

LOWER COLORADO RIVER AUTHORITY ISSUE RESOLUTION PROCEDURES

Pursuant to Lower Colorado River Authority Board of Directors' Policy 205, any Interested Party who wishes to raise an issue concerning LCRA's process for or award of a particular contract shall do so in accordance with the following procedures:

Section 1. Definitions

Key words and phrases are defined as follows:

- (a) **Party** – Any Interested Party who claims that is has been harmed by the content of a contractual solicitation, by the process through which a proposed contract has been solicited or by the actual award of a contract.
- (b) **Board of Directors** – The Board of Directors of the Lower Colorado River Authority.
- (c) **General Manager** – LCRA's General Manager.
- (d) **Interested Party** – Any actual or prospective offeror that is known to LCRA as such and has obtained a contract solicitation from LCRA by mail, electronic transfer or through access to LCRA's website or otherwise, and whose direct economic interest could be affected by the award of the contract.
- (e) **LCRA** – The Lower Colorado River Authority.
- (f) **Line Department** – the department(s) within LCRA on whose behalf a particular contract is being solicited.
- (g) **Person** – an individual engaged in a business or any legally recognized form of business entity.
- (h) **Purchasing Manager** – LCRA's Purchasing Manager.

Section 2. Issue Resolution Procedure

- (a) Any Party with an issue under a solicitation or with a contract award shall timely notify LCRA. Failure to timely notify LCRA shall be grounds for LCRA not to consider an issue. Timely is defined as the following:
 - 1. For issues with the content of the solicitation, notify LCRA at least 7 calendar days prior to the deadline for submission of proposals.

2. For issues with contractor selection decisions, notify LCRA with 3 business days of receipt of the decision.

(b) A Party with an issue shall contact and attempt to resolve the issue with the Purchasing Agent (“PA”) specified in the solicitation. Failing resolution at that level, the matter shall be referred sequentially, and resolution attempted, with the Purchasing Manager, and, thereafter, with the General Manager. At each level, the Party with the issue and the LCRA representative shall attempt to resolve the issue equitably, and exhaust all efforts prior to escalation to the next level. Meetings and correspondence shall be informal.

(c) To raise an issue, an Interested Party must submit the following to the PA:

- a concise statement of the relevant facts,
- identification of the issue or issues to be resolved,
- an argument and citations of authorities, if applicable, in support of its position, and
- a statement of the type of relief or action desired by the Party raising the issue.

(d) In response to a timely submitted issue, LCRA shall delay the contract award pending resolution of the dispute, unless the Purchasing Manager issues a written finding, in concurrence with the Line Department, that a contract must be awarded without delay to protect substantial interests of LCRA.

Section 3. Dispute Resolution

(a) The Purchasing Manager has the authority to settle or resolve any dispute concerning the solicitation or award of a contract. The Purchasing Manager may conduct a meeting aimed at fact finding, formulating the issues, and resolving the dispute. All Interested Parties may participate in the conference either in person or by telephone.

(b) The Purchasing Manager shall provide written notice of the time and place of a meeting to the Interested Parties. Normally such notice shall be mailed at least five days prior to the scheduled conference date; however, LCRA reserves the right to notify the Interested Parties by fax not less than 24 hours before the conference if the Line Department and the Purchasing Manager determine that the shorter notice period is necessary to protect the substantial interests of LCRA.

(c) If the issue is not resolved by mutual agreement, or if the Purchasing Manager determines that a meeting is not necessary, the Purchasing Manager shall decide the appropriate resolution and issue written findings and conclusions for distribution to Interested Parties. Findings and conclusions normally will be characterized as one of the following:

- (1) No violation of rules or statutes is found, in which case the contract shall be awarded as previously announced.
- (2) A violation of rules or statutes is found, in which case the Line Department shall be informed of the need for remedial measures prior to contract award if it appears that a substantial interest of the Party raising the issue has been harmed. No award shall be set aside if the violation found is determined to be harmless.
- (3) If the Purchasing Manager determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, he/she shall so inform the Party raising the issue, the Line Department, and other Interested Parties by letter that sets forth the reasons for the determination, and nullify the pending award.

Section 4. Appeal to the General Manager

(a) An Interested Party may appeal the Purchasing Manager's decision to the General Manager. An appeal to the General Manager may be decided by the General Manager or any of the following to whom decision-making responsibility is delegated by the General Manager: either of the Assistant General Managers, the Chief Financial Officer, or the Chief Engineering Officer. Any reference to the General Manager in this document shall be deemed to include any of the aforementioned personnel to whom such responsibility is delegated. At his or her sole discretion, the General Manager may certify the appeal to the Board of Directors prior to and in lieu of deciding the case. In such case, the provisions of Section 4A apply in lieu of those contained in this section. Except for appeals so certified, the decision of the General Manager reflects the final decision of LCRA.

(b) An appeal of the Purchasing Manager's findings and conclusions must be written, and must be received in the General Manager's office no later than 7 calendar days after the Purchasing Manager's decision is issued. Copies of the appeal must be mailed or delivered by the appealing Party to all other Interested Parties at the time the appeal is delivered to the General Manager. The General Manager shall not consider any grounds for appeal not presented to the Purchasing Manager. If an appeal is not timely, it shall be denied. An untimely appeal shall not be certified to the Board of Directors.

Section 4A. Appeal Certified to the Board of Directors

(a) The provisions of this section apply whenever the General Manager certifies an appeal to the Board of Directors. Such an appeal is not a matter of right, but of the General Manager's sound discretion.

(b) An appeal to the Board of Directors shall be based upon the record developed before the Purchasing Manager, the written appeal filed with the General Manager and any responses thereto. No additional documentation shall be filed with the Board of Directors and no further copies of the appeal or any response already transmitted need be mailed or delivered by the filing party to any other Interested Parties.

(c) When an appeal has been certified to the Board of Directors by the General Manager, the following requirements shall apply:

- (1) Copies of the appeal and the responses of Interested Parties, if any, shall be mailed to the Line Department which initiated the solicitation, the Appealing Party, and other Interested Parties.
- (2) All Interested Parties who wish to make an oral presentation concerning the appeal at the open meeting shall notify the General Manager's office at least five business days before the open meeting.
- (3) The Board of Directors may consider oral presentations and written documents presented by staff and Interested Parties.
 - (A) Staff, the Party raising the issue, and each Interested Party shall be allowed a maximum of 10 minutes in which to make an oral presentation.
 - (B) Oral presentations shall be made in the following order: staff, the Party raising the issue, and all other Interested Parties.
- (4) The Board of Directors' determination of the certified appeal shall be by duly adopted resolution reflected in the minutes of the open meeting, and shall be the final decision of LCRA with respect to the matter.

APPROVED BY: *Signed*
Joseph J. Beal, P.E.
General Manager

EFFECTIVE DATE: *25 April 06*