

ORDINANCE NO. 2272

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAMPBELL ADDING CHAPTER 3.22 TO THE CITY OF CAMPBELL MUNICIPAL CODE RELATED TO BID PROTEST PROCEDURES

THE CITY COUNCIL OF THE CITY OF CAMPBELL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE: Chapter 3.22 is hereby added to Title 3 of the Campbell Municipal Code to read as follows:

CHAPTER 3.22 BID PROTEST PROCEDURES.

3.22.010 Applicability of bid protest procedures.

Only contracts to be awarded pursuant to Section 3.20.050 of this code and Section 20160 et seq. of the California Public Contract Code are subject to the bid protest procedures set forth in this Chapter.

3.22.020 Persons entitled to file bid protests.

Only a bidder who actually submitted a bid on a contract, such bidder's authorized representative, or a party specifically excluded from filing a bid by City action may file a bid protest on a contract. A subcontractor is not eligible to submit a bid protest. A party may not rely on the bid protest submitted by another party or bidder, but must timely pursue its, his, or her own protest.

3.22.030 Form of bid protest.

Bid protests must be in writing; provide the name, address, electronic mail address, telephone and fax numbers of the protesting bidder (or person representing the protesting bidder, if different from the protesting bidder); identify the contract to which the bid protest pertains; refer to the specific portion or portions of the contract documents upon which the protest is based; and identify the City department or division issuing the request for bids. The bid protest must identify and explain the factual and legal grounds for the protest and include any written materials that the protesting bidder wishes to have considered in determining the protest. Any grounds not raised in the written protest are deemed waived by the protesting bidder. Bid protests shall be addressed and delivered to the City Clerk at 70 North First Street, Campbell, California 95008-1423 along with any required fee. Any bid protest that is not submitted as provided herein shall be invalid and shall not be considered.

3.22.040 Submission of bid protest to City.

(a) After bids for a contract are received and opened by the City, City staff shall provide each bidder notice of the City staff's preliminary recommendation for award of the contract by means of a notice of intent to award. The City's notification may be by any reasonable means, including, but not limited to, U.S. mail, electronic mail, phone message, fax, or internet posting. Any bid protest related to the contract must be received by the City Clerk no later than five (5) calendar days after the issuance of the notice of intent to award ("Bid Protest Deadline"). Protests and materials submitted after the Bid Protest Deadline will not be considered.

(b) The protesting bidder shall also transmit a copy of the bid protest and all supporting written materials by U.S. mail, electronic mail, or fax, by or before the Bid Protest Deadline, to the protested bidder and any other bidder who has a reasonable prospect of receiving an award of the subject contract depending upon the outcome of the protest.

(c) There is a single bid protest period for any City contract, and any and all protests must be submitted according to this Chapter, regardless of whether or not the protest is directed at the bid of the protested bidder or the bid of another bidder.

(d) Failure to submit a timely bid protest to the City will constitute waiver of any and all rights, claims, damages, or causes of action against the City relating to the award of the contract.

3.22.050 Investigation by City.

(a) If a bid protest is timely filed by the Bid Protest Deadline, City staff shall investigate or cause to be investigated the bid protest. The protesting bidder, and any other bidder on the contract, shall promptly provide any information requested by City staff as part of such investigation. City staff shall prepare a written decision on the bid protest, which shall be provided to the protesting bidder and to the bidder or bidders whose bid is being protested.

(b) The protested bidder may submit a written response to the protest, provided such response is received by the City Clerk no later than two (2) business days after the Bid Protest Deadline (the "Response Deadline"). The response must include all supporting materials and provide the name, address, electronic mail address, telephone and fax numbers of the person representing the protested bidder if different from the protested bidder. Material submitted after the Response Deadline will not be considered.

3.22.060 Appeal to City Council.

An appeal of City staff's decision on the bid protest may be made by the protesting bidder or protested bidder to the City Council by filing a written notice of appeal with the City Clerk within seven calendar days after the date of notice of staff's decision rendered pursuant to subsection (a) of section 3.22.050 regarding the bid protest together with payment of any required fee. If an appeal is timely filed with the required fee and

subsequently has not been withdrawn by the bidder or by operation of the provisions of this Chapter, the City Council shall consider the bid protest at a public meeting. The City Council may, in its discretion, hear the bid protest as part of the City Council's consideration of the award of the contract to which the bid protest relates or may hear the bid protest as a separate item, provided that the City Council shall decide the bid protest prior to awarding the contract, unless the City Council exercises its discretion to reject all bids. The City Council may take action on the bid protest at the meeting in which the bid protest is considered or may continue the matter of the bid protest and contract award to a future date.

3.22.070 City Council's decision.

The scope of the bid protest considered by the City Council shall be limited to the issues set forth in the bid protest timely filed with the City Clerk by the Bid Protest Deadline and the response to the protest timely filed with the City Clerk by the Response Deadline. The City Council may take any action on the bid protest that is authorized by law, including adoption of City staff's recommended determination of the bid protest, adoption of a determination different from that recommended by City staff, or the rejection of all bids without deciding the bid protest. The decision of the City Council on a bid protest shall be the final administrative action on the protest and shall exhaust the bidder's administrative remedies.

3.22.080 Rejection of all bids.

The filing of a bid protest shall not preclude the City from rejecting all bids. The City retains the right to reject any or all bids, waive any irregularities in any bids, and make any awards or rejections in accordance with applicable law. Rejecting all bids shall render a protest moot and terminate all protest proceedings.

3.22.090 Exclusive remedy.

The procedures and time limits set forth in this Chapter are mandatory and are the bidder's sole and exclusive remedy. The bidder's failure to fully comply with these procedures and time limits shall constitute a waiver of any right to further pursue a bid protest, including filing of a claim pursuant to the California Government Code or other legal proceedings.

SECTION TWO: This ordinance shall become effective thirty (30) days following its passage and adoption and shall be published once within fifteen (15) days upon passage and adoption in the Metro, a newspaper of general circulation in the City of Campbell, County of Santa Clara.

PASSED AND ADOPTED this 18th day of May, 2021 by the following roll call vote:

AYES: COUNCILMEMBERS: Bybee, Landry, Lopez, Resnikoff, Gibbons

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

ABSTAIN: COUNCILMEMBERS: None

APPROVED:

Elizabeth "Liz" Gibbons, Mayor

ATTEST:

Dusty Christopherson, City Clerk