

APPLICABILITY. These protest procedures shall apply to all types of procurement activities, including formal competitive bidding and request for proposals.

DEFINITIONS.

1. **Authority** - The Metropolitan Atlanta Rapid Transit Authority.
2. **Contract** - A written agreement between the Authority and the bidder/offeror setting forth the obligations of the respective parties that may be in the form of a Purchase Order, Invitation for Bids, Request for Quotations, Request for Proposals or Letter Agreement.
3. **FTA** - Federal Transit Administration, or any successor agency.
4. **IFB** - Invitation for Bids.
5. **Person** - A natural person, partnership, corporation and other business organizations/entities.
6. **Protest** - Shall mean a written communication that asserts, alleges or represents that any one or more of the following is contrary to or unauthorized by any applicable law or regulation, or otherwise objects or takes exception thereto:
 - (a) The specifications or other requirements with respect to any goods to be delivered, services to be performed, or other performance to be rendered under any contract to which these procedures apply.
 - (b) Any terms or conditions of any contract to which these procedures apply under or subject to which goods are to be delivered, services performed, or other performance rendered.
 - (c) The procedures or conditions for submitting offers or bids to perform any contract to which these procedures apply, or any restrictions on eligibility to submit such offers or bids.
 - (d) The acceptance, or the proposed or intended acceptance, by the Authority of any offer or bid to perform any contract to which these procedures apply, or the award, or the proposed or intended award, of any such contract.
 - (e) The rejection, or proposed or intended rejections, by the Authority of any offer or bid to perform any contract to which these procedures apply.
7. **RFP** - Request for Proposals.

REQUIREMENT FOR PROTESTER. In order to file a valid protest, an individual, association, corporation, company, consortium, joint venture, partnership or other legal entity must be an actual or prospective bidder or offeror whose **direct economic interest** would be affected by the award or failure to award a contract. A protest filed by anyone who fails to establish standing to protest shall be rejected by the Authority.

FILING OF PROTEST. All protests must be submitted in writing to the Authority within the time prescribed. The protests shall be addressed and delivered to the Assistant General Manager/Director of Contracts & Procurement and Materials, Metropolitan Atlanta Rapid Transit Authority, 2424 Piedmont Road, N.E., Atlanta, Georgia 30324.

All relevant information and referenced material supporting the protests should be attached. Protests should include the following:

- A. The RFQ, IFB or RFP number, or other identifiers. If any addendum or addenda issued by the Authority in connection with a solicitation is the basis for a protest, the protest must also identify that addendum(a). If any other Authority communication is the basis for a protest, it should also be identified.
- B. The name and address of the protester. If the name or address is different than that shown on any bid or proposal of the protester, the protest should include a reference to the original name and/or address. Because standing to protest may be an issue, protests filed under a name other than the name stated on the bid or proposal submitted should indicate the basis supporting standing to protest.
- C. A full and complete statement specifying in detail the grounds for the protest, including identification of any laws, regulations, or procedures violated, and providing all pertinent facts in support of the protest.
- D. The specific remedy requested by the protester.
- E. Identification of person(s) and address(es) of those to whom the Authority communications on the matter of the protest should be directed.

If the protest is not sufficiently clear, or the supporting evidence or information is insufficient, the Authority may request clarification, or additional information or evidence, as appropriate. If the protester's response is still unclear as to the action protested or the basis/grounds of the protest, or if the supporting evidence/information is still insufficient, the Authority may deny the protest on this ground.

TIME TO FILE. All protests must be filed within the applicable times prescribed below:

- A. A protest to (1) the specifications, requirements, terms or conditions of a contract; (2) the procedures or conditions for submitting offers or bids; or (3) to any restrictions on eligibility to do so, must be filed with the Authority no later than fifteen (15) days before the closing date for receiving offers or bids. In the case of a formally advertised contract, a protest must be filed fifteen (15) days before the bid opening date listed in the solicitation.
- B. A protest to the acceptance or rejection of any or all offers or bids for a contract, or to the award, or to any such action proposed or intended by the Authority, must be filed with the Authority no later than ten (10) days after the protester first learned, or reasonably ought to have learned, of the action or the proposed or intended action which is the basis of the protest.

In the case of a formally advertised contract, if the basis or ground of the protest is apparent on the face of the bid or bids in question, the ten (10) days shall begin on the bid opening date.

NOTIFICATION OF PROTEST. If the protest is received before the bid opening date or the proposal deadline, the Authority shall notify all known actual and prospective bidders/offerors of the protest. If the protest is received after the bid opening date/proposal deadline but before award, the Authority shall notify all actual bidders/offerors, whose direct economic interest would be affected by the award or failure to award the contract at issue, of the protest. If the protest was received after the award of the contract, the Authority shall only notify the successful bidder/offeror of the protest.

In accordance with the provisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," November 1, 2008 and any later revision thereto, the Chief Counsel, or designee, will notify and provide information regarding protests of federally funded procurements to the FTA.

STAY OF PROCUREMENT. Upon receipt of a protest, the Authority shall not proceed further with the solicitation and/or award of the contract until the protest has been resolved. If the contract has been awarded, the Authority may suspend performance of the contract until the protest has been resolved.

PROCEDURES FOR EVALUATING PROTEST. The Authority will review, evaluate and decide the protests as follows:

- A. The Assistant General Manager/Director of Contracts & Procurement and Materials shall promptly forward all protests to the Chief Counsel, and notify all interested parties as set forth above. If the protest involves a federally funded project, the Chief Counsel shall notify FTA of the protest.
- B. The Chief Counsel and the Assistant General Manager of the Department for which goods or services are to be purchased under the contract in question shall be responsible for reviewing and evaluating all protests timely received, and for recommending appropriate action to the General Manager. They shall carry out this responsibility as expeditiously as practicable. In doing so, they shall consult such other departments, divisions, or offices of the Authority as they deem appropriate for information, advice, or assistance.
- C. The Chief Counsel may notify the protester that an untimely protest is denied on that ground, but may, if it appears in the Authority's best interest, recommend to the appropriate Assistant General Manager and the General Manager that such a protest be considered. If the General Manager directs that an untimely protest be considered, it will be reviewed and evaluated as provided above.
- D. The General Manager, after receiving the recommendation of the Chief Counsel and the appropriate Assistant General Manager, shall decide upon the action to be taken with respect to the protest. This shall be the final administrative decision thereon. The protester and FTA, if applicable, shall be notified promptly of the decision in writing, and advised that it is final.

- E. The Authority shall not open bids or award contracts that have been the subject to a protest under these procedures for at least five (5) days after the protester has been notified of the Authority's final decision.

APPEAL TO THE FTA. The protester, or other person whose direct economic interest would be affected by the award or failure to award a contract, may be entitled to appeal the Authority's decision to the FTA under Chapter VII of the FTA Circular 4220.1F, "Third Party Contracting Guidance," November 1, 2008 and any later revision thereto.

- A. If a further protest/appeal is filed with the FTA within five (5) days working days of the date of the protester received actual or constructive notice of the Authority's final decision, the opening of bids or the award of the contract by the Authority shall be subject to the directives of the FTA.
- B. If no such protest is filed within such period, the Authority may proceed to open bids or to award a contract as set forth in the MARTA Act and MARTA policies and procedures.