



PROCEDURE NO. PRC-PRO-2023-01

NAME: PROCUREMENT PROTEST PROCEDURES

DATE ISSUED: September 23, 2022

SUPERCEDES: All Previous Procurement Protest Procedures

VERSION: FINAL V 01

GENERAL MANGER SIGNATURE:

A handwritten signature in blue ink, appearing to be "Edgely", is written over the "GENERAL MANGER SIGNATURE:" label.

I. PURPOSE

The Sonoma-Marín Area Rail Transit District (hereinafter "District") has established formal procedures for filing protests in connection with District procurement activities. All protests shall be processed in accordance with the procedures established herein.

Bidders or Offerors may protest contracts or purchases that are let through a formal competitive bidding or a formal competitive negotiation process (hereinafter "Formal Solicitation"). Failure to follow the District's protest procedures may result in the rejection of a protest.

Notice of the availability of these protest procedures and information on the applicable protest deadlines shall be provided and/or referenced to potential Bidders/Offerors in all formal solicitations. These protest procedures will also be made available on SMART's Procurement website.

II. RESPONSIBILITIES

SMART shall follow these procurement protest procedures when a written protest regarding a formal solicitation has been submitted.

III. DEFINITIONS

A. "Formal Solicitation"

A solicitation conducted through the competitive sealed bidding process, also known as, an "Invitation for Bid", or by a competitive negotiation process, also known as, a "Request for Proposal" or "Request for Qualifications".

B. "Interested Party"

If the protest is based on the content of a solicitation, an interested party is any planholder or potential bidder or offeror.

If the protest is related to a contract award, an interested party is a bidder or proposer that submitted a timely bid or proposal.

C. "Protest"

A succinct, written factual description of the basis of the Interested Party's claim that:

1. Prior to submittal of bids/proposals, based upon the content of the solicitation package upon which the bids/proposals are requested, one or more of the following grounds exists: 1) the solicitation package contains unduly restrictive specifications or scope of work; 2) the solicitation package violates local, state or federal law or regulation; or,
2. After receipt of bids/proposals and based upon an action the District has taken with respect to a bid/proposal that one or more of the following grounds exists: 1) the District failed to comply with the terms of the solicitation in question; 2) the District failed to follow its procurement policies and procedures; or 3) the award recommendation is arbitrary or capricious.

D. "Protest Officer"

The General Manager, or a designated individual assigned by the General Manager to receive and evaluate protests, who has not participated in the evaluation of bids/proposals received.

IV. PROCEDURE

I. TYPES OF PROTESTS

Protests may be filed with the District on different grounds, either prior to submittal of bids/proposals, based upon the content of the solicitation package or after receipt of bids/proposals, based upon some action the District has taken with respect to a bid/proposal other than the content of the solicitation package.

A. Content-Based Protests

Protests may be submitted before bids/proposals are due upon specific allegations of one or more of the following grounds:

1. The Solicitation package contains unduly restrictive specifications or scope of work; or
2. The Solicitation package violates local, state, or federal law or regulation.

B. Non-Content-Based Protests

Protests submitted after bid/proposals are due and after a District action relating to the selection of a Consultant/Contractor must be based upon specific allegations of one or more of the following grounds:

1. The District failed to comply with the terms of the solicitation in question; or
2. The District failed to follow its procurement policies and procedures; or
3. The District's award recommendation is arbitrary or capricious.

II. ELIGIBILITY TO SUBMIT A PROTEST

In order to file a valid protest of a contract award, a protestor must be considered an "Interested Party" as defined in Section II "Definitions".

III. CONTENT OF PROTESTS

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

- A. Must be submitted on a timely basis. "Timely" is defined in Section VI entitled "Timeliness of Protests".

B. Must be mailed or hand-delivered to:

Sonoma-Marín Area Rail Transit District (SMART)
Attn: Protest Officer
5401 Old Redwood Hwy, Suite 200
Petaluma, CA 94954

C. Must be submitted in writing.

D. Must identify the Solicitation Number and Solicitation Title being protested.

E. Must identify the name and address of the protestor.

For Non-Content Based Protests, if the name or address is different than that shown on any bid or proposal of the protestor, the protest must include a reference to the original name and/or address. Because standing to protest may be an issue, protests filed under a name other than the name stated on the bid or proposal submitted should indicate the basis supporting standing to protest.

F. Must include 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.

G. Must include all supporting documentation for each material issue raised in the protest.

H. Must identify the specific remedy requested by the protestor.

I. Must be signed by the authorized individual or representative of the "Interested Party".

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

IV. TIMELINESS OF PROTESTS

In order to be considered timely, a protest of a procurement action must be filed after a solicitation is issued and meet the following time constraints:

A. Content-Based Protests

1. Protests Not Relating to a Solicitation for Negotiated Procurements Subject to PCC §20216-20217 or PCC §20355.7:

Protests based upon the content of the solicitation must be received by the District not later than five (5) calendar days before the bid or proposal due date.

2. Protests Relating to a Solicitation for Negotiated Procurements Subject to PCC §20216-20217 or PCC §20355.7:

Protests based upon the content of the solicitation must be submitted within ten (10) calendar days after the solicitation is first advertised. If the protest is denied, the protest may be renewed by refiling the protest with the District within fifteen (15) calendar days after the staff recommendation for award has been made public.

B. Non-Content-Based Protests

1. Protests Not Relating to a Solicitation for Negotiated Procurements Subject to PCC §20216-20217 or PCC §20355.7:

Protests based upon grounds other than the content of the solicitation must be received by the District within five (5) calendar days after the District's Notice of Intent to Award has been issued.

2. Protests Relating to a Solicitation for Negotiated Procurements Subject to PCC §20216-20217 or PCC §20355.7:

Protests based upon grounds other than the content of the solicitation must be received by the District within fifteen (15) calendar days after the District's Notice of Intent to Award has been issued. If the 15th calendar day falls on a weekend or legal holiday, the protest period ends at 5:00 p.m. (Pacific) the following business day.

V. PROCESSING OF PROTESTS

Protests shall be processed as follows:

- a. The Protest Officer will review the protest submitted to determine if the protest is timely and meets the criteria identified in Section V "Content of Protests".
- b. If the protest is not timely or does not meet the required criteria, the Protest Officer is not required to respond to the protest and the protest shall be

denied on that basis.

- c. If the protest is determined to be timely and meets the required criteria, the following actions will be initiated:
 - i. The Protest Officer will review the protest and all supporting documentation and information. At the Protest Officer's discretion, they may meet, either in person or over the telephone, with the Protestor to discuss the protest and/or perform any additional fact finding deemed appropriate.
 - ii. Following review of the protest and the facts presented, the Protest Officer will issue a written determination regarding whether the protest should be denied or upheld. For all protests not relating to a Solicitation for negotiated procurements subject to PCC §20216-20217 or PCC §20355.7, the Protest Officer's determination is final.
 - iii. For content-based protests relating to a Solicitation for negotiated procurements subject to PCC §20216-20217 or PCC §20355.7, the District shall issue a written decision on the protest prior to opening proposals. In the event of an adverse determination, Protestors shall have an opportunity to appear and/or be heard before the Board of Directors prior to the opening of proposals. Requests to be heard by the Board of Directors must be received by the District within five (5) calendar days of being issued the Protest Officer's determination.
 - iv. For non-content-based protests relating to a Solicitation for negotiated procurements subject to PCC §20216-20217 or PCC §20355.7, the District shall issue a written decision on the protest prior to final award. In the event of an adverse determination, Protestors shall have an opportunity to appear and/or be heard before the Board of Directors prior to the final award. Requests to be heard by the Board of Directors must be received by the District within five (5) calendar days of being issued the Protest Officer's determination.
- d. In the event that the Protest Officer issues an adverse determination regarding a protest submitted relating to a Solicitation for negotiated procurements subject to PCC §20216-20217 or PCC §20355.7 and a Protestor requests a board appearance, the process will be as follows:
 - i. The Protest Officer will prepare a report for the Board of Directors, which shall include a copy of the original protest filed and the Protest Officer's determination.

- ii. District 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.
- iii. The Board of Directors shall review the protest, hear the Protestor (if requested), review the recommendation for resolution and issue a decision on the protest.

VI. PROTEST PROCEDURES FOR FTA-FUNDED CONTRACTS

- A. As required by the provisions of FTA Circular 4220.1F, or the most recent version, the District will notify its FTA regional office when it receives a third party contract protest and keep the FTA informed about the status of the protest.
- B. Reviews of protests by the FTA are limited to: (1) The District's failure to have or follow its protest procedures, or the District's failure to review a complaint or protest; or (2) violations of federal law or regulation. The FTA will exercise discretion and will not consider every appeal that it receives.
- C. A protestor must exhaust all administrative remedies available through the District, i.e., the Protest Officer and the District's General Manager before pursuing a protest with the FTA. Protest appeals to the FTA must be filed with the San Francisco Region IX Office within five (5) working days of the date the protester learned or should have learned of an adverse decision by the District. The FTA Region IX contact information for filing an appeal shall be provided in writing to the protestor upon notice of the District's final adverse decision to the protestor.

V. REFERENCES

- A. SMART Enabling Legislation (AB 2224)
- B. FTA Circular 4220.1F – Third Party Contracting Guidance
- C. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards