

LAKE COUNTY FOREST PRESERVE DISTRICT PURCHASING POLICIES AND REQUIREMENTS

PURPOSE, APPLICATION, AND EFFECT

Purpose: The purpose of this Ordinance is to increase the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity.

Application: This Ordinance applies to all contracts and purchases first solicited after its effective date involving the expenditure of public funds by the Lake County Forest Preserve District (the "District") for the procurement of supplies, materials, or work.

Conflicts with Other Laws and Requirements: In the event of a conflict between this Ordinance and the requirements of any applicable federal or state law, such federal or state law shall prevail. To the extent permitted by law, this Ordinance shall not be deemed to prevent the District from complying with the terms and conditions of any grant, gift, or bequest.

Purchasing Procedures: The Finance, Administrative and Revenue Facilities Committee may adopt Purchasing Procedures relating to the procurement of supplies, materials, and work by the District that are consistent with this Ordinance ("Purchasing Procedures"). Any Purchasing Procedures shall be given to all Department Directors and shall be administered by the Purchasing Manager.

Authority and Duties: Except as otherwise provided herein, the Purchasing Manager shall serve under the direction of the Director of Administration as the principal public purchasing official for the District and shall be responsible for the procurement of supplies, materials, and work in accordance with this Ordinance and any Purchasing Procedures adopted pursuant to it.

Binding Effect: No official or employee of the District shall be authorized to enter into or amend any contract, or make or cancel any purchase, to which this Ordinance applies unless he or she does so in strict accordance with the provisions of this Ordinance.

CONTRACTS AND PURCHASES FOR OVER \$20,000: COMPETITIVE BIDDING REQUIRED

Competitive Bidding and Board Approval Required: All contracts for, and purchases of, supplies, materials, and work in excess of \$20,000, except as provided in Section 2-2 below, shall be let to the lowest responsible bidder according to the procedures provided in Sections 2-3 through 2-8 of this Article. Except as otherwise provided by law and except to the extent provided in Section 2-10 of this Article, all contracts for, and purchases of, supplies, materials, and work in excess of \$20,000 shall require the approval of the Board of Commissioners of the District.

Exceptions: The competitive bidding requirements and procedures of this Article shall not apply to contracts or purchases:

requiring personal confidence, as set forth in Section 2-9 of this Article;

for emergency purchases, as set forth in Section 2-10 of this Article;

for necessary supplies, material, or work under the control of monopolies, as set forth in Section 2-11 of this Article;

involving cooperative and surplus purchasing, as set forth in Section 2-12 of this Article; or

that are otherwise exempt from such competitive bidding requirements and procedures under state or federal law, as set forth in Section 2-13 of this Article.

Formal Advertisement Inviting Bids:

A. Newspaper Notice: In all cases where procurement from the lowest responsible bidder is required pursuant to Section 2-1 of this Article, newspaper notice inviting bids shall be published at least once in at least one newspaper having general circulation in the District. Such notice shall be published at least ten calendar days preceding the last day set for receipt of bids. The time set for receipt of bids may be extended by notice of the date to which the bid opening has been extended being published in a newspaper of general circulation within the District, or by any other means that will make the information about such extension reasonably available to the general public, and upon such notice being given by mail, facsimile machine, electronic mail, or telephone to all persons that have requested bid documents; provided, however, that the failure to give such notice of an extension shall not be grounds for challenging the bidding process or any award made pursuant thereto.

B. Scope of Notice: The newspaper notice required herein shall include a general description of the materials, supplies, or work to be purchased; the location of the work site, if applicable, the place where bid documents may be secured; the time and place for opening bids; and deposit and bonding requirements.

Direct Solicitation: The Purchasing Manager may also solicit sealed competitive bids by sending copies of the newspaper notice required by Section 2-3, together with any other information that is also made generally available to the public without special fee or charge, directly to prospective bidders who ordinarily provide the type of supplies, materials, or work being sought.

Bid Security: Bid security in an amount equal to at least ten percent of the amount of the bid shall be required for all competitive sealed bids for construction contracts when the price is estimated to exceed \$100,000 and when otherwise deemed necessary by the District. Bid security shall be a bond provided by a surety company authorized to do business in the State of Illinois, or the equivalent in cash or letter of credit, from a company and in a form satisfactory to the District. When bid security is required, such requirement shall be set forth in the public notices inviting bids. Bidders shall be entitled to return of their bid security except that a successful bidder shall forfeit its bid security upon failure on its part to enter a binding contract as provided in the invitation to bid.

Additional Information: The District reserves the right to require, from any bidder, prior to award of a contract, additional information including, but not limited to, information regarding the bidder's business and technical organizations, the bidder's plant, equipment, and personnel available to perform the contract, the bidder's financial resources, the experience of the bidder's personnel, the bidder's experience in providing supplies, materials, or work that are similar to the supplies, materials, or work for which the contract will be awarded, a history of the bidder's contract defaults and litigation, and a list of the bidder's pending construction projects and outstanding bids and proposals.

Submission and Opening of Sealed Bids:

A. Submission of Bids: Bids shall be submitted in a sealed envelope bearing the legend "Sealed Bid for [Name of Work]" at the place and before the time for the opening of bids specified in the invitation to bid. All bids received after the time specified for the opening of bids shall be returned unopened.

Opening and Evaluation of Bids: All bids shall be opened in public with no less than two witnesses present at the place and time specified for the opening of such bids. All bids shall be tabulated and referred to staff for evaluation. The Department Director for the Department that will be responsible for supervising the contract or purchase for which bids were obtained shall (1) make a recommendation regarding the bids, which may include a recommendation as to which bidder is the lowest responsible bidder to whom the District should award a contract and (2) make the recommendation available to all bidders for that contract or purchase.

Award; Lowest Responsible Bidder: If a bid award is made, the Board of Commissioners shall award the contract to the lowest responsible bidder. In determining which bidder is the "lowest responsible bidder," each standing committee involved in making a recommendation regarding the proposed contract, including the Finance, Administrative and Revenue Facilities Committee, the appropriate departments, the Purchasing Manager, and the Board of Commissioners shall consider the following factors:

the price bid;

the compliance of the bid, including required plans and specifications, with bidding and contract requirements;

the ability, capacity, and skill of the bidder to perform the contract or to provide the service required;

whether the bidder has the requisite facilities, plant, capital, organization, and staffing to enable the bidder to perform the contract successfully and promptly, within the time specified, without delay or interference;

the character, integrity, reputation, judgment, experience, and efficiency of the bidder;

the quality of the bidder's performance of previous contracts or services;

the previous and existing compliance by the bidder with other contracts and the laws or ordinances relating to said contracts;

where relevant, the ability of the bidder to provide future maintenance and service;

the conditions placed on the bid by the bidder; and

any other factor that the District may legally consider in determining the bid that is in the District's best interest.

Proposals For Services Requiring Personal Confidence:

A. Department Recommendation: If a Department Director or the Purchasing Manager determines that a contract for work requires personal confidence, then he or she may

recommend award of the contract to the entity whose proposal for the work is most advantageous to the District.

Solicitation and Submission of Proposals: Proposals for such work may be solicited by the Purchasing Manager in the same manner as provided for competitive bids in Sections 2-3, 2-4, and 2-7(A) of this Ordinance or in such other manner as determined by the Purchasing Manager to be efficient for the submission and review of such proposals. For architectural, engineering, and land surveying services, the District shall comply with the Local Government Professional Services Selection Act, 50 ILCS 510/0.01 *et seq.*

Opening and Evaluation of Proposals: The opening of proposals shall not be open to the public to avoid disclosure to competing proposers. Discussions may be conducted with proposers by the Executive Director, a Department Director, the Purchasing Manager or their designees, to allow clarifications and changes in proposals. The Department Director for the Department that will be responsible for supervising the contract or purchase for which proposals were obtained shall (1) make a recommendation regarding the proposals, which may include a recommendation as to which proposer submitted the proposal that is most advantageous to the District and to whom the District should award a contract and (2) make the recommendation available to all proposers for that contract or purchase.

Award: If a contract is awarded, the Board of Commissioners shall award the contract to the proposer whose proposal is most advantageous to the District. Each standing committee involved in making a recommendation regarding the proposed contract, including the Finance, Administrative and Revenue Facilities Committee, and the appropriate departments shall recommend which proposal is most advantageous to the District. In making such determinations, the Board, the committees, and the departments shall consider any evaluation factors that have been established for the proposals.

Emergency Purchases:

A. Emergency Defined: For purposes of this Ordinance, “emergency” shall mean a situation in which the delay caused by adherence to the applicable requirements of this Ordinance would threaten the public health, safety, or welfare, such that the immediate purchase of supplies, materials, or work is necessary.

Emergency Purchases: In case of an emergency, the President shall be empowered to procure supplies, material, or work in excess of \$20,000 at the lowest obtainable price, but only to the extent necessary to relieve the emergency. A declaration that such an emergency exists shall be made in writing, signed by the President, and communicated to the Board of Commissioners. When necessary to effectuate the provisions of this Section 2-10, waiver of any provisions of this Ordinance may be made in writing and signed by the President. In the event the President is not available, then such authority as is given to the President in this Section 2-10 shall devolve upon the Vice-President of the District. In the absence of the President and the Vice-president, such authority shall devolve upon the Chair of the Finance, Administrative and Revenue Facilities Committee.

Supplies, Materials, and Work Under the Control of Monopolies: When the District requires supplies, materials, or work that are produced by only one supplier, the Purchasing Manager shall specify such supplier’s make or brand in an invitation to bid, and shall obtain competitive bids from authorized dealers or distributors of such supplier and, if possible, directly from such supplier and the contract for the supplies, material, or work shall be awarded to the lowest responsible bidder. If the Purchasing Manager determines that there is only one supplier of supplies, material, or work,

the Purchasing Manager is authorized to negotiate and to recommend to the appropriate standing committees and to the Finance, Administrative and Revenue Facilities Committee a contract with such supplier to purchase the supplies, material, or work, at prices or on terms most advantageous to the District. In such a case, the Purchasing Manager shall make a written determination that such supplier is the sole source for such supplies, material, or work.

Cooperative and Surplus Purchasing:

A. Cooperative Purchasing: To the extent, and in the manner, permitted by federal and state law, the Purchasing Manager may investigate, arrange and recommend to the appropriate standing committees and to the Finance, Administrative and Revenue Facilities Committee purchases under programs involving joint or cooperative intergovernmental purchasing with federal, state, or local government agencies.

Purchasing Government Surplus: To the extent, and in the manner, permitted by federal and state law, the Purchasing Manager may recommend to the appropriate standing committees and to the Finance, Administrative, and Revenue Facilities Committee the procurement of surplus materials and supplies from any federal, state, or local government or government agency.

Exempt Purchases: To the extent that any federal or state law exempts the District from the competitive bidding requirements of the Downstate Forest Preserve District Act (70 ILCS 805/1, et seq.), and to the extent approved by the appropriate standing committees and by the Finance, Administrative and Revenue Facilities Committee, the Purchasing Manager need not follow the competitive bidding requirements of this Article.

CONTRACTS AND PURCHASES FOR \$20,000 OR LESS: OPEN MARKET PURCHASING AUTHORIZED

Open Market Purchasing Authorized: All contracts for, or purchases of, supplies, materials, or work in an amount equal to \$20,000 or less may be made in the open market pursuant to the provisions of this Article 3.

Authority to Approve Contracts and Purchases: Subject to the requirements of this Article 3, the President, the Executive Director, and all Department Directors shall have authority to approve contracts and purchases of up to \$20,000. Notwithstanding the foregoing, no contract or purchase authorized by this Section 3-2 shall be entered into or made in the absence of, or in excess of, a budget and appropriation therefor approved by the Board of Commissioners of the District.

Minimum Number of Quotes: All contracts and purchases for \$20,000 and under shall, wherever practicable, be based on at least three competitive quotes.

Notice Inviting Quotes: The Purchasing Manager may invite quotes for contracts and purchases for \$20,000 and under by direct mail request, telephone, facsimile machine, public notice, or any other means.

Award; Lowest Responsible Quoter: All contracts and purchases for \$20,000 and under shall, wherever practicable, be awarded to the lowest responsible quoter after appropriate approvals as required in Section 3-2 of this Article. In determining which quoter is the lowest responsible quoter, the President, the Executive Director, or Department Director shall be guided by the factors set forth in Section 2-8 of this Ordinance.

Documentation: The Purchasing Manager shall keep a record of all open market purchases and the quotes submitted thereon.

GENERAL PROVISIONS

Application: Except as otherwise expressly provided in this Ordinance, the general provisions of this Article 4 shall apply to the bidding, award, and performance of all bids, proposals, and quotes solicited; all contracts entered into; and all purchases made pursuant to this Ordinance. The provisions of this Ordinance, but not the provisions of applicable state or federal laws, may be waived with respect to the award of a specific contract, by providing for such waiver in the ordinance or resolution approving such contract.

Reservation of Rights: The District reserves the right to accept the bid, proposal, or quote that is, in its judgment, the best and most favorable to the interests of the District and the public; to reject the low bid, proposal, or quote; to accept any item of any bid, proposal, or quote; to reject any and all bids, proposals, or quotes; to accept and incorporate corrections, clarifications, or modifications following the opening of the bids, proposals, or quotes, when to do so would not, in the District's judgment, prejudice the bidding, proposal, or quoting process or create any improper advantage to any bidder, proposer, or quoter; and to waive irregularities and informalities in the bidding, proposal, or quoting process or in any bid, quote, or proposal submitted; provided, however, that the waiver of any prior defect or informality shall not be considered a waiver of any future or similar defects or informalities, and bidders, proposers, and quoters should not rely upon, or anticipate, such waivers in submitting their bids, proposals, or quotes.

Authority to Execute Contracts: The President, Executive Director, or any other officer whom the Board designates, shall execute all contracts in excess of \$20,000 when authorized and directed by the Board to do so. A Department Director shall have authority to execute any contract of \$20,000 or less when such contract has been approved pursuant to this Ordinance.

Contract Performance and Payment Bonds: When a contract for public works is awarded in an amount over \$5,000, the following bonds or security shall be delivered to the District and become binding on the parties upon the execution of the contract:

- a performance bond, cash bond, irrevocable letter of credit, or letter of commitment in a form satisfactory to the District in an amount equal to 110 percent of the price specified in the contract issued by (if a performance bond) a surety or insurance company authorized by the Illinois Department of Insurance to sell and issue sureties in Illinois or (if a letter of credit or letter of commitment) by a financial institution acceptable to the District; and
- a payment bond in a form satisfactory to the District in an amount equal to 110 percent of the price specified in the contract issued by a surety or insurance company authorized by the Illinois Department of Insurance to sell and issue sureties in Illinois for the protection of all persons supplying labor or materials to the contractor or its subcontractors for the performance of the work provided for in the contract; provided, however, that
- in lieu of the performance and payment bonds required by Subsections (1) and (2) above, for contracts under \$100,000 that do not use funds received from the State of Illinois, the District may allow the bidder to provide a non-diminishing irrevocable bank letter of credit.

Insurance Requirement: Every contractor having any contract with the District shall be required to maintain such insurance coverage for the duration of the contract, and any warranty periods, as the Purchasing Manager shall determine, after consulting with the Risk Manager, to be adequate to protect the interests of the District. The contractor shall name the District as an additional insured as its interest may appear and shall furnish the Purchasing Manager with satisfactory evidence of said insurance.

Change Orders and Contract Modifications:

A. Department Director's Authority: The Department Director responsible for supervision of any contract shall have authority to authorize any change to such contract that, when added to all other changes to such contract, would not increase the original contract price by more than 20% or \$20,000 whichever amount is less.

Finance, Administrative and Revenue Facilities Committee's Authority: Upon recommendation of the appropriate standing committee, the Finance, Administrative and Revenue Facilities Committee shall have authority to authorize any change to a contract that, when added to all other changes to the contract, would not increase the original contract price by more than 25% or \$100,000, whichever amount is less

Board's Authority: The Board shall have authority to authorize all other changes to the contract.

Modification of Authority: Notwithstanding the foregoing, the Board shall have the authority to modify the authorities established by Subsections 4-6A through 4-6C above as part of its approval of any specific contract.

Necessary Finding: Any change to a contract that, when added to all other changes to such contract, authorizes or necessitates an increase or decrease in the original cost of the contract by a total of \$10,000 or more, or the time of completion by a total of 30 days or more, may be approved only upon written determination that (1) the circumstances said to necessitate the change were not reasonably foreseeable at the time the contract was signed; (2) the change is germane to the original contract as signed; or (3) the change order is in the best interest of the District. A Department Director, the Finance, Administrative and Revenue Facilities Committee, or the Board, if authorized to approve the change order pursuant to Subsections 4-6A through 4-6D above, shall make the required written determination. Each change order for which a written determination is required pursuant to this Subsection 4-6E shall be made in writing. Each such change order and each such written determination shall be preserved in the contract's file.

CONFLICTS OF INTEREST, GRATUITIES, AND REBATES

All commissioners shall comply with the Public Officer Prohibited Activities Act, 50 ILCS 105/0.01, et seq. and all commissioners and employees shall comply with the District's Ordinance Regulating Ethical Conduct and Political Activities by Elected Officials and Employees, adopted on May 11, 2004, enacted pursuant to the State Officials and Employees Ethics Act, 5 ILCS 430/1-1, et seq.

DEBARMENT

After reasonable notice to the person or entity involved and reasonable opportunity for that person to be heard, the Finance, Administrative and Revenue Facilities Committee, after consulting with the District's General Counsel, is authorized to debar a person or entity for cause from consideration

for award of District contracts. The debarment shall be for a period of not more than two years, unless otherwise provided by law. Reasons that may justify debarment include, but are not limited to:

conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;

conviction under federal or state statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty;

conviction under federal or state antitrust statutes arising out of the submission of bids or proposals;

violation of contract provisions, as set forth below, of a character that is regarded by the Finance, Administrative and Revenue Facilities Committee to be so serious as to justify debarment action:

deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;

a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contract; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be basis for debarment;

delinquency in any debt or other obligation owed to the District; or

any other cause the Finance, Administrative and Revenue Facilities Committee determines to be so serious and compelling as to affect responsibility as a District contractor, including debarment by any other governmental entity for any cause listed in this Ordinance.

The Finance, Administrative and Revenue Facilities Committee shall issue a written decision to debar stating the reasons for the action taken and shall inform the debarred person or entity of its appeal rights under this Ordinance. A copy of the decision shall be mailed or otherwise delivered immediately to the debarred person.

ALL DECISIONS FOR DEBARMENT SHALL BE FINAL AND CONCLUSIVE, UNLESS THE DEBARRED PERSON WITHIN TEN CALENDAR DAYS AFTER RECEIPT OF THE DECISION FILES A WRITTEN APPEAL TO THE BOARD OF COMMISSIONERS OF THE DISTRICT. THE BOARD SHALL FINALLY DECIDE ANY SUCH APPEAL AFTER GIVING THE DEBARRED PERSON REASONABLE NOTICE AND AN OPPORTUNITY TO BE HEARD.

SUSPENSION

After reasonable notice to the person involved and reasonable opportunity for such person to be heard, the Purchasing Manager is authorized to suspend such person from consideration for award of District contracts for a period of not to exceed three months.

Reasons that may justify suspension include, but are not limited to:

acts by the person that show a lack of character, integrity, judgment, or efficiency;

use by the person of supplies, material, or work on a previous contract that show a lack of quality;

failure of the person to comply with other contracts or with laws or ordinances relating to other contracts; or

any other consideration that the Purchasing Manager may legally consider in suspending a person from consideration for award of a District contract.

The Purchasing Manager shall issue a written decision to suspend stating the reasons for the action taken and shall inform the suspended person of its appeal rights under this Ordinance. A copy of the decision shall be mailed or otherwise delivered immediately to the suspended person.

ALL DECISIONS FOR SUSPENSION SHALL BE FINAL AND CONCLUSIVE, UNLESS THE SUSPENDED PERSON WITHIN TEN CALENDAR DAYS AFTER RECEIPT OF THE DECISION FILES A WRITTEN APPEAL TO THE FINANCE, ADMINISTRATIVE AND REVENUE FACILITIES COMMITTEE. THE COMMITTEE SHALL FINALLY DECIDE ANY SUCH APPEAL AFTER GIVING THE SUSPENDED PERSON REASONABLE NOTICE AND AN OPPORTUNITY TO BE HEARD.

BIDDER'S REMEDIES

Bid Protest:

A. Definition: A "bid protest" is a protest by an actual or prospective bidder or proposer of any act or omission by the Purchasing Manager, a Department Director, or other District employee related to a proposed contract for supplies, materials, or work in excess of \$20,000.

B. Authority of Purchasing Manager and Bid Appeal Panel: The Purchasing Manager shall decide all bid protests. The Bid Appeal Panel shall decide all appeals of bid protests. The Bid Appeal Panel consists of: (1) the Chair of the Finance, Administrative and Revenue Facilities Committee (or, in his or her absence, the Vice-Chair of the Finance, Administrative, and Revenue Facilities Committee), who serves as Chair of the Bid Appeal Panel; (2) a District Commissioner (other than the District President) appointed by the President on an *ad hoc* basis; and (3) the Executive Director or his or her designee. A Bid Appeal Panel member may withdraw from serving on the Bid Appeal Panel if he or she (1) believes that serving creates a conflict of interest or the appearance of impropriety or (2) is unavailable for service. Nothing in this Article 8, including the authority granted to the Purchasing Manager and the Bid Appeal Panel, limits the authority of any standing committee to recommend, or the Board of Commissioners to approve or determine, (1) contracts for, and purchases of, supplies, materials, and work in excess of \$20,000, (2) the lowest responsible bidder for a contract, or (3) which proposer submitted the proposal for a contract that is most advantageous to the District. Without limiting the preceding sentence, this Article 8 does not prevent a standing committee from making a recommendation on, or the Board of Commissioners from taking final action on, a contract that is the subject of a pending bid protest or bid protest appeal.

C. **Submission of Bid Protest:** Any actual or prospective bidder or proposer may submit a written bid protest to the Purchasing Manager within three business days after the first adverse action or event that allegedly gave rise to the bid protest, including without limitation the bidder's or proposer's receipt of a Department Director's recommendation to award a contract to a different bidder or proposer. Any bid protest not submitted within such time period is waived.

1-1 **Decision on Bid Protest:** The Purchasing Manager shall promptly (1) issue a written decision on the bid protest, stating the reasons for the decision and informing the protesting party of its appeal rights under this Ordinance and (2) send the written decision to the protesting party and any other interested parties. The Purchasing Manager's decision on a bid protest is final, unless the decision is appealed to the Bid Appeal Panel, as provided in Section 8-3.

1-2 **Bid Protest Appeal Process:**

A. **Appeal of Purchasing Manager's Decision on Bid Protest:** Any protesting party whose bid protest was denied by a decision of the Purchasing Manager, and any bidder or proposer affected by a decision of the Purchasing Manager on a bid protest, may appeal such decision to the Bid Appeal Panel, by filing a written appeal with the Executive Director so it is received by the Executive Director (1) within three (3) business days after the appealing party receives the decision; and (2) not later than (a) the day before an agenda is posted for a standing committee meeting that includes consideration of the contract or (b) if the contract is not considered at a committee meeting, the day before an agenda is posted for a Board of Commissioners meeting that includes consideration of the contract. Any bid protest appeal not submitted within such time period is waived, unless the appeal is filed prior to the meeting of a standing committee or the Board of Commissioners at which the contract is to be considered and, at such meeting, the committee or Board of Commissioners votes to defer such consideration pending resolution of the bid protest appeal.

Bid Appeal Panel Meeting. If the Executive Director receives an appeal of the Purchasing Manager's decision on a bid protest, the Bid Appeal Panel will hold a public meeting to decide the appeal within twenty business days after the date the appeal is received by the Executive Director. The Bid Appeal Panel shall notify all interested parties of the date, time, and location of the public meeting at which the bid protest or bid appeal will be considered and at such meeting, shall give a reasonable opportunity to all interested parties to state their positions.

B. **Bid Appeal Panel's Decision:** If two or more of the three members of the Bid Appeal Panel vote to overturn the decision of the Purchasing Manager, then the decision shall be overturned. In all other cases, the decision shall be deemed upheld. The Bid Appeal Panel shall notify all interested parties of its decision in writing. The Bid Appeal Panel's decision on an appeal of a bid protest is final.

DISTRICT'S REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

Prior to Bid Opening or Closing Date for Receipt of Proposals: If prior to the bid opening or the closing date for receipt of proposals the Purchasing Manager, after consultation with the District's General Counsel, determines that a solicitation is in violation of federal, state, or local law, including this Ordinance, then the solicitation shall be cancelled or revised to comply with applicable law.

Prior to Award: If after bid opening or the closing date for receipt of proposals, but before award of a contract, the Purchasing Manager, after consultation with the District's General Counsel, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or

local law, including this Ordinance, then the solicitation or proposed award shall be cancelled, and all bids, proposals, or quotes shall be rejected.

After Award: If after an award, the Board of Commissioners of the District, upon recommendation of the Finance, Administrative and Revenue Facilities Committee and after consultation with the District's General Counsel, determines that a solicitation or award of contract was in violation of any applicable law, then:

if the person awarded the contract has not acted fraudulently or in bad faith, the Board of Commissioners may:

to the extent permitted by law and if the Board determines that doing so is in the best interests of the District, ratify and affirm the contract; or

terminate the contract and direct that the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract prior to notification;

if the person awarded the contract has acted fraudulently or in bad faith, the Board of Commissioners may, to the extent permitted by law, declare the contract to be null and void.

6211163_v8

Amended 11-10-09

