

METROPOLITAN ST. LOUIS SEWER DISTRICT PURCHASING DIVISION

Protest Procedure

Effective August 11, 2016

PURPOSE:

In accordance with current Purchasing Policy, this procedure establishes the steps to be taken when a bidder protests an action taken by MSD.

REQUIREMENTS:

An award protest must be submitted in writing and must be received by the District within ten (10) business days after the date of issuance of the notice of award. A protest submitted after the tenth (10th) business day period shall not be considered.

An appeal of a protest determination must be submitted in writing and must be received by the District within ten (10) business days after the date of the protest determination letter. An appeal submitted after the tenth (10th) business day period shall not be considered.

1. PROCEDURE:

If a supplier or contractor protests a Purchasing action taken by the District, the following procedures will be followed. All activities undertaken by Purchasing on protests will be first reviewed and approved by General Counsel. No verbal protests will be accepted, all protests must be in writing.

Upon receipt of a protest, the Purchasing Manager will:

- a) Make a written assessment, with the assistance of the requesting and/or issuing department, as to what the scope of the protest is. The assessment will include a recommendation as to the course of action to be taken by the District.
- b) The written determination will be forwarded through the General Counsel for review and approval.
- c) If the District finds that it will be harmed if the procurement is delayed as a result of the protest, the Purchasing Manager will issue a letter to the protestor advising him/her that the procurement process will continue while the protest is being reviewed.
- d) If the District does not find that it will be harmed the Purchasing Manager will notify the requesting department that the procurement process will be placed on hold pending resolution of the protest.

- e) After reviewing the protest and the facts presented by the protestor the Purchasing Manager will draft a response to the protestor and have it reviewed by General Counsel. Once the response to the protest has been approved it will be signed by the Purchasing Manager and forwarded to the protestor. A copy of the signed protest determination letter will be provided to the requesting department and General Counsel.
- f) If the Purchasing Manager denies the protest in part, or in whole, the protestor will be advised that the decision may be appealed to the Executive Director. The appeal must be in writing and filed within ten (10) business days after the date of the Purchasing Manager's protest determination letter.
- g) If the Purchasing Manager upholds the protest, he/she shall prepare a letter to all other affected parties advising them of the District's decision. They will be advised that they may appeal the decision to the Executive Director and the appeal must be in writing and filed within ten (10) business days after the date of the Purchasing Manager's protest determination letter.

2. PROCEDURE FOR APPEALING PURCHASING MANAGER'S DECISION ON INITIAL PROTEST:

When a company and/or individual, that has filed a protest, thinks the decision rendered by the Purchasing Manager is harmful to them, and which is contrary to solicitation and public procurement law they may file a formal written appeal under the conditions discussed below.

- a) The appeal shall be in writing and shall not introduce new issues from the initial protest, other than new issues introduced by the Purchasing Manager's decision.
- b) The appeal shall be submitted to the Executive Director of the District.
- c) The appeal must be filed within ten (10) business days from the date the of the Purchasing Manager's, or his/her designee, protest determination letter; and
- d) The appeal shall identify specific issues that are being appealed and the facts that the protestor believes supports their claim (it is the protestor's responsibility to establish their case).
- e) The Executive Director may elect to respond to the appeal or delegate the appeal to member of his staff.
- f) The Executive Director will advise the Purchasing Manager of the appeal and to place the procurement on hold.
- g) The Executive Director may, after consulting with General Counsel, make a determination that it is not in the District's best interest to withhold the award of the contract pending his/her review of the appeal.

- h) If the Executive Director makes the decision that the award of the procurement will not be withheld pending his/her review of the appeal he/she will notify the appellant of the decision.
- i. The Purchasing Manager will ensure that other parties immediately affected by the appeal are notified of the appeal.
 - ii. After reviewing the appeal and the facts presented by the protestor, the Executive Director or his/her designee will prepare a response to the appellant. A copy of the signed letter will be provided to the requesting department and the Purchasing Manager.
 - iii. The Executive Director's decision is final; any appeal to the Circuit Court shall be in accordance Section 12.110 of the Charter of The Metropolitan St. Louis Sewer District.