

## **RCTC PROTEST POLICY**

This policy provides procedures for the submittal and evaluation of protests relating to all procurements, except purchases less than \$25,000.

In order to be considered, a protest must be filed in a timely manner, as described below, must satisfy all the applicable requirements described below and must be brought by an interested party, as defined below. Notice of the availability of these protest procedures and information on the applicable protest deadlines shall be provided to bidders and proposers in all solicitations in excess of \$25,000. The protest procedures shall be available on RCTC website.

The Executive Director will make the final determination on all protests submitted, and there shall be no further administrative recourse with the exception of protests filed in conjunction with procurements funded in whole or in part by the Federal Transportation Agency (“FTA”).

Protests submitted relating to procurements of \$25,000 or less will not be considered by RCTC and will be returned.

Any protest submitted shall be evaluated in accordance with the procedures described below.

### **1.1 Protest Grounds – General**

Prior to receipt of bids/proposals, a protest may be submitted on the basis of one or more of the following grounds:

- The solicitation package contains unduly restrictive specifications or scope of work.
- The solicitation package violates local, state, or federal law or regulation.

After receipt of bids/proposal and after an action relating to the selection of a consultant/contractor, a protest may be submitted on the basis of one or more of the following grounds:

- RCTC fails to adhere to the evaluation process set forth in the solicitation package.
- RCTC fails to follow its own procurement policies and procedures.
- RCTC made a clerical or mathematical error during evaluation of the bid/proposal.

### **1.2 Protest Submittal Criteria – General**

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

- Must be submitted on a timely basis. “Timely” is defined under the Definition of Terms below. If the protest is not timely, the protest may not be considered and may be returned without response other than the determination that it is untimely filed.

- Must be submitted by an interested party. “Interested Party” is defined under the Definition of Terms below.
- Must identify the solicitation or contract number being protested.
- Must be submitted in writing.
- Must include all supporting documentation for each material issue raised in the protest.
- Must include a detailed statement of the legal and/or factual grounds for each material issue identified in the protest.
- Must describe the resolution to the protest desired by the interested party.
- Must be signed by a properly authorized representative of the interested party.

RCTC reserves the right to waive minor, non-substantive, or trivial deficiencies in a protest at its sole discretion.

### **1.3 Protests Filed Prior to Submittal of Bids/Proposals**

If the protest is determined to be timely and meets the criteria identified in 1.2 above, the following actions will be initiated:

- 1.3.1 All bidders/proposers will be notified within ten (10) working days that a protest has been filed and will be provided with a copy of the protest.
- 1.3.2 Bidders/proposers will be given an opportunity to respond to the protest.
- 1.3.3 The date for receipt of bids/proposals may be delayed, at the sole discretion of the Protest Officer, to provide adequate opportunity to resolve the protest.
- 1.3.4 The Protest Officer, at his/her discretion, may meet, either in person or over the telephone, with the Protestor to discuss the protest and/or perform additional fact finding.
- 1.3.5 Should the Protestor determine, at this point or any other point in the evaluation of the protest that he/she wishes to withdraw the protest, a written request to withdraw will be provided to the Protest Officer and the Protest Officer will promptly notify all bidders/proposers that the protest has been withdrawn.
- 1.3.6 The Protest Officer will research the protest and may call upon any resources he/she feels are necessary and appropriate to assist in the evaluation of the protest.
- 1.3.7 The Executive Director will render a determination to uphold or deny the protest, which determination shall be final.
- 1.3.8 If the protest is upheld, an addendum to the solicitation may be issued to all bidders/proposers and the date for receipt of bids/proposals may be extended, at the Executive Director’s sole discretion, to provide adequate time for all potential bidders/proposers to respond to the addendum.

- 1.3.9 If the protest is denied, the solicitation may be continued without further delay.
- 1.3.10 Acceptance of bids/proposals will be subject to the administrative resolution of any protests timely filed.

#### **1.4 Protests Submitted After Receipt of Bids/Proposals and Relating to Selection of Consultant/Contractor**

If the protest is determined to be timely and meets the criteria identified in 1.2 above, the following actions will be initiated:

- 1.4.1 The potential successful bidder/proposer will be notified within ten (10) working days of receipt of the protest that a protest has been filed and a copy of the protest will be provided to the potential successful offeror.
- 1.4.2 The potential successful bidder/proposer will be provided an opportunity to respond to the protest and provide any information the bidder/proposer believes is important to the issues raised in the protest. The length of time for response shall be determined by the Protest Officer and shall be based on the complexity of the issues raised in the protest.
- 1.4.3 The Protest Officer, at his/her discretion, may meet, either in person or over the telephone, with the Protestor to discuss the protest and/or perform additional fact finding.
- 1.4.4 Should the Protestor determine, at this point or any other point in the evaluation of the protest that he/she wishes to withdraw the protest, a written request to withdraw will be provided to the Protest Officer and the Protest Officer will promptly notify the successful bidder/proposer.
- 1.4.5 Depending on the nature and complexity of the protest, the Protest Officer may, after evaluating all of the information available, provide a written recommendation to the Executive Director that the protest should be denied or upheld, in whole or in part. The recommendation will include reasons supporting the recommendation.
- 1.4.6 The Protest Officer may call upon one or more experts, either from within or outside RCTC, to evaluate the merits of the protest. The expert(s) may provide a written opinion regarding the merits of the protest and may provide a recommendation for consideration by the Protest Officer that the protest be denied or upheld, in whole or in part.
- 1.4.7 The Protest Officer may convene a Protest Evaluation Team to evaluate the merits of the protest. The Protest Evaluation Team may provide a written opinion regarding the merits of the protest and may provide a recommendation for consideration by the Protest Officer that the protest be denied or upheld, in whole or in part.
- 1.4.8 The Protest Officer shall review the recommendation and documentation provided by the expert(s) or Protest Evaluation Team with Legal Counsel and shall prepare a recommended resolution of the protest for consideration by the Executive Director.

1.4.9 If the Executive Director upholds the protest, in whole or in part, he/she may direct such actions, as he/she deems appropriate.

1.4.10 If the Executive Director denies the protest, the challenged determination will move forward.

The Executive Director's decision will be provided to the Protestor and to the potential successful bidder/proposer. The Executive Director's decision shall be final and there shall be no further administrative recourse at the local level.

## **1.5 Protests Relating to Federally Funded Procurements**

If a procurement is federally funded, the Protestor may pursue a remedy through the FTA. Any such protest must be filed in accordance with FTA Circular 4220.1E or most current version.

Reviews of Protests by FTA may be limited to: (1) RCTC's failure to have or follow its protest procedures (2) RCTC's failure to review a complaint or protest and/or (3) Violations of federal law or regulation.

1.5.1 An appeal to FTA must be received by the cognizant FTA regional or headquarters office within five (5) working days of the date the Protestor learned or should have learned of an adverse decision by RCTC or other basis of appeal to FTA.

1.5.2 The Protestor shall provide a copy of all correspondence provided to the FTA to RCTC's Protest Officer.

1.5.3 Award of any proposed contract may be delayed by RCTC pending resolution of the protest to FTA unless one or more of the following conditions is present:

- The items or services being procured are urgently required.
- Delivery or performance will be unduly delayed by failure to make an award promptly.
- Failure to make a prompt award will otherwise cause undue harm to RCTC.

### ***DEFINITION OF TERMS***

*Interested Party:* If the protest is based on the content of a solicitation, an interested party is any bidder/proposer or potential offeror. If the protest is related to selection of a contractor, an interested party is a bidder/proposer that would be next in line as a prime contractor for award of a contract, if the protest were upheld.

*Protest Officer:* The Purchasing Agent is the Protest Officer, unless otherwise designated by the Executive Director. The Protest Officer is to receive and evaluate protests and will recommend to the Executive Director either that the protest be upheld or denied. The Protest Officer should not have participated in the evaluation of bids/proposals received.

*Timely Filed Protest:*

- A protest that addresses the content of the solicitation package must be received by the Protest Officer within seven (7) calendar days after all requests for clarifications and requests for approved equals have been answered by RCTC. Day 1 is the day after the date of RCTC's answer. If no requests for clarification or approved equals are received, a protest regarding the content of the solicitation must be received by the Protest Officer within seven (7) calendar days after the period for requests for clarifications or approved equals has closed. This period shall be defined in each solicitation package.
- For protests submitted after receipt of bids/proposals, the protest must be received by the Protest Officer within seven (7) calendar days after the Commission takes action, or such other time period as may be specified in the solicitation document. Day 1 is defined as the day after the Commission meets and takes action.
- Any solicitation for which contract award is not made by the Commission will include a date certain by which a protest must be filed in order to be considered timely. A protest received after the date certain identified in the solicitation may be considered untimely, may not be considered, and may be returned without response. In all other respects, such a protest will be handled in accordance with 1.3 and 1.4 of this policy.