

15 PROTESTS

15.1 Procurement Objective

Protests submitted related to procurements over \$25,000 shall be evaluated in accordance with the procedures described below. Special procedures apply for protests submitted related to a procurement for specialized rail equipment conducted under Public Utilities Code § 130238 – these special procedures are described in Section 15.6.

15.2 Notice of Availability of Protest Procedures

Notice of the availability of these protest procedures and information on the applicable protest deadlines shall be provided to bidders/proposers in all solicitations in excess of \$25,000. The protest procedures shall be available on the Authority's website. A copy of the Protest Procedures may also be requested from the Contract Administrator identified in the solicitation package.

15.3 Protest Submittal Criteria-General

In order for a protest to be considered, the protest must meet each one of the following criteria:

- Be related to a procurement action in excess of \$25,000.
- Be submitted on a timely basis.
- Be submitted by an Interested Party, defined as an actual or prospective bidder or proposer, whose direct economic interest could be affected by the Authority's conduct of the solicitation. Interested parties do not include subcontractors of an actual or prospective bidder/proposer or individual firms that make up a Joint Venture, acting independently of the Joint Venture.
- Identify the solicitation or contract number being protested.
- Be submitted in writing.
- Include all supporting documentation for each material issue raised in the protest.
- Include a detailed statement of the legal and/or factual grounds for each material issue identified in the protest.
- Describe the resolution to the protest desired by the Interested Party.
- Be signed by a properly authorized representative of the Interested Party.

The Authority reserves the right to waive minor deficiencies in a protest in its sole discretion.

15.4 Protests Filed Prior to Submittal of Bids/Proposals

15.4.1 Timing

To be timely submitted, a protest filed prior to submittal of bids /protests that addresses the content of the solicitation package must be submitted to the Director of CPMM, at Contracts@scrra.net no later than five calendar days prior to the Bid or Proposal due date. The Authority may reject any protest not submitted by the applicable deadline and will not consider additional material submitted after the deadline unless specifically requested by the CEO.

15.4.2 Content

Protestors will first be required to utilize any procedures specified in the solicitation package for Approved Equals or requests for clarifications prior to submitting a protest. The Authority will deny or approve such requests and if the requestor disagrees, they may avail themselves of the protest procedures outlined in this subsection.

Alleged improprieties in the bidding procedure or contract specifications, which are apparent or reasonably should have been discovered by the protestor prior to the bid or proposal submission date, shall be filed in writing. The protest must clearly state in writing the name of the protestor, the solicitation number and description, the grounds and evidence on which the protest is based, and what remedy the protestor is seeking.

15.4.3 Authority Action

Pursuant to the Board adopted Procurement and Contracting Policies, the CEO has been delegated the authority to decide all protests. If the protest is determined to be timely and meets the required criteria, the CEO will review the protest and will render a determination to uphold or deny the protest, which determination shall be final, with the exception of protests filed in conjunction with a procurement for specialized rail equipment subject to Public Utilities Code §130238—see Section 14.6. The CEO will respond to the protest with a written determination prior to the submission date of Bids or Proposals. This determination and original protest will be sent to all identifiable Bidders or Proposers who received the solicitation. Where the determination could affect bid or proposal submission, an appropriate extension of the bid opening or proposal due date may be granted.

15.5 Protests Submitted After Receipt of Bids/Proposals and Relating to Selection of Contractor

15.5.1 Timing

To be timely submitted, protests after the receipt of Bids/Proposals and relating to selection of a contractor, must be submitted to the Director of CPMM at Contracts@scrra.net within the time period specified in the solicitation document. If no such time period is specified, the protest must be received either (a) by 4:00 PM Pacific Time on the seventh calendar day from the date the Authority sends a Notice of Intent to Award the agreement to all proposers, if such award is not subject to Board action, or (b) by 4:00 PM Pacific Time on the 15th calendar day from the date the Authority sends a Notice of Intent to Award the agreement to all proposers, if such award is subject to Board action. Day 1 is defined as the day after the date the Authority sends the Notice of Intent to Award. If the deadline referenced above falls on a weekend or Authority holiday, the protest must be received by 10:00 AM Pacific Time on the next business day.

A protest not received within this time period may be found to be untimely, may not be considered, and may be returned without response other than the determination that it is untimely filed.

Award of any Contract is subject to administrative resolution of any protest timely filed.

15.5.2 Content

Protests based upon alleged improprieties that are not apparent or which could not have reasonably been discovered prior to submission date of the bid or proposal, including protest of the staff recommendation for contract award, shall be submitted in writing. Issues that could have been raised prior to bid or proposal submission (see above) will not be considered. The protest must clearly state in writing the name of the protestor, the solicitation number and description, the grounds and evidence on which the protest is based, and what remedy the protestor is seeking.

15.5.3 Authority Actions

If the protest is determined to be timely and meets the required criteria, the Director of CPMM is required to forward the protest to the CEO with a recommendation for review and final determination by the CEO. The CEO may provide applicable Interested Parties with an opportunity to respond to a protest, and may consider such response in rendering a decision on the protest. After full consideration of the protestor's evidence, staff recommendation, and any other relevant information the CEO will render a determination to uphold or deny the protest, which determination shall be final, with the exception of protests filed in conjunction with a procurement for specialized rail equipment subject to Public Utilities Code § 130238—see Section 14.6. The CEO's determination and the original protest will be sent to all bidders or proposers who submitted bids or proposals.

15.6 Protests Relating to a Solicitation Issued under Public Utilities Code § 130238 for Specialized Rail Equipment Based upon Content of RFP

This section of the procedures applies only to procurements issued pursuant to Public Utilities Code § 130238.

- Any Proposer submitting a protest based on the content of the request for proposals must submit a written protest to the Director of CPMM at Contracts@scrra.net within 10 calendar days after the request for proposal is first advertised. Day 1 is defined as the day after the advertisement date.
- The protest shall contain a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest.
- The Director of CPMM will then forward the protest to the CEO with a recommendation for review and final determination by the CEO.
- The CEO will review the protest and prepare a report for the Board, which shall include a copy of the original protest filed and a recommendation for resolution.
- Authority staff shall notify the Protestor of the date and time that the Board shall consider the matter and the Protestor shall have the opportunity to appear and be heard before the Board prior to the opening of proposals.

- The Board shall review the protest, hear the Protestor, if he/she wishes to speak, and review the recommendation for resolution. The Authority will issue a written decision on the protest prior to the opening of proposals.
- Such a protest may be renewed by refiling the same protest within 15 days after the recommendation for award has been made public

15.6.1 Protests Relating to a Solicitation Issued under Public Utilities Code § 130238 for Grounds Not Based upon Content of RFP, or Refiling a Protest Based on the Content of the RFP

This section of the procedures applies only to procurements issued pursuant to Public Utilities Code § 130238. Any proposer (i) protesting the recommended award on any ground not based upon the content of the request for proposal, or (ii) refiling a protest based upon the content of the request for proposal must submit the written protest to the Director of CPMM not more than 15 calendar days from the date the notice of recommended award is mailed by Authority to Proposer(s). Day 1 is defined as the day after the mailing date.

The protest shall contain a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest.

The Director of CPMM will forward the protest to the CEO with a recommendation. The CEO shall review the protest and prepare a report for the Board, which shall include a copy of the original protest filed and a recommendation for resolution. The Board will decide whether to uphold or deny the protest.

Authority staff shall notify the Protestor of the date and time that the Board shall consider the matter and the Protestor shall have the opportunity to appear and be heard before the Board prior to award of the contract.

15.7 Protests Relating to Federally Funded Procurements

In cases where Contracts are substantially funded by the Federal Transit Administration (FTA), as a best practice, the Authority will notify its FTA regional office when it receives a protest and keep FTA informed about the status of the protest. Contracts and Procurements staff will advise the Authority's Grants Department of relevant information concerning protests so that appropriate reporting will be accomplished.