

City of Newport News
Administrative Appeals Procedure and
Contractual Claims Review Procedure

A. Administrative Appeals Procedure

- 1.0 This administrative appeals procedure described herein authorizes procedures for (a) hearing protests of an award and a decision to award, (b) appeals from refusals to allow withdrawal of bids, (c) appeals from disqualifications, (d) appeals for debarment or suspension, (e) denial of prequalification, (f) determinations of non-responsibility and (g) appeals from decisions or disputes arising during the performance of a contract.
- 2.0 A bidder, offeror or contractor need not utilize the administrative appeals procedure; but if the procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the City agrees otherwise.
- 3.0 To initiate the administrative appeals procedure, the aggrieved party shall submit, in writing, a protest or appeal to the Purchasing Agent. The protest or appeal shall include the basis for the protest or appeal and the relief sought.
 - 3.1 A protest of an award or a decision to award shall be submitted within ten (10) days after the award or the announcement of the decision to award, whichever occurs first. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror.
 - 3.2 An appeal from a refusal to allow withdrawal of a bid shall be submitted within ten (10) days after receipt of the decision.
 - 3.3 An appeal from a determination of non-responsibility shall be submitted within ten (10) days after receipt of the decision.
 - 3.4 An appeal from a disqualification shall be submitted within ten (10) days after receipt of the decision.
 - 3.5 An appeal for debarment or suspension shall be submitted within ten (10) days of receipt of official notice of such actions.
 - 3.6 An appeal related to a contractual claim or contractual dispute shall be submitted within ten (10) days after receipt of the decision by the Purchasing Agent or the designated representative of the Purchasing Agent. Refer to subsection B below prior to submitting an appeal related to a contractual claim or dispute.
- 4.0 Upon receipt of a protest or an appeal, the Purchasing Agent or designated representative shall make a decision related to the protest or appeal within ten (10) business days. The decision will be provided in writing. The Purchasing Agent or the designated representative of the Purchasing Agent may request additional information from the aggrieved party, if necessary.
 - 4.1 The Purchasing Agent or designated representative may schedule a conference prior to making a decision regarding the protest or appeal.

- 4.2 The Purchasing Agent or designated representative shall establish a date, time and location for the conference which may be conducted via telephone or through a virtual meeting. The conference shall allow for the presentation of relevant facts and shall allow representatives of the City and the aggrieved party to explain their position on the matter.
- 4.3 At the conclusion of the conference, the Purchasing Agent or designated representative will provide a written decision to the aggrieved party's protest or appeal within ten (10) business days from the original protest receipt date.
- 5.0 Should the aggrieved party not be satisfied with the decision of the Purchasing Agent or designated representative, the aggrieved party may request an administrative hearing. A request for an administrative hearing shall be submitted, in writing, to the Purchasing Agent within ten (10) days of the date of the written decision.
- 6.0 A request for an administrative hearing must make the claim that the decision by the Purchasing Agent or designated representative, was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes, regulations or the terms and conditions of the solicitation or any resulting contract document.
- 7.0 The Purchasing Agent or designated representative shall advise the City Manager that an administrative hearing has been requested. The City Manager will appoint a disinterested person or persons (collectively the administrative hearing panel) who are not employed by the City to hear the appeal. The City Manager shall attempt to select an individual or individuals who collectively have knowledge of current state and local government procurement laws and regulations and familiarity with the type of products or services provided by the aggrieved party.
 - 7.1 The Purchasing Agent or designated representative will establish a date, time and location for the administrative hearing; the hearing may be conducted as a virtual meeting. The hearing shall allow for the presentation of relevant facts and pertinent information by the aggrieved party and the Purchasing Agent or designated representative. The Purchasing Agent or designated representative may require the participation of City department and City agency employees who have contributed to the evaluation or decision-making process or any other persons involved in the dispute. The aggrieved party must advise the Purchasing Agent or designated representative if he or she will be represented by legal counsel during the hearing so that the Purchasing Agent or designated representative may request assistance from the City Attorney.
 - 7.2 The hearing is an administrative process and is not intended to be conducted as a court proceeding. The administrative hearing panel may determine procedural rules for the hearing including a procedure for questions and objections raised during the course of the hearing. Opening statements may be made at the beginning of the hearing. A review of the issue(s) will be completed by the Purchasing Agent or designated representative and the aggrieved party. The administrative hearing panel may ask for statements and ask questions in order to clarify the issues involved.
 - 7.3 The administrative hearing panel are not bound by technical rules of evidence, but since the protest or appeal is based on the decision by the Purchasing Agent or designated representative, only issues and pertinent information and facts presented to the Purchasing Agent or designated representative as part of the initial protest or appeal by the aggrieved party shall be allowed and shall be considered by the administrative hearing panel. During the hearing, the aggrieved party and the Purchasing Agent or designated representative shall

provide or produce such additional relevant facts and pertinent information as required by the administrative hearing panel in order to make an informed decision regarding the protest or appeal. If necessary, additional information may be provided to the administrative hearing panel at their request after the conclusion of the hearing.

- 7.4 Within ten (10) business days after the conclusion of the hearing, the administrative hearing panel shall issue a written decision containing the findings of fact. The findings of fact shall be final and conclusive and shall not be set aside unless the same are fraudulent, arbitrary or capricious, so grossly erroneous as to imply bad faith, or in the case of denial of prequalification, such findings were not based upon the criteria for denial of prequalification.
- 8.0 The administrative hearing panel, in rendering a decision, shall decide the protest or appeal on the merits of the facts presented. The administrative hearing panel has the responsibility of ensuring the proper application of statutes, regulations, policies and procedures. The panel does not have the authority to formulate policy or to change policy. Accordingly, the administrative hearing panel shall make a decision within the following parameters:
 - 8.1 A proposed award or decision to award shall be reversed only if the aggrieved party establishes that the award or decision to award is not an honest exercise of discretion, but rather is arbitrary or capricious or not in accordance with the Constitution of Virginia, statutes, regulations or the terms and conditions of the Invitation for Bids or the Request for Proposals.
 - 8.2 If prior to an award of a contract it is determined that the award or decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after the award, it is determined that an award of a contract was arbitrary or capricious, the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined by the Purchasing Agent. Where the award has been made and performance has begun, the Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the City. If it is not in the best interest of the City to make the contract void, the Purchasing Agent, at his sole discretion, may allow work to proceed. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits. When administrative hearing panel determines that there is probable cause to believe that a decision to award was based on fraud or corruption or an act in violation of Article XX, Division 4, of the City Code "Ethics in Public Contracting," the Purchasing Agent may enjoin the award of the contract to a particular bidder.
 - 8.3 A decision denying a bidder to withdraw a bid shall be reversed only if the aggrieved party establishes that the decision to deny withdrawal of the bid was clearly erroneous.
 - 8.4 A decision denying a bidder or offeror, actual or prospective, permission to participate or disqualification from participation shall be reversed only if the aggrieved party establishes that the decision was arbitrary or capricious.
 - 8.5 A decision to debar or suspend a bidder or offeror, actual or prospective, shall be reversed only if the aggrieved party establishes that the decision to debar or suspend was based upon bad information and was erroneous or was arbitrary or capricious.

- 8.6 A decision determining that a bidder or offeror is not a responsible bidder or offeror for a particular contract shall be reversed only if the aggrieved party establishes that the decision was arbitrary or capricious. If it is determined that the decision determining non-responsibility was arbitrary or capricious, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question. If, after an award, it is determined that a determination of non-responsibility was arbitrary or capricious, the Purchasing Agent, upon determining the action in the best interest of the City, may enjoin the performance of a contract where performance has not begun. Where the award has been made and performance has begun the Purchasing Agent may declare the contract void. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.
- 8.7 A decision resulting from a contract dispute shall be reversed only if the aggrieved party establishes that the decision is arbitrary or capricious or not in accordance with the Constitution of Virginia, statutes, regulations or the terms and conditions of the invitation for bid or the request for proposal or any resulting contract document.
- 9.0 Any party to the Administrative Appeals Procedure, including the City, shall be entitled to institute judicial review if such action is brought within thirty (30) days of receipt of the administrative hearing panel's written decision.

B. Contractual Claims and Disputes Review Procedure

- 10.0 The Claims and Disputes Procedure for construction related projects are included in those contracts and are defined in the original solicitation and may vary from the procedures defined hereunder. Contractors shall utilize those procedures in lieu of the procedures detailed in this subsection.
- 11.0 An appeal from a decision resulting from a contract dispute shall be submitted within sixty (60) days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based.
- 12.0 The Contractor must submit a claim, in writing, related to a contract dispute to the Purchasing Agent.
- 13.0 The following steps for reviewing claims may be utilized in order to resolve the dispute prior to a Contractor initiating an appeal regarding a claim.
- 13.1 A designated reviewer within the Office of Purchasing may be assigned to review the claim. The reviewer may gather additional information and may schedule a meeting with relevant City personnel and the Contractor to ascertain facts concerning the claim. The meeting shall be solely for the purpose of gathering facts concerning the claim. The reviewer will make a decision within 45 days after receipt of the claim, unless additional time is required to make a decision. The designated reviewer will advise the Contractor, in writing, if additional time is required and will provide an estimate of the number of additional days needed. The additional time needed shall not exceed 10 business days.

- 13.2 Should the Contractor not be satisfied with the decision of the designated reviewer, the Contractor may request a review by the Purchasing Agent. The request for review must be submitted in writing. The Purchasing Agent will complete additional investigations necessary to make a decision and shall make a decision on the claim within 45 days of the request for review.
- 13.3 After receipt of the Purchasing Agent's decision on the claim, the Contractor may appeal the decision by invoking the Administrative Appeals Procedure and request an administrative hearing within ten (10) days after receipt of the decision. The contractor need not utilize the Administrative Appeals Procedure; but if these procedures are invoked by the contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the City agrees otherwise.
- 13.4 The appeal will proceed in accordance with Subsection A, paragraphs 5.0 through 9.0 written above.

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