

Chapter 23 Protest Procedure

23.0 General

Any Interested Party shall have the right to Protest a MARTA procurement action and have its complaint considered and resolved administratively by MARTA in accordance with this procedure.

23.1 Requirement for Protester

In order to file a valid Protest, an individual or entity must be an Interested Party. A Protest filed by anyone who fails to establish standing to Protest shall be rejected by the Authority.

23.2 Filing of Protest

A. All Protests must be submitted in writing to the Authority within the time prescribed herein. The Protest shall be addressed and delivered to the Head of CPM, Metropolitan Atlanta Rapid Transit Authority, 2424 Piedmont Road, N.E., Atlanta, Georgia 30324 with a copy to the Department of Legal Services, Metropolitan Atlanta Rapid Transit Authority, 2424 Piedmont Road, N.E., Atlanta, Georgia 30324.

B. All evidence and relevant information and referenced material supporting the Protest must be attached. Protests should include the following:

1. The solicitation number, name and/or other identifying information. If any addenda issued by the Authority in connection with a solicitation is the basis for a protest, the Protest must also identify the specific addenda. If any other Authority communication is the basis for a Protest, it must also be identified.
2. The name and address of the Protester. If the name or address is different than that shown on any bid, quote or proposal of the Protester, the Protest should include a reference to the original name and/or address of the respondent to the bid, quote or proposal. Any Protest filed under a name other than the original name of the respondent stated on the bid, quote or proposal submitted, then the Protester must indicate the basis supporting standing in Protest.
3. 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.
4. The specific remedy requested by the Protester.
5. Identification of person(s) and address(es) of those to whom the Authority communications on the matter of the Protest should be directed.
6. Protest Security, see Section 23.3 below.

C. If the Protest (1) is not sufficiently clear, (2) does not contain the supporting evidence or the information provided is insufficient, (2) lacks standing or (4) was not filed timely, the Authority may deny the Protest on this ground or 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 missing or insufficient, the Authority may deny the Protest solely on this ground.

23.3 Protest Security

A. Any Protester must, at the time of filing the Protest, post security in an amount equal to the lesser of (1) one (1) percent of the financial offer made by the protester in its Proposal, Bid or Quote or (2) a one hundred thousand and 00/100 U.S. Dollars (\$100,000.00). In the event the bid, quote or proposal does not involve a financial offer or if it involves negotiated contract rates (e.g., architectural and engineering contracts) then the security to be posted must be equal to one hundred thousand and 00/100 U.S. Dollars (\$100,000.00). The Protester must tender security in the form of a bond, certified check, or bank check in the name and favor of MARTA.

B. If the Authority denies the Protest, it may (in its sole discretion) assess against the Protester and deduct from

the Protest Security reasonable administrative costs incurred by the Authority in reviewing and responding to the Protest (including without limitation attorneys' fees). Within fifteen (15) days of denying the Protest, the Authority will calculate the Authority's cost in reviewing and responding to the Protest and will deduct from the Protest Security such costs. Any remaining Protest Security balance will be returned to the Protester along with a list of the deducted costs.

23.4 Time to File

All Protests must be filed within the applicable times prescribed below:

1. A Protest to (1) the specifications, requirements, terms or conditions of a Contract; (2) the procedures or conditions for submitting offers, proposal 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, proposals or bids. In the case of a formally advertised solicitation, a Protest must be filed fifteen (15) days before the opening date listed in the solicitation.
2. A Protest to the acceptance or rejection of any or all offers, proposals 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 should 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(s) or proposals in question, the ten (10) days shall begin on the bid opening date.

23.5 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 Contractors that a Protest has been filed. If the Protest is received after the bid opening date/proposal deadline but before award, the Authority shall notify all actual Contractors, 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 Contractor of the Protest. MARTA will only notify the Contractors of the existence of the Protest, but not the specific details or name(s) of the Protester until the matter is resolved.

23.6 Stay of Procurement

Upon receipt of a Protest, the Authority may (in its sole discretion) elect to postpone the solicitation and/or award of the Contract until the Protest has been resolved. If the Contract has been awarded, the Authority may, in the Authority's sole discretion, suspend performance of the Contract until the Protest has been resolved.

23.7 Procedures for Evaluating Protest

The Authority will review, evaluate, resolve, and issue a final administrative decision with respect to the applicable Protest(s) as follows:

1. The Head of CPM shall promptly forward all Protests to the Department of Legal Services, and notify all interested parties as set forth above.
2. The Department of Legal Services and the Requestor and their Department Head 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/CEO. 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.
3. The Department of Legal Services 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 Department

Head and the General Manager/CEO that such a Protest be considered. If the General Manager/CEO directs that an untimely Protest be considered, it will be reviewed and evaluated as provided above.

4. The General Manager/CEO, after receiving the recommendation of the Department of Legal Services and the appropriate Department Head, shall decide upon the action to be taken with respect to the Protest. This shall be the final administrative decision thereon. The Protester shall be notified promptly of the decision in writing, and advised that it is final.

23.8 Appeal to the FTA

For FTA funded contracts:

1. A Protester, or other person whose direct economic interest would be affected by the award or failure to award a Contract involving FTA funds, 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".
2. If a further Protest/appeal is filed with the FTA within five (5) working days of the date 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.
3. If no such Protest is filed within such period, the Authority may proceed to open Bids or to award a Contract in accordance with this Manual.
4. When MARTA receives a Protest to an FTA funded procurement, the Department of Legal Services shall notify the FTA Region IV Counsel.