

PROTEST PROCEDURES

A. The protest procedures set forth herein must be followed to protest any aspect of this procurement, including protests of the conditions and specifications issued through this Invitation. Failure to comply with these protest procedures may result in disallowance of a protest.

B. Protests may only be filed by an Interested Party, defined as an entity or individual who is an actual or prospective bidder/proposer with respect to this Invitation and whose direct economic interest would be affected by award of the contract or by failure to award the contract. FACT will not accept or consider protests from entities or individuals who are not Interested Parties.

C. Protests must be filed in writing and submitted to: Director, Fayette Area Coordinated Transportation, 825 Airport Road, Lemont Furnace, PA 15456. Verbal protests will not be considered or accepted by FACT. In all instances, information regarding the protest will be disclosed to the FTA upon receipt of the protest by FACT.

D. The protest must be clearly labeled or identified as a protest being submitted under these protest procedures and must identify the particular procurement involved. The protest must contain, at a minimum, the following information:

(1) Name and address of the Protestor

(2) A complete statement of each and every basis upon which the Protestor is relying in protesting the procurement proceeding, including any supporting documentation, and the specific requirements of federal or state law or FACT procurement proceedings with which FACT has failed to comply with respect to this Invitation

(3) A statement as to the date upon which the matter forming the basis of the protest was disclosed or discovered

(4) A clear statement of the relief and/or corrective action sought by the Protestor. Failure to identify the protest clearly or failure to include the required information listed above may result in rejection or disallowance of the protest. FACT, at its sole discretion, may choose to consider a written protest that is incomplete in some respect by notifying the protestor in writing of the deficiencies contained in the protest and of the specified time period allowed for correction of those deficiencies. The protestor's failure to supply additional information requested by FACT within the specified time period shall result in rejection or disallowance of the protest.

E. A protestor may amend or supplement the initial protest at any time prior to the issuance of a written decision on the protest by the Protest Review Board. No amendment or supplement will be permitted once the Protest Review Board has issued a written decision.

F. All amendments or supplements to a protest must be filed in writing with the Director of FACT. Verbal amendments or supplements will not be considered or accepted by FACT.

G. Any amendment or supplement to a protest must be directly related to matters originally raised in the initial protest. Amendments or supplements which raise matters not directly related to those originally raised in the initial protest shall be considered a new protest to be addressed separately under these protest

procedures. The determination as to whether amendments or supplements relate directly to matters raised in the initial protest shall lie solely with FACT.

H. Protests must be filed by actual delivery of the complete protest to the office of the Director of FACT. Protests shall not be considered to have been filed until actual receipt of the protest by FACT. Failure to file a protest within the time frames specified below due to delays in delivery by the U.S. Postal Service or private delivery services shall not be considered good cause for such failure and shall not warrant a waiver of filing deadlines.

(1) Matters disclosed in initial bid/proposal package- Protests based on matters disclosed in the initial bid/proposal package must be filed not later than twenty-one (21) calendar days prior to the date on which bids/proposals are to be opened or seven (7) calendar days after the issuance of the initial bid/proposal package, whichever is later. A matter is considered to have been disclosed under this paragraph if any of the following apply:

The matter is explicitly stated in the bid/proposal package or; the matter could reasonably be inferred by a reasonable person from the bid/proposal package taken as a whole and in light of the circumstances surrounding the procurement proceeding, or; the bid/proposal package contains or omits information which, taken as a whole and in light of the circumstances surrounding the procurement proceeding, would put a reasonable person on notice of the matter, or which would cause a reasonable person to make inquiry concerning the matter.

(2) Matters disclosed subsequent to the issuance of the initial bid/proposal package but prior to bid opening- Protests based upon matters which were not disclosed in the initial bid/proposal package must be filed not later than twenty-one (21) calendar days prior to the actual opening of the bids/proposals or within seven (7) calendar days after the matter upon which the protest is based is disclosed, whichever is later.

(3) Matters disclosed after opening of bids/proposals- Protests based upon matters which are disclosed at or after the opening of bids/proposals, including the award of a contract by FACT, must be filed not later than five (4) calendar days after the opening of bids/proposals or after the matter upon which the protest is based is disclosed or has taken place.

I. Failure to comply with filing requirements set forth above may result in rejection or disallowance of the protest. FACT may, at its sole discretion, waive or alter any of these requirements if FACT determines that the Protestor has substantially complied with the requirements of the protest procedures and that the waiver will not unduly impair FACT's procurement proceedings, or if FACT determines that the Protestor's failure to comply with filing requirements is for good cause based on a compelling reason or circumstance beyond the Protestor's control and the waiver will not unduly impair FACT's procurement proceedings, or if FACT determines that a waiver is appropriate and necessary for reasons of public policy or to avoid manifest inequity.

J. FACT may impose any such conditions on any waiver as it determines are necessary and appropriate. Such conditions are not subject to protest and may include, but are not limited to, a requirement that the Protestor cure any defects in the form or content of its protest.

K. Any bidder/proposer wishing to protest the awarding of a contract by FACT to the apparent most responsive and responsible bidder/proposer will be required to furnish, at its own expense, a protest bond in the amount of \$1,000, in the form of either a cashier's check or certified check made payable to the Centre Area Transportation Authority, before FACT will consider the protest. This protest bond will serve as a guarantee by the bidder/proposer of the validity and accuracy of the protest. Failure to provide this bond may result in FACT's denial of the bidder's/proposers protest. If the Protest Review Board denies the bidder's/proposer's protest, the bond will be used by FACT to recover costs and damages incurred because of the protest and the resulting delay in the delivery of the items to be procured.

L. All properly filed protests shall be reviewed by a Protest Review Board consisting of FACT's Director or designee, Chairman of FACT's Board of Commissioners or designee, and FACT's Legal Counsel.

M. The Protest Review Board shall issue a written decision denying or upholding the protest within seven (7) calendar days after the filing of the protest. Such decision shall respond in detail to each substantive issue raised by the Protestor and shall clearly set forth what relief, if any, is being granted to the Protestor. The Protestor will be notified by telephone of the substance of the decision, with a copy of the written decision mailed to the Protestor by certified or registered mail. The Protest Review Board's decision shall be final.

N. As a general rule, protests shall be considered solely on the basis of the written materials submitted by the Protestor. Upon written request of the Protestor, FACT may, at its sole discretion, permit the Protestor to make a verbal presentation to the Protest Review Board, subject to any restrictions FACT may deem appropriate.

O. The Protest Review Board may, at its sole discretion, schedule an informal conference with the Protestor to review the merits of a protest. Any such conference will be scheduled so as not to delay the issuance of a decision on the protest within the time frames set forth above, except as expressly allowed by FACT.

P. The Protest Review Board shall have the authority to grant such relief, or direct that such actions be taken, as are necessary and appropriate to remedy any defect, substantive or procedural, which may have occurred in this procurement.

Q. The Protest Review Board shall be limited to determining whether this procurement proceeding complies with applicable federal and state law and the requirements of the Invitation. The scope of review shall not extend to the advisability of a particular decision nor to matters which are committed by law to the discretion and judgment of the FACT Board of Commissioners.

R. The Protestor may request that the FTA review a protest only in cases where it is alleged that FACT failed to have written protest procedures, failed to adhere to those procedures or failed to review a protest. An appeal to the FTA must be received by cognizant FTA regional or headquarters office within five (5) working days of the date the protester knew or should have known of the violation, in accordance with FTA Circular 4220.1D, which will be supplied to the Protestor upon request.

S. A written request by a Protestor for reconsideration of the decision issued by the Protest Review Board will be considered only if the request alleges an error of federal/state law or regulation or documents the existence of substantive information that was not previously known.

T. All potential contractors will be advised of a pending protest which has been filed prior to the contract award. FACT will not proceed with any procurement when a protest or appeal is pending except as noted below:

(1) For protests filed prior to award, FACT shall not make an award for five (5) calendar days following the issuance of the decision by the Protest Review Board, or, if a Protestor has filed a protest with the FTA, during the pendency of that protest, unless FACT determines that the items to be procured are urgently required or that delivery or performance will be unduly delayed by failure to make the award properly or that failure to make the award properly will otherwise cause undue harm to FACT or the Federal Government. In such cases, FACT will notify the FTA prior to making award.

U. FACT protest procedures provide an administrative remedy to Interested Parties who wish to protest any aspect of this procurement proceeding. The protest procedures do not limit or otherwise restrict any other remedies that an Interested Party may have at law or in equity, except to the extent that the failure of an Interested Party to follow these procedures may be considered a failure to exhaust administrative remedies.