

RESOLUTION NO. 2013-51

A RESOLUTION OF THE LODI CITY COUNCIL
ESTABLISHING WRITTEN PROTEST PROCEDURES
FOR FEDERALLY-FUNDED TRANSIT PROCUREMENTS

WHEREAS, in accordance with the Federal Transit Administration (FTA) and Code of Federal Regulations Title 49, Transportation, all grantees of federal transit funds shall have written protest procedures to handle and resolve disputes relating to their procurements.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby establish written protest procedures for federally-funded transit procurements, as shown on Exhibit A attached.

Dated: April 3, 2013

I hereby certify that Resolution No. 2013-51 was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 3, 2013, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, Katzakian, Mounce, and Mayor Nakanishi

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL
City Clerk

CITY OF LODI

PROCUREMENT PROTEST PROCEDURES

Under certain circumstances, an interested party to a procurement may protest to the City of Lodi the award of a contract, which may or may not involve the direct application of funds from the Federal Transit Administration (FTA).

All solicitation documents shall include Procurement Protest Procedures, either explicitly or by reference. These procedures are intended to ensure that valid complaints are properly handled and responded to.

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

GENERAL CONDITIONS

The City of Lodi's review of any protest will be limited to violations of federal, state or local laws or regulations; violations of the City of Lodi's purchasing procedures; violations of the City of Lodi's protest procedures; or, failure to review a complaint or protest.

Protests arising from solicitation procedures or forms must be received by the City of Lodi within a reasonable time in advance of scheduled bid opening or proposal submission but no later than fifteen (15) calendar days prior to bid opening or proposal submission due date. All other protests including a staff determination of the apparent low bidder must be received by the City of Lodi within five (5) working days of the action on which the protest is based.

The initial protest filed with the City of Lodi shall be in writing and shall:

1. Include the name, address and telephone number of the protester; and the name of a contact person.
2. Identify the number, date and description of the solicitation.
3. Contain a statement of the grounds for protest and any supporting documentation. The grounds for the protest must be supported to the fullest extent feasible. Additional materials in support of an initial protest will be considered only if filed within the time limits specified.
4. Indicate the ruling or relief desired from the City of Lodi.

Protests filed after the above timelines will be rejected as untimely. However, a protest may be considered, even if the initial filing is late, under the following circumstances:

1. Good cause based on compelling reasons beyond the protester's control, whereby the lateness is due to the fault of the City of Lodi in the handling of his/her protest submission.
2. The City of Lodi determines the protest raised significant issues to a procurement practice or procedure.
3. A court of competent jurisdiction requests, expects or otherwise expresses interest in the City of Lodi's decision.

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 the City of Lodi from the protester, or interested parties shall be submitted as expeditiously as possible, but in no case later than five (5) working days after the receipt of such request unless specifically excepted by the City of Lodi.

CONFIDENTIALITY

Materials submitted by a protester will not be withheld from any interested party outside of the City of Lodi or from any Government agency which 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 protester considers that the protest contains proprietary materials which 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. However, the City is governed by the California Public Records Act, and may or not be able to maintain any document's confidentiality once it is in the City's possession. However, the City will give a bidder 5 days notice before producing documents labeled as confidential to give the bidder an opportunity to seek judicial relief.

FURNISHING OF INFORMATION ON PROTESTS

The City of Lodi shall, upon request, make available to any interested party, information bearing on the substance of the protest, including:

1. Any other documents that pertain to the protest, including correspondence with the bidders; and
2. A statement by the City of Lodi explaining its actions and the reasons for them.

A conference on the merits of the protest with members of the City of Lodi Protest Review Panel (defined below) may be held at the request of the protester. The request for a conference should be made in a timely manner so as not to interfere with the resolution of the protest and not later than twenty (20) calendar days after the initial protest was filed.

WITHHOLDING OF AWARD

When a protest has been filed before the opening of bids or proposal submission, the City of Lodi will not make an award for five (5) working days following its decision on the protest. When a protest has

been filed after the award but prior to the execution of a contract, the City of Lodi will not proceed with the execution of the contract prior to the resolution of the protest. Exceptions to this above may occur if the City of Lodi 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 the City of Lodi or other local, state or federal governments.

PROTEST SUBMISSION

Protest submissions shall be directed to:

City of Lodi Administration Department
Attn: Ms. Randi Johl, City Clerk
221 W. Pine Street (P. O. Box 3005)
Lodi, CA 95240 (95241-1910)

In all cases, the envelope shall be marked: "Attention: Protest Material" and include the pertinent Invitation for Bid or Request for Proposal Project title.

PROTEST REVIEW-LEVEL ONE

Upon receipt of a protest, the City Manager will appoint an ad hoc City of Lodi Protest Review Panel to review all relevant materials associated with the protest. The panel will be comprised of three (3) representatives of the City of Lodi appointed by the City Manager; including the City Department Head, Transportation Manager, and one other City staff member knowledgeable in the specific project. The Panel shall determine the validity of the protest and what actions will be taken.

The panel will be directed to prepare a report within fifteen (15) calendar days. The Panel will notify the protester and any interested parties of their findings and actions and of the procedures for requesting reconsideration. The report shall include the following as relevant:

1. Copies of all relevant documents;
2. A copy of the Invitation for Bid or Request for Proposal, including pertinent provisions of the specifications.

PROTEST REVIEW-LEVEL TWO

Reconsideration of a decision by the City of Lodi may be requested by the protester or any interested party. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law or fact made.

The request for reconsideration of the City of Lodi Protest Review Panel's decision shall be filed no later than ten (10) working days after the Panel issues its written report, and shall be filed with the City Attorney.

Upon receipt of the request for reconsideration, the City Manager shall schedule an informal administrative hearing with the aggrieved party and the City of Lodi Protest Review Panel. The hearing shall be held not later than fifteen (15) working days after the receipt of the request for reconsideration. The City Attorney shall issue, in writing, the City of Lodi's final determination of the reconsidered protest within five (5) working days of the administrative hearing. The appellant process ends with the City Attorney's decision; however, the aggrieved party may ask the City Council to review the City Attorney's decision. Protests must be presented at the City Council public meeting at the time of procurement award. The aggrieved party shall have an opportunity to appear and be heard before the City Council at the public meeting. At the City Council public meeting, the City Council will render a decision. The aggrieved party has those remedies afforded by the state courts, as well.

The City of Lodi may refuse to decide any protest where the matter involved is the subject of litigation before a court of competent jurisdiction.

The City of Lodi shall not be responsible for any protests not filed in a timely manner.

FEDERAL TRANSIT ADMINISTRATION (FTA) PROTEST PROCEDURES

A party wishing to file a protest with FTA should consult FTA Circular 4220.11: for details on FTA's bid protest procedures. Circular 4220.1F reinforces FTA's policy of limiting involvement in grantees' activities. FTA will only review protests regarding the alleged failure of the grantee to have written protest procedures or alleged failure to follow such procedures. Alleged violations of a specific federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that federal regulation. Alleged violations on other grounds are under the jurisdiction of the appropriate local administrative authorities.

Protest must be filed with FTA (with a concurrent copy to the City of Lodi) within five (5) working days after the City of Lodi renders a final decision or five (5) working days after the aggrieved party knows or has reason to know that the City of Lodi failed to render a final decision. After five (5) working days, the City of Lodi will confirm with FTA that FTA has not received a protest on the procurement in question.

In accordance with the provisions of FTA Circular 4220.1F, the Transportation Manager, or designee, will be responsible for providing information regarding protests of federally funded procurements to the FTA Region IX Office.

The City of Lodi shall not be responsible for any protests not filed in a timely manner with FTA.