

Attachment 06

PROTEST INFORMATION

This attachment is intended to provide Offerors with an overview of the Lead Entity's protest law, procedures, and requirements, which may be updated and amended without notice. Offerors filing a protest are wholly responsible for locating, understanding, and complying with protest law, procedures, and requirements in effect at the time of the protest.

- A.** Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the City Purchasing Agent no later than ten days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the City in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in Code of Virginia § 2.2-4303. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under Code of Virginia § 2.2-4342, then the time within which the protest shall be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under Code of Virginia § 2.2-4342, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The City shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of receipt of the written decision by instituting legal action as provided in Code of Virginia § 2.2-4364. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal.
- B.** 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 City shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then 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. Where the award has been made and performance has begun, the City may declare the contract void upon a finding that this action is in the best interest of the public. 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.

Where the City, an official designated by the City, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Article 6 of the Virginia Public Procurement Act (Code of Virginia § 2.2-4367et seq.), the City, designated official or appeals board may enjoin the award of the contract to a particular bidder.

Effect of appeal upon contract.

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this chapter shall not be affected by the fact that a protest or appeal has been filed.

Stay of award during protest.

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in Code of Virginia § 2.2-4360, or the filing of a timely legal action as provided in Code of Virginia § 2.2-4364, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.