



# Procedure 116

EFFECTIVE 12 OCT 07

SUPERSEDES 04 NOV 05

LEAD DEPARTMENT ADMIN

## BID PROTESTS AND REJECTION OF BIDS

**PURPOSE** - To detail the administrative process for the resolution of bid protests filed with the District for materials, supplies, and general services, as well as, outline the criteria used for rejecting formal competitive bids.

### Scope

This procedure applies to all contracts except where outlined below.

Bid protest and bid rejection procedures for construction projects are described in the Engineering & Construction Department and Wastewater Department Standard Practices Manuals.

Protests for professional services contracts will be processed in accordance with the instructions contained in the Professional Services Contracting Guidelines.

### Bid Protest Guidelines

Bid protests may arise at any of the following points during the bidding process:

- After publication of contract specifications, but before the bid opening date.
- After the bid opening, but before the award of contract.
- After the authorization of the contract award, but no later than seven days after the bid opening date or notification of selection.

All bid protests must be in writing and be filed in accordance with this procedure.

#### Materials and Supplies:

The Purchasing Division is responsible for coordinating and tracking materials and supplies protests for proper processing and response pursuant to this procedure.

Purchasing sends a copy of the protest to the Office of General Counsel (OGC) upon receipt.

#### General Services:

The organization requesting the service is responsible for coordinating and tracking general services contracts protests for proper processing and response pursuant to this procedure.

The organization requesting the service will send a copy of the protest to all other interested parties affected by the outcome of the protest.

### Filing a Protest

Protests will be accepted from bidders or prospective bidders only. Protests of materials or supplies contract awards must be received no later than 7 working days after bid opening or proposal due date. Protests of general services contract awards must be received no later than 7 working days after Notification of Selection.

All bid protests shall contain a written statement describing the reason(s) for protest and include the name, telephone number, and address of the protester (or person representing the protesting party).

If the protest is mailed and not received by the District, the protesting party bears the burden of proof to submit evidence (e.g., certified mail receipt) that the protest was sent.

Materials and Supplies:

Protests must be mailed or hand delivered to the Manager of Purchasing, East Bay Municipal Utility District, 375 Eleventh Street, P.O. Box 24055, Oakland, California 94623. Protests submitted to Manager of Purchasing by facsimile transmission to (510) 287-0688 or electronic mail to contact person listed in proposal are acceptable as they allow staff to review concerns in a timely manner. Facsimile and electronic mail protests must be followed by a mailed or hand delivered identical copy of the protest on company letterhead. Any bid protest filed with any other District office shall be forwarded immediately to the Manager of Purchasing.

General Services:

Protests on general service contracts should be mailed or hand delivered to the organization requesting the service. Protests submitted by facsimile transmission or electronic mail to contact person listed in request for proposal are acceptable as they allow staff to review concerns in a timely manner. Facsimile and electronic mail protests must be followed by a mailed or hand delivered identical copy of the protest on company letterhead. Any protest filed with any other District office shall be forwarded immediately to the organization requesting the service.

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**District  
Response to a  
Protest**

Materials and Supplies:

Upon receipt of a written materials and supplies protest, the Purchasing Division will consult with OGC and conduct an investigation. If necessary, the Purchasing Division arranges a meeting with the bid protester to discuss and attempt to resolve the protest.

If Purchasing determines that the protest is valid, the following action shall be taken:

- If bids have not been opened, the proposal may be postponed, canceled, or canceled and re-bid. Bidders will be notified by Addendum of any changes. Any bids received will be returned unopened with the Addendum.
- If bids have been opened, the Manager of Purchasing has the option to acknowledge the protest as having merit, render the apparent low bidder non-responsive, and make award to the lowest responsive bidder or reject all bids and re-bid. All bidders will be notified by mail of the action taken.

If the protest is denied, the Manager of Purchasing provides the determination to the bid protester by certified mail.

General Services:

Upon receipt of a written protest for a general service contract, the organization requesting the service conducts an investigation. If necessary, the requesting party arranges a meeting with the protester to discuss and attempt to resolve the protest.

If the requesting organization determines the protest is valid, after considering the recommendations of the Manager of Purchasing and the OGC, the following action shall be taken:

- If responses have not been opened, the contract award may be postponed, canceled, or canceled and re-competed. Those responding will be notified by Addendum of any changes. Any responses received will be returned unopened with Addendum.

If responses have been opened, the requesting organization has the option to re-evaluate the bids and award to another bidder, or reject all bids and re-compete the contract.

If the protest is denied, the organization requesting the service provides the determination to the protester by certified mail.

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**Appeal  
Process**Materials and Supplies:

The bid protester can appeal the determination to the Director of Administration. The appeal must be submitted to the Director of Administration no later than 5 working days from the date of receipt of the Purchasing Division's determination.

Such an appeal must be made in writing and must include the grounds for the appeal and copies of the original protest and the District's response. The protester must also send the Purchasing Division a copy of all materials sent to the Director of Administration.

If the appeal is denied, the letter will include the date, time, and location of the Board of Directors meeting at which staff will make a recommendation and inform the protester that they may request a final hearing at that meeting.

General Services:

The bid protester can appeal the determination to the requesting organization's department head. The appeal must be directed to the department head no later than 5 working days from the date of receipt of the requesting organization's determination.

Such an appeal must be made in writing and must include grounds for the appeal and copies of the original protest and the District's response. The bid protester must also send the organization requesting the service a copy of all materials sent to the department head.

The department head will make a determination of the appeal and respond to the protester by certified mail in a timely manner. If the appeal is denied, the letter will include the date, time, and location of the Board of Directors meeting at which staff will make a recommendation and inform the protester they may request a final hearing at that meeting.

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**Board of Directors'  
Review (Post-  
appeal)**

The bid protester may request a hearing to appear before the Board of Directors meeting at which time staff's recommendation will be reviewed.

The Board of Directors may elect to deal with the issue immediately during the meeting or defer the issue to a later meeting and direct the vendor and staff to provide detailed information for their review prior to that meeting.

After the Board of Directors has completed its discussion or inquiry, it will render its decision by vote. The Board's decision shall be final.

Once the Board of Directors has rendered its decision, any other inquiry into the protest will be referred to the District's OGC.

**Bid Rejection  
Guidelines**

The District reserves the right to reject bids when it is in the best interest of the District. The Manager of Purchasing, in consultation with the originating department and the District's Office of General Counsel, will make the decision.

Examples of reasons for rejecting bids may include, but are not necessarily limited to:

- Failure to properly complete the bid proposal or submit requested documents.
- Evidence of collusion among bidders.
- Lowest responsive bid substantially exceeds the estimated cost unless there are overriding reasons to make the award.
- Significant ambiguities in the proposal documents or errors in the bidding process, with the strong possibility that the integrity of the bidding has been compromised.
- Rejection of all bids by District staff.

When the decision to reject bids has been made, the Manager of Purchasing prepares a letter of rejection to send to each bidder.

If the District intends to re-bid the proposal, a statement to that effect will be included in the letter.

Bid securities will be returned as appropriate.

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