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RESOLUTION NO. 61 (2004)

APPROVING A PROCEDURE FOR
DETERMINATION ON PROTESTS
FOR PUBLIC PROJECTS

RESOLVED, by City Council of the City of San Mateo, California, that;

WHEREAS, the City of San Mateo is a Charter City of the State of California and is thereby empowered to create its own procedures for the procurement and purchase of City goods and services, consistent with its Charter, ordinances and other prevailing law; and

WHEREAS, the City does, in a great many cases, procure goods and services through a competitive bidding process which generally includes a determination of lowest responsive, responsible bidder; and

WHEREAS, it is not uncommon for one or more applicants or bidders to protest a contract to be awarded to another bidder or to protest a determination that it is not qualified to bid on a contract and it would be beneficial to City departments to have available to them a uniform procedure for making final determinations on such matters;

NOW, THEREFORE, IT IS DETERMINED AND ORDERED, THAT:

In the discretion of the Department Head administering the work, as an alternative to any other existing bid protest or qualification protest procedures available to the City, the following procedure is authorized for use in procuring contracts awarded by the City:

1. PROTEST PROCEDURE. Any protest of the proposed award of contract by the City Council or City staff (hereafter, "Bid Protest"), or any determination by the City that a bidder is either nonresponsive or nonresponsible (hereafter, "Qualification Protest"), shall be reviewed and a determination rendered under these procedures.

2. If these alternative procedures are selected, the provisions of this protest procedure are mandatory and are a Bidder's sole and exclusive remedy in the event of a Bid Protest or Qualification Protest. Failure to comply with these requirements shall constitute a waiver of any right to further pursue a Bid Protest or Qualification Protest. A Bidder may not rely upon the protest of another Bidder, but must rely upon its own timely protest.

3. A Bid Protest may be filed to protest a proposed award to another contractor only by another responsive responsible bidder. No other person or

entity may file a Bid Protest. If the City determines that a bidder is not qualified to file a Bid Protest because it is either nonresponsive or nonresponsible, it shall so notify the bidder in writing who may Request a Review of the determination that it is nonresponsive or nonresponsible according to the Review procedures set forth below unless that issue has already been decided on Review or the protestor has waived Review. If on Review the bidder is determined to be qualified, then the City shall make a determination on the Bid Protest as originally filed.

4. Bid Protests must be filed with the City Clerk's Office within seven (7) calendar days of the posting of a notice of intent to award in the main lobby of City Hall or else are waived and shall contain a complete statement of the basis for the protest, including all relevant facts.

5. Qualification Protests must be filed with the City Clerk's Office within seven (7) calendar days of mailing by U.S. Mail of written notice of disqualification for failure to submit a responsive or responsible bid or else are waived and shall contain a complete statement of the basis for the protest, including all relevant facts.

6. Bid Protests and Qualification Protests shall be decided by the Department Head, or Department Head's designee(s) for the City Department administering the proposed contract (hereafter, "Decision Making Officer"), based upon the materials included with the protest and any materials submitted by City staff relevant to the protest. A decision shall be rendered after review of the protest and an investigation of the facts by the Decision Making Officer. Such decision shall be in writing and transmitted to the protesting party by U.S. Mail. The City shall also attempt to send by facsimile the decision at the same time as mailing if the Fax number of the Protesting Party is known.

7. The protesting party may seek review of the decision of the Decision Making Officer by filing a Request for Review with the City Clerk within ten (10) calendar days of the date the decision was mailed to the protesting party by U.S. Mail. The Request for Review shall be accompanied by any additional documentary evidence the protesting party wishes the City to consider. The Review shall be conducted by the City Manager or the Deputy City Manager, (hereafter "Reviewing Officer"). The Reviewing Officer shall conduct the Review at least five calendar days prior to the proposed contract award date. The Review shall be de novo, shall consider all documentary evidence presented to the Decision Making Officer and any new documentary evidence presented to the City. The Reviewing Officer shall render a decision prior to the proposed contract award date. Notice of the decision shall be mailed to the protesting party by U.S. Mail.

8. The decision of the Reviewing Officer shall be the final administrative decision of the City. Review of the decision of the Reviewing Officer shall be by a Court of competent jurisdiction of the County of San Mateo.

9. The Department Head administering the work may supplement these protest procedures with complementary contract provisions or directives.

10. A certified copy of this resolution shall be filed with the City Clerk.

/s/ CAROLE GROOM
MAYOR

ATTEST:

SEAL /s/ NORMA GOMEZ
CITY CLERK

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Resolution adopted by the City Council of the City of San
Mateo, California, at a regular meeting held on
June 7, 2004, by the following vote of the Council:

AYES: Council Members LEE, EPSTEIN,
LEMPERT, MATTHEWS and GROOM

NOES: NONE

ABSENT: NONE

(SEAL) /s/ NORMA GOMEZ, City Clerk