



# PROTEST POLICY AND PROCEDURE

## APPENDIX A TO THE PROCUREMENT MANUAL, VERSION 5

Next Review: Annual  
Owner: Governance Committee

Accepted by the Governance Committee on August 22, 2022, whose Meeting Minutes were Approved by the full Board of Commissioners on September 22, 2022.

### SECTION 1 - Overview

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- A. RGRTA's policy and procedure for the administrative resolution of protests is set forth herein. The Federal Transit Administration (FTA) Third Party Contracting Circular addresses protests where federal funds are involved. The current version of the FTA Circular is available at [www.transit.dot.gov/regulations-and-guidance](http://www.transit.dot.gov/regulations-and-guidance). FTA will only review protests regarding matters that are primarily of Federal concern.

### SECTION 2 - Submittal Procedures

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- A. An Interested Party wishing to file a protest shall send a written submission to RGRTA's Chief Financial Officer (CFO) by email at [protest@myrts.com](mailto:protest@myrts.com). A PDF copy of the protest and supporting documents shall be included in the email.
- B. The protest shall include, at a minimum:
  - a. The name and address of the protesting party and its relationship to the procurement sufficient to establish that the protest is being filed by an interested party;
  - b. Identity of the contact person for the protesting party, including name, title, address, telephone, and email address. RGRTA will send all documents and notices concerning the protest, including the decision on the protest to the email address provided by the protesting party. The protesting party shall be deemed to have received such documents and notices when RGRTA sends them to the email address provided;
  - c. Identification of the procurement title and procurement number in the Solicitation Document;
  - d. A description of the nature of the protest, referencing the portion(s) of the solicitation involved. Protesting party shall include all supporting facts, documents and data with the protest;
  - e. Identification of the provision(s) of any law, regulation, or other governance upon which the protest is based, including specific citations and description of how the law, regulation or governance was violated;
  - f. A statement of the specific relief requested; and
  - g. A notarized affirmation by the protestor (if an individual) or by an owner or officer of the protestor (if not an individual) as to the truth and accuracy of the statements made in the protest submittal.

### SECTION 3 - Protest of the Solicitation Process

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- A. A Protest of the Solicitation Process is a protest related to the technical scope or specification, terms, conditions, or form of a solicitation or process relating thereto.
- B. This type of protest shall be filed no later than ten (10) calendar days prior to the submission deadline set in the Solicitation Document or ten (10) calendar days after the Interested Party receives the Solicitation Document from the Procurement Officer, whichever occurs first. If an Interested Party obtains the Solicitation Document from the Procurement Officer within ten (10) days of the submission deadline in the Solicitation Document, the Interested Party shall submit a Protest of the Solicitation Process within forty-eight (48) hours of receipt of the Solicitation Document from the Procurement Officer or forty-eight (48) hours prior to the Submission Deadline identified in the Solicitation Document, whichever occurs first. If an



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Interested Party obtains the Solicitation Document from the Procurement Officer less than forty-eight (48) hours prior to the submission deadline identified in the Solicitation Document, the Interested Party shall be deemed to have waived their right to file a Protest of the Solicitation Process.

- C. For protests of the Solicitation Process, the CFO may choose to extend the solicitation process if such extension is necessary to afford an adequate opportunity to render a full and accurate determination on the protest.
- D. A written decision on protests of this type shall be provided to all interested parties prior to the submission deadline set in the Solicitation document.
- E. Should the protest be upheld in whole or in substantial part, the CFO shall issue instructions to remedy issues relating to the protest, which may include (1) amending the solicitation to correct the document or process accordingly and extend the deadline; or (2) canceling the solicitation in its entirety.

### SECTION 4 - Protest of the Evaluation Process

- A. All Interested Parties will be notified by email of any rejection of their response to a Solicitation Document and any recommendation of award ("The Notification"). Such recommendation of award shall be made by Agency staff to RGRТА's Chief Executive Officer (CEO) and the Board of Commissioners (if applicable) for ultimate approval of the Award. Any proposer may protest the rejection or recommended award on one or more of the following grounds:
  - a. The recommended awardee does not meet the requirements of the solicitation;
  - b. The bid or proposal recommended for acceptance does not meet the criteria of the solicitation or award;
  - c. The Interested Party objects to RGRТА declaring their response to the Solicitation Document non-responsive or RGRТА declaring them non-responsive;
  - d. The evaluation process conducted by RGRТА is improper, illegal, or the decision to recommend award is arbitrary and capricious.
- B. The protest must be received by RGRТА no later than five (5) calendar days after the date The Notification is sent.

### SECTION 5 - Processing of Protests

- A. The Procurement Officer shall notify all Interested Parties of the receipt of a protest, the type of protest, and nature of the protest within a reasonable time of the filing.
- B. The Procurement Officer shall conduct the administrative processing of protests filed with RGRТА and provide all information submitted by the protesting party to the CFO. If the solicitation document contemplates using federal funds to pay for the resulting goods or services, in whole or in part, the Procurement Officer shall notify the regional office of the Federal Transit Administration (FTA) of the filing of a protest and keep them informed of its status.



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- C. In determining a protest, the CFO shall be authorized to take appropriate measure, which in his/her discretion would ensure compliance with the provisions and purposes of the Procurement Manual.

### **SECTION 6 - Evaluation of Protests**

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- A. The CFO may decide a protest solely upon the written submission provided by the protesting party. Additional or supplemental materials may only be submitted at the request of, or with the permission of, the CFO. Failure to submit information requested by the CFO in the time allotted by the CFO shall result in a denial of the protest. The CFO may offer the protesting party the opportunity to discuss the matter in person or telephonically.
- B. The CFO shall render a decision of all protests within ten (10) business days after receipt of a protest and shall render one of the following determinations:
  - a. Protest is overruled;
  - b. Protest is substantiated. In such cases, the Chief Financial Officer shall issue instructions to remedy issues relating to the protest; or
  - c. Procurement activity is suspended until further written notification by the CFO.
- C. The decision shall be in writing, shall provide, at a minimum, a general response to each material issue raised in the protest and shall be signed by the CFO. The decision shall be sent to the Protesting Party at the email address provided with the protest.
- D. A notice of the decision shall be provided to all Interested Parties.
- E. The CFO's decision is the Authority's final determination of the dispute.
- F. The protesting party may file an appeal of the CFO's decision pursuant to Federal Law or FTA rules. In accordance with Federal law, review of protests by the FTA may be requested only after exhaustion of all administrative remedies with RGRTA and are limited to the following:
  - a. Violations of Federal law or regulation; and/or
  - b. Violations of RGRTA's protest procedures for failure to review a complaint or protest in accordance therewith.
- G. Protesting Party shall provide a copy of the protest to RGRTA simultaneously with its submission to FTA.

### **SECTION 7 - Record of Protest**

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- A. The Procurement Officer shall retain all documents pertaining to the protest in the file for the procurement. The procurement protest file shall include reasonable and adequate documentation of the protest and outcome of the protest.
- B. The protest file shall include the following:
  - a. The protest, including supporting documentation; and
  - b. Record of determination of protest timeliness.