

PHOENIX CITY CODE ARTICLE XII. PUBLIC WORKS CONTRACTS

2-187 Computation of time under this article.

In computing any period of time prescribed or allowed by this Article XII (Public Works Contracts), the day of the act or event from which the designated period of time begins to run will not be included. Unless noted otherwise, intermediate Saturdays, Sundays and City of Phoenix holidays will not be included in the computation. The last day of the period so computed will be included unless it is a Saturday, Sunday or a City of Phoenix holiday, in which event, the period runs until 5:00 p.m. of the next day which is not a Saturday, Sunday or City of Phoenix holiday.

2-187.01 Definitions.

- A. *City Engineer* means City Engineer or authorized designee.
- B. *City Manager* means City Manager or authorized designee.
- C. *Interested party (parties)* means those persons submitting proposals to the City in response to the solicitation; for a protest, limited to the protesting offeror and recommended offeror.
- D. *Proposer* means any person, party or firm who intends to submit or who submits a solicitation response to the City of Phoenix for a public works contract.
- E. *Protest*:
 - 1. Means with regard to a solicitation protest:
 - a. A formal complaint made by a party concerning the contents of the solicitation.
 - 2. Means with regards to an award recommendation:
 - a. A formal complaint made by an interested party who has a substantial chance of being awarded the contract and will be harmed by the recommended award recommendation;
 - b. May also mean a formal complaint about the solicitation by an aggrieved party concerning the proposed solicitation award;
 - c. But does not mean formal complaints related to determinations of nonresponsiveness for small business or disadvantaged business enterprises.
- F. *Solicitation* means a request for qualifications, invitation to bidders, a request for proposals, a request for quotation or any other invitation or request issued by the City of Phoenix to invite a person, party or firm to submit an offer, statement, response, bid or other proposal for a public works contract.
- G. *Solicitation response* means a bid, proposal, statement of qualifications or other offer to contract submitted to the City of Phoenix in response to a solicitation for a public works contract.

2-188 Protests generally.

- A. The protesting proposer will file the protest in writing with the City Clerk. The City Clerk will notify the City Engineer, who will determine if the protest is timely and valid.
- B. A proposer or interested party will follow the procedures set forth in this article to protest a solicitation, the short list of qualified firms, the final list of qualified firms, a determination of non-responsiveness, or the proposed award of a public works contract.
- C. A proposer or interested party will include the following information in each protest:
 - 1. The name, address, and telephone number of the proposer;
 - 2. The signature of the proposer or the proposer's representative;
 - 3. Identification of the specific solicitation or contract number;
 - 4. A detailed statement of all legal and factual grounds of the protest, including copies of relevant documents; and

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5. The form of relief requested.
- D. The City Engineer will reject all protests not filed strictly in accordance with the limits in this article.
- E. The City Engineer has the discretion to appoint a hearing officer to review the protest in accordance with this article.

2-189 Protest of solicitation.

- A. With respect to a protest of a solicitation, the City Engineer is authorized to deny a protest, or to amend or withdraw any solicitation.
- B. If the protest is based on an alleged mistake, impropriety, or defect that is apparent before the deadline for submission of a solicitation response, the proposer will file the protest within seven days after the proposer knew or should have known of the alleged mistake, impropriety or defect; but in no case later than seven days prior to the deadline for submission of the solicitation response.
- C. All solicitation protesters must submit a timely offer regardless of a solicitation protest being submitted. Only upon official notice from the City Engineer in the form of a solicitation addendum will a solicitation deadline be postponed, at the City Engineer's discretion.

2-190 Protest of determination and contract award.

- A. With respect to a protest of an award recommendation, the City Engineer is authorized to deny, sustain, or sustain in part any protest; protest hearings are optional.
- B. If the protest is based on an alleged mistake, impropriety, or defect that is apparent after the deadline for submission of the solicitation response, the proposer will file the protest within three days after the earliest of the following events:
 1. The proposer knew of or should have known of the basis for the protest; or
 2. Notice of intent to award a contract; or
 3. Notice of a short list determination; or
 4. Notice of a final list determination; or
 5. Notice of determination of non-responsiveness.
- C. The City will notice the solicitation determinations and decision as provided in subsections (B)(1) through (4) of this section on its procurement webpage. Notice related to subsection (B)(5) of this section determinations will be made directly to the proposer.
- D. Any proposer requesting relief in the form of an administrative reconsideration due to a determination of non-responsiveness related to a small business or disadvantaged business enterprise requirement (SBE or DBE) must submit that request to the City Clerk's office. The City Equal Opportunity Director has discretion in determining responsiveness regarding SBE or DBE requirements.

2-190.1 Hearing procedures.

- A. If a hearing is held, an opportunity will be afforded all interested parties to respond and present evidence and argument on all issues presented in the protest.
- B. The burden of proof will remain with the proposer lodging the protest.
- C. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings will be grounds for reversing any administrative decision or order providing the evidence supporting such decision or order is substantial, reliable, and probative. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Every interested party to

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such proceedings will have the right to be represented by counsel, to submit evidence in open hearing and will have the right of cross examination. Unless otherwise provided by law, hearings may be held at any place determined by the City.

2-190.2 Withdrawals.

A. Any proposer who has submitted a response on a public works contract who claims a mathematical or clerical error in their solicitation response must lodge that claim, in writing, with the City Clerk within three days of the solicitation response deadline. The written claim must describe in detail the mathematical or clerical error and be accompanied by a sworn affidavit stating the facts of the alleged error. In addition, the proposer must request, in writing, to be released from its solicitation response. The City will reject all claims of error not filed in accordance with these time limits.

B. If a request to withdraw a solicitation response because of an alleged mathematical or clerical error is timely filed, the City Engineer will issue a written response to the request.

C. The City Engineer will determine whether or not the City should allow the request to withdraw the solicitation response. The City Engineer may appoint a hearing officer in accordance with this article.

D. These procedures do not apply to a proposer who seeks to have its solicitation response modified and reconsidered due to an alleged error in its solicitation response. The burden of proof that the error was a substantial mathematical or clerical error to justify the City's release of the party's solicitation response and any bid or submittal bond, if applicable, will remain with the proposer.

2-190.3 Protest or withdrawal recommendation.

A. Within seven days, or if extended by the City Manager for good cause, within a reasonable time of completion of the hearing, if a hearing is held, the hearing officer will submit findings and recommendations to the City Engineer.

B. The City Engineer will make the final recommendation regarding the solicitation decision to the City Manager in a timely manner.

C. The award of a contract is to be brought forward by the City Manager, for action by the City Council pursuant to the City Charter, and under such other terms and conditions as the Council deems proper.

D. No evidence, not previously offered to the City Engineer or hearing officer, will be offered or presented by any proposer to the City Manager or Council.

2-190.4 Solicitation transparency policy.

Commencing on the date and time a solicitation is published, potential or actual proposers (including their representatives) will only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, any Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated procurement officer) at a public meeting, posted under the Arizona Revised Statutes, until the resulting contract(s) are awarded or all offers or responses are rejected and the solicitation is cancelled without any announcement by the procurement officer of the City's intent to reissue the same or a similar solicitation.

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