

COUNTY OF MONTEREY - NATIVIDAD MEDICAL CENTER ADMINISTRATIVE PROTEST PROCEDURES

Purpose:

To provide a procedure for the resolution of protests filed by bidders or prospective bidders who believe that they have been aggrieved by the County of Monterey – Natividad Medical Center procurement process.

Policy:

The County of Monterey doing business as Natividad Medical Center will entertain protests from interested parties regarding its procurement actions. NMC will respond to any bona fide protest provided that the administrative protest is not of a frivolous or vexatious nature. NMC will not allow a protest to delay the procurement of necessary goods or services unless it is apparent that County participated in a practice that granted an unfair advantage to a participant during the procurement process. This policy will not apply if and after the contract has been submitted and approved by the Board of Supervisors.

NMC reserves the right to consider a protestor's efforts to resolve an issue administratively prior to submission of a formal protest to determine the protestor's intent.

Definitions:

"County" means County of Monterey.

"Bidder, Vendor, or Contractor" means a business or individual who sells or provides, or attempts to sell or provide, commodities and/or services to NMC.

"Prospective Bidder, Vendor, or Contractor" means a person or business that has the capacity to make a written offer to sell commodities or provide services to NMC.

"NMC Deputy Purchasing Agent Designee" means a Buyer or Management Analyst within the NMC Contracts/Purchasing Office or other designee, who has been deputized by the NMC Deputy Purchasing Agent to act on his or her behalf to exercise the powers and duties of the NMC Deputy Purchasing Agent.

"Contract" means any contract, agreement, purchase order or order placed by NMC to receive goods or services from an external source.

"Day or Days" means a working day or days of County.

"Interested Party" means a participant or prospective participant in the procurement whose direct economic interest is affected by the award of the contract for the procurement.

"NMC" means County of Monterey doing business as Natividad Medical Center.

"NMC Deputy Purchasing Agent" means the NMC Chief Executive Officer deputized by the County Administrative Officer to act on behalf of NMC as a Deputy Purchasing Agent, pursuant to the 2007 "Memorandum of Understanding between the County Administrative Officer and the Chief Executive Officer of Natividad Medical Center Regarding the Delegation of Purchasing Activities & Responsibilities."

"Proposal" means a response to NMC procurement solicitation, including but not limited to, quotations, bids, proposals, and expressions of interest or qualifications.

Rationale:

To encourage maximum participation in NMC solicitation process, individuals and businesses that desire to do business with NMC should be provided with an equitable procedure under which they may file a bid protest.

Submission of Protests:

Any interested party may file a bid protest with NMC on the basis that NMC failed to comply with a federal or state law, or that NMC failed to follow its Procurement Regulations. A valid protest must be filed in writing with the NMC Contracts/Purchasing Office and must include at a minimum, but not limited to, the following information:

- 1) Name and address of the protestor
- 2) Identification of the procurement action being protested
- 3) A statement of the reason for the protest, identifying the federal or state law or the NMC Procurement Regulations that the protestor alleges has been violated by NMC.

Written bid protests shall be filed by with:

NMC Contracts/Purchasing Office

Attention: Maria Gutierrez

Natividad Medical Center

1441 Constitution Blvd.

Salinas, CA 93906

Types of Protests and Deadlines to File:

The deadline for a valid protest will be determined by the progress of the procurement. NMC will recognize the following three types of protests:

1. Protest regarding Solicitation

Any protest regarding the solicitation process must be in writing and filed with the NMC Contracts/Purchasing Office no later than seven (7) business days prior to the deadline to submit offers.

Note: This type of protest includes a claim that the solicitation process contained exclusionary or discriminatory specifications, any challenge to the basis for award, or any claim that the procurement documents or the procurement process violates a federal or state law or fails to follow NMC's Procurement Regulations.

2. Protest regarding Evaluation of Proposals

Any protest regarding the evaluation of proposals must be in writing and filed with the NMC Contracts/Purchasing Office no later than seven (7) business days after the date of notification of NMC's intent to award is announced. Any protest filed after such date will not be considered.

Note: This type of protest challenges NMC's determination of responsiveness of proposals and responsibility of proposers, errors in calculation or that NMC's evaluation of proposals violated a federal or state law or NMC's Procurement Regulations.

3. Protest regarding Notification of Intent to Award Contract

Any protest regarding the award of a contract must be in writing and filed with the NMC Contracts/Purchasing Office no later than seven (7) business days after the date of notification of intent to award. Any protest filed after this date will not be considered.

Note: This type of protest will only be entertained by NMC if the protestor is able to demonstrate that the party notified of NMC's decision to award the contract fraudulently represented itself as a responsible bidder or that NMC violated any federal or state law or NMC's Procurement Regulations in its decision to award the contract.

NMC's Response to Protests:

NMC will notify a protestor upon receipt of a timely protest and may, where appropriate, request further information for clarification purposes. NMC may, at its sole discretion, meet with the protestor to review the issues raised in the protest. NMC's consideration of the protest will be made by a NMC Deputy Purchasing Agent Designee in accordance with the following provisions:

1. Protest regarding Solicitation

Upon receipt of a valid protest regarding a solicitation process, NMC will postpone the deadline for submission of offers until the protest in question has been resolved. If the protest regarding the solicitation process includes a claim of unduly restrictive or exclusionary specifications, NMC will, in considering the protest, consider both the specific needs of NMC for the item challenged and any effect on competition of including the specification regarding that item. If NMC determines that such item was included in the specification in order to meet a legitimate need of NMC, and was not unduly restrictive of competition or designed to exclude a particular competitor, then NMC will immediately deny the protest.

2. Protest regarding Evaluation of Proposals

Upon receipt of a valid protest regarding the evaluation of proposals, NMC will suspend its evaluation of all offers until resolution of the protest. If NMC determines that the protestor has established reasonable doubts to the process, NMC will respond.

3. Protest after Notification of Intent to Award

Upon receipt of a timely protest regarding the award of a contract, NMC will issue a stop work order, if necessary, until the resolution of the protest. If NMC determines that the protestor has established a prima facie case that the contract was awarded fraudulently or is in violation of a federal or state law or NMC's Procurement Regulations, NMC will respond.

As indicated above, in most instances, NMC will suspend the procurement action upon receipt of a bona fide bid protest. However, NMC reserves the right, notwithstanding the presence of a protest, to proceed with the appropriate action in the procurement process including but not limited to the following instances:

- a. When failing to fulfill the need for the items or services would cause irreparable harm to NMC or its customers;
- b. When NMC determines that the protest is vexatious or frivolous; or
- c. When delivery or performance will be unduly delayed or when other undue harm would occur by delaying the award of the contract.

After review of a bid protest submitted under these provisions, NMC will issue a written decision on the basis of the information provided by the protestor, the result of any meetings with the

protestor, and NMC's investigation of the matter. If the protest is upheld, NMC will take the appropriate action to correct the procurement to protect the rights of the protestor, including, but not limited to, reissuance of the procurement, revised evaluation of the offers or NMC's conclusion of the evaluation of the proposals, or termination of the contract.

If the protest is denied, NMC will terminate the suspension of the procurement that was imposed during the consideration of the protest and will proceed with the procurement.