

Office of
Management and Budget



Standard Operating Procedure/Policy

Louisville Metro Government
Solicitation and Contract Protest
Process Procedures

SOP # PRO-BC-02-GBL-001

Revision #

Created Date: 2/1/2019

Implementation Date: 5/1/2019

Page # Page 1 of 6

Director Approval: Joel Neaveill

Last Revised Date:

Division Mgr. Approval: Tracey Neathery

1. Introduction

Office of Management and Budget (OMB) is responsible for the fiscal integrity of Louisville Metro Government and providing excellent customer service.

2. Table of Contents

8.1 Solicitation and Contract Protest Process

8.2 Filing of Protest

8.3 Subject of the Protest and Timing

8.3.1 Protest Regarding Solicitation

8.3.2 Protest Regarding Award of Contract

8.4 Metro Response

8.4.1 Protest Regarding Solicitation

8.4.2 Protest Regarding Award of Contract

8.5 Decision by the Director of Procurement

8.5.1 Continue Process during Protest Resolution

8.5.2 Informal Conference

8.5.3 Written Decision

8.5.4 Appeal of Protest Decision

8.5.5 Director's Final Decision

3. Purpose

A protest policy establishes the foundation for procedures that thoroughly and openly investigate complaints and allow the procurement process to move forward expeditiously.

4. Scope

The scope is protest procedures for any formal solicitation and award of contract.

5. Prerequisites

Must be an interested party to the solicitation.


6. Responsibilities

OMB Purchasing Department is responsible for the administration of these procedures.

7. Disclaimer

Louisville Metro Government reserves the right to modify these procedures at any time. LMG has the authority to adopt regulations consistent with KRS 45A 345 to 460.

**Office of
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		Revision #	
	Louisville Metro Government Solicitation and Contract Protest Process Procedures	Created Date:	2/1/2019
		Implementation Date:	5/1/2019
Page #	Page 2 of 6	Last Revised Date:	
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8. Procedure/Policy

8.1 Solicitation and Contract Protest Process

The Director of Procurement of the Louisville Metro Government (Metro) will consider a protest (as described in subsection 8.2) regarding its procurement actions for Metro projects in accordance with the following procedures. All protests will be evaluated and finally decided by the Director of Procurement. Accordingly, Metro intends to provide a thorough review of all protests to the extent they conform to the requirements herein. Metro's primary concern is the timely procurement of needed supplies or services.

Notwithstanding the availability of these protest procedures, any interested party is encouraged to exhaust all methods of resolution described in the bid documents before filing a formal protest. In its consideration of a protest, Metro reserves the right to consider the good faith efforts of the protester to resolve the issue involved through informal efforts. Failure to comply with the protest procedures herein, including, without limitation, all timing requirements, shall constitute a waiver of any right to pursue a bid protest.

8.2 Filing of Protest

Any interested party may file a protest on the basis that Metro has failed to comply with applicable Federal or State law or with Local regulations. The Protest must be filed in accordance with the timing requirements set forth in Subsection 8.3 herein, and must include:

1. The name, address, telephone, and e-mail address of the protester;
2. The number of the specification/contract solicitation;
3. All information establishing that the protester is an interested party;
4. A written statement of the grounds for the protest specifically identifying the Federal, State, or Local law(s) or regulation(s), and any section of the specification/contract solicitation alleged to have been violated. This statement should be accompanied by any and all relevant support documentation and a statement regarding the course of action the protesting party desires that the Director of Procurement take. Protests should be submitted to:


Office of Management & Budget
Department of Purchasing
611 W. Jefferson Street
Louisville, KY 40202

or purchasing@louisvilleky.gov;

5. All information establishing timeliness of the protest; and
6. The signature of the protester.

If the protest does not meet the time or contents requirements, the Director of Procurement may, at his/her sole option, reject the protest or allow the protesting party a reasonable time to correct the

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Management and Budget**

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	Louisville Metro Government Solicitation and Contract Protest Process Procedures	Revision #	
		Created Date:	2/1/2019
		Implementation Date:	5/1/2019
Page #	Page 3 of 6	Last Revised Date:	
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deficiencies of the protest. The Director of Procurement shall not be obliged to postpone contract awards to allow a protester an opportunity to correct a deficient protest, unless otherwise required by Federal Law or regulation.

8.3 Subject of the Protest and Timing

The requirements of timely filing of a protest with the Director of Procurement will depend upon the type of protest involved. The subject of the protest shall be limited to fraud, corruption, or illegal acts undermining the objectivity and integrity of the procurement process. For purposes of this section and in accordance with Section 8.2.4 of these procedures, deposited in the mail, postage prepaid does not constitute filing or receipt. A protest is considered filed when physically received by the Director of Procurement or duly appointed designee. Metro will consider these types of protests:

8.3.1 Protest Regarding Solicitation

Any protest regarding the Metro solicitation must be filed no later than **five (5) days** before the due date for submittals or proposals (if RFQ/P), as applicable. Any protest filed after that date which raises issues regarding the solicitation will not be considered.

8.3.2 Protest Regarding Award of Contract

Any protest regarding the intent to award of the contract must be filed no later than **three (3) days** after posted intent to award. Any protest filed after such date will not be considered.

8.4 Metro Response

Upon timely receipt of a protest, the Purchasing Department will notify the protester and may, where appropriate, request additional information from the protester. Metro may, in its discretion, meet with the protester to review the matters raised in protest. The Purchasing Department shall keep a record of the date and place of Metro's meeting with the protester, and a list of the names and titles of those attending the meeting.

Metro's consideration of the types of protests will, except as otherwise provided in Section 8.5, be in accordance with the following provisions:


8.4.1 Protest Regarding Solicitation

Upon receipt of a timely and properly filed protest regarding the solicitation, Metro may postpone the opening of bids, qualifications, or proposal packages until resolution of the protest, unless otherwise decided by the Director of Procurement in accordance with Section 8.5 of this procedure. If Metro postpones the opening of bids, submittals, or proposal packages, no additional bids will be accepted during the period of postponement.

8.4.2 Protests Regarding Award of Contract

Upon receipt of a timely and properly filed protest, Metro will not issue a notice to proceed or submit an order for goods to the contractor until the protest has been resolved, unless the work or supplies are necessary to protect the interests of Metro in accordance with Section

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	Louisville Metro Government Solicitation and Contract Protest Process Procedures	Created Date:	2/1/2019
		Implementation Date:	5/1/2019
Page #	Page 4 of 6	Last Revised Date:	
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8.5 below. If necessary, Metro may issue a stop work order until the resolution of the protest.

8.5 Decision by the Director of Procurement

8.5.1 Continue Process during Protest Resolution

A decision on a protest will be made as expeditiously as possible after receiving all relevant information. The Director of Procurement reserves the right, notwithstanding the pendency of a protest, to proceed with the appropriate action in the procurement process or under the contract in the following cases:

1. where the item to be procured is urgently required;
2. where the Director of Procurement determines that the protest was vexatious or frivolous; and
3. where delivery or performance will be unduly delayed, or other harm will occur, by failure to make the award promptly;
4. other reasons deemed necessary for the timely acquisition of goods and services.

8.5.2 Informal Conference

The Director of Procurement may, at his/her option, hold an informal conference on the merits of the protest with all interested and available parties. All interested parties will be given at least **two (2) days'** notice of the informal conference. The Purchasing Department shall keep a record of the date and place of Metro's meeting with the protester, and a list of the names and titles of those attending the meeting.

8.5.3 Written Decision

The Director of Procurement will provide a written decision upon receipt of a properly filed protest to the protesting party within **ten (10) days**. The basis of the decision will be the information submitted by the protester, the result of any meetings with the protester, and the Director of Procurement's own investigation. The Director of Procurement will respond to each substantive issue on the protest submitted with the level of detail deemed appropriate by the Director of Procurement. The Director of Procurement's decision shall become final within **three (3) days** unless a timely appeal for reconsideration is filed as noted below.


8.5.4 Appeal of Protest Decision

A protesting party may appeal the Director of Procurement's decision if:

1. Information becomes available that was not previously known, or could have reasonably become known, or
2. The Director of Procurement's decision contains an error of law or regulation.

The appeal must be submitted in writing to the Purchasing Department within **three (3) days** of the date of issuance of the written decision. The appeal must include a detailed explanation of the basis for reconsideration and state the course of action the protesting party desires that the Director of Procurement take. The appeal will be reviewed by the Chief Financial Officer (CFO) and the Office of General Counsel (OGC).

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		Revision #
	Louisville Metro Government Solicitation and Contract Protest Process Procedures	Created Date: 2/1/2019
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Page # Page 5 of 6	Last Revised Date:	
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8.5.5 Director’s Final Decision

The Director of Procurement shall issue a final decision in writing within **twenty (20) days** of receiving the protesting party’s written appeal. If the Director of Procurement finds in favor of the protesting party, he/she may, but is not obligated to, take steps to correct the procurement process, including, but not limited to, re-solicitation of bids, revising evaluation of bids, or termination of the contract. If the Director of Procurement denies the protest, he/she will lift any imposed suspension and proceed with the procurement process of the contract.

9. References

KRS 45A (m) – Administrative regulations deemed advisable to carry out the purpose of the agency’s procurement purposes


Principles and Practices of Public Procurement - Protests

http://engage.nigp.org/acton/attachment/24793/f-004a/1/-/-/-/global-best-practice---protests.pdf?nc=0&ao_optin=1

10. Definitions

<u>Term</u>	<u>Explanation</u>
Agency	Refers to the various departments within Louisville Metro Government.
Days	Business days.
Director of Procurement	The position, authority and duties described and defined in Louisville Metro Purchasing Policy.
Federal Law or Regulation	Any valid requirement imposed by Federal statute or regulation governing contracts awarded pursuant to a grant agreement.
Interested Party	Any person (a) who is an actual bidder or prospective bidder in the procurement involved; (b) whose direct economic interest would be affected by the award of the contract or by a failure to award the contract; and (c) who demonstrates compliance with these procedures, the terms of the Invitation for Bids, and the contract documents (if bid) or Request for Proposals (“RFP”) or Request for Qualifications (“RFQ”), as applicable.
Pendency	The state or time of being pending, undecided, or undetermined, as of a decision on the protest or of a lawsuit awaiting settlement.

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Page # Page 6 of 6	Last Revised Date:	
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Policy

The business rules and guidelines of a company that ensure consistency and compliance with the company's strategic direction. Policies lay out the business rules under which a company, division, or department will operate.

Procedure

Procedures define the specific instructions necessary to perform a task or part of a process.

Protest

A written objection by an interested party to a solicitation or an award of a contract with the intention of receiving a remedial result.

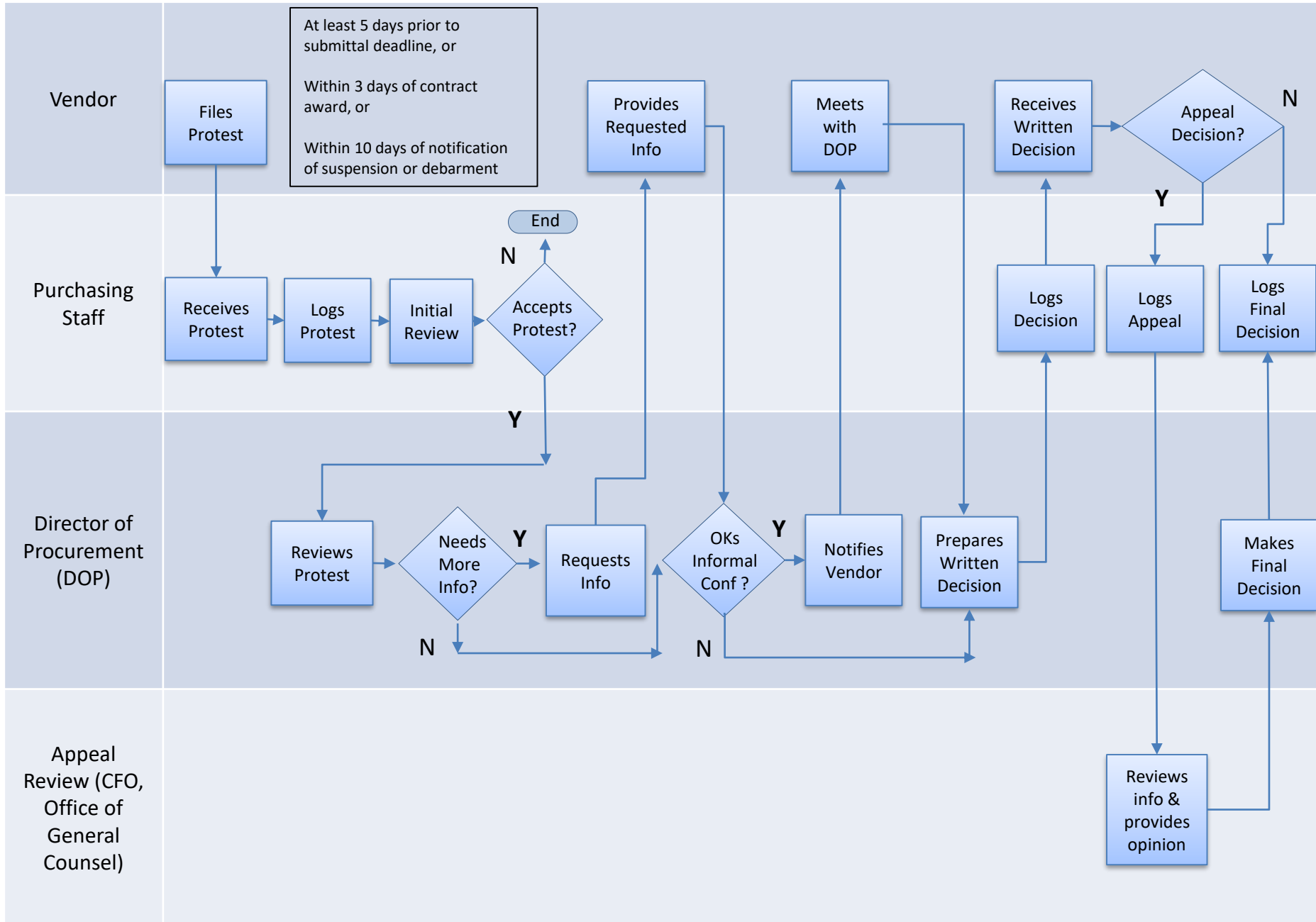
Submit or File

The date of actual receipt by the Director of Procurement.

11. Appendices

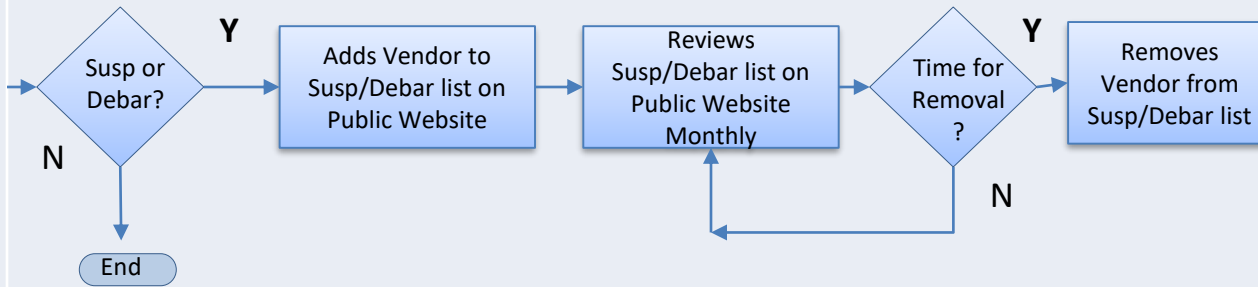
N/A

Protest Process



Vendor

Purchasing Staff



Director of Procurement