

SCAG's POLICY ON CONTRACT AWARD PROTESTS

I. INTRODUCTION

This policy explains SCAG's protest process regarding the award of SCAG contracts. In general, the party challenging SCAG's contract award decisions bears the burden of proof of its charges that SCAG has committed an error in the contract award process sufficiently material to justify invalidation of the proposed award, or that SCAG's decisions are lacking a rational basis and are, therefore, arbitrary and capricious. An example of a material deviation would be, among others, failure of SCAG to follow pertinent Federal and State statutes and regulations or the provisions of its own Request for Proposal (RFP). When scores of the Proposal Review Committee are at issue, more than the opinion of the protestant that scores should have been different, or that different scores could have been awarded based on the same information, is required to invalidate scoring decisions. In view of these parameters, the focus of the reviewing authority (at SCAG, this is the Deputy Director) is usually on whether the protestant has met its burden of proof that SCAG has committed a material error in the conduct of the contract award process.

II. APPLICABILITY

The protest process covered in this policy applies only to SCAG contracts that are awarded through a RFP. This policy does not apply to SCAG purchase orders.

III. GROUND FOR PROTEST

- A. The only entity which may protest a SCAG contract award is any offeror who claims they would have been eligible for the award of the contract if SCAG had evaluated their proposal correctly or if SCAG had correctly followed its own internal procurement procedures.
- B. There is no basis for protest if SCAG rejects all proposals based on the best interests of SCAG.

IV. PROTEST EXCLUSIONS

SCAG's Deputy Director will not consider a protest under the following circumstances:

- A. The protestant was not an offeror. The only recourse in that case is through the civil courts.
- B. The protest was not submitted on time.
- C. The grounds for the protest do not meet the permissible grounds identified above.

V. PROTEST AFFECTING VITAL SERVICES

If a protest is filed and cannot be resolved before the need for vital services occurs, SCAG may extend an existing contract for up to six months at the same or lower rates. If there is no existing contractor or if the contractor does not wish to continue, sole-source support may be obtained until the protest is resolved.

VI. PROCEDURE FOR PROTESTING AN AWARD

A. After consultant interviews are held, a Notice of Intent to Award will be posted on the SCAG web site.

B. A written protest must be filed with SCAG's Deputy Director within five work days after posting of the Notice of Intent to Award. No verbal protests will be accepted. The protest must be a detailed, written statement of the protest grounds and reference the RFP number and name of the designated Contracts Administrator. The protest must be submitted to SCAG's Deputy Director via both certified mail and fax using the following address and fax number:

Deputy Director
Southern California Association of Governments
818 W. 7th Street, 12th Floor
Los Angeles, CA 90017
213.236-1825 fax

C. The contract award is held up when a protest is received. The contract may not be awarded until the protest is either withdrawn or SCAG's Deputy Director has rendered a decision.

D. SCAG's Deputy Director sends the protestant an acknowledgment letter within five work days of receiving the protest and notifies both SCAG's Chief Counsel and Manager of Contracts of the receipt of the protest. If the Contracts section is aware of some reason that the protest should not go forward, this must be communicated to the Deputy Director immediately.

E. SCAG's Deputy Director gathers pertinent information about the intended award from SCAG's Contracts Department, including copies of all RFP evaluation sheets and scoring criteria.

F. If SCAG's Deputy Director determines that the protest is clearly insufficient on its face or without merit, the protest is denied. If the protest is deemed permissible, then SCAG's Deputy Director sends notices to the interested parties, including the proposed awardee, that the protest will be decided by reviewing submissions of written material to support each party's position and sets the date for submission thereof.

G. If the protest is based on permissible grounds, SCAG's Deputy Director will review and decide the issues by written submission and render a written decision within 30 calendar days of the final submission of evidence by the protestant.

VII. NOTIFICATION OF THE RIGHT TO PROTEST

SCAG will include in all RFPs information about protesting the award of SCAG contracts.

VIII. MINIMIZING PROTEST EXPOSURE

To minimize protest exposure and to enhance the likelihood of SCAG prevailing in a protest, SCAG should ensure that:

- A. All solicitation packages are prepared with the appropriate clauses, phrases, and documents, and each is in compliance with all statutory and policy requirements.
- B. All solicitation packages are written with clear and easily understood instructions.
- C. Evaluators are carefully instructed on the evaluation approach to be used.
- D. Sound decisions are made when determining an offeror's responsiveness to RFP requirements.
- E. All offerors are treated fairly and impartially.
- F. All offerors are given access to identical information and facts about the RFP and qualification requirements.
- G. The waiver of immaterial defects in any one proposal does not unduly prejudice other proposals or affect the price.