

## **PART XI**

### **PROTESTS AND APPEALS**

#### **I. PURPOSE**

This policy sets forth the procedures to be utilized by Metropolitan Tulsa Transit Authority in considering and determining all bid protests or objections regarding solicitations, proposed award of a contract, or award of a contract, whether before or after award.

#### **II. GENERAL**

In order for a bid protest to be considered by Metropolitan Tulsa Transit Authority, it must be submitted in writing by an interested party (as defined below in accordance with the procedures set forth herein). A protest which is submitted by a party that is not an interested party or which is not in accordance with the procedures shall not be considered by Metropolitan Tulsa Transit Authority, and will be returned to the submitting party without any further action by Metropolitan Tulsa Transit Authority.

#### **III. DEFINITIONS**

For purposes of these Bid Protest Procedures:

- A. The term “Bid” includes any bid or offer submitted by a bidder in response to an Invitation for Bid (IFB), and a proposal submitted by an offeror in response to a Request for Proposals (RFP).
- B. The term “contract” means that document to be entered into between Metropolitan Tulsa Transit Authority and the successful bidder and offeror.
- C. The term “days” refers to normal business days of Metropolitan Tulsa Transit Authority staff offices.
- D. The term “interested party” means any person: (a) who is an actual or prospective proposer, bidder, or offeror in the procurement involved; and (b) whose direct economic interest would be affected by the award of the contract or by failure to award a contract.
- E. The term “solicitation” means an Invitation for Bids (IFB), Request for Proposals (RFP), or other form of document used to procure equipment or services.

#### **IV. GROUNDS FOR PROTEST**

Any interested party may file a bid protest with Metropolitan Tulsa Transit Authority on the grounds that:

- A. Metropolitan Tulsa Transit Authority has failed to comply with applicable Federal, or State Law.
- B. Tulsa Transit has failed to comply with its procurement procedures.
- C. Metropolitan Tulsa Transit Authority has failed to comply with the terms of the solicitation in question, including the failure to adhere to the evaluation criteria set forth in the solicitation, if applicable.
- D. Metropolitan Tulsa Transit Authority has issued restrictive or discriminatory specifications.
- E. Award is made to other than the lowest responsive and responsible bidder on formally advertised (IFB) procurements.

#### **V. CONTENTS OF PROTEST**

- A. A bid protest must be filed in writing and must include:
  - a. The name and address of the protestor
  - b. The name, date, and number if provided, of the procurement solicitation
  - c. A detailed statement of the grounds for the protest, including all relevant facts and a citation to the Federal or State law, the provision of Tulsa Transit procurement procedures, or specific term of the solicitation alleged to have been violated
  - d. Any relevant supporting documentation the protesting party desires Tulsa Transit to consider in making its decision
    - i. Transit to consider in making its decision
  - e. The desired relief, action, or ruling sought by the protestor.
- B. Protests must be filed with:

Administrator of Grants and Procurement  
Metropolitan Tulsa Transit Authority  
510 South Rockford Avenue  
Tulsa Oklahoma 74120-4016

- C. All protests must be received at the Metropolitan Tulsa Transit Authority address listed above during normal office hours of 8:00 a.m. to 4:30 p.m., Central Standard

or Daylight Time.

- D. If any of the information required by this section is omitted or incomplete, Metropolitan Tulsa Transit Authority will notify the protestor, in writing, by email, or facsimile, and the protestor will be given five business days from receipt of notice to provide the omitted or incomplete information in order for the protest to be further considered. Note that this provision only applies in the case of a failure to state any grounds for a protest and does not apply to stating inadequate grounds for a protest or the failure to submit documentation.

## **VI. TIMING REQUIREMENTS AND CATEGORIES OF PROTESTS**

Metropolitan Tulsa Transit Authority will consider the following categories of bid protests within the time period set forth in each category:

- A. Any bid protest alleging improprieties in a solicitation process or in solicitation documents must be filed no later than five days before the scheduled bid opening or deadline for submittal of proposals, as appropriate, in order to be considered by Metropolitan Tulsa Transit Authority. Any protest based on such grounds not filed within this period will not be considered by Metropolitan Tulsa Transit Authority. This category of protests includes, but is not limited to, allegation of restrictive or exclusionary specifications or conditions.
- B. Any bid protests regarding the evaluation of bids or proposals by Metropolitan Tulsa Transit Authority, or improprieties involving the approval or award or proposed approval or award of a contract must be filed with Metropolitan Tulsa Transit Authority no later than 72 hours after the protestor's receipt of Metropolitan Tulsa Transit Authority notice of its decision or intended decision to award a contract. Any protest filed after such date that raises issues regarding the bid proposal evaluation, or the contract approval or award will not be considered by Metropolitan Tulsa Transit Authority.

## **VII. REVIEW OF PROTEST BY TULSA TRANSIT**

- A. Metropolitan Tulsa Transit Authority will notify the protestor of timely receipt of a bid protest that the protest is being considered.
- B. In the notification, Metropolitan Tulsa Transit Authority will inform the protestor of any additional information required for evaluation of the protest by Metropolitan Tulsa Transit Authority, and set a time deadline for submittal of such information. If Metropolitan Tulsa Transit Authority requests additional information and it is not submitted by the stated deadline, Tulsa Transit may either review the protest on the information before it, or decline to take further action on the protest.
- C. In its sole discretion, Metropolitan Tulsa Transit Authority may give notice of Metropolitan Tulsa Transit Authority relative to the merits of the bid protest. Tulsa Transit will set a any bid protest to other bidders or proposers for the

procurement involved in the protest, as appropriate, and permit such bidders or proposers to submit comments to time deadline for the submittal of such comments.

- D. In its sole discretion, Metropolitan Tulsa Transit Authority may schedule an informal conference on the merits of a bid protest. All interested parties will be invited to participate in the conference. Any information provided at the conference will only be considered by Tulsa Transit in deciding the bid protest if it is submitted to Metropolitan Tulsa Transit Authority in writing within three days after the conference.

## **VIII. EFFECTS OF PROTEST ON PROCUREMENT ACTIONS**

- A. Upon receipt of a timely protest regarding either the solicitation process or the solicitation documents in the case of sealed bids, Metropolitan Tulsa Transit Authority will postpone the opening of bids until resolution of the protest. The filing of the protest will not, however, change the date on which bids are due, unless Metropolitan Tulsa Transit Authority determines, and so notifies all bidders, that such a date change is necessary and appropriate to carry out the goals of the procurement and assure fair treatment for all bidders.
- B. Upon receipt of a timely protest regarding evaluation of bids or proposals, or the approval or award of a contract, Metropolitan Tulsa Transit Authority will suspend contract approval or other pending action, or issue a stop work order if appropriate, until the resolution of the protest. In this event, the successful bidder or proposer may not recover costs as a change order.
- C. Notwithstanding the pendency of a bid protest, Metropolitan Tulsa Transit Authority reserves the right to proceed with any appropriate step or action in the procurement process or in the implementation of the contract in the following cases where:
  - 1. The item to be procured is urgently required.
  - 2. Metropolitan Tulsa Transit Authority determines the protest is vexatious or frivolous.
  - 3. Delivery or performance will be unduly delayed, or other undue harm to Tulsa Transit will occur, by failure to make the award promptly.
  - 4. Metropolitan Tulsa Transit Authority determines that proceeding with the procurement is otherwise in the public interest.

## **IX. SUMMARY OF DISMISSAL OF PROTESTS**

Metropolitan Tulsa Transit Authority reserves the right to summarily dismiss all or any portion of a bid protest that raises legal or factual arguments or allegations that

have been considered and adjudicated by Metropolitan Tulsa Transit Authority in a previous bid protest by any interested party in the same solicitation or procurement action.

## **X. PROTEST DECISIONS**

- A. After review of a bid protest, the Administrator of Grants and Procurement shall make a recommendation to the General Manager of the appropriate disposition of such protest.
- B. The recommendation will be made on the basis of the information provided by the protestor and other parties, the results of any conferences, and Metropolitan Tulsa Transit Authority
- C. The decision of the Metropolitan Tulsa Transit Authority General Manager will be in writing and will be the final binding agency action. Except in exceptional circumstances, the decision of the Metropolitan Tulsa Transit Authority General Manager will be issued within 30 days after the date all relevant information is submitted according to the dealings set forth in these procedures.
- D. If the protest is upheld, Metropolitan Tulsa Transit Authority will take appropriate action to correct the procurement process and protect the rights of the protestor, including re- solicitation, revised evaluation of bids or proposals or Tulsa Transit's determination, or termination of the contract.
- E. If the protest is denied, Metropolitan Tulsa Transit Authority will lift any suspension imposed and proceed with the appropriate state of the procurement process or the contract.

## **XI. JUDICIAL APPEALS**

A protester adversely affected by a bid protest decision may appeal such decision to an appropriate court in Tulsa County in the State of Oklahoma.

## **XII. FEDERAL TRANSIT ADMINISTRATION APPEALS**

When federal funds are used in the procurement, the follow apply:

- A. A protestor adversely affected by a bid protest decision of the Tulsa Transit General Manager may submit a protest to the Federal Transit Administration (FTA) in accordance with the provisions of FTA Circular 4220.1F, as currently in effect as of the date of Tulsa Transit's decision on the bid protest.
- B. Reviews of protests by FTA will be limited to:

1. Metropolitan Tulsa Transit Authority failure to have or follow its protest procedures or its failure to review a complaint or protest.
  2. Violations of Federal law or regulation.
- C. In accordance with the FTA Circular, such protest must be filed no later than five days after the protestor knew or should have known of Metropolitan Tulsa Transit Authority alleged failure listed above.
- D. Under the following conditions, Metropolitan Tulsa Transit Authority may proceed with the procurement in spite of a pending protest to the FTA:
1. The items to be procured are urgently required.
  2. Delivery or performance will be unduly delayed by failure to make the award promptly.
  3. Failure to make prompt award will otherwise cause undue harm to Metropolitan Tulsa Transit Authority or the Federal Government.