

CITY OF CALLAWAY FLORIDA



PURCHASING POLICY AND PROCEDURE MANUAL

Adopted: Feb. 28, 2023 Res. #23-06
Updated: April 25, 2023 Res. #23-08
Updated: May 9, 2023 Res. #23-11
Updated July 11, 2023 Res. #23-15

Contents

Page

• Table of Contents	1
• Introduction.....	2
• Purchasing Policies	3
• Purchasing Office Duties & Responsibilities	3
• Requesting Department Duties & Responsibilities.....	4
• Authorized Buyers	4
• Purchase Requisition & Purchase Order Procedures	4
• Blanket Purchase Orders	6
• Purchase Order Exceptions	6
• Purchasing Card Policy (P-Cards)	6
• Vendor Policies	6
• Formal Bid Procedures	7
▪ Prohibited Communications.....	9
• Piggyback.....	9
• Sole Source / Non-Competitive Negotiations.....	10
• Design-Build Contracts.....	11
• Procurement Procedures for Design-Build Services.....	11
• Florida Prompt Payment Act	12
• Auditing Compliance	12
• Tax Exempt Status / Tax Exempt Number	12
• Tax Exempt Status Granted to Contractor	12
• Risk Management Requirements	12
• Vendor Dispute Resolution Procedures	13
• Bid Protest Procedures	13

Introduction

The goal of the Purchasing Office is to promote the City's collective best interests through efficient, fair, economical, transparent, and controlled spending. This manual has been prepared to establish the necessary basic guidelines for effective and ethical procurement practices. All City employees will adhere to the procedures defined in the City of Callaway Purchasing Manual as it has been approved by the City of Callaway Board of Commissioners in effort to uphold the integrity of the City, and be in compliance with the ethics and procurement laws set forth by the Florida Legislature within the Florida Statutes.

As amendments to the manual for administrative or procedural changes become necessary by changes in law or for the purpose of internal work flow improvement supplemental pages will be issued to all City personnel.

Purchasing Policies

1. It is the policy of the City of Callaway Commission to recognize the Purchasing Office as the department responsible for coordinating the City's consolidated purchasing effort.
2. It is the intent of the City to provide all vendors with a fair and equal opportunity in which to compete for City business.
3. Goods and services offered by State Contract pricing are considered to be competitively bid and to have satisfied the requirements for competitive bidding.
4. It is the policy of the City of Callaway Commission to encourage local businesses to provide goods and services to the City of Callaway through the City's purchasing program.
5. Goods and services produced in the United States will be given preference when all other aspects in the bid selection process are equal.
6. It will be the policy of the City to consolidate for purchase and bidding, all goods and services in a similar nature.
7. It is the policy of the City to award a bid based upon the total aggregate items bid, when possible, rather than to segregate items out for individual awards.
8. The City reserves the right to reject all, or portions of any bid when it is deemed in the best interest of the City.
9. Contracts with organizations desiring to do business with the City shall have an Equal Opportunity Employment Policy which prohibits discrimination in employment because of race, creed, color, religion, or national origin as defined by Executive Order 11246 and 11375, and subsequent amendments.

Purchasing Office Duties & Responsibilities

1. The Purchasing Office shall be responsible for developing and administering the purchasing program for all City departments.
2. All purchases will be made pursuant to the provisions of the annual budget as adopted by the City Commission.
3. The Purchasing Office shall maintain adequate records for all purchasing transactions to include contracts, leases, and agreements.
4. The Purchasing Office shall assist City departments in soliciting quotes where formal bidding is not required.
5. The Purchasing Office will issue a purchase order number for goods or services over \$999.
6. The Purchasing Office will be responsive to department head requests for assistance with research in preparation for purchase requisitions or purchase orders.
7. The Purchasing Office will coordinate with the City Clerk's Office to aid and facilitate departments in the formal bid process when a purchase is expected to exceed \$25,000, as approved by the City Commission.
8. The Purchasing Office will maintain all purchasing related forms.
9. The Purchasing Office will ensure that all non-consumable tangible personal property valued greater than \$5,000 with a life expectancy greater than one year is

capitalized. Capital asset purchase and disposal information will be maintained by the Purchasing Office.

10. The Purchasing Office will coordinate with individual departments to perform a physical count of capital assets to ensure accuracy of records and integrity of security controls on an annual basis. Departments are responsible for providing physical inventory exceptions to the Purchasing Office. Annual inventories will be provided to Commission.

Requesting Department Duties & Responsibilities

1. All City employees are responsible for following the purchasing policies and procedures adopted by the City of Callaway Commission.
2. All City employees will use the appropriate forms supplied by the Purchasing Office for procurement of equipment, supplies, and services.
3. Department staff is responsible for verifying that budgeted funds are available for purchases made by requisition, purchase order, or P-card.

Authorized Buyers

An **Authorized Buyer** is an individual with a defined level of purchasing authority.

- o Level 1 Buyer - \$0 to \$499
 - o Non-probationary employee designated by department head.
 - o Level 2 Buyer - \$0 to \$999
 - o Department heads
 - o Level 3 Buyer - \$0 to \$10,000
 - o City Manager
1. Any purchases exceeding \$25,000 require a formal bid and must be approved by the Commission. (See Formal Bid Procedure.)
 2. Department heads assume full responsibility for all purchases made by their departments. Authorization of a Level 1 Buyer does not relieve the department head of responsibility.

Purchase Requisition & Purchase Order Procedures

A **Purchase Requisition** is a request to the Purchasing Office for supplies or services necessary to continue operating.

1. A requisition must include:
 - o Name and department requesting materials.
 - o Vendor name & address.
 - o Fund / Account number.

- o Total amount of order.
 - o Contract number or authorizing meeting date.
 - o Appropriate department level approval.
 - o Detail to include description, units, part numbers, and cost.
 - o City Hall listed as the bill to address.
 - o Delivery location and desired delivery date.
 - o Single item purchases exceeding \$2,500 require an attempt to obtain at least three quotes, but no less than two.
2. Requisitions should be completed by an authorized buyer and sent electronically to the Purchasing Office.
 - o Upon receipt of the purchase requisition, the Purchasing Office will create a purchase order, assign a number, and place the order.
 - o If a department wishes to place the order, specific instructions should be on the requisition for the Purchasing Office to create the purchase order, assign a number, and transmit the number back to the authorized buyer.
 3. Requisitions for services to City facilities which are generally shared by one or more departments will be prepared by the Purchasing Office. This includes, but is not limited to, repairs, cleaning, maintenance for buildings, telephones, faxes, copiers, printers, postage equipment, electrical, and plumbing.
 4. Requests for computer-related items will be submitted to the Purchasing Office in consultation with the IT contractor to ensure technical specifications are met.

A **Purchase Order** is a formal notice to a vendor to furnish the supplies or services specified on the form. A purchase order is required for the procurement of any items or services unless there is a written contract or it qualifies as an exception. (See Purchase Order Exceptions)

1. Purchase Orders will be issued after the submission of a properly executed purchase requisition, and the submittal of any other information required by this policy.
2. No purchase order or encumbrance of City assets may be made without an authorized purchase order or check request.
 - o Invoices received without prior issuance of a purchase order will be submitted with a written explanation to the City Manager and to the City Commission if over \$10,000 for approval. Unapproved invoices may be subject to disciplinary action.
3. An emergency exception for the purpose of this manual will be defined as a situation that exists where immediate services, materials or repairs are required to remediate a situation that poses a threat to public health, welfare, or safety. Emergency purchases may be made with a requisition number in lieu of a standard purchase order number. The requisition shall note that it is an emergency. Compliance with established purchasing procedures should take place no later than the morning of the next working day.

Blanket Purchase Orders

A blanket purchase order allows a department to make multiple purchases with one purchase order number. Blanket purchase orders are:

- o Issued for a period of time no less than one month and not to exceed 3 months.
- o Limited by the amount indicated.
- o Used for routine and recurring operating expenditures only.

Each department must have their own blanket purchase order when purchasing from the same vendor.

Department heads are responsible for monitoring the status of their current expenditures for blanket purchase orders.

Purchase Order Exceptions

There are certain circumstances under which the processing of a purchase order is unnecessary. These circumstances include:

- o Any purchase approved as to amount and vendor by the City Commission, however, will be encumbered on the basis of the contract and approved blanket purchase order issued for auditing purposes.
- o Service contracts for a fixed monthly amount pre-approved by City Commission will be encumbered on the basis of the contract and approved blanket purchase order issued for auditing purposes. (See Blanket Purchase Order).
- o During the period of a declared emergency by the City Commission, Mayor or Mayor Pro Tem, purchasing procedures are waived.
- o Requisitions, reports, invoices, and receipts must be completed and submitted to the Purchasing Office as soon as possible and require the signature of the City Manager.
- o Petty cash purchases not to exceed \$50 as authorized at the discretion of the department head.
- o Regular utility bills, telephone bills, insurance premiums, etc.
- o Employee travel and expenses.

Purchasing Card Policy (P-Cards)

Due to the uniqueness of the purchasing card system, a standalone policy has been developed.

Vendor Policies

1. **Open Competition.** It is the intent of the City to provide all vendors with a fair and impartial opportunity in which to compete for the City's business.
2. **Public Entity Crime.** In accordance with F.S. 287.133, any entity listed on the State Department of Management Services Convicted Vendor List shall be denied the right to conduct business or render any type of service for any municipal department or

division to the extent required by the debarment, suspension, or other determination of ineligibility by the State.

3. **Qualifications for Construction Contracting.** According to F.S. 489.113(2), no person who is not certified or registered shall engage in the business of contracting in the State of Florida. Construction work may be done by non-certified persons if the work is completed under the supervision of a person who is certified or registered within the scope of the supervisor's license, provided there are not specific requirements listed in F.S. 489.105(3) (d-o).
4. **Vendor List.** Any vendor can submit contact information to the Purchasing Office to be added to the City's Vendor List. It is the responsibility of the vendor to ensure that information on file is current and sufficient. Vendors removed from the Vendor List may be reinstated upon written request once the period of disbarment or suspension is over. A vendor may be removed from the City's Vendor List without notice for:
 - o Knowingly or negligently employing unauthorized aliens to work in the United States.
 - o Non-compliance with the City's Drug Free Workplace Policy requirement.
 - o Delinquent City Tax Assessments. Proof of payment is required and should be submitted with all bids.
 - o Failure to pay sub-contractors.
 - o Failure to comply with F.S. 119, Public Records.
 - o Failure to comply with terms and conditions of contract.
 - o Being listed on the Public Entity Crime List (F.S. 287.133).
5. **Litigation.** The City will not issue any purchase orders or contracts to any vendors currently involved in litigation with the City until a resolution is reached.
6. **Vendors** are required to submit a signed and completed Form W-9 to the Purchasing Office before receiving any payment from the City.

Formal Bid Procedure

The Purchasing Office will work with the City Clerk's Office in conjunction on all bid processes.

1. It is the policy of the City that all contracts with individual organizations desiring to do business with the City of Callaway are required to have a Drug Free Workplace Policy.
2. The requesting department in conjunction with the City Clerk's Office will formulate specifications using guidelines depicted later in the document under Writing Specifications.
3. The requesting department shall provide the City Clerk's Office with specifications and a written request signed by the appropriate Department head. Upon receiving the City Manager's approval, the City Clerk's Office will formally advertise the bid.
4. The City Clerk's Office shall determine the date, time and location for submitting bids, as well as the date, time, and location of the Public Bid Opening (F.S. 287.057).

5. The City Clerk's Office will advertise the request for bids at least once in a local newspaper and permit at least two weeks for the vendor(s) to respond. The City Clerk's Office will also ensure the advertisement for bid is posted to the City's website.
 - a) In accordance with F.S. 255.0525(2), the solicitation of competitive bids or proposals for any county, municipality, or other political subdivision construction project that is projected to cost more than \$200,000 shall be publicly advertised at least once in a newspaper of general circulation in the county where the project is located at least twenty-one (21) days prior to the established bid opening and at least five (5) days prior to any scheduled pre-bid conference. The solicitation of competitive bids or proposals for any county, municipality, or other political subdivision construction project that is projected to cost more than \$500,000 shall be publicly advertised at least once in a newspaper of general circulation in the county where the project is located at least thirty (30) days prior to the established bid opening and at least five (5) days prior to any scheduled pre-bid conference.
 - b) EXCEPTION: The advertising requirement can be waived by the City Manager in the event of an emergency. In accordance with F.S. 255.0525, as used in this section, the term "emergency" means an unexpected turn of events that causes:
 - i) An immediate danger to public health or safety;
 - ii) An immediate danger of loss of public or private property; or
 - iii) An interruption in the delivery of an essential government service.
6. The City Clerk's Office will distribute bid documents for all bids that do not contain a document fee assessment to vendor's requesting the package. For those bids requiring a document fee assessment, the City Clerk's Office or their designee shall distribute bids to those bidders from which payment of the document fee assessment has been received.
7. The requesting department will have representation at the public bid opening and will review the submitted bids to ascertain the lowest and best bid that provides the best value to the City. All bids will be opened in public and read aloud by the City Clerk's Office or designee.
8. Unless otherwise instructed, the requesting department will recommend the award of bid to the City Manager in writing with adequate justification.
9. The City Manager will include purchases in excess of \$10,000 on the next agenda for Commission approval.
10. The cancellation of an invitation for bids usually involves a loss of time, effort, and money spent by the City and bidders. Invitations should not be cancelled unless cancellation is clearly in the public interest; (1) where there is no longer a requirement for the services or supplies, or (2) where amendments to the invitation would be of such magnitude that a new invitation is desirable.
 - a) Notice of Cancellation shall:
 - i) Identify the invitation for bid by number, short title, or subject matter
 - ii) Briefly explain the reason the invitation is being cancelled; and
 - iii) Where appropriate, assure prospective bidders that they will be given an opportunity to bid on any re-solicitation of bids.

Prohibited Communication

1. Any form of communication shall be prohibited regarding a particular Request for Proposal, Request for Qualification, Invitation for Bid, or other competitive procurement between:
 - a) Any person or person's representative seeking an award from such procurement; and;
 - b) Any City Commissioner, any City employee, or any agent of the City who is authorized to act on behalf of the City on such procurement.
2. A person's representative shall include, but not be limited to, the person's employee, partner, officer, director, consultant, lobbyist, attorney or any actual or potential subcontractor or consultant of the person.
3. The prohibited communication period shall commence on the advertisement of the proposal, bid, or other procurement, and shall terminate at the time the City awards or approves a contract, rejects all bids or responses, or otherwise takes action which ends the procurement process. The prohibited communication period shall include any period in which a protest has been submitted and until final disposition of the protest, provided that the protestor may communicate with the City Clerk, City Manager and/or the City Attorney regarding the protest.
4. The provisions of this section shall not apply to:
 - a) Oral communications at any public proceeding, including pre-bid conferences, oral presentations before selection or evaluation committees, contract negotiations during any public meetings, presentations made to the City Commission, and bid protest hearings.
 - b) Communications with the City Attorney.
 - c) Written communications with City employees provided the communication is limited strictly to matters of procurement process or procedure as it relates to a specific solicitation document.
 - d) Contract negotiations between any City employee or the City Attorney and the intended awardee.
5. The provisions of this section shall not apply to any procurement in an amount less than \$35,000.00.
6. Prohibited communications shall result in disqualification from the particular request for proposal, request for qualification, invitation for bid, or other competitive solicitation and may be grounds for suspension or debarment from doing business with the City.

PIGGYBACK

The City of Callaway Board of Commissioners, in lieu of employing competitive contract award procedures for the purchase of goods or services, may authorize purchases through the State of Florida's term contracts. The Commission may also authorize purchases through contracts competitively awarded by other counties or municipalities within the State if the vendors for such contracts agree to provide the City of Callaway the same goods or services, under the same conditions, terms and prices as the other governments' contracts. Such "piggybacking" of government contracts is common practice in public purchasing and may provide favorable pricing while reducing the time delays and costs of the City of Callaway processing a competitive contract award on its own. The City shall

be cautious when piggybacking another entity's bid. Changes to terms, conditions, time frames, and other criteria are not allowable. It is recommended that the requesting department contact the original bidding agency to confirm whether or not they would recommend piggybacking of the award (e.g. Did the vendor perform appropriately?).

The following is required to be part of the procurement piggyback package:

- o A full copy of the Invitation to Bid
- o Vendor's price sheet
- o Vendor's signature
- o Notification of award
- o Date of purchase order or contract and expiration date.

Only purchases can be piggybacked; sale or trade-ins must be sold separately.

Sole Source / Non-Competitive Negotiations

Non-competitive negotiations may be used as a procurement method for purchases of supplies or services available from only one source; or sole brand or when it is determined by the requesting department head, Finance Director, or City Manager that competitive bidding is not feasible or not advantageous to the City. Sole Source means the only existing source of the items that meet the needs of the requesting department as determined by a reasonably thorough analysis of the marketplace. Sole Source purchasing of goods and services requires; 1) only one qualified source is available; 2) a written statement that a search for alternative sources has been made; and 3) justification of why the only source is acceptable to fit the needs of the requesting department. A request for a proprietary item does not justify a sole source procurement if there is more than one potential bidder for the item.

A sole source can be used under the following circumstances:

- o The needed supply or service is available from only one source / brand.
- o The supply or service is wanted for experimental trial or testing.
- o Additional supplies or services are needed to complete an ongoing task.
- o A supply or service is purchased from, or a sale is made to, another unit of government.
- o The item is a component or replacement part for which there is no commercial distributor.
- o Compatibility is the overriding consideration.
- o The item is a used item, which is subject to immediate sale.

Procedures for Processing Sole Source / Non-Competitive Negotiations

1. In processing requisitions for sole source / sole brand items, the Purchasing Office conducts negotiations as to price, delivery, terms, and conditions.
2. The Purchasing Office, in cooperation with the requesting department, prepares a recommendation for award.

Design-Build Contracts

Contracts for the design-build of public construction projects for the City of Callaway Board of Commissioners shall be awarded in accordance with this procedure. Design-build contracts are single contracts with a design-build firm for the design and construction of a public project.

Design-Build Firms must be certified pursuant to Florida Statute 489.119 to engage in contracting through a certified or registered general contractor (as defined in F.S. 471.023, 481.219, or 481.319).

The City Manager, in conjunction with the Purchasing Office will determine if the design-build method is appropriate for a particular requirement. The following factors will be considered when making the determination:

- o The potential for project cost savings and / or cost reduction.
- o The need or potential for reducing the time to complete the project.
- o The need or potential to expedite the completion, activation and operation of the project due to public service considerations or requesting department operational needs and requirements.
- o The potential for collaboration to develop designs and construction methodology that could provide a project with enhanced qualities of aesthetics, innovative use of materials, economy of construction, operational efficiency, and / or functional effectiveness.
- o The need or potential for protecting, preserving and enhancing the health, safety, and welfare of the public.

Procurement Procedures for Design-Build Services

Upon approval by the City Manager, procurement and contracting of design-build contract services shall be in accordance with F.S. 287.057 as follows:

1. A design criteria professional employed or contracted by the City shall prepare, produce and seal a design criteria package for use by the City in advertising for design-build firms, providing a basis for determining and selecting the most highly qualified design-build firms, soliciting competitive technical and price proposals from design-build firms, and providing a basis for awarding a design-build contract.
2. The Request for Proposals should contain a copy of the design criteria package, the scope of services including schedule and time frame, insurance coverage and bonding requirements, instructions regarding form, content, and manner in which the qualifications statement, technical proposal, and price proposal are to be submitted, weighted evaluation criteria for assessing the submitted proposals, a draft design-build contract including general and supplemental terms and conditions, and any other information deemed appropriate by the City.
3. The Notice of Intent (NOI) to solicit design-build services will be consistent with the City of Callaway Purchasing Manual, Section "Formal Bid Procedure".
4. Responding firms shall submit a technical and price proposal, in addition to other required documentation.

5. An evaluation team, comprised of either a contracted Design Criteria Professional or in-house staff, shall submit an alphabetical listing of the short listed firms, providing scoring sheets as back-up, to the City of Callaway Board of Commissioners for selection of one firm and up to two ranked alternates to negotiate and award a design-build contract with the selected firm, provided the final negotiated price does not exceed the price submitted in their proposal. The City may negotiate minor changes prior to the execution of the contract for the purpose of clarifying or refining the project requirements and the services to be performed.

Florida Prompt Payment Act

Vendors who provide goods and services will receive payment for those goods and services in a timely manner pursuant to F.S. 218.70, the Florida Prompt Payment Act. Invoices that remain unpaid after 45 days are subject to an interest penalty at the rate of one percent (1%) that is accrued on unpaid balances.

Auditing Compliance

Invoices submitted to or received by the Purchasing Office for payment will be matched to the initiating purchase order and forwarded to accounts payable for processing. Invoices require online approval of the items, cost and receipt of purchases invoiced. Any invoice over 10% of the purchase order requires approval of the difference.

Tax Exempt Status / Tax Exempt Number

All purchases made by the City of Callaway are exempt from all state and local use tax. It is City staffs responsibility to ensure that any time an order for goods or services is placed the vendor is provided the City's Tax Exempt I.D. Number. Personal use of the City's Tax Exempt I.D. Number is strictly prohibited. Any employee caught using the City's Tax Exempt I.D. Number for personal use will receive disciplinary action to include, but not limited to, immediate termination of employment. Additionally, F.S. 212.085, states that in addition to being liable for payment of the tax plus a mandatory penalty of 200 percent of the tax, such person shall be liable for fine and punishment as provided by law for a conviction of a felony of the third degree, as provided in F.S. 775.082, 775.083, or 775.084.

Tax Exempt Status Granted to Contractor

The City of Callaway is exempt from payment of sales taxes. As such, it is exempt from the payment of sales tax for the performance of work under construction contracts when it is determined to be in the best interest of the City. Tax agreements, if applicable, will be identified in the bid documents.

Risk Management Requirements

City contracts for goods or services shall include the following requirements:

The Contractor / Vendor is required to purchase and maintain minimum limits of \$500,000 per occurrence of all liability, which includes general liability and, if applicable, automobile liability.

The Contractor / Vendor agrees to hold the City harmless against all claims for bodily injury, sickness, disease, death or personal injury or damage to property or loss of use resulting from, arising out of the agreement, unless such claims are a result of the City's sole negligence.

The contractor / vendor shall maintain workers' compensation insurance and any other insurance coverage required by law for the benefit of employees. Required insurance shall be documented in the Certificates of Insurance and shall be provided to the City Purchasing Office.

Vendor Dispute Resolution Procedures

In the event a dispute occurs between a vendor and a City Department the vendor shall submit a written statement via certified mail no later than 45 day from the time when the invoice was submitted to the City specifying the nature of the dispute regarding payment of the invoice.

In the event a City Department has a dispute with an invoice submitted by a vendor, the appropriate department head will send a written statement, via certified mail, not later than thirty days of the receipt of the improper invoice, to the vendor specifying the reasons for the dispute. A copy will be provided to the City Manager and the Purchasing Office. The department head should verify the vendor's receipt of disputed invoice.

Any dispute unresolved at the department level will be reviewed by the City Manager, or his designee. The City Manager will recommend a final decision on the matter and inform the department head and vendor.

Bid Protest Procedures

1. Right to Protest

Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of contract may protest to the City Commission. Protestors shall seek resolution of their complaints initially with the City Attorney's Firm prior to protesting to the City Commission.

2. Filing a Protest

Any person who is affected adversely by a decision, or an intended decision of the City shall file with the City Clerk, a written notice of intent to protest within 72 hours after the posting of the bid tabulation or after receipt of the notice of intended decision. A formal written protest must be filed within 7 calendar days after the date he/she filed the notice of intent to protest. Failure to file notice of intent to protest or failure to file a formal written protest within the specified time frames shall constitute a waiver of proceedings under this Section. A written protest is considered filed with the City when all of the items required by this policy are delivered to and received by the City Clerk.

- a. The notice of intent to protest shall contain at a minimum: the name of the bidder; the bidder's address and phone number; the name of the bidder's

- representative to whom notices may be sent; the name and bid number of the solicitation; and a brief factual summary of the basis of the protest.
- b. The formal written protest shall: identify the protestant and the solicitation involved; include a plain, clear statement of the grounds on which the protest is based; refer to the statutes, laws, ordinances, or other legal authorities which the protestant deems applicable to such grounds; and specifically request the relief to which the protestant deems himself entitled by application of such authorities to such grounds.
 - c. The protester must include with the formal written protest a bid protest bond in the form of a certified check, cashier's check, or money order, which shall be made payable to the City in an amount equal to either five percent (5%) of the lowest acceptable bid, or \$5,000, whichever is less. The bond will be deposited with the City Clerk where it will be put into an account and the protester will receive a dated receipt.
3. **Settlement and Resolution**
The City Attorney's Firm shall, within 10 calendar days of receipt of the formal written protest, attempt to resolve the protest prior to any proceedings arising from the protest.
 4. **Protest Proceedings**
If the protest is resolved by mutual agreement between the City Attorney's Firm and the protester, any settlement shall be approved by the City Commission. If the protest cannot be resolved by mutual agreement, the City Attorney's Firm shall forward the matter to the City Commission. The decision of the Commission at the next regularly scheduled or special meeting shall be final. In no case will the protesting bidder or offeror be entitled to any costs incurred with the solicitation, including bid preparation costs and attorney's fee.
 5. **Disposition of Bid Protest Bond**
Should the protest be found to be without merit, the City shall retain the amount of the bid protest bond necessary to cover the cost and expense of staff time spent responding to and conducting the protest, including attorney's fees. If a decision favorable to the protester is rendered, a check for the full amount of the bond will be returned to the protester.
 6. **Stay/Emergency Action**
If the protest is filed in accordance with this bid protest procedure, the City shall not proceed further with the solicitation or award of the contract until the protest has been settled or the Commission renders a decision. Notwithstanding any of the timelines or procedures herein, nothing shall prevent the City and/or the City Commission from proceeding with a procurement even though the bid protest has not yet been resolved in the event an emergency procurement is necessary to protect the interests of the City.

7. Legal Challenge

After the City Commission renders a decision on a bid protest, any party with standing may challenge the decision by initiating an action in the Circuit Court of the Fourteenth Judicial Circuit in Bay County.