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

City of Tampa Code, Chapter 2, Article V, Division 3, Purchases and Contracts, is hereby amended by creating Section 2-282, Procurement Protest Procedures to read as follows:

### **Section 2-282. Procurement Protest Procedures.**

**(a) Purpose.** This section shall govern any protest made by any actual bidder or proposer, who is allegedly aggrieved in connection with the issuance of a bid solicitation, proposal solicitation or pending award of any contract in any competitive process utilized by the City of Tampa for procurements of supplies, materials or services and construction of public improvements and has standing to protest under Florida law. Protests not complying with the provisions of this Section shall not be reviewed.

**(b) Time for Filing a Protest.** Protests shall only be accepted within the timeframes as stated herein. Any protest received outside of these timeframes shall not be considered. Protests shall be filed with the Director of the soliciting department, either the Director of Purchasing or designee, or the Director of Contract Administration or designee, which shall be specified in the solicitation by the City. For all solicitations with estimated expenditures of \$25,000 or more, protests must be filed with the Director of the soliciting department in writing within three (3) city business days after the City posts notice of Intent to Award by means which shall be specified in the solicitation by the City. For solicitations with estimated expenditures of less than \$25,000, the protesting party shall bear the responsibility of ascertaining whether the City has made a decision of intent to award and of filing any protest within three

(3) city business days of said decision. All protests must be received by the Director of the soliciting department or designee by 4:30 p.m. on the date as specified above. Protests received after this timeframe will not be considered. It is the responsibility of the bidder(s) or proposer(s) to review posted notices from the City in order to file a protest in a timely manner. Standing to protest is limited to parties that have submitted bids or proposals.

**(c) Required Form of Protest.** All protests shall be in writing and state that the bidder or proposer is submitting a formal Notice of Protest. Failure to follow the required form of protest shall be just cause for rejection of the protest. Delivery by certified or registered mail, email, fax (original copy sent immediately following), or hand delivered to the Director of the soliciting department or designee is acceptable. Protests shall be date and time stamped upon receipt and if hand-delivered a receipt shall be issued to the protesting party stating the date and time the protest was filed. A party protesting may be represented by legal counsel at its own expense. A protesting party shall bear all costs of the protest other than salary and personnel costs of City employees. No documentation may be submitted after filing of the protest. The Notice of Protest shall include the following information:

- (1) The name, postal and email address, telephone and facsimile numbers of the party protesting;
- (2) The City Bid or Proposal Number and Title;
- (3) A concise statement indicating the grounds and evidence, including facts, rules, regulations, statutes and constitutional provisions, the factual and legal basis, upon which the protest is based, with inclusion of all supporting documentation. Grounds not specifically stated in writing shall be waived;
- (4) A statement of the specific ruling or relief requested; and
- (5) Signature by an authorized agent of the party protesting.

**(d) Rights of other Interested Parties to Protest Procedures.** Interested parties, other than the protesting party and the City, which will be directly affected by the resolution of the protest, and have legal standing, shall have the right to intervene in such protest proceeding by providing written documentation related to the protested solicitation. Said interested parties shall bear the responsibility of determining whether a protest has been filed with the City. Any documentation submitted by these interested parties must be filed with the Director of the soliciting department within three (3) city business days of receipt of the protest by the City. Said documentation

must be received by the Director of the soliciting department or designee by 4:30 p.m. on the date as specified above. Documentation received after this timeframe will not be considered. Delivery by certified or registered mail, email, fax (original copy sent immediately following), or hand delivered to the Director of the soliciting department or designee is acceptable. Said documentation shall be date and time stamped upon receipt and if handdelivered a receipt shall be issued to the party stating the date and time the said documentation was filed. Any said interested party may be represented by legal counsel at its own expense. Any said interested party shall bear all costs of its submissions to the City. The Notice of Protest shall be made available to said interested parties upon a written request for same. Documentation shall include the following information:

- (1) The name, postal and email address, telephone and facsimile numbers of the party intervening;
- (2) The City Bid or Proposal Number and Title;
- (3) A concise statement indicating the grounds and evidence, including facts, rules, regulations, statutes and constitutional provisions, upon which the intervention is based, with inclusion of all supporting documentation;
- (4) A statement of the specific ruling or relief requested;
- (5) Signature by an authorized agent of the interested party.

**(e) Determination of Protest.**

(1) When a Notice of Protest is received, the Director of the soliciting department shall serve as a Review Officer to evaluate the submissions by interested parties, including the Notice of Protest, the documentation from any other interested party, and documentation related to the protested solicitation provided to the Director of the soliciting department from that department.

(2) The decision by the Review Officer will be based on written submissions only.

(3) The Review Officer shall issue a written decision to uphold or reject the protest, containing the basis of the decision within fifteen (15) city business days after submission of documentation by interested parties has been filed with the Director of the soliciting department.

(4) If additional time is required to review the protest, interested parties shall be notified. In no event shall the additional time exceed more than ten (10) additional city business days.

**(f) Appeal of Decision.**

(1) If a protest is denied, the protesting party may file a request for appeal with the Director of the soliciting department. The appeal shall be submitted in writing and sent by certified or registered mail, or hand-delivered to the Director of the soliciting department or designee. Appeals will be date and time stamped upon receipt and if hand-delivered, a receipt will be issued to the appealing party stating the date and time the appeal was filed.

(2) The appeal must be filed with the Director of the soliciting department within three (3) city business days of the issuance of the decision of the Review Officer. Any appeal received outside of this timeframe will not be considered.

(3) At the filing of the appeal, the appealing party shall post with the Director of the soliciting department, a security in the form of a bond (in a form, and with such terms, approved by the Director) payable to the City of Tampa in an amount equal to ten percent (10%) of the total bid or proposal amount, or the value of the solicitation as estimated by the City prior to a solicitation's opening date, or Twenty Thousand Dollars (\$20,000), whichever is less. The surety issuing the bond must be authorized to do business in the State of Florida and be in compliance with the Florida Insurance Code. Any bond submitted shall have a duly executed power of attorney attached. In lieu of a bond, the City may accept an irrevocable letter of credit, cashier's or certified check, or money order in the above amount (in a form, and with such terms as approved by the Director). Noncompliance with this requirement, in whole or in part, shall be deemed to be a waiver by the protesting party of the right to appeal. Said security shall be designated and held for the payment of any costs that may be levied against the appealing party. If the appeal is successful, the posted security shall be refunded in full.

(4) The request for appeal must include the following:

- a. The name, postal and email address, telephone and facsimile numbers of the party appealing;

b. The City Bid or Proposal Number and Title;

c. A concise statement indicating the grounds and evidence, including facts, rules, regulations, statutes and constitutional provisions, the factual and legal basis, upon which the protest is based, with inclusion of all supporting documentation. New grounds or evidence not previously set forth in the written protest that reasonably could have been raised when the protest was initially submitted will not be considered;

d. A statement of the specific ruling or relief requested; and

e. Signature by an authorized agent of the party appealing.

(5) Notice of Hearing Date and Hearing.

a. Upon filing of a timely request for appeal, the Director of the soliciting department shall notify the City Attorney and forward the request for appeal within three (3) days of receipt of the request to the Procurement Appeals Hearing Officer so designated by the City Attorney pursuant to subsection (j).

b. The Procurement Appeals Hearing Officer shall set a hearing date not more than ten (10) City business days from the date of receipt of the request for appeal from the Director of the soliciting department. The Procurement Appeals Hearing Officer shall cause notice of the hearing date, time and location to be served upon all parties who will be directly affected by the resolution of the appeal by certified mail, return receipt requested. The Procurement Appeals Hearing Officer may extend the deadline for completion of the hearing upon written petition for good cause shown; however, such extension shall not exceed an additional five (5) City business days.

c. The Procurement Appeals Hearing Officer shall conduct a de novo hearing. The burden of proof shall rest with the appealing party. The standard of proof shall be whether the decision by the Review Officer was clearly erroneous, arbitrary or capricious, fraudulent, or otherwise without basis in fact or law. Any decision shall be based on substantial competent evidence. The hearing shall begin with a statement by the Procurement Appeals Hearing Officer of the rules and procedures of the hearing, followed by a general statement of the facts by the Director of the soliciting department. Representatives of the appealing party, limited to its owners, officers, employees and/or legal counsel, will then be required to present its case. Those parties, other than the appealing party, who have standing and will be directly affected by the resolution of the appeal, limited to its owners, officers, employees and/or legal counsel, will be given an opportunity to be heard and to present information, which will be followed by a statement and presentation of information from the Director of the soliciting department and its legal counsel. Party presentations shall be limited to two hours per party. All examinations and cross-examinations shall be conducted by the Procurement Appeals Hearing Officer. All parties shall be provided a fair and impartial hearing. Strict rules of evidence shall not apply. Hearsay evidence may be admissible, and used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objections in civil actions.

d. Decision and Notice of Decision. The Procurement Appeals Hearing Officer shall, within seven (7) days of the hearing, make a written decision on the appeal, which decision shall affirm or deny the decision by the Review Officer. The decision shall be sent to all parties by registered mail and shall set forth the reasons for the decision.

e. Recovery of costs by the City. If at the appeals hearing the City prevails, the Procurement Appeals Hearing Officer shall assess against the appealing party reasonable costs incurred by the City in convening the hearing, including the costs and fees for the Procurement Appeals Hearing Officer. Such costs of the hearing shall be paid to the City within five (5) business days after receipt by the appealing party of the decision upholding the decision of the Review Officer. Any costs not fully discharged by the amount of the appealing party's bond shall be paid by the appealing party. Failure to timely pay said costs shall result in the appealing party being suspended from the City's vendor list until such payment is made.

f. The decision by the Procurement Appeals Hearing Officer under this section shall be final and binding on the City and shall thereafter represent the position of the City.

**(g) Protest Remedies.**

(1) If a protest is upheld, the City, at its sole discretion, may do one or more of the following:

a. Cancel the solicitation.

b. Award in part.

c. Re-compete the procurement.

(2) In no event will a contract be automatically awarded to a protesting party if the protest is upheld.

(3) Nothing herein shall prevent the City, at its sole discretion, from providing for an alternative remedy which is in the best interest of the City and in compliance with any applicable law.

**(h) Stay of Contract Award.** In the event of a timely protest and/or appeal, the City will not proceed further with the award of the bid or proposal, unless the Director of the soliciting department sets forth in writing particular facts and circumstances which require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

**(i) Communication during pendency of solicitation.** During any solicitation period, including any protest and/or appeal, no contact with City officers or employees, other than with the individuals specifically identified in the solicitation, the Director of the soliciting department or the legal department, is permitted from any bidder or proposer. Such communication shall result in an automatic disqualification for selection in the pending solicitation and any subsequent City solicitations for a period of six (6) months, no matter the outcome of the solicitation or any protest and/or appeal.

**(j) Procurement Appeals Hearing Officers.** The City Attorney, on behalf of the City, shall negotiate contracts with two (2) or more Procurement Appeals Hearing Officers who shall be assigned on a rotating basis in alphabetical order. If a Procurement Appeals Hearing Officer is unable to accept a case because of a conflict, time constraints, or any other reason, the case shall be assigned to the next Procurement Appeals Hearing Officer in said order. The officers shall possess the educational background and public or private employment experience to examine facts and apply legal principles, including, but not limited to experience with evidentiary and civil procedure issues, to controversies regarding procurement of goods and services, public improvement construction, professional and consultant services, and information technology in the municipal government sector. No city employee, city official, or anyone who owns any financial interest in any business entity which does business with the City shall be considered. Each officer shall hold hearings upon appeals of procurement protest decisions which shall be held in a municipal building and shall be open to the public. Administrative services, as may be required by the officers, shall be furnished by city departments. The Procurement Appeals Hearing Officer shall have the authority to review and determine any appeal by an aggrieved party from determination of a procurement protest by a Review Officer as authorized in this section.

**(k) Filing Documents and Computation of Time.** All dates, time frames and deadlines shall be calculated as city business days. A city business day shall mean 8:00 a.m. to 5:00 p.m. Monday through Friday, with the exception of city holidays. In all instances any document required to be transmitted by a certain date must be received in the required office by 4:30 p.m. Postmark by the required date in not sufficient. Transmittal by fax, email or other electronic means may be accepted. However, it shall be the responsibility of the party transmitting the documents(s) to ensure that the document(s) were received, and the transmitting party shall bear any risk of an interruption or failure in the electronic transmission.

Section 3. That all ordinances and conflicts herewith are appealed to the extent of any conflict.

Section 4. That if any part of this ordinance shall be declared unconstitutional or invalid by a court of competent jurisdiction, the remaining provisions at the election of the City of Tampa shall remain in full force and effect.

Section 5. That this ordinance shall take effect immediately upon becoming a law.