



### 1. SCOPE

- 1.1 The following Instructions implement Los Angeles County Metropolitan Transportation Authority (LACMTA) Policy regarding filing and resolution of Protests against the contents of an LACMTA solicitation or the proposed or actual award of a contract. These Instructions do not apply to the following:
- 1.1.1 Appeals related to a Pre-Qualification denial. Pre-Qualification appeals must be filed in accordance with the Contractor Pre-Qualification Program (available for download at [http://media.metro.net/uploads/EBB/PQA/images/Vendor\\_Prequal\\_Program.pdf](http://media.metro.net/uploads/EBB/PQA/images/Vendor_Prequal_Program.pdf)).
  - 1.1.2 Appeals related to a finding of non-responsiveness under the LACMTA Small Business Enterprise (SBE) program or the Disadvantaged Business Enterprise (DBE) program.
  - 1.1.3 Appeals of awards under LACMTA Small Purchase Procedures.
  - 1.1.4 Actions taken by MTA officials in responding to legal actions initiated by dissatisfied contractors in state or U.S. Courts pertaining to MTA contract award decisions.

### 2. DEFINITIONS

The following definitions apply to these Instructions.

Interested Party – An actual or prospective offeror whose direct economic interest would be affected by the award of a Contract or by the failure to award a Contract. (Interested parties do not include subcontractors or suppliers of an actual or prospective offeror, or joint venturers acting independently of a joint venture.)

Protest - A written objection or complaint by an interested party to the terms, conditions or form of a proposed procurement or the proposed or actual award of a contract

Protestor - An Interested Party that has properly filed a timely Protest.

Timely Filed Protest - A written document filed by a Protestor that meets the requirements outlined in these Instructions.

### 3. FILING OF PROTESTS

- 3.1 Contents of the Protest :An interested party wishing to protest a matter involving a proposed procurement or contract award shall file with the Contracting Officer, a written submission covering, at a minimum the following:
- 3.1.1 Name and address of the Protestor;



- 3.1.2 Its relationship to the procurement sufficient to establish that the Protest is being filed by an Interested Party;
- 3.1.3 Identification of the proposed procurement or contract;
- 3.1.4 Description of the nature of the Protest including the specific staff recommendation, LACMTA Board action, or inaction that is being protested; Factual allegations in the written submission must be supported by an affidavit included with the written submission.
- 3.1.5 Identification of the provision(s) of the solicitation, regulations, and/or laws upon which the Protest is based, (i.e. identification of the technical specifications or item of content in the solicitation);
- 3.1.6 All documentation supporting the allegations in the Protest; and
- 3.1.7 A statement of the specific relief requested.
- 3.1.8 Reference to any pertinent court, GAO and agency decisions, which are relied upon in support of the Protest, as well as any contrary authority.
- 3.1.9 Failure to substantially comply with any of the requirements of this section may be grounds for dismissal of the Protest.

**3.2 Method and Location of Submission**

- 3.2.1 A Protest or Renewal of a Protest in accordance with Para. 3.3.4, may be filed by electronic facsimile (with original copy by express mail) or by any other return receipt means. LACMTA is not responsible for lost or otherwise delayed deliveries.
- 3.2.2 An Appeal to the Chief Executive Officer (CEO) in accordance with Para. 6.1 must be hand delivered by an authorized representative of the Protestor or by courier, or by confirmed delivery by fax.
- 3.2.3 All Protests must be filed in writing to:

\_\_\_\_\_ (Contract Administrator for the procurement)  
Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza, 9<sup>th</sup> Floor  
Los Angeles, CA 90012  
Solicitation/Contract No. \_\_\_\_\_  
FAX No. 213 922-4690  
EMAIL: **protest@metro.net**  
No other location or addressee shall be acceptable.



Note: Appeals addressed to the attention of the LACMTA CEO, and Renewals of Protests under California Public Utilities Code (PUC) §130238 or Public Contract Code (PCC) §20217 must be delivered to the above address for date and time stamping.

**3.2.4** The Protestor may withdraw its Protest or Appeal at any time before LACMTA issues a final decision.

**3.2.5** ANY PROTEST, APPEAL OR RENEWAL MUST CLEARLY STATE THAT IT IS EITHER A PROTEST, AN APPEAL OR RENEWAL OF A PROTEST AS APPROPRIATE, TO AVOID DELAY.

**3.2.5.1** The subject line of each letter, email or Fax must read:

Subject: Protest (or Appeal or Renewal of Protest) under Solicitation

No. \_\_\_\_\_.

**3.2.5.2** The envelope of each letter must be clearly marked, "PROTEST"

### **3.3** Timeliness of Protest Submission

**3.3.1** Protests concerning the content of an Bid/Proposal, including all attached documents must be filed with LACMTA within ten (10) calendar days after LACMTA first advertises the Bid/Proposal and received not later than 4:00 p.m. (local time) on the tenth day. If the tenth calendar day falls on a weekend or legal holiday, the Protest period ends at 4:00 p.m. (local time) the following business day.

**3.3.2** Protests concerning a recommendation for award, on any ground not based upon the content of the Bid/Proposal, must be filed with LACMTA by an Interested Party within fifteen (15) calendar days after LACMTA mails the recommendation for award notice and received not later than 4:00 p.m. (local time). If the fifteenth calendar day falls on a weekend or legal holiday, the Protest period ends at 4:00 p.m. (local time) the following business day.

**3.3.3** The date of filing will be the date of receipt recorded and time stamped by the timekeeper at the address for submission in para. 3.2, above.

**3.3.4** For procurements conducted in accordance with California PUC §130238 or PCC §20217, a Protest against the solicitation contents may be renewed in accordance with the instructions in para. 3.2, above by re-filing the Protest within 15 calendar days after the mailing of the notice of the recommended award.



**3.3.5** A Protest not filed within the time limits herein may be rejected without consideration or evaluation.

**4. LACMTA RESPONSE**

- 4.1** The Contracting Officer will issue a written decision on a timely Protest concerning the content of a solicitation at least 6 days prior to the date set for bid opening or submission of proposals.
- 4.2** The Contracting Officer will issue a written decision on each substantive issue raised in all timely filed Protests against the making of a contract award not later than forty-five (45) working days from receipt of the Protest. The Contracting Officer will acknowledge only one Protest on Bid/Proposal content. Any additional information or complaint must be filed within the designated time for Protest submittal and will be considered part of the original Protest.
- 4.3** For Contracts under the CEO's awarding authority established by PUC §130051.9, a Protest review committee will be established as prescribed by agency policy.

**5. APPEARANCE BEFORE THE BOARD OF DIRECTORS**

**5.1** For procurements conducted in accordance with California Public Utilities Code §130238 or Public Contract Code §20217, Protestors shall have an opportunity to appear and be heard before the Board of Directors prior to the opening of proposals in the case of Protests based on the content of the request for proposals, or prior to final award in the case of Protests based on other grounds or the renewal of Protests based on the content of the request for proposals

**5.1.1** AN OFFEROR DESIRING TO BE HEARD BY THE LACMTA BOARD MUST FILE A TIMELY PROTEST, AS SET FORTH IN THIS INSTRUCTION, AND MUST NOTIFY THE CONTRACTING OFFICER OF ITS INTENT TO APPEAR, AT LEAST 5 DAYS PRIOR TO THE DATE SET FOR BID OR PROPOSAL OPENING TO ALLOW FOR PROPER PROCESSING OF THE PROTEST.

**6. APPEALS**

**6.1** Appeal to the CEO Any decision rendered by the Contracting Officer may be appealed by filing a written appeal with the Chief Executive Officer within five (5) calendar days of



the denial, restating the basis of the Protest and the grounds for the appeal. The appeal shall only contain factual information previously provided in the Protest or discovered subsequent to the Contracting Officer's decision and directly related to the grounds of the original Protest.

**6.1.1** The Appeal should be addressed to the CEO and submitted as required in para. 3.2, above.

**6.2** Appeal To The Federal Transportation Administration (FTA)

**6.2.1** All Protests regarding procurements funded in part or in whole by the FTA will be filed and resolved in a manner consistent with the requirements of FTA Circular 4220.1 Third Party Contracting Guidelines. [Refer to the revision in effect at the time of solicitation or contract award, as appropriate]  
[http://www.fta.dot.gov/legislation\\_law/12349\\_8641.html](http://www.fta.dot.gov/legislation_law/12349_8641.html)

**6.2.2** If the Bid/Proposal is FTA funded and all the LACMTA administrative remedies described above have been exhausted, a Protestor may file an appeal with the FTA. Pursuant to Circular 4220.1, FTA will consider a Protest if the recipient (LACMTA):

- Does not have protest procedures, or
- Has not complied with its protest procedures, or
- Has not reviewed the protest when presented an opportunity to do so.
- Protestors should consult FTA Circular 4220.1 for a complete description of the FTA procedures and the grounds for Protest appeal.

**6.2.3** All appeals to the FTA must be submitted to the cognizant FTA office as follows:  
Federal Transit Administration  
Regional Administrator Region IX  
211 Main Street, Suite 1160  
San Francisco, CA 94105

All appeals to the FTA must be submitted within five (5) working days after the date the Protestor knew or should have known of the LACMTA alleged violation.