

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: General Services Agency

BOARD AGENDA # *B-4

Urgent

Routine

AGENDA DATE August 20, 2013

CEO Concur with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval to Adopt the Revised General Services Agency Purchasing Division Bid Protest and Appeal Policy and Procedure, Establish a Bid Appeal Review Committee, and Appoint the Chief Executive Officer, Chairman and Vice-Chairman of the Board to Serve on the Committee

STAFF RECOMMENDATIONS:

1. Adopt the revised General Services Agency Purchasing Division Bid Protest and Appeal Policy and Procedure with respect to all current, pending and future Bids.
2. Approve the establishment of a bid appeal review committee.
3. Appoint the Chief Executive Officer, or designee, and the Chairman and Vice Chairman of the Board of Supervisors to serve as committee members.

FISCAL IMPACT:

The revised policy and procedure will allow the County to timely resolve appeals with lesser staff and administrative impact. It is estimated that staff time will be reduced by approximately 28 hours for a total estimated savings of \$3,959 per appeal. By streamlining the appeal review process, the time to get to actual procurement will be significantly improved.

BOARD ACTION AS FOLLOWS:

No. 2013-420

On motion of Supervisor Monteith, Seconded by Supervisor Withrow

and approved by the following vote,

Ayes: Supervisors: O'Brien, Withrow, Monteith, De Martini and Chairman Chiesa

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

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DISCUSSION:

The General Services Agency Purchasing Division (GSA) conducts requests for proposals (RFP), bids, and other competitive processes (collectively referred to as a Bid) to procure goods and services as requested by County departments. Bid processes are described in GSA's Policies and Procedures which are posted on the internet at <http://www.stancounty.com/purchasing/>. All Bid processes allow a prescribed period of time for vendors to pose questions regarding the scope of work that describes the goods or services being procured, or to clarify the Bid process itself. These questions allow GSA to make any necessary adjustments or revisions to either the scope of work or the Bid process, including scoring criteria, prior to the Bid closing.

Once a Bid has closed and an award is made, all Bid processes provide a fixed period of time during which unsuccessful vendors may protest the Bid result (Protest) to the Purchasing Agent. Because issues related to the Bid process and procedures are required to be addressed prior to the Bid question deadline, vendors cannot protest the Bid process or procedure after a notice of intent to award is issued. Should the Purchasing Agent deny the Protest, the current protocol requires unsuccessful vendors to appeal the Purchasing Agent's decision to the Board of Supervisors which includes preparing for and conducting a public hearing.

The substantive change recommended in the revised policy and procedure language streamlines and redirects appeal hearings to a bid appeal review committee (Committee). The Committee will be comprised of the Chief Executive Officer, or designee, the Chairman and Vice Chairman of the Board of Supervisors. This change eliminates the public hearing before the Board of Supervisors and the added process required for preparation and calendaring, thereby minimizing delays in procuring the contemplated goods or services and streamlining an otherwise cumbersome appeal process.

A review of other California counties' protest and appeal processes was conducted; those findings are shown in the table below:

| County: | Protest to: | Appeal to: |
|-------------|------------------------------|-------------------------|
| Fresno | Purchasing Manager | Board of Supervisors |
| Kern | Purchasing Agent | Board of Supervisors |
| Merced | County Executive or designee | Board of Supervisors |
| Sacramento | Contract Services Officer | Purchasing Agent |
| San Joaquin | Purchasing Director | Chief Executive Officer |
| Ventura | Purchasing Manager | GSA Director |

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As shown in the table above, other counties have established varied practices for bid protest and appeal. Appeals in Fresno, Kern, and Merced Counties are heard before the Board of Supervisors, which is the current practice of Stanislaus County. In Sacramento and Ventura Counties appeals are heard by the Purchasing Agent/GSA Director. The current practice in San Joaquin County includes the appeal being heard before the Chief Executive Officer. An appeal process directed through a Committee comprised of the Chief Executive Officer and appointed Board members provides for better efficiency, while still allowing for an independent final review to resolve all disputes. This efficiency provides that the customer, or County department, is able to obtain the goods or services needed in a more timely manner.

In addition, changes in the policy are recommended to clarify existing language and to explain the process for appealing a protested procurement involving the use of Federal funds. The added language details the process to follow when a protested procurement involves the use of Federal funds, in whole or in part, in which case the appeal process may include an appeal to the appropriate Federal agency. This added language appears in all bid documents utilized by GSA but is only briefly mentioned with little detail in the existing policy and procedures.

POLICY ISSUE:

Approval of this revised policy and procedure supports the Board's priority of Efficient Delivery of Public Services by providing an efficient, expedient and fair approach for resolving disputes raised during the procurement process.

STAFFING:

Existing GSA Purchasing staff will coordinate with the Chief Executive Office to conduct all appeals in accordance with the revised procedure.

CONTACT:

Keith Boggs, GSA Director/Purchasing Agent. Telephone: (209) 652-1514
Melinda Pallotta, GSA Purchasing Contract Administrator: Telephone: (209) 567-4958

SECTION VI. BIDS AND CONTRACTS

A. Bids and Contracts

2. Protest and Appeal Procedures

a. General

Potential bidders, proposers, contractors and sub-contractors wishing to protest or appeal a procurement or contracting decision by the County of Stanislaus Purchasing Division must follow the procedures provided by this section. Protests or appeals which are not submitted in accordance with these procedures will not be reviewed.

b. Definitions

For the purposes of this procedure:

- 1) "Bid" includes the term "offer" or "proposal" as used in the context of formal, informal, or negotiated procurements.
- 2) "Chief Executive Officer" means the Stanislaus County Chief Executive Officer.
- ~~1)3) For the purposes of this procedure: "Days" means working days of the County of Stanislaus.~~
- ~~2)4) "Filing Date" or "Submission Date" means the date of receipt by the Purchasing Division of the County of Stanislaus.~~
- 3) "Interested Party" means an actual or prospective bidder or proposer.
- 4) "Purchasing Agent" means the Stanislaus County Purchasing Agent.
~~"Bid" includes the term "offer" or "proposal" as used in the context of formal, informal, or negotiated procurements.~~

c. Protest Procedure

- 1) Any Interested Party~~bidders, proposers, contractors and sub-contractors~~ may file a written protest with the ~~Stanislaus County Purchasing Agent~~ not later than five (5) days after date of mailing a Notice of Intended Award.
- 2) The protest shall be delivered or sent by registered mail to the Purchasing Agent.
- 3) The protest filed with the Purchasing Agent shall:
 - a) Include the name, address, and business telephone number of the protestor;
 - b) Identify the project under protest by name, RFP/quotation/bid number, and RFP/quotation/bid date;

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- c) Contain a concise statement of the grounds for protest; provided, however, RFP or bid process and procedures, including evaluation criteria, shall not be proper grounds for protest, ~~and~~ ~~e~~Concerns related to those issues ~~must~~ ~~should~~ be raised and addressed, if ~~at all~~ prior to the bid or proposal opening date to allow adjustments before evaluation of bids or proposals; and
- d) ~~Include~~Provide all supporting documentation, if any. Documentation submitted after filing the protest will not be considered during review of the protest or during any appeal.

d. Protest Review

- 1) Upon receipt of a protest, the Purchasing Agent shall review all the submitted materials and shall create and retain a written record of the review. The Purchasing Agent shall respond in writing at least generally to each material issue raised in the protest not later than ten (10) days after receipt of the protest.
- 2) If the protested procurement involves federal funds, the Purchasing Agent shall give notice to the interested party that he or she has the right to appeal to the appropriate federal agency which shall be identified by name and address. An appeal hereunder shall be filed with the appropriate agency within five (5) working days of the dispatch of rejection notices to the interested party(ies).
- 3) Purchasing Agent decisions may be appealed in writing to the Stanislaus County Board of Supervisors Chief Executive Officer or his/her designee(s), with a copy to the Purchasing Agent, not later than ten (10) days after date the Purchasing Agent's decision is mailed to the protesting party. The Board of Supervisors A bid appeal review committee comprised of the Chief Executive Officer or designee, the Chairman and Vice Chairman of the Board shall review and decide the appeal based on the grounds and documentation set forth in the original protest to the Purchasing Agent. The appealing party may be represented by legal counsel if desired. Each party shall bear its own costs and expenses involved in the protest and appeal process, including any subsequent litigation. The decision of the Board of Supervisors bid appeal review committee shall be final, unless the protested procurements are obtained in whole or in part with federal funds.
- 3)4) If the protested procurement involves Federal funds, interested parties may have the right to appeal to the appropriate Federal agency. When applicable, the Purchasing Agent shall give notice to the interested party that he or she has the right to such an appeal and shall identify the Federal agency by name and address. When applicable, an appeal hereunder shall be filed with the appropriate agency within five (5) working days of the dispatch of rejection notices to the interested party(ies).

SECTION VI. BIDS AND CONTRACTS

A. Bids and Contracts

2. Protest and Appeal Procedures

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b. Definitions

For the purposes of this procedure:

- 1) "Bid" includes the term "offer" or "proposal" as used in the context of formal, informal, or negotiated procurements.
- 2) "Chief Executive Officer" means the Stanislaus County Chief Executive Officer.
- 3) "Days" means working days of the County of Stanislaus.
- 4) "Filing Date" or "Submission Date" means the date of receipt by Purchasing.
- 3) "Interested Party" means an actual or prospective bidder or proposer.
- 4) "Purchasing Agent" means the Stanislaus County Purchasing Agent.

c. Protest Procedure

- 1) Any Interested Party may file a written protest with the Purchasing Agent not later than five (5) days after date of mailing a Notice of Intended Award.
- 2) The protest shall be delivered or sent by registered mail to the Purchasing Agent.
- 3) The protest filed with the Purchasing Agent shall:
 - a) Include the name, address, and business telephone number of the protestor;
 - b) Identify the project under protest by name, RFP/quotation/bid number, and RFP/quotation/bid date;
 - c) Contain a concise statement of the grounds for protest; provided, however, RFP or bid process and procedures, including evaluation criteria, shall not be proper

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grounds for protest. Concerns related to those issues must be raised and addressed, prior to the bid or proposal opening date to allow adjustments before evaluation of bids or proposals; and

- d) Include all supporting documentation, if any. Documentation submitted after filing the protest will not be considered during review of the protest or during any appeal.

d. Protest Review

- 1) Upon receipt of a protest, the Purchasing Agent shall review all the submitted materials and shall create and retain a written record of the review. The Purchasing Agent shall respond in writing at least generally to each material issue raised in the protest not later than ten (10) days after receipt of the protest.
- 2) If the protested procurement involves federal funds, the Purchasing Agent shall give notice to the interested party that he or she has the right to appeal to the appropriate federal agency which shall be identified by name and address. An appeal hereunder shall be filed with the appropriate agency within five (5) working days of the dispatch of rejection notices to the interested party(ies).
- 3) Purchasing Agent decisions may be appealed in writing to the Chief Executive Officer or his/her designee(s), with a copy to the Purchasing Agent, not later than ten (10) days after date the Purchasing Agent's decision is mailed to the protesting party. A bid appeal review committee comprised of the Chief Executive Officer or designee, the Chairman and Vice Chairman of the Board shall review and decide the appeal based on the grounds and documentation set forth in the original protest to the Purchasing Agent. The appealing party may be represented by legal counsel if desired. Each party shall bear its own costs and expenses involved in the protest and appeal process, including any subsequent litigation. The decision of the bid appeal review committee shall be final.
- 4) If the protested procurement involves Federal funds, interested parties may have the right to appeal to the appropriate Federal agency. When applicable, the Purchasing Agent shall give notice to the interested party that he or she has the right to such an appeal and shall identify the Federal agency by name and address. When applicable, an appeal hereunder shall be filed with the appropriate agency within five (5) working days of the dispatch of rejection notices to the interested party(ies).