


MEMORANDUM

TO: Mayor and Commissioners

FROM: Donald B. Cooper, City Manager 

DATE: December 1, 2015

SUBJECT: Blake's Towing and Transport Bid Protest Appeal. Bid No. RFP 2015-61 pursuant to Section 36.04 (D), (F) Delray Beach Code of Ordinances

A bid protest was filed by Zuccala Wrecker Service and Blake's Towing and Transport of the bid award for RFP No. 2015-61 pursuant to Section 36.04 of the Delray Beach Code of Ordinances. A protest committee was convened pursuant to the code and the protest was heard by the committee (committee was Chaired by Assistant City Manager David Scott, Environmental Services Department Director Randal Krejcarek, and Chief Purchasing Officer Holly Vath). The protest committee found that both protests were without merit (see attached decisions).

Blake's Towing has filed an appeal to the City Commission pursuant to Section 36.04 (D), (F) (see attached appeal). Pursuant to Section 36.04 (D) the appeal must be heard at the next available Commission meeting.

The purpose of this memo is recommend procedure for hearing the appeal as Section 36.04 (F) does not set forth a procedure for hearing appeals. The following process is recommended:

1. Allow not more than 10 minutes for presentation of the appeal by Blake's Towing.
2. Allow not more than 10 minutes for presentation by Chair of Protest Committee.
3. Allow not more than 2 minutes for rebuttal by Blake's Towing.
4. Questions and Answers by Commission

RE: Blake's Towing and Transport Bid Protest Appeal. Bid No. RFP 2015-61
pursuant to Section 36.04 (D), (F) Delray Beach Code of Ordinances
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Discussion and Deliberations by Commission: The Commission may find the appeal to be without merit and deny said appeal or find the appeal to have merit and direct staff to take action deemed appropriate.

DC/sy
(attachment)

cc: Francine Ramaglia, Assistant City Manager
David Scott, Assistant City Manager
Jeffrey Goldman, Police Chief
Noel Pfeffer, City Attorney
Holly Vath, Chief Purchasing Officer

By: Email and HAND DELIVERY
Chevelle D. Nubin, MMC
City of Delray Beach
City Clerk
100 NW 1 st Avenue
Delray Beach, Florida 33444

RE: Bid Protest Appeal. Bid No. RFP 2015-61 Vehicle Towing and Storage Services.

Dear Ms. Nubin

Pursuant to Section 36.04 (F) of the City of Delray Beach Code of Ordinances, Blake's Towing & Transport, Inc. ("Blake's Towing") 1300 West Industrial Ave, Suite 102, Boynton Beach, Florida 33426, hereby submits this appeal of the decision of the Protest Committee dated November 18, 2015.

This protest appeal arises from a remarkable circumstance where the City of Delray Beach Selection Committee has no records showing how the selection committee scored each bidder in accordance with the requirements of the bid specifications or is willfully refusing to release the scoring information in violation of Florida's Public Record Laws. Also the specifications that determined the revenue back to the City of Delray Beach was not based on any rational information.

The Request for Proposal (RFP) was posted on July 1, 2015. Responses were opened by Delray Beach on August 3, 2015. The bid results, attached hereto as Exhibit 1 were posted by the City of Delray Beach as follows:

1. Beck's Towing & Recovery Inc.
2. Westway Towing, Inc.
3. Priority Towing
4. Zuccala's
5. Blake's Towing & Transport, Inc.

6. City Towing, Inc.

On September 11, 2015 the Selection Committee recommended that three top rank bidders be awarded a rotating contract. On October 20, 2015 the City Commission voted to accept the Selection Committee's recommendation. Pursuant to Section 36.04(B)(2) Blake's Towing filed a protest of the award. A copy of Blake's Towing protest is attached hereto as Exhibit 2.

On November 10, 2015 the Protest Committee, comprising of David Scott, Randal Kreje Carek, and Holly Vath heard argument of Blake's Towing. During the Protest Committee Hearing, The protest committee members were interested in entertaining more information regarding the industry standard relating to the amount of tows a municipality performs in a given year.¹ The Protest Committee allowed Blake's Towing to amend its protest to provide the committee with evidence of the industry standard and the Protest Committee hearing was continued to November 18, 2015. A copy of the Protest Committee's final decision is attached hereto as Exhibit 3.

STANDING

Blake's Towing has standing to file this protest. Section 36.04 (A) of City of Delray Beach's ordinance allows any actual bidder, proposer or responder protest or appeal any determination.

PROTEST STANDARD

Under Florida law public authorities have broad discretion in passing on the capability, integrity and reliability of bidders. See Eng'g Contrs. Ass'n of S. Fla., Inc. v. Broward Cnty., 789 So.2d 445, 451 (Fla. 4th DCA 2001) (finding statutes requiring projects be awarded to the "the lowest competent bid" or "the lowest responsible bid" invests public authorities with discretionary power to judge the quality of the bidders). However, this discretion is not unlimited: The public

¹ Blake's Towing argued that industry standard is 1-1.5% of the general population.

body must still engage in “an honest exercise of this discretion,” by making a reasonable determination of which bidders are responsive and qualified. See *id.* at 50 (quoting Liberty Cnty. v. Baxter's Asphalt & Concrete, Inc., 421 So.2d 505, 507 (Fla.1982)); See also City of Sweetwater v. Solo Constr. Corp., 823 So.2d 798, 802 (Fla. 3d DCA 2002) (“While a public authority has wide discretion in [the] award of contracts for public works on competitive bids, such discretion must be exercised based upon clearly defined criteria, and may not be exercised arbitrarily or capriciously.”). Therefore, the selection of a bidder in a public procurement “must be exercised based upon clearly defined criteria.” Sweetwater, 823 So. 2d at 802. Arbitrary and capricious has been defined to include actions taken with improper motive, without reason, or for a reason which is merely pretextual. *Id.* citing Decarion v. Monroe County, 853 F. Supp. 1415 (S.D. Fla. 1994). “ A capricious action is one taken without thought or reason or irrationally. An arbitrary decision is not supported by facts or logic.” Agrico Chem. Co. v. Dep’t of Envir. Reg. 365 So. 2d 759, 763 (Fla. 1st DCA 1978).

Whether a agency acted arbitrarily is generally controlled by a determination of whether the agency complied with its own proposal criteria. Emerald Correctional Mgmt. v. Bay County Board of County Commissioners, 955 So. 2d 657, 653 (Fla. 1 DCA 2007). If an agency fails to observe pre-established specifications, that action will render meaningless the basis upon which were initially sought, and so must be deemed arbitrary, illegal, fraudulent or dishonest.” MCI Telecommunication Corp. v. Dept. of Corrections, 1995 WL 1053092 (Fla. Div. Admin. Hrgs.)

I. SELECTION COMMITTEE FAILED TO FOLLOW THE SCORING CRITERIA IN THE RPF.

Paragraph 1.8 – Evaluation of Proposals by Selection Committee calls for two phases of evaluation. The first phase or Phase One is when the Selection Committee determines if a bidder is responsive. According to paragraph 1.8 of the RFP a responsive bidder is one that “has submitted a proposal that conforms in all material respects to the requirements of the RFP.” At that stage the Selection Committee is to determine whether the bidder submitted and completed all the necessary forms, documents and information. Phase Two of the evaluation process is when the Selection Committee determines if the bidder is responsible. In this regard, the RFP specifically states “a responsible Proposer means a Person that has the capacity in all respects to fully perform the contract requirements and has the integrity and reliability that will ensure good faith performance. In Phase Two, each proposal was to be evaluated in light of the following weighted criteria:

Rates	30%
Facilities – Equipment, condition of equipment and facilities, convenience of principal compound location and hours of operation.	30%
Experience – Qualifications and competency of staff, owners and officers.	30%
Administration – Record keeping procedures, financial capacity and reporting capabilities.	10%

a. There is no evidence that the Selection Committee used the weighted criteria.

Pursuant to Fla. Stat. 119, Florida Public Records law, Blake’s Towing requested that the City of Delray Beach provide the Selection Committee’s scoring sheet. The City of Delray Beach produced Exhibit 1 which represents the final results of the Selection Committee. There is no record of how many points each bidder received or that the Selection Committee used the scoring sheet in the RFP see Exhibit 4. In fact, Holly Vath, the Purchasing Director and Member of the Protest Committee stated that criteria were not meant to be a mathematical formula but just a guide for the Selection Committee.

Indeed the RFP does state that the weighted criterial is provided to assist in the review of the proposals and to guide the Selection Committee in establishing a general framework for the Selection Committee's deliberations. However, nowhere in the RFP does it state that the Selection Committee has the discretion to use the formula or that it is not meant to be a mathematical formula.

Here there is absolutely no evidence that the Selection Committee used the weighted criteria in the RFP. A review of the Selection Committee audio recordings confirms there was no discussion about the weighted criteria. The Selection Committee simply assigned a number 1 through 6 to each proposer. In fact there is nothing in the record that confirms the significance of 1 through 6. This is supported by Zuccala who testified that his scores were inverted.

Further evidence that the final rankings were arbitrarily done is the fact that Administration (record keeping, financial capacity and reporting capabilities) carried 10 percent of the scores, yet the first place bidder, Beck's Towing & Recovery Inc., is the company that had the previous franchise agreement with the City of Delray Beach but was unable to provide the City of Delray Beach with the number of tows it performed under the contract in the prior year. It begs the question - how does the company that is unable to provide the City with the amount of tows it performed in the previous year, ends up as the number 1 Proposer.

Further evidence that the Selection Committee acted arbitrary is the fact that the inspection of the facilities occurred after the Selection Committee made its ranking and recommendation to the Commission. The Purchasing Manager defends this position by pointing to page 21 of the RFP which under Subsidiary Compounds subsection (e) which states "All Proposer storage facilities shall be subject to inspection and must be approved by the City prior

to the award of a contract...” The Purchasing Director is simply incorrect. The weighted criteria require assigns 30% to Facilities and takes into account the type of equipment, condition of the equipment and facilities, the convenience of the principal compound location and hours of operation. The Purchasing Director admits that an inspection was performed after the Selection Committee did its ranking. Therefore, even though one-third of the weighted criteria depending on the bidder’s facilities, the Selection Committee had no information regarding the condition of the bidder’s facilities and equipment.

The Selection Committee’s failure to follow the weighted criteria renders their decision arbitrary and capricious.

b. The Estimated Volume of Tows Were Arbitrary

During the question and answer period the bidders had questions regarding how the rates factored into the weighted criteria. One question asked

Q. Section 1.9 provides that the contract will be awarded to 2 or 3 contractors serving on a monthly rotating basis. However rates are 30% of the weighted criteria. Given Addendum 1 that everyone will charge Palm Beach County rates, how will rates be weighted?

A. The revised price sheet will be used for the rating criteria. The total net revenue/cost to the City will be used for evaluation purposes.

Q. Please clarify the estimated number of tows by type.

A. The information in the RFP is the only information available. Our current tow contract does not require detailed reporting of all tows. The amounts were estimated.

The Recovery Fee to the City was used as the primary criteria for the rates since all the bidders had to use Palm Beach County rates, yet the number of tows, which determines the recovery fee was an arbitrary number. This information skews the total fee that would be paid to the City of Delray Beach. By way of example Exhibit 5 shows how the potential recovery fee from each bidder. The current recovery fee earned by the City at the time of the bid was \$162,400. It appears that the higher the proposed recovery fee the better the bidder scored. Becks Towing & Recovery Inc. and Westway Towing Inc., the two first place bidders, had the second and third highest recovery fee. However the fee is a fiction that will never be realized by the City. Therefore, although it appears that Becks and Westway benefited from having proposed a higher fee, the City has never and will never see such a fee.

At the Protest Committee Hearing, the Purchasing Director produced an email that shows the amount of actual tows to be much lower than what was estimated in the RFP. The Commission should note that Blake's used a flat fee of \$175,000 which comes much closer to the actual number \$162,400 currently earned by the City. Blake's number is an number based upon industry standard and not an arbitrary number that has no basis in fact or reality.

c. **Holly Vath Should Not Have Presided On The Protest Committee.**

Holly Vath as purchasing director prepared the RFP and closely oversaw the Selection Committee. Section 36.04(D) states that Protest Committee members shall not be the same as the Evaluation Selection Committee members. Although Ms. Vath was not on the Selection Committee the audio recordings show that she closing guided the process. The spirit of fairness and impartiality is lost when the Purchasing Director who was involved in every step of this solicitation sits in judgement of her own process.

d. Blake's Towing is concerned that the Florida Public Records Laws Were Violated.

Blake's Towing requested that all the documents related to the Selection Committee be provided.

Blake received the ranking sheet and audio recordings, one of which did not have the entire meeting recorded. At the Protest Committee hearing the Purchasing Director made mention of the Selection Committee notes. Those notes were never produced.

Respectfully Submitted,

/s/ Y. Lisa Colon Heron
Y. Lisa Colon Heron

RFP 2015-61 Ranking

	Beck's Towing & Recovery Inc	Blake's Towing & Transport Inc	City Towing Inc	Priority Towing	Westway Towing Inc	Zuccala's
John Morgan	2	5	6	4	3	1
Teresa Cantore	4	3	6	2	1	5
John Cardascia	2	6	5	1	4	3
Tim Stillings	1	5	6	4	1	3
Total	9	19	23	11	9	12
Final Ranking	1	5	6	3	1	4

EXHIBIT 1

Blake's Towing & Transport, Inc.

Ron Schuster
President

1300 West Industrial Ave
Suite 102
Boynton Beach, FL 33426

Donald Cooper
City Manager
City of Delray Beach, Florida

October 26, 2015

Pursuant to city ordinance 36.04 relating to protest procedures, please accept the following letter as protest to the award of vehicle towing & storage represented in the City of Delray Beach RFP No 2015-61.

Following are significant issues leading to the erroneous award to the top three providers based on the selection committee recommendations:

- I. Incumbent, Beck's Towing, was allowed to withhold annual tow information giving their company an unfair advantage in the bid process. The question is not whether the prior contract called for this information rather whether the company had or could provide the information based on software utilized in the daily operation and presented as such in the current RFP at time of submission.
- II. Recommendations for the award of the contract was placed on the docket prior to physical inspections which would determine whether each proposer was truly "responsible" as outlined in the RFP Section 1.8. Certain proposers did not have the required facilities/equipment at time of submission as outlined in the RFP and whose proposals should have been rejected during phase II of the review process.
- III. Recovery fee is based on invalid and completely erroneous annual tow information which skews the total fee paid back to the City of Delray Beach. The City awarded the contract for which fees presented will never be realized. Further Blake's Towing & Transport Inc. provided for a flat recovery fee which will hold constant regardless of the number of annual tows. The difference between a variable and constant recovery fee was misrepresented by the City Purchasing Manager to both the selection committee and at time of presentation on October 20, 2015.
- IV. There is no support or documentation of any kind to confirm that the selection committee actually utilized the criteria outlined in Section 1.8 of the RFP and presented below:

Rates	30%
Facilities - Equipment, condition of equipment and facilities, convenience of principal compound location and hours of operation.	30%
Experience - Qualifications and competency of staff, owners and officers.	30%
Administration - Record keeping procedures, financial capacity, and reporting capabilities.	10%

EXHIBIT 2

The presentation made by the City Purchasing Manager on October 20th, indicates that the award was made based almost entirely on "Rates" represented by the total recovery fee. The total fee is grossly overstated given zero basis for estimated annual tow calculations presented in the RFP.

Further, as outlined in Section 1.9 of the RFP, all proposers must warrant to the City of Delray Beach that it is not engaged in (subject to) *investigations of any kind that would have an adverse effect on its ability to perform its obligations under the contract*. Given the known open and pending investigations of current award recipient(s), how does the City intend to qualify such warrants as outlined below.

Extract of RFP language provided:

Proposer warrants to City that it is not insolvent, it is not in bankruptcy proceedings or receivership, nor is it engaged in or threatened with any litigation, arbitration or other legal or administrative proceedings or investigations of any kind which would have an adverse effect on its ability to perform its obligations under the Contract.

I felt that the commissioners' present on the evening of Tuesday, October 20th were right on target with the questions pertaining to the abnormalities of the towing RFP 2015-61 as well as the results of the selection committee. However, based on the significant issues highlighted, the final award of the RFP should have been tabled until informative and knowledgeable conversations could have taken place with city staff and towing proposers.

Respectfully,

Ron Schuster
President

Cc: Mr. Noel Pfeffer, City Attorney; Mr. Cary Glickstein, Mayor, Mrs. Shelly Petrolia, Vice-Mayor, Mr. Al Jacquet, Deputy Vice Mayor, Ms. Jordana Jarjura, Commissioner, Mr. Mitch Katz, Commission, Ms. Francine Ramaglia, Assistant City Manager



BID 2015-61 PROTEST COMMITTEE FINDINGS

November 18, 2015

Pursuant to the Section 36.04 of the Delray Beach Code of Ordinances, the City Protest Committee held a Public Meeting on November 6, 2015 regarding the Vehicle Towing and Storage Services, RFP # 2015-61 Bid Protest filed by Blake's Towing & Transport, Inc.

The bid protest meeting on November 6, 2015 for Vehicle Towing and Storage Services, RFP # 2015-61, was held at 3:30 pm in City Hall, 1st Floor Conference Room, 100 N.W. 1st Street, Delray Beach, FL 33444. The bid protest committee addressed some of bid protestor's claims contained in their bid protest letter dated October 26, 2015. The bid protest meeting for RFP #2015-61 was continued to address remaining claims by bid protestor on November 18, 2015 at 9:00am at City Hall.

The Bid Protest Committee for RFP No. 2015-61, by unanimous vote, adopted motions that the bid protest filed by Blake's Towing & Transport, Inc. are without merit on November 18, 2015.

All inquiries, contact Melissa Thorn @ thornm@mydelraybeach.com or 561-243-7129.

EXHIBIT 3

RFP 2015-61 Evaluation

Criteria	Weight	Towing & Recovery				Towing & Transport		City Towing Inc	Priority Towing	Westway Towing Inc	Zuccala's
		Inc	Inc	Inc	Inc	Inc	Inc				
Rates	30%										
Facilities - Equipment, condition of equipment and facilities, convenience of principal compound location and hours of	30%										
Experience - Qualifications and competency of staff, owners and officers.	30%										
Administration - Record keeping procedures, financial capacity, and reporting capabilities.	10%										
Total											

Committee Member:

	Proposed Cost	Proposed Recovery	Annual Net Revenue
Current			162,400
City Towing Inc	13,850	66,500	52,650 ⁶
Blake's Towing & Transport Inc	-	175,000	175,000 ⁵
Priority Towing	12,600	194,450	181,850 ⁴
Westway Towing Inc	10,100	203,500	193,400 ³
Beck's Towing & Recovery Inc	36,325	293,090	256,765 ²
Zuccala's	3,750	298,100	294,350 ¹

Note: These numbers are based on estimates from the Police Department and Fleet Maintenance Division. Becks, the current provider has indicated the exact numbers are not available.



BID 2015-61 PROTEST COMMITTEE FINDINGS

November 18, 2015

Pursuant to Section 36.04 of the Delray Beach Code of Ordinances, the City Protest Committee held a Public Meeting on November 6, 2015 regarding the Vehicle Towing and Storage Services, RFP # 2015-61, Bid Protest filed by Zuccala Wrecker Service.

The bid protest meeting on November 6, 2015 for Vehicle Towing and Storage Services, RFP # 2015-61, was held at 3:30pm in City Hall, 1st Floor Conference Room, 100 N.W. 1st Street, Delray Beach, FL 33444. The bid protest committee addressed bid protestor's claims contained in their bid protest letter dated October 23, 2015. The bid protest meeting for RFP #2015-61 was continued to November 18, 2015 at 9:00 am at City Hall.

The Bid Protest Committee for RFP No. 2015-61, by unanimous vote, adopted a motion that the bid protest filed by Zuccala Wrecker Service is without merit on November 6, 2015.

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All inquiries, contact Melissa Thorn @ thornm@mydelraybeach.com or 561-243-7129.

for the non-real property, goods or services of any contract between the vendor and any other governmental entity within the State.

- (8) *Cooperative Acquisitions.* The City may acquire or contract for non-real property, goods or services without utilizing a Sealed Competitive Method or the Written Quotations Method where the City participates in joint procurement of non-real property, goods or services with other public entities within the State, including, but not limited to acquisitions made pursuant to interlocal agreements entered into with other governmental entities in accordance with F.S. Chapter 163. Cooperative acquisitions where the expenditure by the City (including expenditures during renewal periods, but not expenditures relating to Change Orders) is estimated to be twenty-five thousand dollars (\$25,000.00) or greater shall be subject to approval by the City Commission.
- (9) *Utilities.* Water, sewer, gas, electrical, and other utility services may be acquired without utilizing a Sealed Competitive Method or the Written Quotations Method and without City Commission approval.
- (10) *Resale.* Food, beverages and merchandise purchased for resale, which would include but not be limited to the City's golf courses and tennis center facilities, may be acquired without utilizing a Sealed Competitive Method or the Written Quotations Method and without City Commission approval.
- (11) *Best Interest Acquisitions.* The City may acquire or contract for non-real property, goods or services without utilizing a Sealed Competitive Method or the Written Quotations Method where the City Commission declares by at least a four-fifths affirmative vote that the Sealed Competitive Method or the Written Quotations Method is not in the best interest of the City. The City Commission shall make specific factual findings that support its determination, and such contracts shall be placed on the regular City Commission agenda.

(Ord. No. 29-13, § 1, passed 11/19/13)

Sec. 36.03. - CITY COMMISSION APPROVAL.

- (A) *Acquisitions of Twenty-Five Thousand Dollars (\$25,000.00) or Greater.* Acquisitions of or contracts for non-real property, goods or services where the expenditure by the City (including expenditures during renewal periods, but not expenditures relating to Change Orders) is estimated to be twenty-five thousand dollars (\$25,000.00) or greater shall be subject to prior approval by the City Commission, except for emergency acquisitions, which are subject to subsequent ratification by the City Commission pursuant to Section 36.02(C)(5).
- (B) *Multiple Acquisitions From Vendor Exceeding Twenty-Five Thousand Dollars (\$25,000.00) in Any Fiscal Year.* Acquisitions of or contracts for non-real property, goods or services from the same person exceeding the aggregate sum of twenty-five thousand dollars (\$25,000.00) shall not be permitted from the same person during the course of any Fiscal Year, unless the acquisition is first approved by the City Commission. This subsection shall not apply to utility acquisitions.

(Ord. No. 29-13, § 1, passed 11/19/13)

Sec. 36.04. - PROTEST PROCEDURES.

- (A) *Standing.* Parties that are not actual bidders, proposers or responders, including, but not limited to, subcontractors, material and labor suppliers, manufacturers and their representatives, shall not have standing to protest or appeal any determination made pursuant to this Section.
- (B) *Procedure.*
- (1) *Protest of Failure to Qualify.* Upon notification by the City that a bidder, proposer or responder is deemed non-responsive and/or non-responsible, the bidder, proposer or responder who is deemed non-responsive and/or non-responsible may file a protest with the Purchasing Manager by close of business on the third business day after notification (excluding the day of

notification) or any right to protest is forfeited. It shall be the sole responsibility of such bidder, proposer or responder to verify the operating hours of City Hall.

- (2) *Protest of Award of Agreement.* After a Notice of Intent to Award an Agreement is posted, any actual bidder, proposer or responder who is aggrieved in connection with the pending award of the agreement or any element of the process leading to the award of the agreement may file a protest with the Purchasing Manager by close of business on the third business day after posting (excluding the day of posting) or any right to protest is forfeited. It shall be the sole responsibility of such bidder, proposer or responder to verify the operating hours of City Hall. The City Manager or his/her designee shall have five (5) days to acknowledge receipt of a bid protest.

A Notice of Intent to Reject all Bids, Proposals or Responses is subject to the protest procedure.

- (3) *Content and Filing.* The protest shall be in writing, shall identify the name and address of the protester, and shall include a factual summary of, and the basis for, the protest. Filing shall be considered complete when the protest and the Protest Bond are received by the Purchasing Manager. The time stamp clock located in the Finance/Purchasing office shall govern.
- (C) *Protest Bond.* Any bidder, proposer or responder filing a protest shall simultaneously provide a Protest Bond to the City in the amount set forth in the Sealed Competitive Method documents. If the protest is decided in the protester's favor, the entire Protest Bond shall be returned to the protester. If the protest is not decided in the protester's favor, the Protest Bond shall be forfeited to the City. The Protest Bond shall be in the form of a cashier's check, and shall be in the amount specified in the Sealed Competitive Method documents.
- (D) *Protest Committee.* The Protest Committee shall review all protests at a public meeting as soon as possible or no later than twenty (20) days after a bid protest is filed. The City Manager shall appoint the members of the Protest Committee. No member of the City Commission shall serve on the Protest Committee. The Protest Committee members shall not be the same as the Evaluation Selection Committee members. The City Attorney or designee shall serve as counsel to the Committee. The meeting of the Protest Committee shall be opened to the public and all of the actual bidders, responders or proposers shall be notified of the date, time and place of the meeting. If the Protest Committee determines that the protest has merit, the City Manager shall direct that all appropriate steps be taken. The protest appeal shall be heard at the next available City Commission meeting. All of the actual bidders, responders or proposers shall be notified of the determination by the Protest Committee no later than ten (10) days after the Protest Committee meeting. The Protest Committee shall terminate upon the award of the contract, or such other time as determined by the City Commission.
- (E) *Stay of award of Agreement or Sealed Competitive Method.* In the event of a timely protest, the City Manager shall stay the award of the Agreement or the Sealed Competitive Method unless the City Manager determines that the award of the Agreement without delay or the continuation of the Sealed Competitive Method is necessary to protect any substantial interest of the City. The continuation of the Sealed Competitive Method or award process under these circumstances shall not preempt or otherwise affect the protest.
- (F) *Appeals to City Commission.* Any actual bidder, proposer or responder who is aggrieved by a determination of the Protest Committee may appeal the determination to the City Commission by filing an appeal with the City Clerk by close of business on the third Business Day after the protester has been notified (excluding the day of notification) of the determination by the Protest Committee. The appeal shall be in writing and shall include a factual summary of, and the basis for, the appeal. Filing of an appeal shall be considered complete when the appeal is received by the City Clerk.
- (G) *Failure to File Protest.* Any actual bidder, proposer or responder that does not formally protest or appeal in accordance with this Section shall not have standing to protest the City Commission's award.

(Ord. No. 29-13, § 1, passed 11/19/13; Ord. No. 05-14, § 2, passed 3/4/14.)