



## AWARD PROCESS

### Responsible/Responsive Bidder

A **responsible bidder** has the capability to perform the contract requirements in all respects, including the experience, integrity, reliability, capacity, facilities, equipment, and good credit, which will help assure good faith performance. A bidder's qualifications may be considered in making an award recommendation. GRU has the right to verify the qualifications of a bidder as GRU deems appropriate either before or after the bid opening.

A **responsive bidder** has submitted a bid which fully conforms in all material respects to the solicitation's requirements, as determined solely by GRU. "Material respects" refers to factors of importance which help to ensure that the bidder will adequately comply with the prerequisites of the solicitation by performing the work in the manner specified, or providing equipment or goods meeting specifications.

If GRU determines either that a bidder is not responsible, or the bid submitted is nonresponsive, written notice will be sent by the Purchasing representative to the bidder, setting forth the basis of the finding. The failure of a bidder to promptly supply such information to support their company's capabilities as may be requested by the Purchasing representative may be grounds for GRU to determine that the bidder is not responsible. Similarly, the failure of a bidder to promptly supply information in connection with an inquiry may be grounds for a determination of nonresponsiveness.

GRU may, in the exercise of its sole discretion, require a **prequalification** process in connection with any bid. In such case, a prequalification form is sent to bidders to complete which helps GRU assess the bidder's qualifications and experience. Bidders are notified whether or not they qualify to participate in the solicitation. The form may also be modified for submittal with the bid response based on the type of goods or services needed. If a prequalification process is not used, GRU may also elect to award the solicitation based on an evaluated process.

A mandatory or non-mandatory **pre-bid meeting** may be held prior to the bid due date which can help potential bidders to determine if they are capable of performing the work.

## EXCEPTIONS AND CLARIFICATIONS

While a responsive bid meets all material requirements of the solicitation, GRU may waive non-material requirements. Some requirements cannot be waived without adversely impacting the competitive bid process. If during bid evaluation, there is any

doubt as to the materiality of any exception or clarification taken, Utilities Purchasing and/or the Utilities Attorney shall be consulted before acceptance of a bid. Similarly, no bid shall be rejected without such consultation.

### **CORRECTION/WITHDRAWAL OF BID**

Prior to a bid opening, mistakes discovered by a bidder may be rectified, or the bid may be withdrawn by a written notice delivered to Utilities Purchasing in advance of the due date.

After bid opening, corrections in bids shall be permitted: 1) only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made; 2) the nature of the mistake is evident; and 3) the bid price intended is evident. After bid opening, changes cannot be made to bid prices or other bid provisions in the interest of fair competition.

In lieu of bid correction, an apparent low bidder alleging a material mistake of fact may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or the bidder submits evidence which clearly and convincingly demonstrates that a good faith mistake (without negligence of the bidder) was made.

All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be evidenced in writing by the Purchasing representative.

### **TIE BIDS**

Bids shall be considered tied only when all factors in the bid are equal. If there is a difference in delivery time or another factor which benefits the City, the bids shall not be considered tied. All factors being equal, preference shall be given to tied bidders in the following order:

- 1) drug-free workplace programs meeting the requirements of Florida Statutes
- 2) located within the City limits, if not subject to the Local Preference Ordinance
- 3) located within Alachua County
- 4) located within the State of Florida.

### **NOTIFICATION OF AWARD**

Purchasing will notify bidders of the recommended award of the contract with reasonable promptness. The notification will be through an award letter, issuance of a purchase order, execution of a contract or other appropriate means. Purchasing will be responsible for obtaining required submittals from the successful bidder such as the insurance certificate, bonds, purchase order acceptance or contract, as required.

### **MULTIPLE AWARDS**

If bid documents provide for award to more than one bidder, multiple awards may be made to bidders under one solicitation. The provision to make multiple awards should be considered when it appears likely that the equipment, materials, or services available from a sole bidder will not meet the needs of the City or it is in the best interest of the City to purchase from multiple vendors.

### **CANCELLATION OF AWARD**

Cancellation occurs when an issued purchase order or executed contract is voided, rescinded or terminated, or the delivered goods or work are rejected. If defective goods are received, an order is incorrect, or work is not performed in accordance with specifications, the user department shall contact Purchasing before taking any action. In addition, departments must contact Purchasing for assistance with canceling any purchase order or contract.

Even after a bid has been awarded, Purchasing may cancel the award or executed contract based on a bid error and may take action to reject performance when appropriate. If the contract is canceled at the request of the vendor, the vendor may be required to reimburse the City for the difference between its bid and the next low bid.

### **DEBARMENT/SUSPENSION/TERMINATION**

Debarment/Suspension. The Purchasing representative is authorized to suspend a vendor from consideration for award of contracts if there is probable cause to believe that the vendor has engaged in activity which might lead to debarment. The suspension shall be for a period not to exceed three months. After reasonable notice to the vendor involved and reasonable opportunity for that vendor to be heard, the Purchasing representative, after consulting with the Utilities Attorney, is authorized to

debar a vendor for cause from consideration for award of contracts. The debarment shall be for a period of not more than three years. The causes for debarment include:

- (a) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract, within five years of a proposed award;
- (b) Conviction under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a City contractor, within five years of a proposed award;
- (c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals, within five years of a proposed award;
- (d) Violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing representative to be so serious as to justify debarment action, within five years of a proposed award:
  - (I) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - (II) A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- (e) For any provision of, or offer, gift or agreement to provide, any gratuity, kickback or offer of employment to any current or former City employee in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase requisition, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal, within three years of a proposed award;
- (f) For any payment, gratuity, kickback or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order, within three years of a proposed award;

- (g) For retaining a person or soliciting or securing a City contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business, within three years of a proposed award;
- (h) During the period of a contract with the City, employing, or offering employment to, any current City employee participating directly or indirectly in the procurement process, within three years of a proposed award;
- (i) Any other cause the Purchasing representative determines to be so serious and compelling as to affect responsibility as a City contractor, including debarment by another governmental entity for any cause listed in this Section;
- (j) The foregoing are supplemental to any applicable provisions of F.S. 287.133, as amended. In the event of any conflict between this provision and the requirements of said statute, the statute shall prevail.

### **REJECTION OF BIDS/TERMINATION OF CONTRACT**

Previously solicited and/or accepted bids may be rejected or acceptance revoked prior to beginning of performance upon discovery by the City that the bidder or its affiliates have committed any act which would have been cause for debarment, or were on the convicted vendor list prepared under the provisions of F.S. 287.133, as amended, at or prior to the acceptance of the bid.

If the City discovers, after a contract is awarded and performance has begun, that the bidder or its affiliates have committed any act subsequent to or prior to award or acceptance which would have been cause for debarment had it been discovered prior to award or acceptance, the City may consider such to be a material breach of the contract and such shall constitute cause for termination of the contract.

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## **APPEALS AND REMEDIES**

It is the intent of GRU to ensure a fair and impartial process for all competitive procurement solicitations, resulting in contract award to the most responsive and responsible bidder(s) whose bid or proposal is most economical for the intended purpose, and which is in the best interest of GRU and its ratepayers.

To that end, if any actual or prospective bidder has concerns or questions about a solicitation at any point of the process, they are encouraged to contact the Purchasing representative or GRU Purchasing Manager to communicate their concerns.

**Prospective bidders** may submit a protest to the Purchasing Manager regarding an Invitation to Bid, Request for Proposals, Request for Statement of Qualifications, specific terms and conditions, technical specifications or other concerns prior to the solicitation's due date or as indicated in the solicitation.

After the bid opening, actual bidders are prohibited from lobbying City officials or employees regarding the procurement during the black out period, which is defined as the period between the time the bids are received by the Purchasing Department and award of the contract. Bidders may, however, contact the Purchasing representative during the black out period with questions or concerns. Bidders who violate this provision shall disqualify the bidder on whose behalf the lobbying occurred. This procedure is not all encompassing of the City's Purchasing policy, available at [www.cityofgainesville.org](http://www.cityofgainesville.org).

**Actual bidders** who are aggrieved in connection with the intended award of a contract and could reasonably be expected to obtain the work if its protest is granted, may protest in writing to the GRU Purchasing Manager within the following number of days after the notice of intended award:

Purchases which do not require  
prior approval of the City Commission      3 calendar days after notice of award

Purchases which require prior  
approval of the City Commission              7 calendar days after notice of award

The period for appeal shall be calculated as follows: the day of the notice of award shall not be counted and the last day of the period shall be included unless it is not a working day for the City. If the last day of the period is not a working day, the appeal period shall run through the close of the next City working day. In cases where federal or state regulations require the mailing of a notice of intent to award, the period for appeal shall be seven days from the date of issuance of such notice.

Protests shall:

1. Be legible.
2. State clearly the alleged aggrieved party's interest in project.
3. State clearly the action taken by the City which affects the protestor's direct financial interests.
4. State clearly the protester's recommended adjustment for remedy.
5. Include a Power of Attorney, Corporate Seal or other evidence which verifies that the protestor has legal authority to act on behalf of the company, corporation or recognized legal entity.
6. State the date that the protestor became aware of the alleged aggrieved incident.
7. If the protest involves a specification or language contained in the contract documents, identify the specific section upon which the protest is predicated.
8. If the protest involves a specification or language contained in the contract documents, include a detailed statement indicating how the aggrieved party intends to comply with the contract documents specification or language.
9. Include all relevant information, which the alleged aggrieved party believes to be pertinent to the protest.
10. Include a sworn statement that the protestor is acting alone and is not in concert with any other party for any other reason but direct financial interest.

The City may, in the exercise of its sole discretion, withhold the award pending resolution of the protest, or waive irregularities in the requirements of the protest that are not material to the integrity of the process.

Within seven (7) business days of receipt of a timely protest complying with the above requirements, the Purchasing Manager shall determine if a hearing is warranted based on information submitted by the aggrieved party. Upon such decision, the Purchasing Manager shall send a written notice to the aggrieved party within two (2) business days.

If the Purchasing Manager determines that a hearing is warranted, the aggrieved party will be provided an opportunity for a hearing in three (3) business days from the date of the written notice. If the hearing cannot be performed within such time, the hearing should



be held as soon as practicable based on the availability of staff, but in no event shall the hearing be held more than seven (7) business days from the date of the written notice. All bidders that responded to the solicitation shall be notified of the protest and hearing and may attend in order to protect their interests. The notice to all parties will include the hearing date, time and location.

Protests for solicitations which do not require City Commission approval shall be heard by the Administrative Services Director or designee. Reports shall be made to the City Commission of any Bid Protest for purchases that do not require approval of the City Commission.

Inasmuch as the hearing may be considered subject to the Sunshine Law, the notice should be given pursuant to 286.0105, F.S., and contain the following language:

"If a person decides to appeal any decision made by the Protest Appeal Board, the agency or the Commission with respect to any matter considered at the hearing, he will need a record of the proceedings, and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based."

Protests for solicitations which require City Commission approval prior to award shall be heard by a Protest Appeal Board (the Board) consisting of the following persons:

1. The Assistant General Manager of the department for whose benefit the award is to be made, or designee.
2. The Administrative Services Director or designee.
3. A third person having technical or other knowledge of the specifications who has not been directly or indirectly involved in the evaluative process.

Any person directly involved in the evaluation and award of the bid should recuse themselves from the Board and appoint a designee who has not been directly involved in the process.

Within three (3) business days of the hearing, the Board shall render its decision in writing to the General Manager. The Board shall recommend to either grant or deny the protest. The General Manager, or designee, shall cause written notice of his decision to be given to the aggrieved party within five (5) business days of receipt of the Board's recommended decision.



The final action of the General Manager, upon the recommendations of the Appeal Board or the Administrative Services Director or designee, as applicable, shall be binding upon all bidders that submitted bids upon the item subject to the bid protest.

A bidder who has exhausted the foregoing procedures may appeal the decision of the General Manager to the City Commission. The bidder must communicate its desire to appeal the decision in writing to the General Manager, who will schedule the appeal before the Commission.

The City Commission shall review the decision of the General Manager, the record before the General Manager, and written or oral argument of the parties involved in the protest. No new evidence shall be considered and the City Commission may only reverse or modify the decision of the General Manager upon a determination that their decision was not based on substantial competent evidence or that their reasoning or application of the policies, procedures and law was fundamentally flawed. The decision of the City Commission shall constitute final administrative action.

With regard to projects funded in whole or in part under Federal Grant Programs, the aggrieved party may have additional rights regarding protest appeals under applicable Federal regulations issued by the awarding agency. It is the responsibility of the aggrieved party to protect such rights as may be provided under said Federal law or regulations.

### **CONDUCT OF THE PROTEST HEARING**

The following rules of order will be observed in the conduct of protests subject to City Commission approval when properly filed in accordance with the above procedure:

1. The three members of the Protest Appeal Board shall elect a Chairperson (the Chair) from among their members to preside over the meeting, and designate a secretary, who may or may not be a board member, to take minutes.
2. The Chair shall call the hearing to order and introduce the members of the Protest Appeal Board. All attendees shall sign in for a record of attendance.
3. The Chair shall make introductory statements about the basis for the protest for the benefit of those attending and to establish the issues for the record.
4. The Protestor shall be given the first opportunity to speak and present the basis for the protest. The Chair shall restate the issues of the protest to ensure that the hearing is confined to only those issues contained in the filed written protest.

5. The Board shall question the Protestor as needed in order to clarify any issues presented.
6. The Purchasing representative responsible for the bid shall present the background of the bid, present the bid file for inclusion into the record, and explain the evaluation process and basis of award. If the Purchasing representative deems necessary, they may call witnesses to support the technical aspects of the specifications or otherwise support the process. The Purchasing representative shall control the testimony of the witnesses by asking specific questions about the items at issue.
7. Witnesses called by any interested party shall identify themselves by name, title, and the capacity in which they participated in the process.
8. If the protest is in regard to the specifications, the Protestor and the Purchasing representative must explain the portions of the specifications at issue with specificity.
9. The Protestor shall be given the opportunity for rebuttal.
10. Other interested parties in attendance shall be given an opportunity to speak to protect their interests.
11. The Chair shall conclude by explaining the timeline for decision-making including final determination by the General Manager.
12. The Chair shall adjourn the hearing and the Protest Appeal Board shall deliberate the issues.
13. The Chair shall commit the decision of the Protest Appeal Board to writing and submit it with recommendation to the General Manager in accordance with the timeline in the procedures.

The failure of the Board or the Purchasing representative to strictly comply with any exact process herein shall not impair the validity of the proceeding.