



**CITY OF LOS ALTOS
CITY COUNCIL MEETING
November 10, 2015**

CONSENT CALENDAR

Agenda Item # 3

SUBJECT: Adopt Resolution No. 2015-36, establishing a procedure for making determinations on bid protests on City contracts

BACKGROUND

One of the City's primary procurement methods is to purchase goods or services by solicitation of formal bids and then to award a contract to the lowest responsive and responsible bidder. In recent years, it has been common for one of the unsuccessful bidders to challenge the City's determination by protesting the bid of the apparent low bidder. In the past, the City has utilized various procedures, both informal and formal, for making determinations on bid protests. The number of protests has created an increased administrative burden on staff.

EXISTING POLICY

None

PREVIOUS COUNCIL CONSIDERATION

None

DISCUSSION

The accompanying resolution has been developed in order to provide a concise and clear procedure for use by the City. The goal of the procedures is to provide a fair decision-making process that does not consume undue amounts of staff resources. The proposed procedures are not mandatory, but may be implemented at the discretion of the City Manager, or his or her designee.

Under the proposed procedures, a timely-filed bid protest will be first reviewed by the department head who will make a decision on the protest. That decision will be appealable to the City Manager, who will make the final administrative decision by the City on the bid protests. Subsequent review may be had through the courts.

PUBLIC CONTACT

Posting of the meeting agenda serves as notice to the general public.

FISCAL/RESOURCE IMPACT

None

ENVIRONMENTAL REVIEW

Action recommended above is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) in that it can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment.

RECOMMENDATION

Adopt Resolution No. 2015-36, establishing a procedure for making determinations on bid protests on City contracts.

ALTERNATIVES

1. Do not adopt the resolution

Prepared by: Jolie Houston, City Attorney

Reviewed by: Susanna Chan, Public Works Director

Approved by: Marcia Somers, City Manager

ATTACHMENT:

1. Resolution No. 2015-36

RESOLUTION NO. 2015-36

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS
APPROVING A PROCEDURE FOR DETERMINATION ON PROTESTS FOR
PUBLIC PROJECTS**

WHEREAS, the City of Los Altos (“City”) is a general law city of the State of California and is thereby empowered to create its own procedures for the procurement and purchase of City goods and services, consistent with its purchase policies, ordinances and other prevailing law; and

WHEREAS, the City does, in a great many cases, procure goods and services through a competitive bidding process which generally includes a determination of lowest responsive and responsible bidder; and

WHEREAS, it is not uncommon for one or more applicants or bidders to protest a contract to be awarded to another bidder or to protest a determination that it is not qualified to bid on a contract and it would be beneficial to City departments to have available to them a uniform procedure for making final determinations on such matters.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Los Altos hereby authorizes the following Bid Protest Procedures, attached hereto as Exhibit “A” and incorporated by this reference. As needed, these Bid Protest Procedures will be implemented by the City Manager, or his or her designee, administering the work, as an alternative to any other existing bid protest or qualification protest procedures available to the City.

I HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the ____ day of _____, 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Janis Pepper, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK
Resolution No. 2015-36

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ATTACHMENT 1

BID PROTEST PROCEDURES

General

Any bid protest must be in writing and received by the City Clerk's Office at:

City of Los Altos
1 North San Antonio Road
Los Altos, CA 94022

by 5:00 p.m. within five working days of posting a notice of Intent to Award in a place accessible by the general public, including any internet site (the "Bid Protest Deadline") and must comply with requirements set forth in these procedures.

Only a bidder who has actually submitted a Bid Proposal is eligible to submit a bid protest against another bidder. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest. For purposes of these procedures, a "working day" means a day that City is open for normal business, and excludes weekends and holidays observed by City. Material submitted after the Bid Protest Deadline will not be considered.

Protest Contents

The bid protest must contain a complete statement of the basis for the protest and all supporting documentation. The protest must refer to the specific portion or portions of the contract documents upon which the protest is based. The protest must include the name, address, email address, and telephone number of the protesting bidder.

Copy to Protested Bidder

A copy of the protest and all supporting documents must be concurrently transmitted by fax or by email, by or before the Bid Protest Deadline, to the protested bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.

Response to Protest by Protested Bidder

The protested bidder may submit a written response to the protest, provided the response is received by the City Clerk's Office before 5:00 p.m., within two working days after the Bid Protest Deadline or after actual receipt of the bid protest, whichever is sooner (the "Response Deadline"). The response must include all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address, email address, and telephone number of the person representing the protested bidder if different from the protested bidder.

Copy to Protesting Bidder

A copy of the response and all supporting documents must be concurrently transmitted by fax or by email, by or before the Response Deadline, to the protesting bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.

Decision on Bid Protests

Bid Protests shall be decided by the department head, or department head's designee(s) for the City department administering the proposed contract (the "Decision Making Officer"), based upon the materials included with the protest and materials submitted by City staff and protested bidder relevant to the protest. A decision shall be rendered after review of the protest and an investigation of the facts by the Decision Making Officer within five working days after the Response Deadline. Such decision shall be in writing and transmitted to the protesting bidder by U.S. Mail. The City shall also attempt to send by facsimile or email the decision at the same time as mailing if the Fax number or email address of the Protesting Bidder is known.

Review of Decision on Bid Protests

The protesting bidder may seek review of the decision of the Decision Making Officer by filing a request for review ("Request for Review") with the City Clerks' Office within five working days of the date the decision was mailed to the protesting party by U.S. Mail. The Request for Review shall be accompanied by any additional documentary evidence the protesting bidder wishes the City to consider. The review shall be conducted by the City Manager or City Manager's designee(s), (the "Reviewing Officer"). The Reviewing Officer shall conduct the review at least ten working days prior to the proposed contract award date. The review shall be de novo, shall consider all documentary evidence presented to the Decision Making Officer and any new documentary evidence presented to the City. The Reviewing Officer shall render a decision prior to the proposed contract award date. Notice of the decision shall be mailed to the protesting bidder by U.S. Mail. The decision of the Reviewing Officer shall be the final administrative decision of the City. Review of the decision of the Reviewing Officer shall be by a court of competent jurisdiction of the County of Santa Clara.

Exclusive Remedy

The procedure and time limits set forth in this section are mandatory and are the bidder's sole and exclusive remedy in the event of bid protest. A bidder's failure to comply with these procedures will constitute a waiver of any right to further pursue a bid protest, including filing a Government Code Claim or initiation of legal proceedings.

Right to Award

The City Council reserves the right to award the contract to the bidder it has determined to be the responsible bidder submitting the lowest responsive bid, and to issue a notice to proceed with the work notwithstanding any pending or continuing challenge to its determination.