

# First 5 Commission of San Diego

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**Subject: Protest Procedures for Award of Solicitations**

Policy Number: F5C-006

Effective Date: October 10, 2019

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## **Purpose**

To establish the policy of the First 5 Commission of San Diego (Commission) for protesting the award of Solicitations.

## **Background**

The Commission funds programs and services for children age zero to five and their families to ensure that every child in San Diego County will enter school physically, mentally, socially and developmentally ready to learn. The Commission's mandate is set forth in Health and Safety Code sections 130100 *et seq.*, San Diego County Administrative Code, Article IIP, sections 84.100 *et seq.*, and the Commission's Strategic Plan.

The Commission's funding decisions are guided, in part, by its Strategic Plan. The Strategic Plan is a multiyear plan that is reviewed annually. The Strategic Plan sets forth the Commission's goals and general areas in which it will provide funding. One mechanism for funding programs is through the solicitation process. Specific procedures are utilized during this process and certain standards of behavior are expected of Commission officials and source selection committee members. It is the intent of the Commission to ensure that these procedures and standards of behavior are adhered to at all times.

## **Policy**

Solicitation applicants not selected for award of a grant or contract may protest their non-selection for award of funding. Any applicant so desiring to protest their non-selection shall follow the procedures as specified in the Policy.

## **Procedures**

### **A. Definitions**

- 1) Interested Parties: For the purpose of this policy, Interested Parties are defined as:
  - a. The Commission and its staff.
  - b. A grant or contract applicant who has filed a timely protest.
  - c. A grant or contract applicant who has been notified of the Commission's intent to award a grant or contract to that applicant.
- 2) Protestor: A grant or contract applicant who files a protest of a grant or contract award in accordance with the provisions of this policy.
- 3) Hearing Officer: An individual selected by the Chair of the Commission or the Chair's designee will serve as the Hearing Officer to review protests related to the solicitation process. The Chair has the discretion to appoint more than one Hearing Officer.

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**B. Protest Requirements and Procedure**

- 1) Standing to Protest: Protests shall be filed only by a grant or contract applicant.
- 2) Grounds for Protest: Protests shall be based only upon one or both of the following grounds:
  - a. The Commission failed to follow the procedures or adhere to the requirements set forth in the solicitation or any addendum thereto.
  - b. The Protestor alleges misconduct or impropriety by Commission officials or source selection committee members.
- 3) Time for Filing a Protest: A protest shall be filed within five (5) working days after (a) a notice of pending grant or contract award(s) has been posted in a public place in the County's Contracting Office, the County Administration Center, or County/Commission Internet Website or (b) a Commission recommendation to award the grant(s) or contract(s) has been docketed, whichever is earlier.
- 4) Required Form of Protest
  - a. All protests shall be made in writing, containing the information listed below, and shall be filed at the Commission office identified in the solicitation. Protests shall contain the following information:
    - i. The name, address, telephone and facsimile numbers, and e-mail address of the Protestor;
    - ii. The signature of the Protestor or its representative;
    - iii. The solicitation subject and number (if applicable);
    - iv. Identification of the ground or grounds of protest set forth above in Section B, Subsection 2, "Grounds for Protest," with supporting facts and documentation;
    - v. All information establishing that the Protestor is a grant or contract applicant for the purpose of filing a protest; and
    - vi. The form of relief requested.
  - b. Protest submissions shall be concise, but no formal briefs or other technical forms of pleading or motion are required. Supporting documentation may include, but is not limited to, the solicitation and addendum, correspondence and declarations. Protests of different applications shall be separately filed.
- 5) Summary Dismissal of Protest: The Hearing Officer may summarily dismiss a protest, or specific protest allegations, at any time that the Hearing Officer determines that the protest raises issues beyond the scope of this protest procedure as set forth above in Section B, Subsection 2, "Grounds for Protest," is untimely, frivolous or obviously without merit, is not submitted in the required form of protest, as set forth above in Section B, Subsection 4, "Required Form of Protest," or is submitted by a non-applicant. In such cases, a notice of summary dismissal shall be furnished to Interested Parties.
- 6) Decision by the Hearing Officer Based on Written Submissions Only: In reaching a decision on the merits of a protest, the Hearing Officer may consider relevant documentation submitted by the Protestor. If the Hearing Officer wishes to have additional information submitted by the Protestor that was not included in the protest or documentation from other Interested Parties, the Hearing Officer shall make a request specifying the information sought and time for submittal. Submissions of additional information not specifically requested by the Hearing Officer shall not be considered. The Hearing Officer shall not conduct a "hearing" nor consider oral testimony. The

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Hearing Officer shall issue a written decision containing the basis of the decision within thirty (30) days after a protest has been filed with the Hearing Officer; however, the time for decision may be extended by the Hearing Officer. If the Hearing Officer requests additional documentation from the Protestor or other Interested Parties, an additional fifteen (15) days shall automatically be added to the time for decision. A copy of the decision shall be furnished to Interested Parties. The decision shall be final with no provision for reconsideration.

- 7) Decision by the Hearing Officer Following Discretionary Oral Presentation: At the sole discretion of the Hearing Officer, the Hearing Officer may elect to provide an opportunity for the Protestor to make an oral presentation pertaining to the protest. Oral presentations shall be conducted in accordance with the following procedure:
  - a. Notice of Oral Presentation: The Hearing Officer shall set a date, time and place for an oral presentation. Written notice shall be provided to Interested Parties not less than five (5) calendar days in advance of the oral presentation unless it is agreeable to all parties that an earlier date be established. Continuances may be granted by the Hearing Officer for good cause.
  - b. Guidelines for Oral Presentation: Oral presentations are informal in nature and shall be made by the Protestor or its authorized representative. The Hearing Officer shall determine how the oral presentations will be conducted and set time limits for the presentation. The Hearing Officer may allow the Protestor to comment on the written documentation and argue its position. The Hearing Officer may request additional documentation prior to or during the oral presentation. Unless requested, additional documentation shall not be accepted. Witnesses shall not be called. Technical rules of evidence shall not apply. The Hearing Officer may question Interested Parties or provide an opportunity for Interested Parties to make an oral presentation.
- 8) Record of Oral Presentation: Any Interested Party may request that the presentation be recorded with the understanding that the cost of recording, including the cost to distribute copies of the recording to the Hearing Officer and other interested parties, shall be borne solely by the requesting party, with no cost to the Commission.
- 9) Decisions: The Hearing Officer shall issue a written decision within thirty (30) days of the oral presentation; however, the time for decision may be extended by the Hearing Officer. A copy of the decision shall be furnished to Interested Parties. The decision shall be final with no provision for reconsideration.
- 10) Scope of Decision: The scope of the Hearing Officer's decision shall be limited to whether one or more of the two grounds for protest set forth above in Section 2, Subsection b, "Grounds for Protest," was sustained or denied.
- 11) Protest Remedies: If the Hearing Officer sustains a protest in whole or in part, the Hearing Officer shall have the sole discretion to determine an appropriate remedy.
- 12) Effect on Grant or Contract Agreements: The failure of the Commission to comply with the provisions stated in this Policy shall in no way affect the validity of any grant or contract agreement entered into by the Commission.

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