

Gateway Development Commission (GDC)

Protest Procedure IP-001

I. PURPOSE & SCOPE

This Policy is intended to:

- A. Provide for the efficient administrative review of a protest and ensure a fair and equitable determination of the grounds underlying the protest; and
- B. Establish a set of guidelines for GDC procurement staff and Interested Parties (as defined below) to follow when an Interested Party, in connection with a solicitation or contract award, through written notice, files a formal protest regarding a solicitation or a proposed award of a contract.

II. PROTEST

- A. A protest is a written objection to a solicitation or award of a contract.
- B. Protests challenging the provisions of a solicitation, award, or proposed award of a contract will only be accepted from Interested Parties.
- C. An Interested Party is defined as an actual bidder/proposer or prospective bidder/proposer in the procurement process whose direct economic interest would be affected by the award (or non-award) of a contract.
- D. The protester shall have the burden of proving its protest through its written submission to GDC as provided herein.

III. PROCEDURE

- A. All protests must be submitted to GDC's Contract Manager¹ in writing within 10 days after the date when the protester knew or should have known of the facts giving rise to the protest. This includes restrictive specifications or alleged improprieties in the solicitation, including addenda, which are apparent prior to bid opening or the closing date for the receipt of initial proposals. Failure to submit a protest on a timely basis shall constitute a waiver of the protester's right to bring a protest or to challenge the procurement or the award thereof in any subsequent proceedings.

¹ That is, the primary GDC point of contact for prospective vendors as identified in the relevant solicitation document—may also be denominated as the “Commission Representative(s)” or “Contracting Officer” or other similar term.

Notwithstanding the foregoing, the Protest Officer (as defined below) shall have the discretion to hear an untimely protest where it is in the best interests of GDC to do so.

- B. All protests must be clearly identified using the word “protest”. Miscellaneous complaints or questions about the GDC procurement process or a specific procurement will not be deemed to be a protest as defined by this procedure. Statements made over the telephone, via text message or via social media will not be deemed to be a protest.
- C. All protests must be submitted in hardcopy to the Contract Manager by certified mail, overnight courier, or hand delivery. The written protest must be received by the Contract Manager not later than 5:00 p.m. on the 10th day as set forth above; in the event the 10th day falls on a day that is not a business day, the ten-day period will expire at 5:00 p.m. on the next business day.
- D. The protest must contain, at a minimum, the following information:
 - 1. Name and address of the protester, and a telephone number and email address for the protester’s representative;
 - 2. Solicitation title and contract number.
 - 3. Detailed statement of the legal and factual grounds for the protest (including copies of relevant documents in support thereof);
 - 4. Date(s) on which the protester first learned of the relevant facts and information giving rise to the protest;
 - 5. Protester’s relationship to the procurement sufficient to establish that the protester is an Interested Party as defined in this procedure; and
 - 6. A statement by the protester as to what relief is being requested.
- E. The Senior Director of Procurement (SDP) shall, within three business days of receipt of the protest, appoint a “Protest Officer” with the requisite procurement knowledge to review the protest. A protest found by the Protest Officer to be not brought in a timely manner or which does not include the required information set forth in Section III.D. of this procedure may be rejected without further consideration.
- F. The Protest Officer may take any action or make any requests he or she deems necessary to investigate the protest. The Protest Officer shall issue a written decision within thirty days of their appointment, when feasible. The protester will be provided a copy of the written decision of the Protest Officer.
- G. The decision of the Protest Officer will be final unless, within three business days of receipt of the written decision, the protester appeals the decision to the SDP. The

appeal shall be in writing, sent by certified mail, overnight courier, or hand-delivery, to the SDP, sent to the care of the Contract Manager at their address. No evidence or information may be introduced or relied upon in the appeal that has not been presented to the Protest Officer. The SDP will review the appeal and supporting documents and the decision of the Protest Officer and issue a written decision within thirty days after receipt of the appeal, where feasible. The SDP may take any action or make any requests they deem necessary, including extending the time to issue a decision to render a decision on the appeal. The decision of the SDP shall be conclusive and final. Any appeal of a decision of the SDP is subject to the applicable standards of judicial review or federal agency review, as applicable, and nothing in this procedure or any GDC solicitation shall constitute an agreement by GDC to modify the applicable standards for the benefit of the protester or otherwise.

- H. The SDP may determine that an award must be made prior to resolution of the protest when he or she determines that:
1. The goods/services to be procured are urgently required; or
 2. Delivery or performance will be unduly delayed by failure to make the award promptly; or
 3. Failure to make a timely award will cause undue harm to GDC and/or its funding partners.

If the SDP determines that an award must be made prior to resolution of the protest to protect the substantial interest of GDC, the protester will be given a written notice.

- I. For procurements that include funding from the Federal Transit Administration (FTA), in whole or in part, in accordance with Circular 4220.1F, GDC shall in all instances disclose information regarding the protest to the FTA. The following should be noted:
1. A protestor must exhaust all administrative remedies with GDC prior to pursuing a protest with FTA.
 2. Reviews of protests by the FTA are limited to:
 - a. GDC's failure to have or follow its protest procedures,
 - b. GDC's failure to review a protest when presented, or
 - c. Violations of Federal law(s) or regulation(s) over which the FTA has determined to exercise discretionary jurisdiction.
 3. An appeal to the FTA must be received by the applicable FTA regional or Headquarters Office, as may be required by the FTA, within five business days of the date (a) when the protestor knew or should have known of GDC's final

decision on the protest or (b) if applicable, when the protester identified other grounds for appeal to FTA. Concurrent copies must be sent to GDC's Contract Manager for the procurement. The protester is solely responsible for complying with all requirements of the FTA in regard to the filing of a protest.

4. If a protest has been filed with the FTA, GDC will not make an award during the pendency of such protest with the FTA, unless the SDP makes a determination in accordance with Section III.H. above.
- J. A copy of GDC's Protest Procedure may be obtained by contacting the Contract Manager for the procurement solicitation.
- K. If a contract includes funding from a federal agency other than the FTA, this Protest Procedure shall conform to the requirements of such agency, as applicable.

Adopted: May 31, 2023