

Attachment E

AUTHORITY PROTEST PROCEDURES

1. PURPOSE

The purpose of this Part is to set forth the procedures to be utilized by the Authority in considering and determining all protests or objections regarding this RFP, and shall supplement the procedures set forth in Authority's Administrative Code.

2. GENERAL

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

3. DEFINITIONS

For purposes of these Protest Procedures:

1. The terms —bid or —proposal include any Offer or Statement of Qualifications submitted by an offeror in response to this RFP
2. The term —contract means that document to be entered into between the Authority and the successful bidder(s) and offeror(s).
3. The term —days refers to normal business days of the Authority staff offices.
4. The term —interested party for purposes of a protest submitted prior to the proposal due date means any person who is a Prospective Offeror, and for purposes of a protest submitted on or after the proposal due date shall mean a party that has timely submitted a bid in response to this RFP
5. The term —solicitation means the RFP.

4. GROUNDS FOR PROTEST

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

1. The Authority has failed to comply with applicable Federal or State Law;
2. The Authority has failed to comply with its procurement policy manual;
3. The 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; or
4. The Authority has issued restrictive or discriminatory specifications.

5. CONTENTS OF PROTEST

1. A bid protest must be filed in writing and must include:
 1. The name and address of the protestor.
 2. The name and number of the procurement solicitation.
 3. A detailed statement of the grounds for the protest, including all relevant facts and a citation to the Federal or State law, the provisions of the Authority procurement procedures, or specific term of the solicitation alleged to have been violated.
 4. Any relevant supporting documentation the protesting party desires the Authority to consider in making its decision.
 5. The desired relief, action, or ruling sought by the protestor.

2. Protests must be filed with:
Procurement Manager
C/o Exposition Metro Line Construction Authority Board Secretary
707 Wilshire Boulevard
34th Floor
Los Angeles, CA 90012

3. All protests must be received by the Authority address listed above during normal office hours of 8:00 a.m. to 5:00 p.m., Pacific Standard or Daylight Time.

4. If any of the information required by this section is omitted or incomplete, the Authority will notify the protestor, in writing, within one day of the receipt of the protest, and the protestor will be given one day 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.

6. TIMING REQUIREMENTS AND CATEGORIES OF PROTESTS

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

1. Any bid protest alleging improprieties in a solicitation process or in solicitation documents must be filed no later than five days prior to the scheduled deadline for submittal of bids, as appropriate, in order to be considered by the Authority. Any protest based on such grounds not filed within this period will not be considered by the Authority. This category of protests includes, but is not limited to, allegation of restrictive or exclusionary specifications or conditions.

2. Any bid protests regarding the evaluation of bids by the Authority, or improprieties involving the approval or award or proposed approval or award of a contract must be filed with the Authority no later than five (5) working days after publication of the written recommendation for award. Any protest filed after such date which raises issues regarding the bid or proposed evaluation, or the contract approval or award will not be considered by the Authority.

7. REVIEW OF PROTEST BY THE AUTHORITY

1. The Authority will notify the protestor within 3 days of timely receipt of a bid protest that the protest is being considered.

2. In the notification, the Authority will inform the protestor of any additional information required for evaluation of the protest by the Authority, and set a time deadline for submittal of such information. If the Authority requests additional information and it is not submitted by the stated deadline, the Authority may either review the protest on the information before it, or decline to take further action on the protest.

3. In its sole discretion, the Authority may give notice of any bid protest to other bidders or Offerors for the procurement involved in the protest, as appropriate, and permit such bidders or offerors to submit comments to the Authority relative to the merits of the bid protest. The Authority will set a time deadline for the submittal of such comments, which will be no less than 5 days after the Authority provides notification of the protest.

4. In its sole discretion, the 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 the Authority in deciding the bid protest if it is submitted to the Authority in writing within 3 days after the conference.

8. EFFECTS OF PROTEST ON PROCUREMENT ACTIONS

1. Upon receipt of a timely protest regarding evaluation of bid, or the approval or award of a contract, the 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 Offeror may not recover costs as a change order.
2. Notwithstanding the pendency of a bid protest, the 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:
 1. Where the item to be procured is urgently required;
 2. Where the Authority determines, in writing, that the protest is vexatious or frivolous;
 3. Where delivery or performance will be unduly delayed, or other undue harm to the Authority will occur, by failure to make the award promptly; or,
 4. Where the Authority determines that proceeding with the procurement is otherwise in the public interest.

9. SUMMARY DISMISSAL OF PROTESTS

The 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 the Authority in a previous bid protest by any interested party in the same solicitation or procurement action.

10. PROTEST DECISIONS

1. After review of a bid protest by appropriate Authority staff and/or legal counsel, a recommendation shall be made to the Chief Executive Officer of the Authority concerning the appropriate disposition of such protest.
2. The recommendation shall be made on the basis of the information provided by the protestor and other parties, the results of any conferences, and the Authority's own investigation and analysis.
3. The decision of the Chief Executive Officer of the Authority shall be in writing and shall be the final binding agency action. Except in exceptional circumstances, the decision of the Chief Executive Officer of the Authority 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, the 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 Statements of Qualifications at the Authority's determination, or termination of the contract.
 - E. If the protest is denied, the Authority will lift any suspension imposed and proceed with the appropriate stage of the procurement process or the contract.

11. JUDICIAL APPEALS

A protestor adversely affected by a bid protest decision may appeal such decision to an appropriate court of the State of California.