

BID PROTEST PROCEDURES

Under certain circumstances, an interested party to a procurement may protest to RVTB the award of a contract which may or may not involve the direct application of funds from the Federal Transit Administration (FTA).

All solicitation documents shall include Bid Protest Procedures, either explicitly or by reference. These procedures are intended to ensure that valid complaints are properly handled and responded to. These procedures apply to all types of procurement actions, including sealed bids, requests for proposals, etc.

The term protest is utilized to describe the controversies that arise usually during the contract information process as an objection to a contract award or to a decision on a specific bid.

The protests are challenges to actual or proposed actions of the contracting officers on specific procurements. These objections are brought by offerors, prospective offerors or other interested parties who contend that they have been improperly treated in the procurement process. All protests must be submitted in writing.

RVTB Level One Protest Procedures – General Conditions

RVTB's review of any protest will be limited to violations of state or local laws or regulations, violations of RVTB's purchasing procedures, or violations of RVTB's protest procedures or failure to review a complaint or protest.

Protests based on restrictive or severely defective specifications or improprieties in any type of solicitations that are apparent prior to bid opening or closing date for proposals, must be received by RVTB within a reasonable time in advance of scheduled bid opening but no later than 5 days after receipt of the RFP/IFB by the proposer/bidder. All other protests must be received by RVTB within 5 days of the action on which the protest is based.

The initial protest filed with RVTB shall be in writing and shall:

- a) Include the name, address and telephone number of the protestor; and the name of a contact person.
- b) Identify the number, date, and description of the solicitation.
- c) Contain a statement of the grounds for protest and any supporting documentation. The grounds for the protest must be supported to the fullest extent feasible. Additional materials in support of an initial protest will be considered only if filed within the time limits specified.
- d) Indicate the ruling or relief desired from RVTB.

A protest may be considered, even if the initial filing is late, under the following circumstances:

- a) Good cause based on compelling reasons beyond the protestor's control, whereby the lateness is due to the fault of RVTB in the handling of his/her protest submission.
- b) RVTB determines the protest raised issues significant to a procurement practice or procedure.
- c) RVTB is directed by the FTA to either consider or reconsider a protest.
- d) A court of competent jurisdiction request expects or otherwise expresses interest in RVTB's decision.

No formal briefs or other technical forms of pleading or motion are required, but a protest and other submissions should be concise, logically arranged, clear and legible.

Any additional information requested or required by RVTB from the protestor, or interested parties shall be submitted as expeditiously as possible, but in no case later than five (5) days after the receipt of such request unless specifically accepted by RVTB.

Confidentiality

Materials submitted by a protestor will not be withheld from any interested party outside of RVTB or from any Government agency that may be involved in the protest, except to the extent that the withholding of information is permitted or required by law or regulation. If the protestor considers that the protest contains proprietary materials that should be withheld, a statement advising of this fact may be affixed to the front page of the protest document and the alleged proprietary information must be so identified wherever it appears.

Furnishing of Information on Protests

RVTB shall, upon request, make available to any interested party, information bearing on the substance of the protest, including:

- a) Any other documents that pertain to the protest, including correspondence with the bidders; and
- b) A statement by RVTB explaining its actions and the reasons for them.

A conference on the merits of the protests with members of RVTB Protest Review Panel (defined below) may be held at the request of the protestor. The request for a conference should be made in a timely manner so as not to interfere with the resolution of the protest and not later than twenty (20) days after the initial protest was filed.

Withholding of Award

When a protest has been filed before the opening of bids, RVTB will not open bids prior to the resolution of the protest. When a protest has been filed after the opening of bids but before the contract award, RVTB will not make an award for five days following its decision on the protest. When a protest has been filed after the award but

prior to the execution of a contract, RVTB will not proceed with the execution of the contract prior to the resolution of the protest. Exceptions to the above may occur if RVTB determines that:

- a) The items to be procured are urgently required; or
- b) Delivery or performance will be unduly delayed by failure to either make the award promptly or to continue with the procurement; or
- c) Failure to make prompt award or to continue with the procurement will otherwise cause undue hardship to RVTB or other local, state or federal governments.

If FTA funds are involved, RVTB will notify FTA in a timely manner and keep FTA apprised of the status of the protest.

Protest Review – Level One

Upon receipt of a protest, the General Manager will appoint an ad hoc RVTB Protest Review Panel to review all relevant materials associated with the protest. The Panel shall be comprised of two representatives of RVTB appointed by the General Manager. The Panel shall determine the validity of the protest and what actions will be taken.

The Panel will be directed to prepare a report within fifteen (15) days. The Panel will notify the protestor and any interested parties of their findings and actions and of the procedures for requesting reconsideration. The report shall include the following:

- a) Copies of all relevant documents;
- a) A copy of the invitation for Bid or Request for Proposal, including pertinent provisions of the specifications; and
- c) A copy of the abstract of bids.

Protest Review – Level Two

Reconsideration of a decision by RVTB may be requested by the protestor or any interested party. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

The request for reconsideration of RVTB Protest Review Panel's decision shall be filed no later than ten (10) days after the Panel issues its written report, and shall be filed with the General Manager.

Upon receipt of the request for reconsideration, the General Manager shall schedule an informal administrative hearing with protestor and RVTB Protest Review Panel. The hearing shall be held not later than fifteen (15) days after the receipt of the request for reconsideration.

The Board of Directors of RVTD has the authority to make the final decision on all protests. The General Manager shall issue, in writing, RVTD's final determination of the reconsidered protest within five (5) days of the administrative hearing.

The appellant process ends with Board of Directors decision; however, the aggrieved party has those remedies afforded by the state courts.

Effect of Judicial Proceedings

RVTD may refuse to decide any protest where the matter involved is the subject of litigation before a court of competent jurisdiction, or has been decided on the merits by such a court.

Federal Transit Administration (FTA) Protest Procedures

A protestor wishing to file a protest with FTA should consult FTA Circular 4220.1F for details on FTA's bid protest procedures. Circular 4220.1F reinforces FTA's policy of limiting involvement in the affairs and activities of grantees.

Each authority is responsible for the settlement of all contractual and administrative issues arising out of procurements entered into in support of a grant, and only in certain specific situations is it appropriate for FTA officials to become involved in those situations or to substitute their judgment for that of the grantee in the controversies.

FTA will only review protests regarding the alleged failure of the grantee to have written protest procedures or alleged failure to follow such procedures. Alleged violations of a specific federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that federal regulation. Alleged violations on other grounds are under the jurisdiction of the appropriate state or local administrative or judicial authorities.

Protests must be filed with FTA (with a concurrent copy to RVTD) within five (5) days after RVTD renders a final decision or five (5) days after the protestor knows or has reason to know that RVTD failed to render a final decision. After five (5) days, RVTD will confirm with FTA that FTA has not received a protest on the contract in question.

Circular 4220.1F is available for review at RVTD offices. A copy can be obtained from FTA at the following address:

Federal Transit Administration, Region X
915 Second Ave., Ste. 3142
Seattle, WA. 98174

RVTD shall not be responsible for any protests not filed in a timely manner with FTA.