

CONTRACT AWARD PROTEST POLICY

(Effective April 16, 2019)

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1. INTRODUCTION

This document describes SMUD's protest process for competitively awarded service, construction/craft, information technology, materials, supplies, and equipment procurement contracts.

- A. All SMUD solicitations will contain an explanation of SMUD's contract award protest policy (Policy). This Policy will be made available to any interested party upon receipt of a written request submitted to the Director, Purchasing, Warehouse and Fleet, SMUD procurement staff, or may be found on www.smud.org.
- B. SMUD reserves the right to:
 - 1) Reject all bids or proposals.
 - 2) Cancel any competitive solicitation.
 - 3) Rebid any competitive solicitation.
- C. At its sole discretion, SMUD may exercise any of the above rights at any time and for any reason including during the protest or appeal process. SMUD's decision to exercise any of the above rights constitutes final agency action and is not subject to further protest, appeal or agency review.

2. GROUNDS FOR PROTEST

- A. A responsive Bidder or Proposer alleging it would have been awarded the contract but for SMUD's failure to evaluate its Bid/Proposal/Response in accordance with applicable law, evaluation criteria, and/or award procedures specified in the competitive solicitation is eligible to file a protest under this Policy. The protest must allege: 1) that the protesting party should have been awarded the contract; and 2) with reasonable specificity how SMUD's failure to comply with applicable law or to apply the evaluation criteria and/or award procedures specified in the competitive solicitation harmed the protesting party.
- B. A responsive Bidder or Proposer who fails to comply with this Policy, waives its right to protest.

3. NO BASIS FOR PROTEST

There is no basis for a protest and SMUD will not consider a protest under the following circumstances:

- A. The protesting party did not participate as a bidder or proposer in the competitive solicitation at issue.

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- B. The protesting party fails to allege it would have been awarded the contract if SMUD had complied with applicable law, the evaluation criteria and/or award procedures specified in the competitive solicitation.
- C. The protesting party fails to adequately support, through documentation or otherwise, that it would have been awarded the contract if SMUD had complied with applicable law, the evaluation criteria and/or award procedures specified in the competitive solicitation.
- D. The protest or subsequent appeal, if any, was not submitted within the timelines specified in this Policy or otherwise fails to comply with the procedures set forth in this Policy.
- E. The contract award is for a type of contract not subject to this Policy.
- F. SMUD has exercised any of the rights set forth in Section 1(B) of this Policy for the competitive solicitation at issue.

4. EXTENSION OF EXISTING OR AWARDING OF NEW CONTRACTS

At SMUD's sole discretion and during the pendency of a protest, SMUD may extend an existing contract or let a sole source or direct procurement contract as reasonably prudent to ensure there is no interruption of services, availability of equipment supplies or materials, or negative impact to SMUD's business operations. Under normal circumstances, the term of extended or new contracts under this section should not be longer than reasonably necessary to resolve the relevant protest, including the time reasonably necessary to resolve a court challenge related to the protest.

5. NOTIFICATION OF INTENT TO AWARD

SMUD's contract award notification requirements are as follows:

- A. Bids Request Process:
 - 1) Bid Requests include Invitations for Bids, Request for Bids, and Requests for Quotes. SMUD will post a "Notification of Intent to Award" and "Pricing Abstract" of the Bids received and evaluated on the SMUD Bid Website in the Bid Results category (or any successor SMUD web portal) at least five (5) business days prior to awarding the contract. If for any reason SMUD does not enter into a contract with a Bidder or Bidders listed on the Notification of Intent to Award, and if SMUD intends to enter into contract negotiations with a different Bidder or Bidders, SMUD will post a subsequent Notification of Intent to Award at least five (5) business days prior to awarding a contract to such Bidder(s).

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- 2) If SMUD determines that a Bid is either nonresponsive or does not meet the Pass/Fail requirements of the Bid Request and intends to award a contract to another Bidder, SMUD will provide at least five (5) business days advance notice to the nonresponsive Bidder prior to awarding the contract.

B. Requests for Proposals (RFP) Process:

- 1) SMUD will post a "Notification of Intent to Award" of the Proposals received and evaluated on the SMUD Bid Website in the Bid Results category (or any successor SMUD web portal) at least five (5) business days prior to awarding the contract. If for any reason SMUD does not enter into a contract with a Proposer or Proposers listed on the Notification of Intent to Award, and if SMUD intends to enter into contract negotiations with a different Proposer or Proposers, SMUD will post a subsequent Notification of Intent to Award at least five (5) business days prior to awarding a contract to such Proposer(s).
- 2) If SMUD determines that a Proposal is either nonresponsive or does not meet the Pass/Fail requirements of the RFP and intends to award a contract to another Proposer, SMUD will provide five (5) business days advance notice to the nonresponsive Proposer prior to awarding the contract.

C. Requests for Quotation (RFQ) Process:

- 1) Requests for Quotations include E-Bids (or any successor SMUD Electronic Bid mechanism). SMUD will post a "Notification of Intent to Award" and "Pricing Abstract" on the SMUD Bid Website in the Bid Results category (or any successor SMUD web portal) at least two (2) days before awarding the contract. If for any reason SMUD does not enter into a contract with a Bidder or Bidders listed on the Notification of Intent to Award, and if SMUD intends to enter into contract negotiations with a different Bidder or Bidders, SMUD will post a subsequent Notification of Intent to Award at least three (3) business days prior to awarding a contract to such Bidder(s).
- 2) If SMUD determines that the low Bid is nonresponsive and intends to award a contract to another Bidder, SMUD must provide one (1) business day advance notice to the nonresponsive Bidder prior to awarding the contract.

D. The notifications under this Section 5 may be by electronic mail, overnight courier, certified mail, or personal delivery.

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6. INSPECTION OF BIDS/PROPOSALS

A Bid Request Process:

- 1) After the “Notification of Intent to Award” and ”Pricing Abstract” are posted on the SMUD Bid Website (EBSS) and the contracting process is complete, all portions of bid(s) subject to disclosure under the California Public Records Act will be available for public inspection upon written request, referencing the applicable Bid Request Number, to:

Sacramento Municipal Utility District
Office of the General Counsel
Re: Public Records Act Request
6301 S Street, MS A312
Sacramento, CA 95817

or by email to pra@smud.org

- B. RFP Process: After the “Notification of Intent to Award” is posted on the SMUD Bid/Proposal Website (EBSS) and the contracting process is complete, all portions of proposal(s) subject to disclosure under the California Public Records Act will be available for public inspection upon written request, referencing the applicable RFP number, to the address/email set forth above.
- C. RFQ Process: After the “Notification of Intent to Award” and “Pricing Abstract” are posted on the SMUD Bid Website (EBSS) and the contracting process is complete, all portions of quotations(s) subject to disclosure under the California Public Records Act will be available for public inspection upon written request, referencing the applicable RFQ number, to the address/email set forth above.

7. FILING A PROTEST

- A. A protest must be received within the timeline set forth in Section 8.
- B. All protests must be submitted to the Office of the Director, Purchasing, Warehouse and Fleet at the following address:

Sacramento Municipal Utility District
Office of the Director, Purchasing, Warehouse and Fleet
Supply Chain Services
Re: Protest of Award
4401 Bradshaw Road, MS EA404
Sacramento, CA 95826

or by email to Award.Protest@smud.org

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- C. The protest may be by electronic mail, overnight courier, certified mail, or personal delivery.
- D. The protest must specify the Bid Request, RFP or other competitive solicitation which is the object of the protest and the grounds of the protest.
- E. The protest must allege: 1) that the protesting party should have been awarded the contract; and 2) with reasonable specificity how SMUD's failure to comply with applicable law or to apply the evaluation criteria and/or award procedures specified in the competitive solicitation harmed the protesting party.
- F. The protest must include a detailed written statement of the protest grounds and provide any documents or other information the protesting party believes is relevant to the protest.
- G. After filing a protest, the protesting party may within five (5) calendar days file a supplemental detailed written statement of the grounds for protest, if the original protest did not contain the complete grounds for the protest, and provide any documents or other information the protesting party believes is relevant to the appeal. Documentation provided by the protesting party after the five (5) calendar day period is untimely and will not be considered.

8. TIME PERIOD FOR FILING A PROTEST

Protests related to Bid Requests and Requests for Proposals must be received by the Director, Purchasing, Warehouse and Fleet within five (5) business days from the most recent Notification of Intent to Award as set forth in Section 5 above. Protests related to Requests for Quotations must be received by the Director, Purchasing, Warehouse and Fleet within two (2) business days from the most recent Notification of Intent to Award as set forth in Section 5 above. Failure to file a protest as set forth above will result in the protest being deemed untimely and the protest will not be considered.

9. SUSPENSION OF CONTRACT AWARD

At SMUD's sole discretion, upon receipt of a protest, SMUD may suspend contract award of a competitive solicitation subject to this Policy while the Director, Purchasing, Warehouse and Fleet reviews and considers the protest.

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10. DIRECTOR, PURCHASING, WAREHOUSE AND FLEET

- A. Upon receipt of a protest the Director, Purchasing, Warehouse and Fleet will:
 - 1) Notify SMUD's Office of the General Counsel of the protest.
 - 2) Send the protesting party an acknowledgment letter within two (2) business days of the date the protest was received. The acknowledgement may be by electronic mail, overnight courier, certified mail, or personal delivery.
 - 3) Analyze the protest and documentation provided by the protesting party and any other documentation or information the Director, Purchasing, Warehouse and Fleet deems relevant to the disposition of the protest, including but not limited to, documents or information requested from or provided by third parties.
- B. The Director, Purchasing, Warehouse and Fleet may also meet informally with a protesting party to better understand the claim or attempt to resolve the protest.
- C. Following review of a protest, the Director, Purchasing, Warehouse and Fleet is empowered to:
 - 1) Deny the protest on either procedural or substantive grounds, or
 - 2) Grant the protest.

The Director, Purchasing, Warehouse and Fleet's decision will be in writing, will state the basis of the decision and will be provided to the protesting party and other interested parties by electronic mail, overnight courier, certified mail, or personal delivery.

11. APPEALS

- A. The Director, Purchasing, Warehouse and Fleet's decision to grant or deny a protest may be appealed to SMUD's General Manager and CEO.
 - 1) An appealing party must file its appeal within three (3) business days after receipt of the Director, Purchasing, Warehouse and Fleet's decision.

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- 2) The appeal must be submitted in writing, referencing the applicable Bid Request or RFP Number, to the General Manager and CEO's office, with a mandatory copy to the Office of the General Counsel by electronic mail, overnight courier, certified mail, or personal delivery, to the following addresses:

Sacramento Municipal Utility District
Office of the General Manager and CEO
Re: Appeal of the Director, Purchasing, Warehouse and Fleet's Decision
6301 S Street, MS A312
Sacramento, CA 95817

Sacramento Municipal Utility District
Office of the General Counsel
Re: Appeal of the Director, Purchasing, Warehouse and Fleet's Decision
6301 S Street, MS A311
Sacramento, CA 95817

Email: Award.Protest@smud.org

- 3) The appeal must set forth the grounds of the appeal and is limited to those issues raised in the original protest.
- 4) After filing an appeal, the appealing party may within five (5) calendar days file a supplemental detailed written statement of the grounds for appeal, if the original appeal did not contain the complete grounds for the appeal, and provide any documents or other information the appealing party believes is relevant to the appeal. Documentation provided by the appealing party after the five (5) calendar day period is untimely and will not be considered.
- 5) On receipt of the appeal and/or subsequent detailed written statement or documentation from the appealing party, if any, the General Manager and CEO or delegate will analyze, the Director, Purchasing, Warehouse and Fleet's decision, the documentation reviewed by the Director, Purchasing, Warehouse and Fleet in rendering the decision, the appeal and documentation provided by the appealing party and any other documentation or information the General Manager and CEO or delegate deems relevant to the disposition of the appeal, including but not limited to, documents or information requested from or provided by third parties.

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- 6) Following the review of the appeal, the General Manager and CEO or delegate, the General Manager and CEO is empowered to: (i) deny the appeal on either procedural or substantive grounds, or (ii) grant the appeal. The General Manager and CEO's decision will be in writing, will state the basis of the decision and will be provided to the appealing party and other interested parties by electronic mail, overnight courier, certified mail, or personal delivery.
 - 7) For contracts where the SMUD Board of Directors has delegated decision-making authority to the General Manager and CEO, the General Manager and CEO's decision constitutes final agency action and is not subject further protest, appeal or agency review.
- B. For contract awards requiring SMUD's Board of Directors' approval, the decision of the General Manager and CEO may be appealed to SMUD's Board of Directors.
- 1) An appealing party must file an appeal, if any, within three (3) business days after receipt of the General Manager and CEO's decision.
 - 2) The appeal must be submitted in writing, referencing the applicable Bid Request or RFP number, to the Office of the General Counsel by electronic mail, overnight courier, certified mail, or personal delivery, to the following address:

Sacramento Municipal Utility District
Office of the General Counsel
Re: Appeal of the General Manager and CEO's Decision
6301 S Street, MS A311
Sacramento, CA 95817

Email: Award.Protest@smud.org
 - 3) The appeal must set forth the grounds of the appeal and is limited to those issues raised in the original protest.
 - 4) After filing an appeal, the appealing party may within five (5) calendar days file a supplemental detailed written statement of the grounds for appeal, if the original appeal did not contain the complete grounds for the appeal, and provide any documents or other information the appealing party believes is relevant to the appeal. Documentation provided by the appealing party after the five (5) calendar day period is untimely and will not be considered.

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- 5) The Director, Purchasing, Warehouse and Fleet will notify all interested parties of the date, time, and place of the Board of Directors public meeting that is scheduled for consideration of the appeal. Notice will be at least seventy-two (72) hours prior to the Board of Director's meeting to consider the appeal and may be provided by electronic mail, overnight courier, certified mail, or personal delivery.
- 6) The General Counsel will provide the Board of Directors with the General Manager and CEO's decision and the documentation reviewed by the General Manager and CEO in rendering his or her decision, the appeal and documentation provided by the appealing party and any other documentation or information the General Counsel deems relevant to the disposition of the appeal, including but not limited to, documents or information requested from or provided by third parties.
- 7) At the Board of Directors' meeting where the appeal is scheduled to be heard, the appealing party may orally present their position on the appeal. Comments must be relevant to the protest issues and are limited to five (5) minutes, unless additional time is granted by the Board of Directors.
- 8) Following public comment and discussion by the Board of Directors, the Board may grant the appeal, deny the appeal, continue the matter to a future meeting of the Board of Directors, or take any other action permitted by law.
- 9) A final decision by the Board of Directors will be made in the form of a resolution and will constitute final agency action and will not be subject to further protest, appeal or agency review.