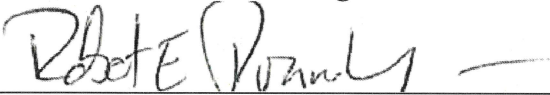




Type: Procedure	Number: 3.11 Pertaining to Policy 3 Procurement Administration
Department: Procurement	
Focus: Protest	
Document History Approved: Effective: Revisions:	Pages: 1 of 5
Chief Executive Officer Signature: 	
Date: 1/31/2023	

I. PROTEST

A protest is a written objection by a potentially interested party to a solicitation or award of a contract over the small purchase threshold to receive a remedial result. An interested party must be an actual or prospective bidder/proposer whose direct economic interest would be affected by the award or failure to award the applicable contract in accordance with FTA Circular 4220.1.

II. PROTEST DEFINITIONS

D. Pre-Bid

A written objection is made during the pre-bid or solicitation phase and is received before the bid opening or proposal due date.

E. Pre-Award

A written objection is made before an award and is received after the bid opening or proposal due date, but before award of the contract.

F. Post-Award

A written objection made by an unsuccessful offeror and received after the Board approves award of the contract.

III. SUBMITTAL PROCESS

A. Before Protest

The bidder/proposer should contact or make an appointment with the solicitation's procurement representative to resolve any issues.

B. Filing a Protest

Protests may be filed during the following:

1. Pre-bid or solicitation phase must be submitted **no later than five (5) business days** before the closing of said bid/proposal. If the protester fails

to meet this deadline, protests based on those solicitation issues may not be allowed.

2. Pre-award must be received **no later than five (5) business days** after the bid opening or proposal due date.
3. Post-award must be received **at least five (5) business days** after the Board approves contract award.

C. Protest Submittals

The protest shall include, at a minimum:

1. The name and address of the protesting party and its relationship to the procurement are sufficient to establish that an interested party is filing the protest;
2. Identity of the contact person for the protester, including name, title, address, telephone, fax, and e-mail addresses. If the contact point is a third party representing the protester, the same information must be provided, plus a statement defining the relationship between the protester and the third party;
3. The name and number of the solicitation/contract;
4. A description of the nature of the protest, referencing the portion(s) of the solicitation involved;
5. Identification of the provision(s) of any law, regulation, or other governance upon which the protest is based;
6. A complete discussion of the basis for the protest, including all supporting facts, documents, or data;
7. A statement of the specific relief requested;
8. State if an informal conference is wanted to discuss the protest with RTA.
9. Submit the protest in writing by certified mail or another delivery method by which receipt can be verified and address it to:

Director of Procurement
Greater Dayton Regional Transit Authority
4 S. Main Street
Dayton, OH 45402

D. Protest Determination

1. Director of Procurement or designee will review the protest submittal to determine if sustainable.

2. If not sustainable, the protester will be notified in writing **within ten (10) business days** of receipt of the protest.
3. If sustainable and an informal conference is requested, the protester will be notified in writing of the location and time **within three (3) business days** of such notice.
4. A decision will be made in writing and sent to the protester **within ten (10) business days** after receipt of the protest. Such a decision is final.

E. Request for Reconsideration

1. The protester shall deliver the request to the Chief Executive Officer (CEO) with a copy to the Director of Procurement **within five (5) business days** of receipt of the initial decision. The request shall state the reason(s) why the decision should be reconsidered and any information to support such a position.
2. The CEO shall review and decide on the request for reconsideration and issue a written decision to the protester **within ten (10) business days** of receipt of the request. Such a decision is final.

IV. PROCUREMENT RESPONSIBILITIES

Protests shall be submitted in accordance with the requirements of this procedure and any directions included in the solicitation and shall be addressed to the Director of Procurement. All subsequent documents will be maintained in the procurement file.

A. Director of Procurement

1. Immediately after receipt of a protest, alert the Procurement Representative, project manager, legal department, and other interested parties.
2. Notify your FTA regional office and keep FTA informed about the status of the protest if:
 - a) Valued exceeding \$100,000, or
 - b) Controversial matter, irrespective of amount, or
 - c) Involves a highly publicized matter, irrespective of amount.
3. If the protest is received after the documented protest period ends, send a written response denying the protest and the reason by email with a return receipt, registered mail with the return receipt requested, or another delivery method by which the receipt can be verified.
4. If received before the protest period ends, conduct a fair and independent review of all written supplier concerns regarding solicitation or RTA decisions.
5. Request the Procurement Representative responsible for the procurement or an assigned Procurement Representative in cases where the conduct of the Procurement Representative responsible for the procurement is called into

question to conduct the administrative processing of the protests filed with RTA.

- a) If the Director of Procurement is responsible for the procurement and their conduct is called into question, an assigned Procurement Representative will conduct the administrative processing of the protests filed with RTA.
 - b) The Chief Executive Officer will review the protest and render the final decision.
6. Review the documentation provided by the Procurement Representative to determine whether the protest will move forward. Ensure that the confidentiality of proprietary information is maintained.
7. Determine whether the solicitation or award of the contract should be suspended until an administrative resolution is reached. If suspending, notify Procurement Representative, who will notify the project manager and all prospective offerors.
8. Determine whether to form a committee that may include a legal representative, the department head, and the project manager who will benefit from the contract or any combination thereof.
9. If an informal conference is requested, provide the protester written notice of the place, location, and time of the informal conference, which shall be within **three (3) business days of such notice**. In addition, any other information the protester wants to be considered concerning the protest decision must be submitted in writing **within twenty-four (24) hours** after the conference.
10. Mail with return receipt or email with read receipt a written decision to the protester that verifies receipt within **ten (10) business days** of the receipt of the protest. The written response shall address each substantive issue raised in the protest. A decision is final unless a request for reconsideration is filed.
11. If the protester is dissatisfied with the initial decision made by the Director of Procurement, they may request in writing a reconsideration based on data that was not previously known or because there has been an error of law or regulation.
 - a) The request shall be delivered to the Director of Procurement **within five (5) business days** of receipt of the initial decision.
 - b) The request shall state the reason(s) why the decision should be reconsidered and any information to support such a position. In the manner provided above for an initial protest, the Director of Procurement shall consider and decide the request for reconsideration and issue a written decision to the protester **within ten (10) business days**.

- c) The protester will be notified of the decision, and all substantive issues will be addressed that were raised in the request for reconsideration. Such a decision is final.
- 12. RTA may proceed with the procurement when a protest is pending, if it is in the best interest of RTA.
- 13. Potential bidders/proposers will be advised of a pending protest if made before the award.
- 14. FTA will only entertain a protest alleging RTA failed to adhere to a protest procedure. A protest to RTA must be filed per FTA Circular 4220.1.
- 15. Should the protester be dissatisfied with the decision rendered by RTA and FTA, if applicable, the protest would have to be taken to the appropriate state and local administrative or judicial authority.

B. Procurement Representative

- 1. Provide all required documentation to the Director of Procurement.
- 2. Maintain a detailed file of all communications and documents pertaining to the protest. The protest file should, at a minimum, include the following:
 - a) The protest, including supporting documentation
 - b) Record of determination of protest timeliness
 - c) Record of internal distribution of protest
 - d) Record of internal responses to protest
 - e) Record of legal review
 - f) Determination and findings, including supporting documentation
 - g) Protester response/appeal
 - h) Result of appeal
 - i) Notice of cancellation of solicitation, if applicable.
- 3. Keep the project manager and interested parties informed of the status during the protest process.