



# City of Coral Gables

## CONE OF SILENCE

**AUTHORITY:** City of Coral Gables Procurement Code, Section 2-1027

**PURPOSE:**

The purpose of this policy is to provide guidance, for any party involved in a competitive process, on the steps involved in submitting a protest to a solicitation or award recommendation issued for a city project.

**APPLICABILITY:**

This policy applies to all formal solicitations issued City projects.

**SCOPE:**

For the purpose of this policy-

A “formal” bid protest involves the award of a city contract valued in excess of \$25,000.

**DEFINITIONS:**

Intent to Protest – a written document that establishes the “basis” for submitting a protest. The document must outline with particularity the ***specific facts, grounds, and law*** upon which the protest is based and why the decision rendered in the associated award recommendation should be challenged.

Written Protest – a written document that includes all pertinent information, documents, evidence to support the Intent to Protest. This document shall only contain information that directly supports the original position outlined in the Intent to Protest.

Protesting Party –

- (a) Solicitation - An actual or prospective offer who plans to participate in a currently open competitive solicitation.
- (b) Award – An actual responsive and responsible participant of a competitive solicitation process.

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### SECTION 1. TYPES OF PROTEST

1.1 *Protest of solicitation.* Any actual or prospective offeror who perceives itself aggrieved in connection with the formal solicitation of a contract or who intends to contest bid specifications or a bid solicitation.

1.2 *Protest of award.* Any actual responsive and responsible bidder/proposer who perceives they are aggrieved in connection with the recommended award of a contract may file a notice of “Intent to Protest” and “Written Protest” with the City Clerk's office.

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## **SECTION 2. WHEN TO FILE**

- 2.1 For the protest of a solicitation, the prospective offeror may file a notice of Intent to Protest with the City Clerk's office three (3) calendar days "prior" to the date set for opening of bids or receipt of proposals.
- 2.2 For the protest of an award, an actual responsive and responsible bidder/proposer may submit a notice of Intent to Protest to the City Clerk's office within three (3) calendar days of the recommendation to award notice being issued.
- 2.3 A notice of Intent to Protest is only considered filed when received timely by the City Clerk's office and submitted with the appropriate filing fee (refer to Section 3.6).
- 2.4 No time will be added to the time limits to accommodate service by mail or any other delivery method. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until the next day which is not a Saturday, Sunday or legal holiday.
- 2.5 The formal Written Protest must be filed within five (5) calendar days of when the notice of Intent to Protest was filed.
- 2.6 The protesting party **must** have participated in the solicitation process to have standing to issue an Intent to Protest for an award.

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## **SECTION 3. HOW TO FILE A PROTEST**

- 3.1 The notice of Intent to Protest must be filed with the City Clerk's office during the operating hours of 8:00 A.M through 4:30 P.M., Monday through Fridays (with the exception of City declared holidays). The Clerk's office is in City Hall at 405 Biltmore Way, 1<sup>st</sup> Floor, Coral Gables, FL 33134.
- 3.2 All filings ("Intent to Protest" & "Written Protest") must be submitted via original hard copy. Emails or other methods of transmission will not be accepted.
- 3.3 The Intent to Protest document submitted by the protestor shall form the "basis" for review of the Written Protest that will follow. No facts, grounds, or evidence **not contained** in the Intent to Protest at the time of filing the protest shall be permitted in the consideration of the Written Protest.
- 3.4 The Intent to Protest may not challenge the relative weight of the evaluation criteria or the formula for assigning points in making an award determination.
- 3.5 The notice of Intent to Protest must be accompanied by a filing fee in the form of a money order or cashier's check payable to the city in an amount equal to one percent of the amount of the bid or proposed contract, or \$2,500.00, whichever is less. The filing fee shall cover any internal fees associated with responding to the protest as well cover the payment of all costs, which may be adjudged against the protestor in any administrative

or court proceeding. If the protest is denied for any reason, the filing fee shall be forfeited to the city in its' entirety or used in the payment of costs associated with any administrative court proceedings. If the protest is upheld by the city, the filing fee shall be refunded to the protestor less any costs generated by facilitating the process.

### 3.6 Filing Fee:

<u>Contract Award Amount</u>	<u>Filing Fee</u>
\$25,000-\$250,000	1% of the contract award amount
Over \$250,000	\$2,500

\*All costs accruing from a protest shall be assumed by the protesting party.

3.7 A formal Written Protest must be submitted after the notice of Intent to Protest and must state with particularity the specific facts and law upon which the protest of the solicitation or the award is based and shall include all pertinent details, supporting documents and evidence the protesting party would like considered during decision process.

3.8 The Written Protest may not offer evidence or documentation that deviates from the original basis or position that was outlined in the "Intent to Protest" document. No other facts or information shall be permitted in the consideration of the written protest.

3.9 The Written Protest must be filed within five (5) calendar days from the filing of the notice of Intent to Protest. The filing must be submitted to the City Clerk's office as outlined in Section 3.1 and 3.2.

3.10 Failure of a party to properly or timely file either the notice of Intent to Protest, the Written Protest, or submit the filing fee, with the City Clerk's office within the time provided shall constitute a forfeiture of such party's right to file a protest pursuant to referenced procurement code section. The protesting party shall not be entitled to seek redress before the city commission or seek judicial relief without first having followed the procedure set forth in this procedure.

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## **SECTION 4. ONCE A PROTEST HAS BEEN FILED**

4.1 When a notice of Intent to Protest is filed, the City Clerk's office shall promptly notify Procurement, the City Attorney's office, and the City Manager's office via email with copies of the documents filed.

4.2 A determination will made on whether the Intent to Protest was filed "properly" and "timely" by the protesting party. The City Attorney's office will make the final determination on the merits of the two requirements listed in consultation with Procurement.

4.3 Upon receipt of the Written Protest filed pursuant to the requirements of the procurement code, the City Clerk's office will distribute copies of the written protest to Procurement, the City Manager's office, the Mayor, City Commissioners, and the City Attorney's office.

4.4 Another determination will made regarding the Written Protest and whether it was filed "properly" and "timely" by the protesting party. The City Attorney's office will make the final determination on the merits of the two requirements listed in consultation with Procurement.

4.5 If it is determined that the Written Protest filing was proper and timely, the city shall not proceed further with the solicitation or with the award of the contract until the protest is resolved by the City Manager or the City Commission.

4.6 If the intent to protest is related to the solicitation, a notice to extend the close date of the solicitation may be issued if additional time is necessary prior to the current closing date of the solicitation to address the issue(s) outlined in the notice filed by the protesting party.

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## **SECTION 5. PROTEST REVIEW/DECISION PROCESS**

5.1 The Chief Procurement Officer, after consultation with the City Attorney, shall issue a written recommendation within ten (10) business days after receipt of the Written Protest. Said recommendation shall be sent to the City Manager with a copy to the protesting party.

5.2 The City Manager may then either resolve the protest or reject all proposals.

5.3 On any protest on a contract for supplies, equipment, services and construction not exceeding \$100,000.00 the City Manager as authorized in section 2-586 shall have sole authority to resolve in the best interests of the city.

5.4 The City Manager, after consultation with the head of the affected user department, the Chief Procurement Officer, and the City Attorney, may make a written determination that the solicitation process or the contract award must be continued without delay in order to avoid an immediate and serious danger to the public health, safety or welfare and protect substantial interests of the city.

5.5 Once the City Manager has made a final determination on the matter, an official notice will be provided in writing and filed with the City Clerk.

5.6 The determination by the City Manager shall be considered bidding based on the authority as outlined in the procurement code section 2-586.

5.7 A determination shall be made no later than thirty (30) days from receipt of the Written Protest, unless it is determined that additional time is necessary to address the issues presented. If additional time is required, the protesting party will be notified in writing.

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## **SECTION 6. FINAL RULING (COMMISSION HEARING)**

6.1 If the value of the award exceeds the authority of the City Manager, a recommendation to the City Commission for approval or disapproval thereof will be submitted for their consideration.

6.2 A publicly noticed item will be set for the next available City Commission agenda. The protesting party will be advised of the upcoming meeting and advised to prepare their arguments to support their claims.

6.3 The matter will be publicly discussed before the City Commission. In advance of the

scheduled agenda item, a letter drafted by the City Attorney will be issued to all parties involved that will outline the procedures for the matter prior to scheduling the item for a specific commission agenda.

6.4 All parties will be expected to adhere to the pre-established rules for order and no exceptions will be allowed.

6.5 Under no circumstances will the scheduling of the item be determined by protesting party. The protesting party is obligated to be available for the presentation date scheduled by the City. If the protester is unable to present their case, the decision will automatically be rendered in the City's favor on the matter.

6.6 The final determination issued by the City Commission during this process shall be considered bidding.

6.7 A protest of an award of a contract by the city commission may be filed with the circuit court pursuant to the Florida Rules of Appellate Procedure.

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