



## Metro Protest Procedure

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### 1.0 Policy

- 1.1. Any actual or prospective bidder, proposer, or contractor who alleges an error or impropriety in the solicitation or award of a contract may submit a protest to the Director of Procurement.
- 1.2. The full protest procedure will be included in all solicitation documents and posted on the public-facing Metro website.
- 1.3. Chapter VII, Sec. 1.b. of Federal Transit Administration (FTA) Circular 4220.1F addresses protests where federal funds are involved.
  - 1.3.1. FTA will only review protests regarding the following allegations:
    - 1.3.1.1. Alleged failure of the grantee to have a written protest procedure;
    - 1.3.1.2. Alleged failure to follow such written protest procedure; or
    - 1.3.1.3. Alleged violations of Federal law or regulation.
  - 1.3.2. A protestor must exhaust all administrative remedies with SORTA before pursuing a protest with FTA.

### 2.0 Submittal Procedures

- 2.1. All protests shall be typed under the protestor's letterhead and submitted in accordance with the provisions stated herein. All protests must include at a minimum the following information:
  - 2.1.1. The name, address, and telephone number of the protestor;
  - 2.1.2. The signature of the protestor or the protestor's representative;
  - 2.1.3. The solicitation or contract number;
  - 2.1.4. A detailed statement of the legal and/or factual grounds for the protest; and
  - 2.1.5. The form of relief requested.
- 2.2. Protests not including the information contained in 2.1 will not be considered.



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- 2.3. An interested party wishing to protest a matter involving a proposed procurement or contract award shall file a written submission with the Director of Procurement by certified mail or other delivery method by which receipt can be verified.
- 2.4. Electronic submission of protests will not be accepted. Interested parties may inform the Director of Procurement via email with a Notice of Intent to Protest. The Notice does not extend the submission deadline.
- 2.5. The Director of Procurement may permit the electronic provision of supplemental information after the initial protest submittal.
- 2.6. The protestor is solely responsible for the completeness and validity of the information provided. Any documents relevant to the protest should be attached to the written submission.

### **3.0 Protests of Solicitation**

- 3.1. All protests related to the specifications, amendments, or issuance of a solicitation, irrespective of the method of procurement, must be received no later than five (5) days prior to the scheduled date for receipt of responses/solicitation close. Protests received after the five (5) business day deadline will not be considered.
- 3.2. In the event the protest of specifications, amendments, or issuance is denied, and the protestor wishes to continue in the solicitation process, they must still submit a response prior to the close of the solicitation provided in the announcement.

### **4.0 Protests of Contract Award**

- 4.1. All protests related to the award of a contract resulting from a competitive solicitation process must be submitted no later than five (5) business days after the Notice of Intent to Award has been issued by SORTA. Protests received after the five (5) business day deadline will not be considered.
- 4.2. The Procurement Department may move forward with the contract award process if no protest is received within the five (5) business day period.
- 4.3. During the five (5) business day period, solicitation information such as the final evaluator score sheets (individual evaluator names to be redacted), are subject to public disclosure.

### **5.0 Protest Process**



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- 5.1. In the event of a timely protest, the Director of Procurement shall stay the solicitation or contract award until a final decision can be rendered. Notification of the receipt of a timely Protest of Solicitation will be published on the e-procurement profile for the solicitation. Notice of the receipt of a timely Protest of Contract Award will be issued to all bidders/proposers under consideration for award.
- 5.2. Upon receipt of a timely protest, the Director of Procurement will issue a determination in writing within ten (10) business days.
- 5.3. The Director of Procurement may, after providing written justification to the Chief Executive Officer to be included in the procurement file, make the determination that an award of the contract is necessary to protect the substantial interests of Metro. The award of a contract shall in no way compromise the protestors right to the protest procedures contained herein.
- 5.4. If the protestor disagrees with the decision of the Director of Procurement, the protestor may submit a written Notice of Appeal to the Chief Executive Officer requesting a review of the determination.

### **6.0 Appeal Process**

- 6.1. If the protestor wishes to appeal the decision of the Director of Procurement, the protestor must submit, within five (5) business days from receipt of the Director's decision, a written appeal to the Chief Executive Officer.
- 6.2. The written appeal must contain the information required in section 2.1 of this policy and must include the legal or factual grounds for appeal.
- 6.3. Within five (5) business days of receipt of the protest appeal, the Chief Executive Officer will notify the protestor of the method of review of the decision of the Director of Procurement. The decision of the Director of Procurement may be reviewed using one or more of the following methods, as determined by the Chief Executive Officer:
  - 6.3.1. Independent review by the Chief Executive Officer;
  - 6.3.2. Convening of a Protest Appeals Committee consisting of Metro executive leadership; and/or
  - 6.3.3. Third-party review by one or more individuals not affiliated with Metro with documented expertise in public procurement or procurement/contract law.



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- 6.4. The Chief Executive Officer will issue a final determination of appeal within fifteen (15) days of receipt of a timely appeal.
- 6.5. The determination of the Chief Executive Officer will be final and there shall be no right to further administrative remedy of the protest.

### **7.0 Protest Appeals Committee**

- 7.1. The Protest Appeals Committee is an administrative review committee convened by the Chief Executive Officer for the sole purpose of hearing vendor protests that have not been resolved by the Director of Procurement.
- 7.2. The purpose of the Committee will be to determine whether a solicitation or contract award is in accordance with applicable policies, procedures, state or federal law, and accepted standards of fairness and ethics.
- 7.3. The Protest Appeals Committee will be convened at the discretion of the Chief Executive Officer and will be comprised of three (3) or more Executive employees not responsible for the department for which the contract is to be used.
- 7.4. The Protest Appeals Committee will have fifteen (15) business days to render a final determination upon notice from the Chief Executive Officer of the receipt of a timely protest appeal.
- 7.5. The determination of the Protest Appeals Committee shall be final and there shall be no right to further administrative remedy of the protest.

### **8.0 Third-Party Protest Appeals Review**

- 8.1. The Chief Executive Officer may select a non-SORTA employee for review of protest appeals.
- 8.2. The Third-Party Protest Appeals party must have documented expertise in public procurement or procurement law.
- 8.3. The Third-Party Protest Appeals party will have fifteen (15) business days to render a final determination upon notice from the Chief Executive Officer of the receipt of a timely protest appeal.
- 8.4. The determination of the Third-Party Protest Appeals party shall be final and there shall be no right to further administrative remedy of the protest.



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### **9.0 Conflicts of Interest**

- 9.1. All personnel outside of the Procurement Department who may be involved in a protest or protest appeal must certify that they have no conflict of interest with the protest being heard.