SERVICES CONTRACT SOLICITATION PROTEST POLICY
IMPLEMENTATION GUIDELINES

This document ("Guidelines") provides instructions on how to implement the Los Angeles County Board of Supervisors ("Board") Services Contract Solicitation Protest Policy (Policy No. 5.055) ("Protest Policy"), the revised version of which was adopted by the Board on March 31, 2009 and becomes effective June 1, 2009. These Guidelines address the following areas:

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Introduction

Any proposer who, in the course of a competitive solicitation for a Board-approved services contract, (i) would have submitted a proposal but for a requirement or provision in the solicitation document, or (ii) is determined non-responsive, or (iii) is not being recommended to the Board for award of a contract, may request the applicable levels of review of such solicitation, as provided in the Protest Policy.

As used in these Guidelines:

1. The term "proposer" is defined as (a) any person or entity that submits a bid, proposal or other response to a services contract solicitation

conducted by any department or agency that is governed by the Board and (b) for purposes of the Solicitation Requirements Review only, any person or entity that can demonstrate that it would have submitted a bid, proposal or other response to such a solicitation, but for a requirement or provision in the solicitation document that created an unfair disadvantage for the proposer.

2. The term "proposal" is defined as a bid, proposal, or other response to a services contract solicitation.

3. The term "evaluation document" is defined as the term is defined in Board Policy No. 5.054 (Evaluation Methodology for Proposals).

Throughout the review process, the County has no obligation to delay or otherwise postpone an award of contract based on a proposer protest. In all cases, the County reserves the right to make an award when it is determined to be in the best interest of the County to do so.

Notification to Vendor

All issued solicitation documents should include information on how a proposer may request a review. The most current solicitation language may be accessed at http://web.co.la.ca.us/lacounty/svcscontractingmanual/ by selecting "Model Solicitation Documents."

Grounds for Review

Unless state or federal statutes or regulations otherwise provide, the grounds for review of any departmental determination or action provided for under the Protest Policy are limited to the following:

- Review of Solicitation Requirements
- Review of a Disqualified Proposal
- Review of Department's Proposed Contractor Selection

The following describes the procedures to be followed for each of these areas.

Solicitation Requirements Review

Any person or entity may seek a Solicitation Requirements Review by submitting a written request for review to the department conducting the solicitation as described in this section of these Guidelines. A request for a Solicitation Requirements Review should be granted if it satisfies all of the following criteria:

1. The request for a Solicitation Requirements Review is made within ten business days of the issuance of the solicitation document;

2. The request for a Solicitation Requirements Review includes documentation, which demonstrates the underlying ability of the person or entity to submit a proposal;

3. The request for a Solicitation Requirements Review itemizes in appropriate detail, each matter contested and factual reasons for the requested review; and

4. The request for a Solicitation Requirements Review asserts that either:

   (a) application of the minimum requirements, evaluation criteria and/or business requirements unfairly disadvantages the person or entity; or,
   (b) due to unclear instructions, the process may result in the County not receiving the best possible responses from prospective proposers.

Requests for a Solicitation Requirements Review not satisfying all of these criteria may, in the department's sole discretion, be denied.

Wherever possible, the Solicitation Requirements Review should be performed by one or more departmental representatives with services contracting knowledge or experience, who were not involved to a substantial degree with the solicitation.

After a request for a Solicitation Requirements Review is received from a proposer, the department should:

- Ensure the request was received within the timeline specified; and

- Review the request to determine if it itemizes in appropriate detail each matter contested, as well as any factual reason(s) for the requested review.

The Solicitation Requirements Review shall be completed and the department's determination shall be provided to the proposer, in writing, within a reasonable time prior to the proposal due date.

Disqualification Review

A proposal may be disqualified from consideration because a department determined it was non-responsive at any time during the review/evaluation process. If a department determines that a proposal is disqualified due to non-

responsiveness, the department shall notify the proposer in writing and provide the following information:

- The specific solicitation criteria the proposal failed to meet;
- The grounds on which the proposer may request a Disqualification Review;
- The specific timeframe within which the proposer must request a Disqualification Review;
- The Transmittal form to Request a Disqualification Review; and
- Direction to the proposer to include appropriate factual support on each ground asserted in the request for a Disqualification Review as well as copies of all documents and other material which support its assertions.

A copy of the Transmittal Form to Request a Disqualification Review can be accessed at http://web.co.la.ca.us/lacounty/svcscontractingmanual/ by selecting "Model Solicitation Documents".

Upon receipt of the department's written notification of non-responsiveness, the proposer may submit a written request for a Disqualification Review by the date specified in the written notification.

A request for a Disqualification Review should be granted if it satisfies all of the following criteria:

1. The person or entity requesting a Disqualification Review is a proposer;
2. The request for a Disqualification Review is submitted timely; and
3. The request for a Disqualification Review asserts that the department's disqualification of the proposal was erroneous (e.g. factual errors, etc.) and provides factual support on each ground asserted as well as copies of all documents and other material that support the assertions.

Requests for a Disqualification Review not satisfying all of these criteria may, in the department's sole discretion, be denied.

Whenever possible, a Disqualification Review should be performed by one or more departmental representatives with services contracting knowledge or experience, who were not involved to a substantial degree with the solicitation.

After a request for a Disqualification Review is received from a proposer, the department should:

- Ensure the request was received within the timeline specified; and

- Review the request to determine if it itemizes in appropriate detail each ground asserted, as well as any factual reason(s) for the requested Disqualification Review.

The Disqualification Review shall be completed and the determination shall be provided to the proposer, in writing, prior to the conclusion of the evaluation process.

Department's Proposed Contractor Selection Review

Selection of Proposer and Completion of Negotiations

Upon completion of the evaluation, the department notifies the recommended proposer and commences contract negotiations with that proposer. Upon completion of negotiations, the department obtains a letter ("Letter of Intent") from an authorized officer of the recommended proposer that the negotiated contract is a firm offer of the recommended proposer, which shall not be revoked by the recommended proposer pending the department's completion of the Protest Policy process and Board approval. A sample Letter of Intent can be accessed at http://web.co.la.ca.us/lacounty/svcscontractingmanual/ by selecting "Model Solicitation Documents".

NOTE: Once the department obtains a Letter of Intent, absent extraordinary circumstances, the department will release the recommended proposer's proposal and corresponding evaluation documents only, with any justifiable portions redacted, in response to California Public Records Act requests.

Departmental Debriefing Process

NOTE: Debriefings are required to be provided under these Guidelines only in connection with solicitations where the responses are evaluated and scored (as opposed to being awarded to the lowest cost, responsive and responsible bidder). For solicitations being awarded to the lowest cost, responsive and responsible bidder, departments should include the manner and timeframe for submitting a Notice of Intent to Request Proposed Contractor Selection Review (described at the end of this section of these Guidelines) in the letters notifying the remaining proposers that they were not selected (described in the next paragraph of this section of these Guidelines).

Concurrent with notifying the recommended proposer as described in the section of these Guidelines entitled "Selection of Proposer and Completion of Contract Negotiations," the department shall additionally notify the remaining proposers in writing that they were not selected and that they may request a Debriefing within the timeframe specified in the written notification. A request for a Debriefing may, in the department's sole discretion, be denied if it is not submitted within the specified timeframe.

A Debriefing is conducted by the individual within the department who was charged with administering the solicitation process. If the proposer requests a Debriefing, the department should:

- Ensure the request was received within the specified timeframe; and
- Contact the proposer and schedule a Debriefing meeting.

The purpose of the Debriefing is to compare the proposer's response to the solicitation document with the evaluation document. The proposer shall be debriefed only on its response and evaluation documents. It is helpful for the proposer to understand the strengths and weaknesses of its proposal, as reflected in the score it received in the evaluation. Because contract negotiations are not yet complete, other proposers' responses and/or evaluation documents shall not be discussed. However, to provide the proposer with proper context, the proposer should be informed as to its relative ranking, i.e. points received compared to other proposals.

During or following the Debriefing, the department shall instruct the proposer that if the proposer is not satisfied with the results of the Debriefing, the proposer may, within a specified timeframe following the Debriefing, submit a Notice of Intent to Request a Proposed Contractor Selection Review. The department shall provide the proposer with a copy of the Notice of Intent to Request a Proposed Contractor Selection Review, which can be accessed at http://web.co.la.ca.us/lacounty/svcscontractingmanual/ by selecting "Model Solicitation Documents."

The department shall additionally inform the proposer that, once the department has completed contract negotiations with the recommended proposer, each proposer that has timely submitted a Notice of Intent to Request a Proposed Contractor Selection Review will be provided an opportunity to request a Proposed Contractor Selection Review. In addition to requesting prior notification of the intent to request a Proposed Contractor Selection Review, the Notice of to Request a Proposed Contractor Selection Review also asks the proposer to notify the department if the proposer wants copies of the recommended proposer's proposal and corresponding evaluation documents, when the same are made available for release in accordance with these Guidelines.

Proposed Contractor Selection Review

Following receipt of the Letter of Intent as described in section of these Guidelines entitled "Selection of Proposer and Completion of Negotiations," the department shall notify each proposer that has timely submitted a Notice of Intent to Request a Proposed Contractor Selection Review, in writing that such proposer may request a Proposed Contractor Selection Review by the date

specified in the written notification. The written notification should include a copy of the Transmittal Form to Request a RFP Proposed Contractor Selection Review and should instruct the proposer to include full and complete factual information on each ground for review asserted in the proposer's request. A copy of the Transmittal Form to Request a RFP Proposed Contractor Selection Review can be accessed at http://web.co.la.ca.us/lacounty/svcscontractingmanual/ by selecting "Model Solicitation Documents." If requested under the Notice of Intent to Request a Proposed Contractor Selection Review, the written notification should include copies of the recommended proposer's proposal and corresponding evaluation documents.

A request for a Proposed Contractor Selection Review should be granted if all it satisfies all of the following criteria:

1. The firm/person requesting a Proposed Contractor Selection Review is a proposer;
2. The request for a Proposed Contractor Selection Review is submitted timely;
3. The firm/person requesting a Proposed Contractor Selection Review asserts in appropriate detail with factual reasons one or more of the following grounds for review:

   (a) The department materially failed to follow procedures specified in its solicitation document. This includes:
   - Failure to correctly apply the standards for reviewing the proposal format requirements.
   - Failure to correctly apply the standards, and/or follow the prescribed methods, for evaluating the proposals as specified in the solicitation document.
   - Use of evaluation criteria that were different from the evaluation criteria disclosed in the solicitation document.

   (b) The department made identifiable mathematical or other errors in evaluating proposals, resulting in the proposer receiving an incorrect score and not being selected as the recommended contractor.

   (c) [NOTE: Applicable only to solicitations where the responses are evaluated and scored (as opposed to being awarded to the lowest cost, responsive and responsible bidder).] A member of the Evaluation Committee demonstrated bias in the conduct of the evaluation.

   (d) Another basis for review as provided by state or federal law; and

4. The request for a Proposed Contractor Selection Review sets forth sufficient detail to demonstrate that, but for the department's alleged failure, the firm/person would have been the lowest cost, responsive, and responsible bidder or highest-scored proposer.

The assertions included in a request for a Proposed Contractor Selection Review may be with respect to the requesting proposer's proposal and/or with respect to the recommended proposer's proposal, provided the request for the Proposed Contractor Selection Review satisfies all of the four criteria identified above. Requests for a Proposed Contractor Selection Review not satisfying all of these criteria may, in the department's sole discretion, be denied.

After a request for a Proposed Contractor Selection Review is received from a proposer, the department should:

- Ensure the request was received within the timeline specified; and

- Review the request to determine if it itemizes in appropriate detail each ground asserted, as well as any factual reason(s) for the requested review.

Wherever possible, a Proposed Contractor Selection Review is performed by one or more departmental representatives with services contracting knowledge and experience, who did not participate to a substantial degree in the solicitation in question.

Upon completing the Proposed Contractor Selection Review, the department representative shall issue a written decision to the proposer within a reasonable time, and always before the date the contract award recommendation is to be heard by the Board. The written decision should state that if the proposer is not satisfied with the results of the Proposed Contractor Selection Review, it may request a review by the County Review Panel within the timeframe specified in the written decision.

Additionally, the written decision should attach a copy of the Transmittal Form to Request a County Review Panel and should instruct the proposer to:

- Include appropriate factual support on each ground asserted;
- Include all documents and other material which support its assertions;
- Include all items in their request as only the items referenced will be considered at the County Review Panel meeting;
- Limit the items included in their request to items raised in the Proposed Contractor Selection Review and new items that (i) arise from the department's written decision and (ii) are on of the appropriate grounds for requesting a Proposed Contractor Selection Review as listed above; and

- Inform the County if legal counsel will be accompanying them to the County Review Panel meeting.

A copy of the Transmittal form to Request a County Review Panel can be accessed at http://web.co.la.ca.us/lacounty/svcscontractingmanual/ by selecting "Model Solicitation Documents."

County Review Panel Process

After a request for a County Review Panel is received from a proposer, the department should:

- Ensure the request was received within the timeline specified; and

- Review the request to determine if it itemizes in appropriate detail each matter contested, as well as any factual reason(s) for the requested review.

Request to Convene a Panel; Required Panel Materials

In order to convene a County Review Panel, the department submits a written request, including the timeframe for completion of the review, to the Chief Executive Office ("CEO"). The written request shall include five (5) copies of the following documentation (collectively, "Panel Materials"):

- The request for a Panel and supporting documentation;
- A copy of the solicitation document;
- A copy of the proposal being reviewed;
- If applicable, a copy of the recommended proposer's proposal ;
- A copy of the evaluation documents for proposal being reviewed and, if applicable, for the recommended proposer;
- Copies of any additional correspondence to and from the requesting proposer;
- A summary of the Debriefing;
- A copy of the request for a Proposed Contractor Selection Review and the department's decision; and
- Any other pertinent documentation.

A copy of the Letter to CEO to Convene County Review Panel can be accessed at http://web.co.la.ca.us/lacounty/svcscontractingmanual/ by selecting "Model Solicitation Documents."

Selection of Panel Members

Upon receipt of a written request to convene a County Review Panel that meets the applicable requirements of these Guidelines, the CEO shall convene a Panel

from a candidate pool of potential Panel members. The pool will consist of contract managers and contract analysts in departments. When convening a Panel, the CEO shall select from the candidate pool three individuals from departments other than the department that administered the solicitation. The CEO shall appoint one of the three individuals to serve as Chair. The Panel members shall have services contracting knowledge. No member may have prior involvement with the solicitation.

Once all Panel members have been selected, the CEO will distribute the Panel Materials to each Panel member and the County Counsel for the Panel. NOTE: With respect to each convened Panel, absent extraordinary circumstances, copies of all Panel Materials, with any justifiable portions redacted, will be released upon request without delay.

Brown Act Considerations

Each County Review Panel is a Brown Act (California Government Code §§ 54950 et seq.) body and its meetings must be conducted in accordance with the Brown Act. This requires, in summary, that:

- Meetings of two or more Panel members must be properly noticed and open;
- Panel members cannot engage in closed "serial meetings," whether in person, by phone or e-mail;
- Panel agenda must be posted at the Panel meeting site seventy-two (72) hours in advance of the Panel meeting;
- Panel meeting must be limited to that which is listed on the Panel agenda;
- Public must be allowed to comment; and
- Violators may be subject to civil and criminal penalties.

Chair Responsibilities

County Review Panel Chairs are responsible for coordinating their respective Panel meetings. After receiving CEO notice of Panel member selection, the Chair shall contact the CEO and County Counsel for the Panel for direction on these responsibilities.

Conducting the Review Panel

The County Review Panel shall be conducted in accordance with the following guidelines:

- The review is to be facilitated by the County Review Panel Chair.
- Participants should be advised that (ii) the review by the County Review Panel is not a formal legal proceeding and (ii) the Panel makes recommendations only, which are not binding on the department.
- The review should be limited to what was presented in the request for review. No new issues can be brought forward in the review.
- All facts, comments and arguments made during the review must be relevant to the issues being reviewed.
- All comments are to be made by the proposer and department to the County Review Panel. There is no direct dialogue between the department and the proposer.
- The Panel shall deliberate and state its findings prior to adjourning the County Review Panel meeting.
- The public shall be given an opportunity to comment prior to adjourning the County Review Panel meeting.

Panel Responsibilities

Upon completion of the Panel's review, the Chair, with advice from the County Counsel for the Panel if needed, shall:

- Prepare a written report within ten business days; and
- Forward the report to the department.

Department Responsibilities

Upon receipt of the County Review Panel's report, department shall:

- Provide a copy to the proposer; and
- Forward a copy of the report, as necessary, to other departments.

With respect to each solicitation, once all Panels have been held and all reports have been issued, the department files recommendation for contract award on Board's agenda. Should a department believe that it is in the best interests of the County to place the recommendation for contract award on the Board's agenda prior to the completion of all Panels and issuance of all reports, the department must (a) state the reasons therefor in the applicable Board letter and (b) ask the Board for approval to proceed with contract award prior to such completion and issuance.

NOTE: When the agenda is printed, absent extraordinary circumstances, the remaining proposals and corresponding evaluation documents, with any justifiable portions redacted, will be available for release in response to California Public Records Act requests.

Accessing Guidelines; Updates to Guidelines

Internal Services Department will publish these Guidelines on the Intranet at http://web.co.la.ca.us/lacounty/svcscontractingmanual/ and will update the site as changes occur.

Standard/Sample Language

To assist departments in implementing their review protocols, the Internal Services Department and County Counsel have prepared standard solicitation document language setting forth the Protest Policy which should be used in all solicitations for Board-awarded services contracts. The most current solicitation language may be accessed at http://web.co.la.ca.us/lacounty/svcscontractingmanual/ by selecting "Model Solicitation Documents."

Timeframes

The complexity and nature of requirements and proposals received, as well as the issues raised by a proposer can vary from solicitation to solicitation. As such, it is not practical to establish an across the board timeline for each phase of the review process. Instead, these Guidelines call for departments to complete each phase of any review process and to notify the proposer of the review results within a reasonable timeframe:

- Review of Solicitation Requirements – Review results should be provided to the proposer in time to allow for any changes in the submittal of a proposal.

- Review of Disqualified Proposal – Review results should be provided to the proposer in time to allow the proposal to be evaluated prior to the proposed contractor selection should they receive a favorable disposition of their ground asserted.

- Review of Proposed Contractor Selection – Review results should be provided to the proposer in advance of the scheduled Board date and in time to allow the proposal to be evaluated prior to contract award.

Solicitation Practices

Providing accurate information concerning the services sought, and producing clear, accurate and consistent solicitation documents, as well as appropriately documented evaluations will assist in expediting the solicitation process; minimizing the need for review and enhance vendor relations. To this end, County departments should be aware of the contracting practices set forth in the

Services Contracting Manual and consult with County Counsel timely as issues arise in the drafting of solicitation documents or during the solicitation process.

Departments should also consider the additional time that may be required to accommodate vendor protests and plan accordingly for that time in their solicitation processes. It is also recommended that departments add language to contracts that are subject to resolicitation to allow for the department head to unilaterally exercise extensions of the contract term on a month-to-month basis not to exceed a certain period of time (typically six months). Exercising short-term extensions of the contract can ensure continuation of services if a department encounters a protest process that delays award of a subsequent contract.

Departments should:

- Prepare all solicitations with appropriate, current provisions and exhibits. Model solicitation documents may be accessed at http://web.co.la.ca.us/lacounty/svcscontractingmanual/ by selecting "Model Solicitation Documents."

- Follow statutory and policy requirements.

- Draft solicitations using clear and easily understood instructions.

- Define the evaluation criteria clearly prior to release of the solicitation, and include a high level summary of the evaluation criteria, along with weighting for criteria to be evaluated, in the solicitation document.

- Provide careful instruction for the Evaluation Committee members on the evaluation approach to be used and how the evaluation process will be conducted.

- Treat all proposers fairly and impartially.

- Give proposers an opportunity, through proposers' conferences and Debriefings, to ask questions regarding the solicitation document and/or learn why its proposal was not recommended.

- Include the following language in solicitation documents under "Proposers' Questions": "Questions may address concerns that the application of minimum requirements, evaluation criteria and/or business requirements would unfairly disadvantage proposers or, due to unclear instructions, may result in the County not receiving the best possible responses from proposer."

- Provide all proposers access to pertinent, concise answers to relevant questions submitted.

- Give all proposers access to the same information and facts about the solicitation documents, statement of work, and qualification requirements.

- Provide appropriate written explanation to a proposer as to why its proposal was determined non-responsive.

- Give proposers notice of how they may request a Debriefing, a Disqualification Review, a Proposed Contractor Selection Review and/or County Review Panel.

- Begin to prepare proposals and evaluation documents for release pursuant to California Public Records Act requests and Brown Act requirements as soon as Notices of Intent to Request Proposed Contractor Selection Reviews are received.