

**ARTICLE XII.
PUBLIC WORKS CONTRACTS***

Charter references: Contracts, ch. XIX.

Cross references: Construction contractors' affirmative action requirements, § 18-12 et seq.; minority owned, woman owned and small business enterprise participation programs, § 18-100 et seq.; prequalification of contractors, ch. 31A.

State law references: Public works contracts, A.R.S. § 34-201 et seq.

Sec. 2-187. Computation of time under this article.

In computing any period of time prescribed or allowed by this Article XII (Public Works Contracts), the day of the act or event from which the designated period of time begins to run shall not be included. Unless noted otherwise, intermediate Saturdays, Sundays and City of Phoenix holidays shall not be included in the computation. The last day of the period so computed shall be included unless it is a Saturday, Sunday or a City of Phoenix holiday, in which event, the period runs until 5:00 p.m. of the next day which is not a Saturday, Sunday or City of Phoenix holiday.

(Ord. No. G-4042, § 1, passed 10-1-1997, eff. 10-31-1997; Ord. No. G-4894, § 1, adopted 5-2-2007, eff. 6-1-2007)

Sec. 2-187.01. Definitions.

A. "Proposer" means any person, party or firm who intends to submit or who submits a solicitation response to the City of Phoenix for a public works contract.

B. "Solicitation" means a request for qualifications, invitation to bidders, a request for proposals, a request for quotation or any other invitation or request issued by the City of Phoenix to invite a person, party or firm to submit an offer, statement, response, bid or other proposal for a public works contract.

C. "Solicitation response" means a bid, proposal, statement of qualifications or other offer to contract submitted to the City of Phoenix in response to a solicitation for a public works contract.

(Ord. No. G-4894, § 2, adopted 5-2-2007, eff. 6-1-2007)

Sec. 2-188. Protest of solicitation, determination and contract award and request to withdraw solicitation response– How made.

A. A proposer shall follow the procedures set forth in this article to protest a solicitation, the short list of qualified firms, the final list of qualified firms, a determination of non-responsiveness, or the award of a public works contract.

B. The protesting proposer shall file the protest in writing with the City Clerk and submit copies of the protest to the City Manager and City Engineer. The proposer shall include the following information in each protest:

1. The name, address, and telephone number of the proposer;
2. The signature of the proposer or the proposer's representative;
3. Identification of the specific solicitation or contract number;
4. A detailed statement of all legal and factual grounds of the protest, including copies of relevant documents; and
5. The form of relief requested.

C. If the protest is based on an alleged mistake, impropriety, or defect in a solicitation that is apparent before the deadline for submission of a solicitation response, the proposer shall file the protest no later than the following:

1. Within ten calendar days after the proposer knew or should have known of the alleged mistake, impropriety or defect; or
2. Ten calendar days prior to the deadline for submission of the solicitation response.

D. If the protest is based on an alleged mistake, impropriety, or defect that is apparent after the deadline for submission of the solicitation response, the proposer shall file the protest within three days after:

1. The proposer knew or should have known of the basis for the protest;
2. Notice of award of contract;
3. Notice of a short list determination;
4. Notice of a final list determination; or
5. Notice of determination of non-responsiveness.

E. The City shall reject all protests not filed strictly in accordance with these time limits.

F. Any proposer on a public works contract who claims a mathematical or clerical error in their solicitation response shall lodge that claim, in writing, with the City Clerk within three days of the solicitation response deadline. The written claim must describe in detail the mathematical or clerical error and be accompanied by a sworn affidavit stating the facts of the alleged error. In addition, the proposer must request, in writing, to be released from their solicitation response. The City shall reject all claims of errors in a solicitation response if such claims are not filed within this time limit.

(Ord. No. G-747, § 1; Ord. No. G-2804, § 1; Ord. No. G-4894, § 3, adopted 5-2-2007, eff. 6-1-2007)

Sec. 2-189. Protest hearing; withdrawal hearing.

A. If a protest is timely filed, the City Clerk shall notify the City Engineer and within ten days the City Engineer or a person designated by the City Engineer, as hearing officer, shall conduct a hearing in which the protesting proposer and other interested parties shall be allowed to appear, with or without counsel. A notice shall be given to all parties involved in the protest at least five days prior to the date set for the hearing. The notice shall include:

1. A statement of the time, place and nature of the hearing.
2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
3. A reference to the particular section(s) of the City Code, City Charter, or State law involved.
4. A short and plain statement of the matters asserted.

B. The hearing officer shall hear testimony and receive evidence as to whether or not the protest is valid. The burden of proof shall remain with the proposer lodging the protest.

C. If a request to withdraw a solicitation response because of an alleged mathematical or clerical error is timely filed, the City Clerk shall notify the City Engineer and within ten days the City Engineer or a person designated by the City Engineer, as hearing officer, shall conduct a hearing at which the party requesting to withdraw their solicitation response shall be allowed to appear, with or without counsel. The notice shall be given at least five days prior to the date set for the hearing. The notice shall include:

1. A statement of the time, place and nature of the hearing.
2. A short statement of the procedure to be utilized at the hearing.

D. The hearing officer shall hear testimony and receive evidence as to whether or not the City should allow the request to withdraw the solicitation response. The review procedures on claims of an erroneous response shall not be available to a proposer who seeks to have their solicitation response modified and reconsidered due to an alleged error in submitting the response. The burden of proof that the error was a substantial mathematical or clerical error to justify the City's release of the party's solicitation response and bid bond, if applicable, shall remain with the proposer.

(Ord. No. G-747, § 1; Ord. No. G-2804, § 1; Ord. No. G-3550, § 1; Ord. No. G-4049, § 1, passed 10-22-1997, eff. 11-21-1997; Ord. No. G-4894, § 4, adopted 5-2-2007, eff. 6-1-2007)

Sec. 2-190. Hearing procedure.

A. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

B. Informal disposition may be made of any protest or request to withdraw by stipulation, agreed settlement, consent order or default.

C. The record in a protest or request to withdraw shall include:

1. All pleadings, motions, and interlocutory rulings.
2. Evidence received or considered.
3. A statement of matters judicially noticed.
4. Objections and offers of proof and rulings thereon.
5. Proposed findings of fact and conclusions of law.
6. Any decision, opinion or report by the officer presiding at the hearing.

D. Oral proceedings or any part thereof may be recorded manually, by a recording device or taken before a court reporter, and shall be transcribed on request of any party. The cost of such transcript shall be paid by the party making the request unless otherwise provided by law or unless assessment of the cost is waived by the City.

E. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

F. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings shall be grounds for reversing any administrative decision or order providing the evidence supporting such decision or order is substantial, reliable, and probative. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Every proposer who is a party to such proceedings shall have the right to be represented by counsel, to submit evidence in open hearing and shall have the right of cross examination. Unless otherwise provided by law, hearings may be held at any place determined by the City.

G. Copies of documentary evidence may be received in the discretion of the hearing officer. Upon request, parties shall be given an opportunity to compare the offered copy with the original.

H. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts or established customs and practices within that portion of the construction industry normally performing the type of public work forming the subject of the protest, to the extent that such facts, custom and practices are within the City's specialized knowledge. To the extent reasonably feasible, parties shall be notified, either before or during the hearing, or by reference in reports or otherwise, of any material officially noticed by the hearing officer and the party affected thereby shall be afforded an opportunity to contest the material so noticed. The City's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

(Ord. No. G-2804, § 1; Ord. No. G-3550, § 2; Ord. No. G-4894, § 5, adopted 5-2-2007, eff. 6-1-2007)

Sec. 2-190.1. Protest or withdrawal recommendation.

Within seven days of completion of the hearing, the hearing officer shall submit findings and recommendations to the City Manager. The City Manager shall forward those findings and recommendations, together with such other and further findings and recommendations as developed by the City Engineer and City staff bearing on any issue relating to the award of the contract. Such findings or recommendations presented to the City Council may be based on information obtained from any source whatsoever, including but not limited to, the protest or withdrawal hearing, for action by the City Council pursuant to the City Charter and under such other terms and conditions as the Council shall deem proper. No evidence, not previously offered to the Hearing Officer, shall be offered or presented by any proposer, to the Council. The foregoing shall not be construed to prevent the presentation of any matter bearing on the award to the City Council or any member thereof by the City Manager at any time prior to the execution of the public works contract.

(Ord. No. G-747, § 1; Ord. No. G-2804, § 1; Ord. No. G-3550, § 3; Ord. No. G-4894, § 6, adopted 5-2-2007, eff. 6-1-2007)