

PROCUREMENT PROTEST PROCEDURES

Under certain circumstances, an interested party to a procurement may protest to COIC the award of a contract which may or may not involve the direct application of public funds. COIC will make protest procedures accessible to bidding parties. These procedures are intended to ensure that valid complaints are properly handled and responded to. These procedures apply to all types of procurement actions, including sealed bids, requests for proposals, etc.

The term protest is utilized to describe the controversies that arise usually during the contract information process as an objection to a contract award or to a decision on a specific bid. The protests are challenges to actual or proposed actions of the contracting officers on specific procurements. These objections are brought by offerors, prospective offerors, or other interested parties who contend that they have been improperly treated in the procurement process. All protests must be submitted in writing.

COIC Level One Protest Procedures – General Conditions

COIC's review of any protest will be limited to violations of federal, state or local laws or regulations, violations of COIC's purchasing procedures, violations of COIC's protest procedures, or failure to review a complaint or protest. Protests based on restrictive or severely defective specifications, or improprieties in any type of solicitations that are apparent prior to bid opening or closing date for proposals, must be received by COIC within a reasonable time in advance of scheduled bid opening but no later than 5 days after receipt of the RFP/IFB by the proposer/bidder. All other protests must be received by COIC within 5 days of the action on which the protest is based.

The initial protest filed with COIC shall be in writing and shall:

- a) Include the name, address, and telephone number of the protestor and the name of a contact person
- b) Identify the number, date, and description of the solicitation
- c) Contain a statement of the grounds for protest and any supporting documentation. The grounds for the protest must be supported to the fullest extent feasible. Additional materials in support of an initial protest will be considered only if filed within the time limits specified
- d) Indicate the ruling or relief desired from COIC

A protest may be considered, even if the initial filing is late, under the following circumstances:

- a) Good cause based on compelling reasons beyond the protestor's control, whereby the tardiness is due to the fault of COIC in the handling of his/her protest submission
- b) COIC determines the protest raised issues significant to a procurement practice or procedure
- c) COIC is directed by a relevant grantee to either consider or reconsider a protest

- d) A court of competent jurisdiction expresses interest in COIC's decision

No formal briefs or other technical forms of pleading or motion are required, but a protest and other submissions should be concise, logically arranged, clear, and legible. Any additional information requested or required by COIC from the protestor, or interested parties shall be submitted as expeditiously as possible, but in no case later than five (5) days after the receipt of such request unless specifically stated by COIC.

Confidentiality

Materials submitted by a protestor will not be withheld from any interested party outside of COIC or from any government agency that may be involved in the protest, except to the extent that the withholding of information is permitted or required by law or regulation. If the protestor considers that the protest contains proprietary materials that should be withheld, a statement advising of this fact may be affixed to the front page of the protest document and the alleged proprietary information must be so identified wherever it appears.

Furnishing of Information on Protests

COIC shall, upon request, make available to any interested party, information bearing on the substance of the protest, including:

- a) Any other documents that pertain to the protest, including correspondence with the bidders
- b) A statement by COIC explaining its actions and the reasons for them

A conference on the merits of the protests with members of COIC protest review panel (defined below) may be held at the request of the protestor. The request for a conference should be made in a timely manner so as not to interfere with the resolution of the protest and not later than twenty (20) days after the initial protest was filed.

Withholding of Award

When a protest has been filed before the opening of bids, COIC will not open bids prior to the resolution of the protest. When a protest has been filed after the opening of bids but before the contract award, COIC will not make an award for five days following its decision on the protest. When a protest has been filed after the award but prior to the execution of a contract, COIC will not proceed with the execution of the contract prior to the resolution of the protest. Exceptions to the above may occur if COIC determines that:

- a) The items to be procured are urgently required
- b) Delivery or performance will be unduly delayed by failure to either make the award promptly or to continue with the procurement
- c) Failure to make prompt award or to continue with the procurement will otherwise cause undue hardship to COIC or other local, state, or federal governments

If government agency funds are involved, COIC will notify the appropriate agency in a timely manner and keep the agency apprised of the status of the protest.

Protest Review – Level One

Upon receipt of a protest, the Executive Director will appoint an ad hoc COIC protest review panel to review all relevant materials associated with the protest. The panel shall be comprised of at least two representatives of COIC appointed by the Executive Director. The panel shall determine the validity of the protest and what actions will be taken.

The panel will be directed to prepare a report within fifteen (15) days. The panel will notify the protestor and any interested parties of their findings and actions and of the procedures for requesting reconsideration. The report shall include the following:

- a) Copies of all relevant documents
- b) A copy of the invitation for bid or request for proposal, including pertinent provisions of the specifications
- c) A copy of the abstract of bids.

Protest Review – Level Two

Reconsideration of a decision by COIC may be requested by the protestor or any interested party. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

The request for reconsideration of COIC's protest review panel decision shall be filed no later than ten (10) days after the panel issues its written report, and shall be filed with the Executive Director. Upon receipt of the request for reconsideration, the Executive Director shall schedule an informal administrative hearing with protestor and the COIC protest review panel. The hearing shall be held not later than fifteen (15) days after the receipt of the request for reconsideration.

The Executive Director has the authority to make the final decision on all protests. The Executive Director shall issue in writing, COIC's final determination of the reconsidered protest within five (5) days of the administrative hearing. The appellant process ends with the Executive Director's decision; however, the aggrieved party has those remedies afforded by the state courts.

Effect of Judicial Proceedings

COIC may refuse to decide any protest where the matter involved is the subject of litigation before a court of competent jurisdiction, or has been decided on the merits by such a court.

Federal Transit Administration (FTA) Involvement

FTA's involvement in bid protests is limited. The Uniform Guidance, as adopted by DOT, no longer provides for the direct appeal to FTA of a recipient's final decision on a bid protest. The Uniform Guidance provides "The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern." Thus, the FTA's role is limited to considering matters that are "primarily a Federal concern".