



Southern California Regional Rail Authority
Contract Administration and Procurement Policies and Procedures Manual

TITLE: Protests

NO. CON- 17

EFFECTIVE DATE: February 25, 2005

REVISION: 1

As Amended: January 22, 2010

PURPOSE

This policy provides procedures for the submittal and evaluation of protests relating to any Authority procurement actions.

APPLICATION

This policy applies to all Authority procurement actions except purchases less than \$2500 (micro purchases).

Protests of procurement actions may be appealed to the Federal Transit Administration (FTA) only if the procurement is funded in whole or in part by the FTA. Such protests must be filed in accordance with FTA Circular 4220.1E or most recent version.

POLICY STATEMENT

The Authority will accept and evaluate protests for all procurement actions in excess of \$2500, subject to compliance with this policy. To be considered, a protest must be filed in a timely manner, as described herein, must satisfy all of the applicable requirements described herein, and must be brought by an interested party, as defined herein.

Protests may be filed with the Authority, on different grounds, either prior to submittal of bids/proposals, based upon the content of the solicitation package upon which the bids/proposals are requested, or after receipt of bids/proposals, based upon some action of the Authority taken with respect to a bid/proposal. This policy describes the protest procedures for each of these two types of protest.

Protests may be submitted before bids/proposals are received upon specific allegations of one or more of the following grounds: 1) the solicitation package contains unduly restrictive specifications or scope of work; 2) the solicitation package violates local, state or federal law or regulation. Protests based on these grounds are sometimes referred to as protests based on the content of the solicitation package, and such protests are only timely if they are submitted in conformance with the time lines described in this policy so that protests based on content can be

considered and resolved prior to the submission of bids/proposals. Therefore, this policy provides that protests on the grounds relating to content of the solicitation package will be untimely if they are raised late, including but not limited to after bids/proposals have been received.

Protests submitted after bids/proposals are received and after an Authority 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 Authority failed to adhere to the evaluation process set forth in the solicitation package; 2) the Authority failed to follow its procurement policies and procedures; or 3) the Authority made a clerical or mathematical error during evaluation of the proposal/bid.

Notice of the availability of these protest procedures and information on the applicable protest deadlines shall be provided to Bidders/Proposers in all solicitations in excess of \$2500. The protest procedures shall be available on the Authority's website and may be accessed at www.metroinktrains.com; About Metrolink; Public Projects and Contracting Opportunities; current contracting opportunities. A copy of the Protest Procedures may also be requested from the Contract Administrator identified in the solicitation package.

The Chief Executive Officer will make the final determination on all protests submitted, and there shall be no further administrative recourse with the exception of 1) protests filed in conjunction with procurements funded in whole or in part by the Federal Transportation Administration; or, 2) protests filed in conjunction with a procurement for specialized rail equipment subject to Public Utilities Code ("PUC") § 130238.

Protests submitted against procurements of \$2500 or less will not be considered by the Authority and will be returned.

1.0 PROCEDURES

Any protests submitted, with the exception of those protests submitted in response to procurement for Specialized Rail Equipment conducted under PUC § 130238, shall be evaluated in accordance with the procedures described below through Section 1.6 of this policy. Procedures for protests submitted in response to a procurement for specialized rail equipment conducted under PUC § 130238 are described in Section 1.7 of this policy.

1.1 Protest Grounds-General

Prior to receipt of bids/proposals, a protest may be submitted on the basis of one or more of the following grounds:

- The solicitation package contains unduly restrictive specifications or scope of work.
- The solicitation package violates local, state, or federal law or regulation.

After receipt of bids/proposals and after an Authority action relating to selection of a consultant/contractor, a protest may be submitted on the basis of one or more of the following grounds:

- The Authority fails to adhere to the evaluation process set forth in the solicitation package.
- The Authority fails to follow its own procurement policies and procedures.
- The Authority made a clerical or mathematical error during evaluation of the bid/proposal.

1.2 Protest Submittal Criteria-General

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

- Must be submitted on a timely basis. “Timely” is defined in Section 2.0 entitled “Definition of Terms” of this Policy.
- Must be submitted by an Interested Party. “Interested Party” is defined in Section 2.0 entitled “Definition of Terms” of this Policy.
- Must identify the solicitation or contract number being protested.
- Must be submitted in writing.
- Must include all supporting documentation for each material issue raised in the protest.
- Must include a detailed statement of the legal and/or factual grounds for each material issue identified in the protest.
- Must describe the resolution to the protest desired by the Interested Party.
- Must be signed by a properly authorized representative of the Interested Party.

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

1.3 Protests Filed Prior to Submittal of Bids/Proposals

- 1.3.1** To be timely submitted, a protest filed prior to submittal of bids /protests that addresses the content of the solicitation package, must be received by the Protest Officer in conformance with the deadlines as defined in Timely Filed Protests in Section 2.0 of this policy.
- 1.3.2** A protest not received within the applicable time period may be found to be untimely, may not be considered, and may be returned without response other than the determination that it is untimely filed.

- 1.3.3 Additional material associated with the protest may be submitted within seven (7) calendar days of submitting the initial protest. Any additional material may not be submitted after the seven (7) calendar days have passed unless specifically requested in writing by the Protest Officer.

1.4 Authority Actions for Protests Filed Prior to Submittal of Bids/Proposals

If the protest is determined to be timely and meets the criteria identified in Section 1.2 above, the following actions will be initiated:

- 1.4.1 All planholders will be notified within two (2) working days that a protest has been filed and will be provided with a copy of the protest.
- 1.4.2 Planholders will be given an opportunity to respond to the protest.
- 1.4.3 The date for receipt of bids/proposals may be delayed, in the Protest Officer's sole discretion, to provide adequate opportunity to resolve the protest.
- 1.4.4 The Protest Officer, at his/her discretion, may meet, either in person or over the telephone, with the Protestor to discuss the protest and/or perform additional fact finding.
- 1.4.5 Should the Protestor determine, at this point or any other point in the evaluation of the protest, that he/she wishes to withdraw the protest, a written request to withdraw the protest will be provided to the Protest Officer and the Protest Officer will promptly notify all planholders that the protest has been withdrawn.
- 1.4.6 The Protest Officer will research the protest and may call upon any resources he/she feels are necessary and appropriate to assist in the evaluation of the protest.
- 1.4.7 The Chief Executive Officer will render a determination to uphold or deny the protest, which determination shall be final.
- 1.4.8 If the protest is upheld, an addendum to the solicitation may be issued to all planholders and the date for receipt of bids/proposals may be extended, at the Chief Executive Officer's sole discretion, to provide adequate time for all potential bidders/proposers to respond to the addendum.
- 1.4.9 If the protest is denied, the solicitation may be continued without further delay.
- 1.4.10 Acceptance of bids/proposals will be subject to the administrative resolution of any protests timely filed.

1.5 Protests Submitted After Receipt of Bids/Proposals and Relating to Selection of Consultant/Contractor

- 1.5.1 To be timely submitted, protests after the receipt of Bids/Proposals and relating to selection of a consultant/contractor, must be received by the

Protest Officer in conformance with the deadlines as defined in Timely Filed Protests in Section 2.0 of this policy. A protest not received within this time period, may be found to be untimely, may not be considered, and may be returned without response other than the determination that it is untimely filed.

- 1.5.2 Additional material associated with the protest may be submitted within seven (7) calendar days of submitting the initial protest. Any additional material may not be submitted after the seven (7) calendar days have passed unless specifically requested in writing by the Protest Officer.
- 1.5.3 Award of any contract is subject to administrative resolution of any protest timely filed.

1.6 Authority Actions for Protests Submitted After Receipt of Bids/Proposals and Relating to Selection of Consultant/Contractor

If the protest is determined to be timely and meets the criteria identified in Section 1.2 above, the following actions will be initiated:

- 1.6.1 The potential successful bidder/proposer will be notified within (2) working days of receipt of the protest that a protest has been filed and a copy of the protest will be provided to the potential successful offeror.
- 1.6.2 The potential successful bidder/proposer will be provided an opportunity to respond to the protest and provide any information the bidder/proposer feels is germane to the issues raised in the protest. The length of time for response shall be determined by the Protest Officer and shall be based on the complexity of the issues raised in the protest.
- 1.6.3 The Protest Officer, at his/her discretion, may meet, either in person or over the telephone, with the Protestor to discuss the protest and/or perform additional fact finding.
- 1.6.4 Should the Protestor determine, at this point or any other point in the evaluation of the protest, that he/she wishes to withdraw the protest, a written request to withdraw the protest will be provided to the Protest Officer and the Protest Officer will promptly notify the successful bidder/proposer.
- 1.6.5 Depending on the nature and complexity of the protest, the Protest Officer may, after evaluating all of the information available, provide a written recommendation to the Chief Executive Officer that the protest should be denied or upheld in whole or in part. The recommendation will include reasons supporting the recommendation.
- 1.6.6 The Protest Officer may call upon one or more experts, either from within or outside the Authority, to evaluate the merits of the protest. The expert(s) may provide a written opinion regarding the merits of the protest and may provide a recommendation for consideration by the Protest Officer and

Chief Executive Officer that the protest be denied or upheld in whole or in part.

- 1.6.7 The Protest Officer may convene a Protest Evaluation Team to review the merits of the protest. Such a team shall not include any members of the original proposal evaluation or bid review teams.
- 1.6.8 The expert(s) and/ or Protest Evaluation Team will consider the issues raised in the protest and may interview or request additional information from SCRRA staff, the potential successful bidder/proposer or protestor as may be necessary. Issues raised in the protest may be considered by one or more experts or members of the Protest Evaluation Team depending on their expertise and at the sole discretion of the Protest Officer.
- 1.6.9 After completing their review, the expert(s) and/ or Protest Evaluation Team will review the protest with the Protest Officer and provide its recommendation for resolution of the protest. Such recommendation may be in writing.
- 1.6.10 The Protest Officer shall review the recommendation and documentation with Legal Counsel and shall prepare a recommended resolution of the protest for consideration by the Chief Executive Officer.
- 1.6.11 If the Chief Executive Officer upholds the protest, in whole or in part, he/she may direct such actions, as he/she deems appropriate.
- 1.6.12 If the decision of the Chief Executive Officer is to deny the protest, the challenged determination made by the Board of Directors may move forward.

The Chief Executive Officer's decision will be provided to the protestor and to the potential successful bidder/proposer. The Chief Executive Officer's decision shall be final and there shall be no further administrative recourse at the local level.

1.7 Protests Relating to a Solicitation Issued under PUC § 130238 for Specialized Rail Equipment

This section of the policy applies only to procurements of specialized rail transit equipment including rail cars, and computers, telecommunications equipment, fare collection equipment, microwave equipment and other related equipment and apparatus that have been found by a two-thirds majority of the Board to qualify under PUC § 130238 (b).

A protest related to either the scope of work/specifications of a solicitation or an award of a contract under PUC § 130238 shall comply with the communication requirements set forth in Public Contract Code ("PCC") § 20216, which states in part:

Ex Parte Communication: Authority Board members or any other person responsible for awarding a contract subject to PUC § 130238 shall not have

any ex parte communication with a Bidder/Proposer or any representative of the Bidder/Proposer except in writing and provided that the communication be made public. PCC § 20216 (d).

Staff Communication: Other than proprietary information, the content of any RFP, any proposal received, and any other communications between a transportation agency and a potential Bidder/ Proposer of a contract that is subject to PUC § 130238 shall be made available to the public no later than the same time that a recommendation for awarding a contract is made to the governing board or persons responsible for approving the award of a contract to a Bidder/Proposer, except that the price proposed in any Bidder's/Proposer's initial proposal shall be made available upon the opening of the bid by the agency requesting the proposal. PCC § 20216 (b).

A firm that submits or plans to submit a proposal may protest any acquisition conducted in accordance with PUC § 130238 as follows:

- 1.7.1 Protests based on the content of the request for proposals shall be filed with the Protest Officer within ten (10) calendar days after the request for proposal is first advertised.
- 1.7.2 The protest shall contain a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest.
- 1.7.3 The Protest Officer shall review the protest with the Chief Executive Officer and prepare a report for the Board of Directors, which shall include a copy of the original protest filed and a recommendation for resolution. The Protest Officer and/or Chief Executive Officer may choose to confer with Authority staff or individuals outside the Authority with specific expertise in the area(s) identified in the protest.
- 1.7.4 Authority 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. Such hearing shall occur prior to the opening of proposals.
- 1.7.5 The Board of Directors shall review the protest, hear the Protestor, if he/she wishes to speak, review the recommendation for resolution and issue a written decision on the protest prior to the opening of the proposals.

Protests Relating to a Solicitation Issued under PUC § 130238 for Grounds Not Based upon Content of RFP

Any firm submitting a proposal in response to an acquisition conducted in accordance with PUC § 130238 may protest the recommended award on any ground not based upon the content of the request for proposal.

- 1.7.6 The protest must be filed with the Protest Officer not more than 15 calendar days from the date the notice of recommended award is mailed by Authority to Bidder/Proposer(s). Day 1 is defined as the day after the mailing date.
- 1.7.7 The protest shall contain a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest.
- 1.7.8 The Protest Officer shall review the protest with the Chief Executive Officer and prepare a report for the Board of Directors, which shall include a copy of the original protest filed and a recommendation for resolution.
- 1.7.9 The Protest Officer and/or Chief Executive Officer may choose to confer with Authority staff or individuals outside the Authority with specific expertise in the area(s) identified in the protest.
- 1.7.10 Authority 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.
- 1.7.11 The Protestor shall have the opportunity to be heard before the Board prior to final award in the case of protests based on grounds other than content or on the renewal of protests based on content of the request for proposal.

1.8 Protests Relating to Federally Funded Procurements

If a procurement is federally funded, the Protestor may pursue a remedy through the Federal Transit Administration (FTA). Any such protest must be filed in accordance with FTA Circular 4220.1E or most current version.

Reviews of Protests by FTA may be limited to:

- The Authority's failure to have or follow its protest procedures
- The Authority's failure to review a complaint or protest
- Violations of Federal law or regulation.

- 1.8.1 An appeal to FTA must be received by the cognizant FTA regional or Headquarters office within five (5) working days of the date the Protestor learned or should have learned of an adverse decision by the Authority or other basis of appeal to FTA.
- 1.8.2 The Protestor shall provide a copy of all correspondence provided to the FTA to the Authority's Protest Officer.
- 1.8.3 Award of any proposed contract may be delayed by the Authority pending resolution of the protest by FTA unless one or more of the following conditions is present:

- The items or services being procured are urgently required.

- Delivery or performance will be unduly delayed by failure to make award promptly.
- Failure to make prompt award will otherwise cause undue harm to the Authority.

2.0 DEFINITION OF TERMS

Authority - The Southern California Regional Rail Authority, operator of Metrolink Commuter Rail Service.

Interested Party - If the protest is based on the content of a solicitation, an interested party is any planholder or potential offeror. If the protest is related to selection of a contractor, a determination of Acceptability or Non-Acceptability, or ranking of most technically qualified firms, an interested party is a Bidder/Proposer that would be next in line as a prime contractor for award of a contract, if the protest were upheld. In the case of a Protest filed in conjunction with a procurement conducted under PUC § 130238, an interested party is an individual or firm that plans to submit or has submitted a proposal.

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 of the Authority taken with respect to a bid/proposal. that one or more of the following grounds exists: 1) the Authority failed to adhere to the evaluation process set forth in the solicitation package; 2) the Authority failed to follow its procurement policies and procedures; or 3) the Authority made a clerical or mathematical error during evaluation of the proposal/bid.

Protest Officer - The individual designated by the Chief Executive Officer to receive and evaluate protests, who has not participated in the evaluation of bids/proposals received, and who will recommend to the Chief Executive Officer that the protest be upheld or denied. This individual may be the Purchasing Agent.

Protest Resolution - The determination of the Chief Executive Officer to uphold or deny a protest; the withdrawal of the protest by the Protestor; or, any other appropriate action particular to the circumstances of the protest.

Timely Filed Protest-

1. A protest that addresses the content of the solicitation package must be received by the Protest Officer within seven (7) calendar days after all requests for clarifications and requests for approved equals have been answered by the Authority. Day 1 is the day after the date of the Authority answer. If no requests for clarification or approved

equals are received, a protest regarding the content of the solicitation must be received by the Protest Officer within seven (7) calendar days after the period for requests for clarification or approved equals has closed. This period shall be defined in each solicitation package in the Section entitled Requests for Clarification or Approved Equals.

2. For protests submitted after receipt of bids/proposals, the protest must be received by the Protest Officer within seven (7) calendar days after the Authority's Board of Directors takes action, or such other time period as may be specified in the solicitation document. Day 1 is defined as the day after the Board meets and takes action.
3. For protests associated with the content of procurements conducted under PUC § 130238: a written document filed by the Protestor must be received by the Protest Officer within ten (10) calendar days after the request for proposal is first advertised. The protest may be renewed by re-filing the original protest with the Board of Directors not more than 15 calendar days from the date the notice of recommended award is mailed by Authority to Bidder/Proposer(s). If the 15th calendar day falls on a weekend or legal holiday, the protest period ends at 5:00 p.m. (local time) the following business day.
4. For protests of the recommended award not based on the contents of procurements conducted under PUC § 130238: a written document filed by the Protestor must be received by the Protest Officer not more than 15 calendar days from the date the notice of recommended award is mailed by Authority to Bidder/Proposer(s). If the 15th calendar day falls on a weekend or legal holiday, the protest period ends at 5:00 p.m. (local time) the following business day.
5. Any solicitation for which contract award is not made by the Board of Directors will include a date certain by which a protest must be filed in order to be considered timely. A protest received after the date certain identified in the solicitation may be considered untimely, may not be considered, and may be returned without response. In all other respects such a protest will be handled in accordance with Sections 1.4 and/or 1.6 of this procedure.

3.0 RESPONSIBILITIES

Board of Directors - For procurements conducted under PUC § 130238, the Board shall review the protest, provide the Protestor an opportunity to be heard publicly, review all recommendations from the Chief Executive Officer, Legal Counsel and the record and render a determination to either concur in or deny the protest.

Chief Executive Officer - Reviews the protest, all recommendations from the Protest Officer, Legal Counsel, any experts, or other resources and the record and renders a determination to either uphold or deny the protest. For those protests submitted with regard to procurements conducted under PUC § 130238, the Chief Executive Officer shall make a recommendation to the Board as to the resolution of a protest. The Chief Executive Officer shall appoint a Protest Officer and/or at his/her sole discretion may designate a member of SCRRA Senior Management staff to uphold or deny a protest.

The Chief Executive Officer may also, at his/her sole discretion, extend the period for submittal of a protest, or any other deadline in these procedures, to the extent permitted by law, when it is in the best interest of the Authority to do so.

Purchasing Agent - Generally may act as the Protest Officer. Receives and investigates all protests timely received and prepares a recommendation for resolution of the protest for consideration by the Chief Executive Officer. The Purchasing Agent may recommend to the Chief Executive Officer that another individual either from within the Authority or an individual from outside the Authority be designated to act as the Protest Officer.

4.0 REFERENCES

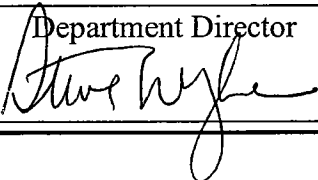
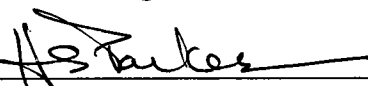
PUC § 130238
PCC § 20216
FTA Circular 4220.1F

5.0 ATTACHMENTS

Not Applicable.

6.0 PROCEDURE HISTORY

Date

Approvals		
Department Director 	Legal Counsel 	Chief Executive Officer 