

(R-94-1867)

RESOLUTION NUMBER R- 285123

ADOPTED ON DEC 12 1994

A RESOLUTION ESTABLISHING COUNCIL POLICY NO.  
000-29 REGARDING CONTRACT AWARD PROTESTS BY  
NON-SELECTED BIDDERS.

BE IT RESOLVED, by the Council of The City of San Diego,  
that Council Policy No. 000-29 regarding CONTRACT AWARD PROTESTS  
BY NON-SELECTED BIDDERS be and is hereby established as set forth  
in the Council Policy filed in the Office of the City Clerk as  
Document No. RR- 285123.

BE IT FURTHER RESOLVED, that the City Clerk is hereby  
instructed to add the aforesaid to the Council Policy Manual.

APPROVED: JOHN W. WITT, City Attorney

By Stuart H. Swett  
Stuart H. Swett  
Senior Chief Deputy

SHS:smm  
05/23/94  
Or.Dept:Mgr.  
R-94-1867  
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**COUNCIL POLICY**

SUBJECT

CONTRACT AWARD PROTESTS BY NON-SELECTED BIDDERS

POLICY NUMBER 000-29

EFFECTIVE DATE 12/12/94

**BACKGROUND**

The primary objective of the selection process in the award of purchasing or public works contracts is to assure the selection of that source determined to be the lowest responsible and reliable bidder, or in the case of professional or technical service contracts, the source determined to provide services that would be in the best interest of the City, in terms of qualifications, price and other factors. Depending on type and value of the contract, the City of San Diego in its award of contracts may utilize procurement by formal bidding, Request for Bid (RFB) or negotiated procurement, Request for Proposal (RFP). Each of these selection processes is defined within this policy under the section titled definitions. On occasion, competitors for the contract may protest a recommendation to award to another party. This policy establishes the procedures for the resolution of contract award protests.

**PURPOSE**

To establish and provide a standardized procedure for the resolution of protests to the selection for award of contracts, when the awarding of contracts do not require Council confirmation or in the case of purchasing contracts, when the contract does not exceed \$100,000.

**DEFINITIONS**

**Interested Parties** - For the purpose of this policy, interested parties are defined as:

- a. The City's requesting department, office or project manager for which the service or material is being procured.
- b. The Purchasing Division.
- c. The offeror filing a protest.
- d. The offeror to whom award of a contract is contemplated, if such contemplated award is protested by any other offeror under the provisions of this policy statement.

**Offeror** - Includes the vendor or contractor submitting bids in response to a Request for Bid (RFB) and proposals in response to a Request for Proposal (RFP).

**Formal Bidding** - The acquisition of material or services by means of sealed bids pursuant to provisions of Charter Sections 35 or 94.

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Materials, supplies, equipment, non-professional services and Public Works contracts are included in this category.

Public Works Contract - An agreement for the erection, construction, alteration, repair or improvement of any public structure, building, road or other improvement of public realty of any kind.

Purchasing Contract - The acquisition of materials, supplies, equipment, or non-professional services.

Negotiated Procurement - The acquisition of professional or technical services by means of a Request for Proposal (RFP) as specified by Council Policy 300-7, Consultant Services Selection. Negotiated procurement can be competitive or in some cases non-competitive, and includes contracts awarded for professional consultant services. Professional consultant services include Architectural and Engineering (A & E Services) and non-A & E consultant services.

Consultant Services Contract - A contract for A & E and related professional services or non-A & E professional services awarded pursuant to the provisions of Council Policy 300-7.

Contract - Any contract to which the City of San Diego is to be a party except for the following:

- a. A contract which is subject to an appeal procedure for its award prescribed by a funding source such as the state or federal government.
- b. A contract with another public agency.
- c. A contract involving a transfer of an interest in real property, including but not limited to a lease or contract for sale.
- d. A contract which the City Council has authorized to be awarded on a non-competitive basis.

Contract Protest Review Board - A board assembled to review evidence presented by all interested parties to determine if the City of San Diego properly executed a contract award in accordance with laws and guidelines. The board is composed of at least three members appointed by the City Manager, one of whom will be designated chairperson. Members will be assigned to specific cases on an ad hoc basis. The City Attorney shall be legal advisor to the Board.

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**COUNCIL POLICY**

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POLICY  
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It is the policy of the City Council that a Contract Protest Review Board as described herein be established as the means of assuring that protests are heard by an objective body and thus provide an administrative remedy in the resolution of such protests. The contract shall not be awarded until the protest has been withdrawn, the City Manager has determined the protest to be without merit, or the City's Contract Protest Review Board has decided the matter.

PROCEDURE

Grounds for Protest - Protests shall be limited to the following:

- a. The City failed to follow the procedures and adhere to requirements set forth in the solicitation or amendments thereto.
- b. The protestant alleges misconduct or impropriety by City officials or evaluation team members.
- c. There has been a recommendation for a finding that the non-selected bidder is not responsible to perform the contract.

Requirements for Protest - All protests shall be submitted in writing no later than ten (10) calendar days after the date of announcement of selection. Such protest shall clearly state the grounds for the protest and the information supporting the grounds. The Purchasing Agent or administering department director shall attempt to resolve protests to the satisfaction of all parties prior to forwarding to the Contract Protest Review Board. For materials, supplies, equipment, non-professional services and construction contracts, protests are to be submitted to the Purchasing Agent. For consultant contracts, protests are to be submitted to the department director of the administering department.

Purchasing contracts (materials, supplies, equipment and non-professional services) for sums in excess of \$100,000 and that are protested by a non-selected bidder are not subject to the provisions of this Council Policy and shall require City Council confirmation of the contract award. The non-selected bidder shall then have the right to appear at the City Council to protest the award required to be confirmed by Council, per San Diego Municipal Code 22.0513.

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Notice of Hearing - On receipt of a protest under the provisions of this policy, the Contract Protest Review Board shall set a date, time and place for hearings and shall notify all interested parties, in writing. Notice shall be provided to the parties not less than five calendar days in advance of the hearing unless it is agreeable to all parties that an earlier hearing date be established. The Contract Protest Review Board is not required to hear a protest that is determined by the City Manager to be frivolous. In such cases, the protesting party shall be so advised.

Nature of Hearing - Evidence or arguments shall be received only from interested parties, their witnesses or authorized representatives. The Contract Protest Review Board, at its discretion, determines whether such evidence or arguments shall be presented orally or in writing.

Record of Hearing - Any interested party may request that the record of the hearing be recorded with the understanding that an identical copy of the recording will be provided without cost to the Contract Protest Review Board. The cost of the recording will be borne by the requestor.

Decisions - The Contract Protest Review Board shall issue its decision on all protests as expeditiously as possible but no later than 30 calendar days after hearing the protest. All interested parties shall be notified in writing of the decision. All decisions shall be final.

Effects on Contracts - The failure of a City employee or department to comply with this Council Policy shall in no way affect the validity of any contract lawfully entered into with the successful bidder subsequently by the City of San Diego.

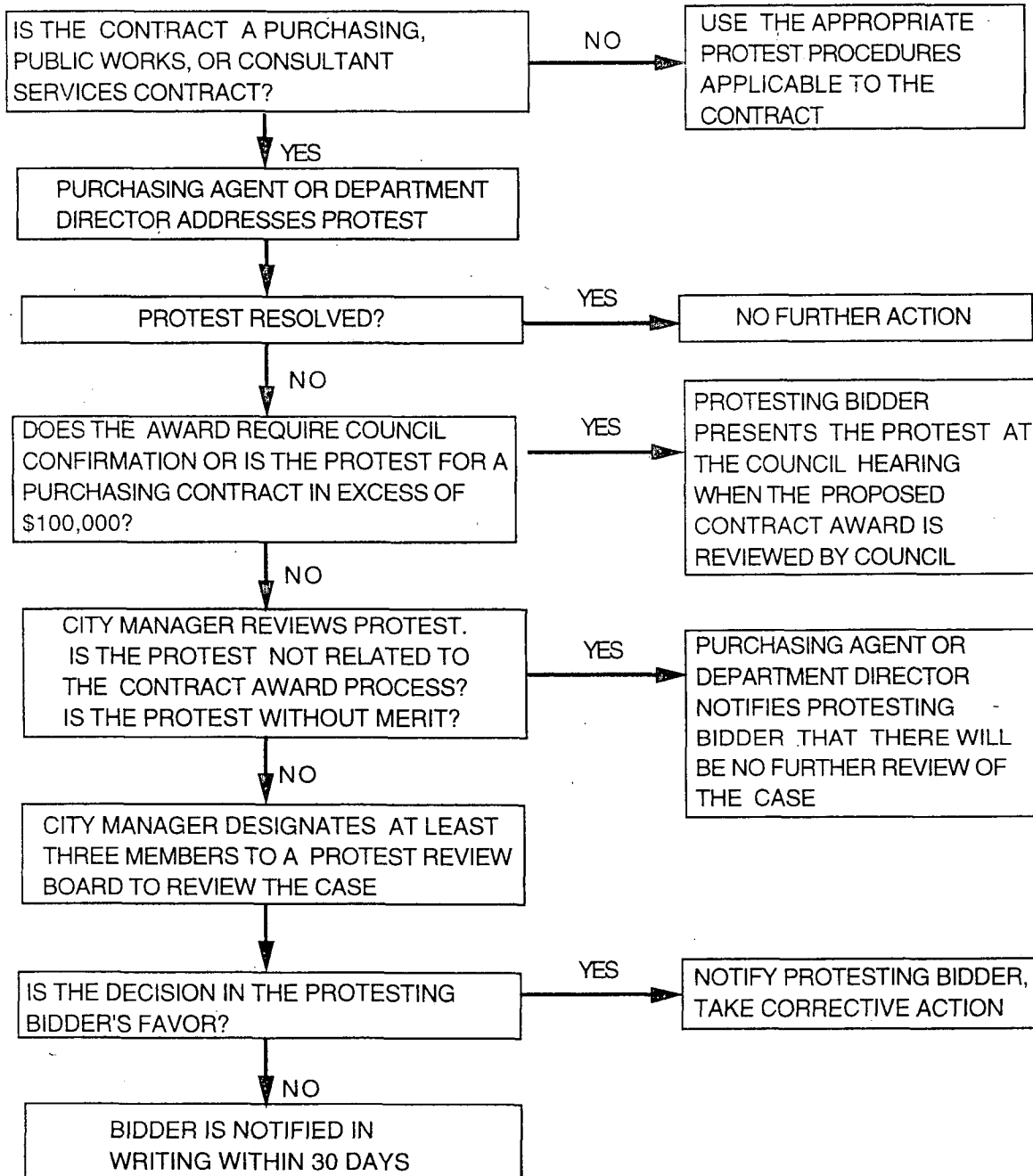
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SUBJECT **CONTRACT AWARD PROTESTS BY NON-SELECTED BIDDERS**

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EFFECTIVE DATE **12/12/94**

**PROTEST OF AWARDS BY NON-SELECTED BIDDERS  
FLOWCHART**



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