

Cape Cod Regional Transit Authority Protest Procedures for Competitively Bid Procurements

A. General:

Protests will only be accepted by the Cape Cod Regional Transit Authority from prospective bidders or offerors whose direct economic interest would be affected by the award of a contract or refusal to award a contract. The Authority will consider all such protests, whether submitted before or after the award of a contract. All protest must be in writing and conform to the following requirements:

1. Be concise and legally arranged;
2. Provide name, address and telephone numbers of protester;
3. Identification of the solicitation or contract number;
4. Provide a clear and detailed statement of legal and factual grounds of the protest including copies of all relevant documents;
5. A statement as to what is requested.

B. Protest Before Award

1. General: Protest before award must be submitted within the time frame as specified below. If the written protest is not received by the time period specified, the bid or evaluation shall continue.
2. Protest before bid opening: Protests addressing the adequacy of the Request for Proposals (RFP) or Invitation for Bids (IFB), including the pre-award procedure, the instruction to Proposers, general terms and conditions, specifications and scope of work, must be filed with the CCRTA not less than seven (7) full working days before bid opening. Thereafter, all issues and appeals are deemed waived by all interested parties. Upon receipt of the written protest, the CCRTA will determine if the bid opening should be postponed.
3. If the opening is postponed, the Authority will immediately contact prime contractors and subcontractors who have been furnished a copy of the specifications that a protest has been filed and that the opening is postponed until a final decision is issued. Any appropriate addenda will be issued regard a rescheduling of the bid opening. Any protest may be withdrawn at any time before CCRTA has issued its decision.
4. Protest after bid opening: A protest of a decision of the CCRTA to award a contract to a prime contractor or a subcontractor must conform to A. above and be received by the Authority within ten (10) full working days of its decision. Thereafter, such decisions are deemed waived by all interested parties.
5. In addition, when a protest against the making of an award is received and the CCRTA determines to withhold the award pending disposition of the protest, the bidders (whose bids might become eligible for award) shall be requested, before expiration of the time

for acceptance of bids, to extend the time for acceptance (with the consent of sureties, if any) to avoid the need for re advertising.

6. When a written protest against making an award is received, the award shall not be made until five (5) days after the matter is resolved. The Authority may, however, proceed to make an award if it determines that:
 - a) The items to be procured are urgently requested, or;
 - b) Delivery or performance will be unduly delayed by failure to make the award promptly, or;
 - c) Failure to make a prompt award will otherwise cause undue harm to the CCRTA, the Commonwealth of Massachusetts or the Federal Government.

In the event the CCRTA determines that an award is to be made during the five day period or during the pendency of a protest, the FTA will be notified prior to the making of the award. The FTA reserves the right not to participate in such procurement. If an award is made, the appropriate documents will be prepared to explain the need for the award with notice to the protestor and other concerned parties.

C. Protest after award

Protest against an award must be filed with CCRTA within five (5) full working days immediately following the award. This protest shall conform to requirements of A. above. Thereafter, such issues are deemed waived by all interested parties.

Although the number of persons involved in or affected by the filing of a protest may be limited to instances where an award has been made, the contractor shall be furnished with the notice of protest and related information. Also, if it appears that the award may be invalidated and a delay in receiving the supplies or service is not prejudicial to the CCRTA interest, the Authority shall consider a mutual agreement with the contractor to suspend performance on a no-cost basis.

D. Cape Cod Regional Transit Authority decision on the protest

The Authority shall render its decision in writing within fourteen (14) working days from the receipt of the written protest and shall provide the notice of this decision to all interested parties. Following an adverse decision by the Authority, the protestor may file a protest with the Federal Transit Administration (FTA).

Part II: FTA Review of Protest

1. FTA will only review protests regarding the alleged failure of CCRTA to have written protest procedures or alleged failure to follow such procedures.

2. Alleged violations on other grounds are under the jurisdiction of the appropriate State or local administrative or judicial authorities. Alleged violations of a specific Federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that Federal regulation.
3. FTA will only review protests submitted by an interested party as defined in Paragraph B, below.
 - a) Remedy: FTA's remedy for the CCRTA's failure to have written protest procedures or failure to follow such procedures is limited to requiring the Authority to develop such procedures, if necessary, and follow such procedures in reviewing the protest at issue if the Authority desires FTA financial participation in the contract in question. In instances where the CCRTA has awarded to another bidder or offeror prior to FTA's decision on the protest, the FTA may refuse to participate in funding the contract.
 - b) Definitions: For the purposes of these Protest Procedures, the following definitions apply:
 - I. "Days" refers to working days of the Federal Government;
 - II. "File" or "submit" refers to the date of receipt by FTA;
 - III. "Interested Party" means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract;
 - IV. "Bid" includes the term "offer" or "proposal" as used in the context of negotiated procurements.

C. Time for Filing:

1. Protesters shall file a protest with the FTA not later than five (5) working days after a final decision is rendered under the CCRTA's protest procedure. In instances where the protester alleges that the Authority failed to make a final determination on the protest, protesters shall file a protest with the FTA not later than five (5) working days after the protester knew or should have known of the Authority's failure to render a final determination on the protest.
2. The CCRTA shall not award a contract for five (5) working days following its decision on a bid protest except in accordance with the provisions and limitations of subparagraph G. After five (5) days, the Authority shall confirm with the FTA that the FTA has not received a protest on the contract in question.

D. Submission of Protest to FTA:

1. Protests should be filed with the appropriate FTA Regional Office with a concurrent copy to the CCRTA.
2. The protest files with FTA shall:
 - a) Include the name and address of the protestor;
 - b) Identify the CCRTA project number and the number of the contract solicitation;
 - c) Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow the protest procedures or the alleged failure to have procedures and be fully supported to the extent possible;
 - d) Include a copy of the local protest filed with the CCRTA and a copy of the CCRTA decision, if any.

E. Cape Cod Regional Transit Authority Response:

1. FTA shall notify the Authority in a timely manner of the receipt of a protest. FTA shall instruct the Authority to notify the contractor of the protest if award has been made or, if no award has been made, to notify all interested parties. The Authority shall instruct all who received such notice that they may communicate further directly with the FTA.
2. The Authority shall submit the following information not later than ten (10) days after receipt of notification by the FTA of the protest:
 - a) A copy of the CCRTA protest procedures;
 - b) A description of the process followed concerning the protestor's protest; and
 - c) Any supporting documentation.

The CCRTA shall provide the protestor with a copy of the above submission.

F. Protestor Comments:

The protestor must submit any comments on the CCRTA's submission not later than ten (10) days after the protestor's receipt of the Authority's submission.

G. Withholding of Award:

When a protest has been timely filed with the CCRTA before award, the Authority shall not make an award prior to five (5) days after the resolution of the protest, or if a protest has been filed with the FTA, during the pendency of that protest, unless the Authority determines that:

1. The items to be procured are urgently required;
2. Delivery or performance will be unduly delayed by failure to make the award promptly;
or
3. Failure to make prompt award will otherwise cause undue harm to the CCRTA or the Federal Government.

In the event that the CCRTA determines that the award is to be made during the five (5) day period following the local protest decision or the pendency of a protest, the Authority shall notify the FTA prior to making such award. FTA will not review the sufficiency of the Authority's determination to award during the pendency of a protest prior to the FTA's bid protest decision. FTA reserves the right not to participate in the funding of any contract awarded during the pendency of a protest.

H. FTA Action:

Upon receipt of the submission, the FTA will either request further information or a conference among the parties, or will render a decision on the protest.