

PROCUREMENT PROTEST PROCEDURES

The Regional Transportation Authority (the RTA) will entertain protests from interested parties regarding its procurement actions. The RTA will respond to any bona fide protest filed in a timely manner provided that the protest is not of a frivolous or vexatious nature. The RTA will not allow a protest to delay the procurement of needed goods or services unless it is apparent that the RTA participated in a practice that granted an unfair advantage to a participant in the procurement.

The RTA reserves the right to consider a protestor's efforts to resolve an issue administratively prior to submission of a protest to determine the protestor's intention in protesting the procurement action.

Definitions

“Contract” means any contract, agreement, purchase order or order placed by the RTA to receive goods or services from an external source.

“Day or Days” means a working day or days of the RTA.

“interested party” means a participant or prospective participant in an the RTA procurement whose direct economic interest is affected by the award of the contract for the procurement.

“offer” means a response to an the RTA procurement solicitation, including but not limited to quotations, bids, proposals and expressions of interest or qualifications.

Submission of Protests

Any interested party may file a bid protest with the RTA on the basis that the RTA failed to comply with a federal or state law or that the RTA failed to follow its own Procurement Regulations. A valid protest must include 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 RTA Procure Regulation that the protestor alleges has been violated by the RTA.

Types of Protests and Deadline to File

The deadline for a valid protest will be determined by the progress of the procurement. The RTA will recognize three different types of protest:

1. Protest regarding solicitation

Any protest regarding solicitation must be filed no later than five (5) days Prior to the deadline to submit offers.

This type of protest includes a claim that the solicitation contained exclusionary or discriminatory specifications, any challenge to the basis for award or any claim that the procurement documents or the procurement process violate a federal or state law or fail to follow its own Procurement Regulations.

2. Protest regarding offer evaluation

Any protest regarding the evaluation of offers must be filed no later than five (5) days from the day that the RTA's decision to award is announced. Any protest filed after such date which raises such issues will not be considered as a valid protest but may be considered to the benefit of the RTA.

This type of protest challenges the RTA's determination of responsiveness of offers and responsibility of offerors, errors in calculation or that the RTA's evaluation of offers violated a federal or state law or its own Procurement Regulations.

3. Protest regarding award of contract

Any protest regarding the award of the contract must be filed no later than ten (10) days after the date of award of the contract. Any protest filed after such date which raises an issue regarding the award will not be considered as a valid protest but may be considered to the benefit of the RTA.

This type of protest will only be entertained by the RTA if the protestor is able to demonstrate that the party awarded the contract fraudulently represented itself as a responsible bidder or that the RTA violated a federal or state law or its own Procurement Regulations in awarding the contract.

The RTA's Response to Protests

The RTA will notify a protestor upon receipt of a timely protest and may, where appropriate, request further information. The RTA may, at its sole discretion, meet with the protestor to review the issues raised in the protest. The RTA's consideration of the protest, except as otherwise provided in the following paragraph "**Decisions by the RTA**", will be in accordance with the following provisions:

Protest regarding solicitation

Upon receipt of a valid protest regarding solicitation, the RTA will postpone the deadline for submission of offers until resolution of the protest.

If the protest regarding the solicitation includes a claim of unduly restrictive or exclusionary specifications, the RTA will, in considering the protest, consider both the specific needs of the RTA for the feature or item challenged and any effect on competition of including the specification regarding that feature or item. If the RTA determines that such feature or item was included in the specification in order to meet a legitimate need of the RTA, and was not unduly restrictive of

competition or designed to exclude a particular competitor, then the RTA will deny the protest.

Protest regarding evaluation of offers

Upon receipt of a valid protest regarding the evaluation of offers, the RTA will suspend its evaluation of all offers until resolution of the protest. If the RTA determines that the protestor has established that there are reasonable doubts regarding the responsiveness of an offer or the responsibility of an offeror or regarding the RTA's compliance with federal or state law or its procurement Regulations.

Protest after award

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

Protest regarding bid evaluation

Any bid protest regarding the evaluation of bids by the RTA must be filed with the RTA no later than twenty (20) days after the opening of bids. Any protest files after such date which raises issues regarding the bid evaluation will not be considered by the RTA.

This type of protest would include any challenge to determinations by the RTA of the responsiveness of a bid or the responsibility of a bidder, or any claim that the evaluation of bids violated federal, state or the RTA's procurement regulations.

Protest Regarding Award of Contract

Any protest regarding the award of the contract must be filed no later than ten (10) days after the date of award. Any protest regarding the award of the contract filed after that date will not be considered by the RTA.

This type of protest will only be entertained by the RTA if the protestor is able to demonstrate that the party awarded the contract fraudulently represented itself as a responsible bidder or that the RTA violated federal, state or its own procurement regulations in the award of the contract.

Decisions by the RTA

As indicated above, in most instances, the Authority will suspend the procurement action upon receipt of a bona fide bid protest. However, the RTA reserves the right, notwithstanding the presence of a protest, to proceed with the appropriate action in the procurement process in the following instances:

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

After review of a bid protest submitted under these provisions, the RTA will issue a written decision on the basis of the information provided by the protestor, the result of any meetings with the protestor, and the RTA's own investigation of the matter. If the protest is upheld, the RTA will take 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 the RTA's conclusion of the evaluation of the offers, or termination of the contract. If the protest is denied, the RTA will terminate the suspension of the procurement that was imposed during the consideration of the protest and will proceed with the procurement .

The availability of review of bid protests by FTA is as follows:

Reviews of protests by FTA will be limited to:

- (1) a grantee's failure to have or follow its protest procedures, or its failure to review a complaint or protest; or
- (2) violations of Federal law or regulation.

An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protestor learned or should have learned of an adverse decision by the grantee or other basis of appeal to FTA.