

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF
FRESNO, CALIFORNIA, ESTABLISHING UPDATED
PROCEDURES FOR APPEALS IN THE COMPETITIVE
BIDDING PROCESS AND RESCINDING RESOLUTION NO.
2003-129

WHEREAS, the Council of the City of Fresno previously adopted Resolution No. 2003-129 on April 29, 2003, which established the current procedures for appeals in the competitive bidding process; and

WHEREAS, the City Council has determined that the existing procedures require modernization to reflect current administrative practices and ensure a more efficient bidding process; and

WHEREAS, it is in the best interest of the City to provide updated, clear, and fair guidelines for contractors and vendors to appeal bidding decisions for a determination of non-responsibility.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. Resolution No. 2003-129 is rescinded in its entirety and replaced by this Resolution.
2. It is the policy of the City Council that the question of a bidder's responsibility be decided by an objective body if a hearing is requested by the bidder, determined to be non-responsible. A bidder is not entitled to a hearing to question another bidder's responsibility. To facilitate an objective forum, this policy establishes an administrative hearing procedure to resolve questions of responsibility.

1 of 12

Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval:

671155v1

Resolution No.

3. A non-responsible bidder includes, but is not limited to, one who does not possess the skill, judgment, financial or functional ability, or integrity to perform satisfactorily the proposed contract.

SECTION 1. Purchasing Manager's Initial Review.

The Purchasing Manager, after bid opening, shall forward to the department administering the contract all documents related to the bid, specifying the date a reply is required to meet the bid award deadline, and identifying any perceived errors, omissions, irregularities, and/or failure to submit appropriate documentation.

If the Purchasing Manager at any time becomes aware of information which is adverse to the ability of a bidder to perform the contract satisfactorily, the Purchasing Manager shall immediately advise the administering department.

SECTION 2. Departmental Recommendation.

The department shall review the bids submitted, consider any information provided by the Purchasing Manager, prepare a written recommendation, and submit it to the Purchasing Manager. If the recommendation is to award to a bidder other than the lowest bidder, written justification shall be submitted to the Purchasing Manager with the recommendation to declare the low bidder(s) non-responsible and award to the next lowest bidder who is responsible.

If the department at any time becomes aware of information which is adverse to the ability of a bidder to perform the contract satisfactorily, the department shall immediately advise the Purchasing Manager.

SECTION 3. Purchasing Manager's Recommendation.

The Purchasing Manager shall determine, after consultation with the City Attorney,

whether the justification submitted by the department demonstrates that the lowest bidder(s) may not be responsible.

If the Purchasing Manager, after considering the department's recommendation and conferring with the City Attorney, determines that the lowest bidder(s) may be non-responsible, the Purchasing Manager shall submit its recommendation to that effect, with justification, to the City Manager along with staff's proposed determination of bid award.

SECTION 4. Staff Determination.

The City Manager or designee shall review the Purchasing Manager's recommendation to determine whether it concurs that there may be sufficient justification to find that the lowest bidder(s) may be non-responsible and of staff's proposed determination of bid award.

If the City Manager or designee concurs, it shall direct the Purchasing Manager to notice the low bidder(s) of the intent to reject its bid ("Notice of Intent to Reject"), along with written notice containing the reason(s) for the proposed non-responsibility finding prior to the award of the contract.

In addition, the Purchasing Manager shall cause the posting of the staff's proposed determination of the lowest responsive and responsible bidder for award of the contract a minimum of five (5) working days prior to Council action.

SECTION 5. Initiation of Hearing Process.

(a) Filing of an Appeal; Withdrawal thereof.

Unless a time period other than three (3) working days for filing an appeal is expressly provided in the bid specifications in accordance with this subsection, any and all appeals must be received in writing within three (3) working days from the issuance of

the Notice of Intent to Reject or the date the staff determination is posted, whichever is applicable. Bidders who fail to protest by the deadline shall waive all rights to protest the bid in any capacity. The Purchasing Manager may increase the time period for filing an appeal by expressly stating such time period in the bid specifications.

All appeals must be filed, in writing, with the Purchasing Manager. An appeal will only be considered and accepted by the City Manager or designee if timely and sets forth in detail specific, verifiable facts and description of all evidence relied on, including copies of relevant documents, that:

- (1) Rebut the staff determination that the low bidder is non-responsible as contained in the Notice of Intent to Reject.

The protest must be signed under penalty of perjury under the laws of the State of California. Further, the protest must further include an email address where further correspondence and notice regarding the protest shall be sent.

The appellant may withdraw its appeal to the Purchasing Manager and are encouraged to expedite such withdrawal upon making the determination to do so.

Should it be determined by the City, at its sole discretion, to cancel the solicitation or otherwise not award, the contract will be deemed final and not subject to appeal.

- (b) Hearing Authority Determination.

If an acceptable appeal is received within the specified time, the City Manager or designee will either appoint an independent hearing officer or, alternatively, contract with the State of California Office of Administrative Hearings (OAH) for an Administrative Law Judge (ALJ) to serve as the protest body.

Selection of Hearing Authority: The Hearing Authority may be a Hearing Officer (a person having a minimum of 5 years' experience as a licensed attorney in the State of California) selected by the City Manager, or designee, if in their discretion they determine that the circumstance(s) warrant such a Hearing Authority.

Selection of ALJ: If the City Manager decides to use the OAH for the hearing, the OAH will select an ALJ to act as the protest body pursuant to its own internal procedures.

(c) Notice of Hearing.

(1) The hearing shall be scheduled as soon as practicable after the appeal is received, to take place not less than thirty (30) working days from the last appeal received, provided that such time is conducive with the Hearing Authority's schedule, to which the hearing date may be extended or shortened upon written agreement by all parties to the action. Notice of the date and time of the hearing shall be given to all bidder(s) at least seven (7) calendar days prior to the hearing unless such time is shortened upon written agreement by all parties (appellant and Purchasing Manager on behalf of the City).

(2) In the case of multiple acceptable appeals from bidders whom staff has determined may be non-responsible, the Hearing Authority appointed to hear multiple appeals shall hear the subsequent appeals in sequence beginning with the appeal filed by the lowest non-responsible bidder.

///

///

(d) Presentation of Testimony, Evidence, and Arguments by Non-Appellant Bidders.

(1) Except in those instances when a non-appellant bidder is called by the City or an appellant as a witness to testify at the hearing, a bidder who is not an appellant shall have the opportunity to attend the hearing and may, at the discretion of the Hearing Authority, present brief oral or written arguments. However, such non-appellant bidders shall not be considered parties to the administrative hearing and shall not have the right to cross-examine witnesses or present a full case-in-chief.

(2) In advance of the hearing, the bidder must provide to the Purchasing Manager, in writing, a statement of all the evidence and testimony to be presented, in sufficient detail to establish that the evidence is relevant, verifiable, and timely to the appeal hearing being conducted. General statements of support of, or opposition to, a particular bidder, product, or condition will not be considered or accepted in satisfying this condition. Such statement shall include all grounds on which the bidder believes a bidder to be non-responsible, whether or not included in a Notice of Intent to Reject.

(3) The written statement shall be actually submitted to the Purchasing Manager not less than three (3) working days prior to the hearing.

SECTION 6. Hearing Rules.

(a) Purpose.

The purpose of the hearing shall be to evaluate the bidder's responsibility (i.e., whether it is qualified to perform satisfactorily the proposed contract).

(b) Procedure.

The bidder(s) who have filed an acceptable appeal shall be notified that it may be present at the hearing, may but need not be represented by counsel, and may present any relevant evidence. The procedures outlined in Subsection 6(c) of this resolution will be followed.

(c) Administration of Hearing.

All hearings will be administered by the General Services Department and conducted by the Hearing Authority. Hearings shall be recorded by a recording device or court stenographer. Any interested party may arrange with the stenographer to have a transcript prepared at the party's cost.

The Purchasing Manager shall provide to the Hearing Authority, in advance of the hearing, a copy of the appeal and evidence received from appellant pursuant to Subsection 5(a) and any statement of evidence received from non-appellant bidders pursuant to Subsection 5(d). The Purchasing Manager shall provide to appellant(s), in advance of the hearing, a copy of the appeal and evidence received from other appellants who are parties to the same hearing, a copy of any statement of evidence received from non-appellant bidders who are participating in the same hearing, and a copy of evidentiary documents generated by City in response to the appeal filed, provided such evidentiary documents were provided to the Hearing Authority in advance of the hearing. Otherwise, if prior to the date of the hearing, any appellant or bidder wishes to inspect or copy non-exempt public records from this bid file prior to the hearing, they must submit a request to the Purchasing Division and pay any applicable copy costs. All requests for documents are subject to the California Public Records Act, including its standard 10-day

determination period and will be processed in the order received.

(d) Rules of Evidence (Hearing Officer or ALJ).

(1) All relevant oral and written evidence is admissible.

(2) Each party may produce witnesses and introduce exhibits on any matter relevant to the issues.

(3) Cross-examination, other than as permitted by the respective Hearing Authority, shall not be permitted.

(4) The hearing need not be conducted according to the technical rules of law relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in and of itself to support a finding unless it would be admissible over objection in civil actions in California.

(5) Copies of the reports and records of any governmental agency, division or bureau will be accepted as evidence in lieu of the original thereof.

(e) Order of Presentation and Close of Hearing.

The order of presentation shall be as follows:

(1) The bidder(s) shall present testimony and evidence.

(2) The City shall present testimony and evidence.

(3) Rebuttal evidence may be presented.

(4) Argument may be permitted.

Upon the conclusion of all testimony, evidence and argument, the hearing shall be closed and the matter submitted for decision.

(f) Decision by Hearing Authority.

The Hearing Authority's decision must be in writing and include findings of fact that determine:

- Whether the bidder is responsible;
- Whether the bidder is non-responsible, lacking the capability, resources, or integrity to reliably fulfil a contract, or otherwise;
- Whether the bidder is non-responsible due to a bid proposal irregularity;
- Whether that irregularity is minor and should be waived; or
- Whether the City should reject all bids.

Because all bidders have the opportunity to appeal and/or present evidence regarding the staff determination of non-responsibility, there shall be no appeal allowed of the findings of the Hearing Authority.

Copies of the decision of the Hearing Authority shall be served on the parties when available. The City Manager will have the discretion of determining the period of time the Hearing Authority will be allowed to render its decision including, without limitation, whether the Hearing Authority is to render a bench decision; provided such period of time is within twelve (12) working days of the hearing.

(g) Authority for Subsequent Hearing.

If a new staff determination of award results from the hearing process and

the City Manager, in its discretion, directs the Purchasing Manager to post such determination in accordance with Section 4, subsequent hearings may be held regarding the same bid file number if bidder(s), upon such posting or written notice, submits a timely, acceptable appeal hereunder which sets forth facts not previously considered by the Hearing Authority.

SECTION 7. Effect of Decision by Designated Hearing Authority.

The decision of the designated Hearing Authority shall constitute a recommendation to the City Manager. The City Manager or designee shall present to the Council its recommendations for its consideration. Following consideration thereof and in the event there is to be an award of the contract, the Council shall make a finding of responsibility or non-responsibility. Dependent upon the findings made for award, the Council may award the contract to the appellant bidder, may waive any minor irregularities, may award a bidder other than the appellant bidder, or may reject all bids.

SECTION 8. Working Day.

"Working day" means a City of Fresno regular business day.

SECTION 9. City Manager Authority.

The City Manager shall have the authority to adopt procedures that are consistent with this resolution.

SECTION 10. Council Authority.

A failure to comply precisely with the technical requirements set forth in this resolution shall not negate the Council's authority to make a determination of non-responsibility or any other determination within its authority. The Council's decision shall be final.

SECTION 11. Pre-requisite to Judicial Review.

The exercise by the bidder of its right to appeal under this resolution shall be a pre-requisite to such bidder seeking judicial review of the Council's decision.

SECTION 12. Validity.

If any section, subsection, sentence, clause or phrase of this resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this resolution. The Council hereby declares that it would have adopted this resolution, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

This resolution will be effective upon final approval.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, AMY K. ALLER, Interim City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2026.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2026
Mayor Approval/No Return: _____, 2026
Mayor Veto: _____, 2026
Council Override Vote: _____, 2026

AMY K. ALLER
Interim City Clerk

By: _____
Deputy Date

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _____
Jennifer M. Wharton Date
Deputy City Attorney