



DATE: September 25, 2024

TO: Waste Management Authority (WMA) Board

FROM: Timothy Burroughs, Executive Director
Pat Cabrera, Administrative Services Director
Justin Lehrer, Operations Manager

SUBJECT: Revision to the Agency's Purchasing Policy

SUMMARY

Staff recommends that the WMA Board approve revisions to the Agency's purchasing policy – specifically, adding a bid protest policy for service contracts over \$100,000.

DISCUSSION

Staff systemically reviews internal processes to ensure that the Agency is functioning in an efficient, effective, and responsive manner. Given the Agency is responsible for public funds, assessing contracting and bidding processes is a top priority.

Regarding bidding procedures, the Agency complies with the rules required by the California Uniform Public Construction Cost Accounting Act and California's Public Records Act. However, these laws do not provide a process for protesting awards for service-related contracts. A survey of StopWaste member agencies indicated that only a few of the member agencies had any related policies (discussed more below). However, staff recommends including a protest process for Agency service contracts over \$100,000.

Survey of Member Agencies (Attachment B)

Out of the 14 cities in Alameda County and the County itself, three have protest procedures in their municipal codes that may apply to service contracts. For example, in Fremont, bidders of service contracts over \$100,000 may protest in accordance with code sections that determine procedures for such protests, including eligibility, form, and timeline. In Piedmont, bidders for service contracts may protest purchase decisions within time frames specified by the City's municipal code. Albany's contract protest procedures typically only apply to public works projects, but its code provides that the City may also extend its protest procedures to other bidding processes on a case-by-case basis. None of the other 11 cities in Alameda County nor

the County itself have provisions for the protest of service contract awards in their municipal codes.

Although not legally required, staff has concluded that having a mechanism for service contracts exceeding \$100,000 is a reasonable threshold as it still allows for efficiency and is consistent with the Executive Director's signing authority, while also providing a protest option for bidders.

Upon adoption of the revised purchasing policy, all requests for proposal will include language describing this policy so that prospective bidders will know the protest options available.

Agency staff who are responsible for conducting bid requests receive training on and comply with the Agency's policies and processes involving the issuance, evaluation, and recommendations regarding requests for proposals and will be apprised of this addition upon Board approval.

The protest policy was reviewed by both Authority Counsel and County Counsel.

RECOMMENDATION

That the WMA Board approve the revised purchasing policy resolution, which includes the protest policy.

Attachment A: Purchasing Policy Resolution

Attachment B: Member Agency Survey

ATTACHMENT A

ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY

RESOLUTION #WMA

MOVED:

SECONDED:

AT THE MEETING HELD SEPTEMBER 25, 2024

**THE AUTHORITY AUTHORIZES AN AMENDMENT TO THE PURCHASING POLICY TO INCLUDE A
PROTEST PROVISION FOR SERVICE CONTRACT AWARDS**

WHEREAS, the Purchasing Policy of the Alameda County Waste Management Authority (“Agency”) was adopted by Resolution No. 2022-06; and

WHEREAS, a recent review of the Agency’s bidding process determined that a protest process was appropriate for service contracts exceeding \$100,000; and

WHEREAS, adopting this process provides a mechanism for bidders of service contract exceeding \$100,000 to raise concerns or objections regarding the selection process; and

WHEREAS, the process should reside in the Agency’s Purchasing Policy.

NOW, THEREFORE, BE IT RESOLVED, that the Purchasing Policy of the Alameda County Waste Management Authority is hereby amended to include the Service Contract Protest Policy attached as Exhibit A.

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

Arliss Dunn, Clerk of the Board

Exhibit A

Alameda County Waste Management Authority

Service Contract Protest Policy

This policy applies to Agency service contracts for services exceeding \$100,000 per fiscal year. Contract awards below this threshold are not subject to protest. Protests shall be handled in accordance with the process below. This policy does not apply to contracts for a public project as that term is defined in Public Contract Code section 22002(c).

Contracts are awarded based on evaluation criteria, which are based on the specific service to be provided and include the following, along with additional criteria defined in the specific RFP or RFQ.

- Demonstration of adequate qualifications, experience, and capacity to accomplish the tasks and activities specified in the RFP/RFQ/contract.
- A clear and comprehensible proposal that is responsive to the needs of the Agency.
- Demonstrated track record of providing superior customer service and recognition of the Agency's public service mission.
- Ability to contract with the ACWMA and meet the basic [insurance and contracting requirements](#) outlined in the RFP/RFQ/contract/grant agreement.

The evaluation criteria will be described in the RFP or RFQ.

When the Agency has selected a contractor for negotiation of a final contract, a Notice of Intent to Award shall be given via e-mail to the selected contractor(s) and a copy provided to all parties who responded to the RFP or RFQ.

A protest must be in writing and must be received by the Clerk of the Board before 5:00 p.m., no later than three (3) business days after the day on which the Notice of Intent to Award was sent to the respondents. The protest must contain a complete statement of the basis for the protest, the relief requested and attach all supporting documentation. Material submitted after the protest deadline will not be considered. The protest must include the name, address, email address, and telephone number of the protesting bidder and any person submitting the protest as an authorized representative of the protesting bidder. Protests may be submitted only by a party that has submitted a bid or proposal in response to the RFP or RFQ. A subcontractor of a bidder or proposer may not submit a protest. A party may not rely on a protest submitted by another party, but must pursue its own protest in a timely manner.

Upon timely filing of a protest that contains all the required information, the Agency shall notify the party whose bid or proposal is being protested and shall investigate the protest. If additional information is requested by the Agency, the party from whom it is requested shall deliver the information within the time period specified in the request.

A protestor is not entitled to a formal hearing. The protest will be heard by the Executive Director, who will review the protest information and decide what action, if any, should be taken in response to the protest. The Executive Director will advise the protestor of the decision within three business

days of the decision. The decision is final and non-appealable. Upon timely filing of a protest that contains all the required information, no contract shall be issued unless and until the Executive Director makes a decision that allows the contract to proceed.

The procedures set forth herein are the sole and exclusive remedy of a bidder or proposer to dispute the award of a contract or establishment of a bidders' list subject to these procedures. A protest that does not comply with these procedures may be summarily rejected by staff. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the protest.

ATTACHMENT B

SUMMARY OF WASTE MANAGEMENT AUTHORITY MEMBER AGENCY BID PROTEST PROCEDURES

The following table lists each member agency with a link to the municipal code section(s) most relevant to that city’s purchasing procedures for service contracts and summarizes the protest procedures specified in the code. The summary column also includes information on the constraints on selecting service contracts. Note that cities may have established protest procedures through internal purchasing policies or by a City Council action that is not reflected in the municipal code.

City	Link to Relevant Code Section	Summary
Alameda	<p>Article IV. - Contracts: https://library.municode.com/ca/alameda/codes/code_of_ordinances?nodeId=CHIIAD_ARTIVCO_2-59AUCO</p> <p>Article V. - Administrative Procedures and Policies: https://library.municode.com/ca/alameda/codes/code_of_ordinances?nodeId=CHIIAD_ARTVADPRPO</p>	<p>Protest procedures: none found.</p> <p>Neither Article IV, Chapter 2-59 governing contracts (which includes service contracts, 2-59.4), nor Article V, Chapter 2-61 governing bidding procedures on public projects and goods and supplies, contemplates procedures for protest or appeal.</p>
Albany	<p>13-18 - Protests of Contract Award: https://ecode360.com/37934737</p> <p>2-27 - Purchasing Policies: https://ecode360.com/34831591#34831591</p>	<p>Protest procedures: bidders of major public works contracts can protest contract awards, but bidders of service contracts generally cannot. However, the City reserves the right to apply protest procedures for public works contracts to other bidding processes.</p> <p>Protest procedures apply to Major Public Works Contracts. 13-18.1. However, the City reserves the ability to apply these procedures to other bidding processes when “otherwise specified in the applicable request for qualifications, request for proposals, request for quotes, or other such</p>

		<p>invitation for a competitive procurement process. 13-18.1(h).</p> <p>Contracts for services for individuals or firms possessing a high degree of skill, for utility services and sole vendors are exempt from the City's bidding policies. 2-27.2.</p>
Berkeley	<p>Berkeley Municipal Code: https://berkeley.municipal.codes/BMC</p>	<p>Protest procedures: none found.</p> <p>Searched: “purchase,” “service contract,” “purchase appeal.” Nothing relevant found about appeals of service contracts. The Berkeley municipal code does not appear to have a section on purchase procedures.</p>
Dublin	<p>Chapter 2.36 - Contracts and Purchasing: https://www.codepublishing.com/CA/Dublin/#!/html/Dublin02/Dublin0236.html</p>	<p>Protest procedures: none found.</p> <p>Chapter 2.36 covers purchasing procedures, including for services.</p> <p>For general service contracts less than \$5,000, “comparative pricing is expected to secure the lowest price.” 2.36.070.</p> <p>For general service contracts of at least \$5,000 and less than \$45,000, the vendor that submits the lowest total cost bid consistent with the factors for responsiveness and responsibility in 2.36.060 receives the award. 2.36.080.</p> <p>For general service contracts at least \$45,000, contracts must be awarded to the lowest responsive, responsible bidder, except as otherwise provided by the code. 2.36.090(h).</p> <p>Contracts for consultant or professional services are exempt from the competitive bidding process, but the Purchasing Agent must establish administrative procedures for purchases of professional services from private architectural, landscape architectural,</p>

		engineering, environmental, land surveying, or construction project management firms. 2.36.100.
Emeryville	Chapter 6 – Purchasing System: https://www.codepublishing.com/CA/Emeryville/#!/Emeryville03/Emeryville036.html#3-6	Protest procedures: none found. Service contracts are exempt from purchasing procedures. Title 3, Chapter 6.02(a). Regardless, the chapter on purchasing system does not contemplate protest or appeals.
Fremont	Chapter 3.20 - Purchasing Code: https://www.codepublishing.com/CA/Fremont/#!/Fremont03/Fremont0320.html#3.20	Protest procedures: bidders of service contracts above \$100,000 may protest in accordance with the requirements in Chapter 3, Article VIII: Protests and Appeals. The protest procedures in Section 3.20.330 apply to contracts for services over \$100,000, excluding public project construction. 3.20.330(a)(3). These procedures determine eligibility, statute of limitations, form, effect of failure to comply, investigation, and review and determination of protests. Section 3.20.340 on appeal hearings also sets forth procedures for appeals of “determinations” made by the city manager. However, this section on appeals hearings does not apply to contract protest determinations made in accordance with the Section 3.20.220 protest procedures. 3.20.330(h)(2).
Hayward	Article 8. Public Works Contracts: https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH2GOAD_ART8PUWOCO_S2-8.14ROONSECO	Protest procedures: none found. Article 8 on Public Works Contracts also includes a section on Routine and Ongoing Service Contracts. “Certain routine and ongoing service contracts, regardless of the dollar amount, shall be authorized on an annual open purchase order or an agreement for services in accordance with City policies and procedures governing purchasing activity.” Chapter 2, Article 8, Sec. 2-8.14. However, this chapter does

		not specify any policies and procedures for appeals or protest of government purchases.
Livermore	<p>Livermore Municipal Code: https://www.codepublishing.com/CA/Livermore/?LivermoreOT.html&?f</p>	<p>Protest procedures: none found.</p> <p>Chapter 2.68, Contracts and Purchasing, governs purchasing procedures for contracts including for services.</p> <p>For service contracts \$5,000 or less, “additional purchasing procedures shall be established by an administrative regulation of the City Manager.” Section 2.68.350.</p> <p>For service contracts between \$5,000 and \$50,000, purchases must follow the procedure in Section 2.68.360. These procedures require that the city award a contract to the best value bidder, as defined by Section 2.68.040, when the contract is for \$25,000 or less. The code is ambiguous as to whether the requirement to take the best value bid also applies to contracts between \$25,000 and \$50,000. 2.68.360(5).</p> <p>For service contracts over \$50,000: The City Manager or City Council has the discretion to reject any and all bids presented and may readvertise for bids.</p>
Newark	<p>Chapter 3.04 - Purchasing System: https://library.municode.com/ca/newark/codes/code_of_ordinances?nodeId=CD_ORD_TIT3REFI_CH3.04PUSY</p> <p>Chapter 3.06 - Bidder Pre-Qualification Procedures (for public works construction projects):</p>	<p>Protest procedures: found for public works construction projects, but not for service contracts.</p> <p>Chapter 3.06 includes an appeals procedure for prospective bidders of <u>public works construction</u> projects who want to contest pre-qualification decisions. There is no provision in this chapter extending the appeals procedure to service contract bidders.</p> <p>Code Chapter 3.04 covers purchasing procedures, including for services. The chapter establishes a</p>

	https://library.municode.com/ca/newark/codes/code_of_ordinances?nodeId=CD_ORD_TIT3REFI_CH3.06BIPALPR_3.06.030APHE	<p>tiered system for purchases of services based on price.</p> <p>For contracts less than \$5000, the city shall take the lowest price bid. 3.04.050</p> <p>For contracts at least \$5000 and less than \$50,000, the city shall consider factors for “responsiveness and responsibility” specified in 3.04.060.</p> <p>For contracts at least \$50,000, the city shall take the lowest responsive, responsible bidder, unless otherwise provided. 3.04.070.</p> <p>Contracts for consultant or professional services are exempt from the code chapter, but certain professional services are subject to additional procedures to be established by the city purchasing agent. 3.04.080.</p>
<p>Oakland</p>	<p>Chapter 2.04 - Purchasing System:</p> https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=TITLE2ADPE_CH2.04PUSY	<p>Protest procedures: none found.</p> <p>The Purchasing Code in Chapter 2.04 establishes procedures for the purchase of services, professional or otherwise. The city is required to award the contract to the lowest responsible bidder, as defined in the chapter. 2.04.050(E). Contracts for professional or specialized services are exempt from this requirement. 2.04.050(I)(1). Contracts for professional or specialized services over \$50,000 must be awarded based on “demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the City.” The code chapter does not provide for appeals or protest procedures.</p>
<p>Piedmont</p>	<p>Piedmont City Code:</p> https://piedmont.ca.gov/government/charter code	<p>Protest procedures: bidders for service contracts can protest purchase decisions within a specified time frame.</p> <p>Section 2.173, “Appeal from Decision to Purchase,” enables bidders to appeal purchase decisions within</p>

		<p>10 days of the date of award or within the time limits specified in the notice inviting bids, whichever period is shorter.</p> <p>Section 2.165 requires contracts over \$5,000, including for services, to be awarded to the “lowest responsive, responsible qualified bidder,” as defined in the chapter. Contracts for professional services, however, must be awarded based on demonstrated competence and professional qualifications for the services required.</p>
Pleasanton	<p>Chapter 2.48 - Selection Procedures for the Development of Lists of Qualified Firms for Certain Professional Services: https://ecode360.com/43019460</p>	<p>Protest procedures: none found.</p> <p>Chapter 2.48 establishes procedures for the selection of certain services: architectural, engineering, environmental, land surveying and construction project management. The city must award contracts to the "most qualified" firm. 2.48.050(D). This chapter is silent on protest or appeal procedures.</p> <p>There do not appear to be other code provisions for the purchase of service contracts. Search terms used: “purchase,” “service,” “service contract.”</p>
San Leandro	<p>Chapter 1-6 - Purchasing, Personal Services and Surplus Sales: https://ecode360.com/44066063</p>	<p>Protest procedures: none found.</p> <p>There are no procedures specified in Chapter 1-6 (governing Purchasing, Personal Services, and Surplus) for appeals or protests of purchase decisions. The city purchasing agent has the discretion to reject any bid received pursuant to Chapter 1-6: Purchasing, Personal Services and Surplus Sales. 1-6-230.</p>
Union City	<p>Chapter 2.32 - Purchasing System: https://ecode360.com/43306263#43306263</p>	<p>Protest procedures: none found.</p> <p>Chapter 2.32 establishes a tiered system for purchases of <u>general services</u> based on price: less than \$5000 (take the lowest bid), 2.32.050; greater than or equal to \$5000 and less than \$50,000 (consider specified factors for “responsiveness and</p>

		<p>responsibility), 2.32.060; and greater than or equal to \$50,000 (take the lowest responsive, responsible bidder unless otherwise provided) 2.32.070.</p> <p>Contracts for <u>consultant or specialized services</u> are exempt from the purchasing requirements in Chapter 2.32. 2.32.080(A)(1). However, the Purchasing Agent is required to establish administrative procedures for purchases of contracts for professional services from private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms.</p> <p>This chapter is silent on protest procedures.</p>
<p>County of Alameda</p>	<p>County Administrative Code</p> <p>Chapter 4.12</p> <p>https://library.municode.com/ca/alameda_county/codes/administrative_code?nodeId=TIT4FI_CH4.12PUPR</p>	<p>Chapter 4.12 sets forth general purchasing procedures. For contracts expected to exceed \$100,000, formal sealed bids are required (4.12.020). The Chapter provides that contracts entered in violation of its provisions may be voided by the Board of Supervisors (4.12.090) but does not establish protest procedures.</p> <p>Alameda County describes a protest procedure in their RFP template, but there is no reference to that procedure in the County’s Administrative Code.</p>