

Bid Protest Procedure

Part I: CATA Procedures

General

Protests will only be accepted by the CATA from prospective bidders or offerors whose direct economic interest would be affected by the award of the contract or refusal to award a contract. The CATA will consider all such protests, whether submitted before or after the award of a contract. All protests must be in writing and conform to the following requirements:

1. Be concise and legally arranged.
2. Provide name, address and telephone numbers of protestors.
3. Identification of the solicitation or contract number.
4. Provide a clear and detailed statement of the legal and factual grounds of the protest including copies of all relevant documents.
5. A statement as to what relief is requested.

A. PROTEST BEFORE AWARD

General

Protest before award must be submitted within the time frame as specified below. If the written protest is not received by the time specified, the bid or evaluation process shall continue.

Protest Before Bid Opening

Protest addressing the adequacy of the Invitation to Bid, RFP's, including the pre-award procedure, the Instruction to Bidders, General terms and conditions, specifications and scope of work must be filed with the CATA not less than seven (7) full working days before bid opening. Thereafter, all issues and appeals are deemed waived by all interested parties.

Upon receipt of the written protest the CATA will determine if the bid opening should be postponed. If the bid opening is postponed, the CATA will immediately contact prime contractors and subcontractors who have been furnished a copy of the specifications that a protest has been filed and the bid opening is postponed until a final decision is issued. Any appropriate addenda will be issued regarding a rescheduling of the bid opening. Any protest may be withdrawn at any time before the CATA has issued its decision.

Protest After Bid Opening

A protest of a decision of the CATA to award a contract to a prime contractor or a subcontractor must conform to A. above and be received by the CATA within ten (10) full working days of its decision. Thereafter, such issues are deemed waived by all interested parties.

In addition, when a protest against the making of an award is received and the CATA determines to withhold the award pending disposition of the protest, the bidders whose bids might become eligible for award shall be requested, before expiration of the time for acceptance of their bids, to extend the time for acceptance (with the consent of sureties, if any) to avoid the need for re-advertising.

When a written protest against making of an award is received, the award shall not be made until five (5) days after the matter is resolved. The CATA may, however, proceed to make an award if it determines that:

- a) The items to be procured are urgently requested, or;
- b) Delivery of performance will be unduly delayed by failure to make the award promptly, or;
- c) Failure to make a prompt award would otherwise cause undue harm to the CATA, the Commonwealth of Massachusetts or the Federal Government.

Attachment B

In the event that the CATA determines that an award is to be made during the five day period or during the pendency of a protest, the FTA will be notified prior to the making of an award. FTA reserves the right not to participate in such procurements.

If an award is made, the appropriate documents will be prepared to explain the need for the award with notice going to the protestor and other concerned parties.

B. PROTEST AFTER AWARD

Protest against an award must be filed with the CATA within five full working days immediately following the award. This protest shall conform to the requirements of A. above. Thereafter, such issues are deemed waived by all interested parties.

Although the number of persons involved in or affected by the filing of a protest may be limited to instances where an award has been made, the contractor shall be furnished with the notice of protest and related information. Also, if it appears that the award may be invalidated and a delay in receiving the supplies or service is not prejudicial to CATA's interest, the CATA shall consider a mutual agreement with the contractor to suspend performance on a no-cost basis.

C. CATA'S DECISION ON THE PROTEST

The CATA shall render its decision in writing within fourteen (14) working days from the receipt of the written protest and shall provide notice of this decision to all interested parties.

Following an adverse decision by the CATA, the protestor may file a protest with the Federal Transit Administration (FTA).

PART II: FTA REVIEW OF PROTEST

FTA will only review protest regarding the alleged failure of the CATA to have written protest procedures or alleged failure to follow such procedures.

Alleged violations on other grounds are under the jurisdiction of the appropriate State or Local administrative or judicial authorities. Alleged violations of a specific Federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that Federal regulation. See, e.g. Buy America Requirements, 49 CFR Part 661 (Section 661.15); Participation by Minority Business Enterprise in Department of Transportation Programs, 49 CFR Section 23.73.

FTA will only review protests submitted by an interested party as defined in paragraph B. below.

A. REMEDY

FTA's remedy for CATA's failure to have written protest procedures or failure to follow such procedures is limited to requiring the CATA to develop such procedures, if necessary, and follow such procedures in reviewing the protest at issue, if the CATA desire FTA financial participation in the contract in question. In instances where CATA has awarded to another bidder or offeror prior to FTA's decision on the protest, the FTA may refuse to participate in funding the contract.

B. DEFINITION

For the purpose of this Bid Protest Procedures, the following definitions apply:

- a. "Days" refers to working days of the Federal Government.
- b. "File" or "Submit" refers to the date of receipt by FTA.
- c. "Interested Party" means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract.
- d. "Bid" includes the term "Offer" or "Proposal" as used in the context of negotiated procurements.

C. TIME FOR FILING

- a. Protestors shall file a protest with FTA not later than five (5) days after a final decision is rendered under the CATA's protest procedure. In instances where the protestor alleges that the CATA failed to make a final determination on the protest, protestors shall file a protest with FTA not later than five (5) days after

the protestor knew or should have known of the CATA's failure to render a final determination on the protest.

- b. CATA shall not award a contract for five (5) days following its decision on a bid protest except in accordance with the provisions and limitations of subparagraph G. After five days the CATA shall confirm with FTA that FTA has not received a protest on the contract in question.

D. SUBMISSION OF PROTEST TO FTA

- a. Protest should be filed with the appropriate FTA Regional Office with a concurrent copy to the CATA.
- b. The protest filed with FTA shall:
 - (1) Include the name and address of the protestor.
 - (2) Identify the CATA, project number, and the number of the contract solicitation.
 - (3) Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures and be fully supported to the extent possible.
 - (4) Include a copy of the local protest filed with the CATA and copy of the CATA's decision, if any.

E. CATA RESPONSE

- a. FTA shall notify the CATA in a timely manner of the receipt of a protest. FTA shall instruct the CATA to notify the contractor of the protest if award has been made or, if no award has been made, to notify all interested parties. The CATA shall instruct all who received such notice that they may communicate further directly with FTA.
- b. The CATA shall submit the following information not later than ten days after receipt of notification by FTA of the protest:
 - (1) a copy of the CATA's protest procedures;
 - (2) a description of the process followed concerning the protestor's protest; and
 - (3) any supporting documentation.
- c. The CATA shall provide the protestor with a copy of the above submission.

F. PROTESTOR COMMENTS

The protestor must submit any comments on the CATA's submission not later than ten days after the protestor's receipt of CATA's submission.

G. WITHHOLDING OF AWARD

When a protest has been timely filed with the CATA before award, the CATA shall not make an award prior to five (5) days after the resolution of the protest, or if a protest has been filed with FTA during the pendency of that protest, unless the CATA determines that:

- a. The items to be procured are urgently required;
- b. Delivery or performance will be unduly delayed by failure to make the award promptly; or,
- c. Failure to make prompt award will otherwise cause undue harm to the CATA of the Federal Government.

In the event that the CATA determines that the award is to be made during the five day period following the local protest decision or the pendency of a protest, the CATA shall notify FTA prior to making such award. FTA will not review the sufficiency of the CATA's determination to award during the pendency of a protest prior to FTA bid protest decision. FTA reserves the right not to participate in the funding of any contract awarded during the pendency of a protest.

H. FTA ACTION

Upon receipt of the submission, FTA will either request further information or a conference among the parties, or will render a decision on the protest.