

PROTEST PROCEDURES

GENERAL

Protest may be made by prospective bidders or proposers whose direct economic interest would be affected by the award of a contract or by failure to award a contract. The Wave Transit System will consider all protest requested in a timely manner regarding the award of a contract, whether submitted before or after an award. All protest are to be submitted in writing to: Gerald E. Alfred, The Wave Transit, GM&O Transportation Center, 110 Beauregard Street, Suite 104, Mobile, AL 36602. Protest submissions should be concise, logically arranged, and clearly state the grounds for protest. Protest must include the following information:

- A. Name, address, and telephone number of protestor,
- B. Identification of contract solicitation number,
- C. A detailed statement of the legal and factual grounds of the protest, including copies of relevant documents, and
- D. A statement as to what relief is requested.

Protest must be submitted to The Wave Transit System in accordance with these procedures and time requirements must be complete and contain all issues that the protestor believes relevant.

In the procedure outline below, the General Manager is considered to be the Contracting Officer.

PROTESTS BEFORE OPENING

Bid protest alleging restrictive specifications or improprieties which are apparent prior to the bid opening or receipt of proposals must be submitted in writing to the Contracting Officer at the address above and must be received at least seven (7) days prior to the bid opening or closing date for receipt of bid proposals. If the written protest is not received by the time specified, bids or proposals may be received and an award made in the normal manner unless the Contracting Officer determines that remedial action is required. Oral protest not followed up by a written protest will be disregarded. The Contracting Officer may request additional information from the appealing party and information or responses from other bidders, which shall be submitted to the Contracting Officer not less than ten (10) days after the date of The Wave Transit's request. So far as practical, appeals will be decided based on the written appeal, information and written responses submitted by the appealing party and other bidders. In failure of any party to timely respond to a request form information, it may be deemed by The Wave Transit System that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response, and in such case, the protest will proceed and will not be delayed due to the lack of response. Upon receipt and review of written submissions and any independent evaluation deemed appropriate by The Wave Transit, the Contracting Officer, shall either (a) render a decision, or (b) at the sole election of the Contracting Officer, conduct an informal hearing at which the interested parties will be afforded the opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedures. Following the informal hearing, if one is held, the Contracting Officer will render a decision, which shall be final, and notify all interested parties thereof in writing but no later than ten (10) days from the date of the informal hearing.

PROTEST AFTER OPENING/PRIOR TO AWARD

Bid protests against the making of an award by The Wave Transit System must be submitted in writing to the Contracting Officer and received within seven (7) days of the award by The Wave Transit. Notice of the protest and the basis thereto will be given to all bidders or proposers. In addition, when a protest against the making of an award by The Wave Transit System is received and it is determined to withhold the award pending disposition of the protest, the bidders or proposers whose bids or proposals might become eligible for award shall be requested before the expiration of the time for acceptance, to extend or to withdraw the bid. Where a written protest against the making of an award is received in

the time period specified, award will not be made prior to seven (7) days after resolution of the protest unless The Wave Transit System determines that:

- a) The items to be purchased are urgently required
- b) Delivery or performance will be unduly delayed by failure to make an award promptly, or
- c) Failure to make an award will otherwise cause undue harm to The Wave Transit System or the federal government.

PROTESTS AFTER AWARD

In instances where the award has been made, the Contractor shall be furnished with the notice of protest and the basis thereof. If the contractor has not executed the contract as of the date of the protest is received by The Wave Transit; the execution of the contract will not be made prior to seven (7) days after resolution of the protest unless The Wave Transit System determines that:

- a) The items to be purchased are urgently required
- b) Delivery or performance will be unduly delayed by failure to make an award promptly, or
- c) Failure to make an award will otherwise cause undue harm to The Wave Transit System or the federal government.

FTA PROTEST REVIEW PROCEDURES

Circumstances under which FTA will accept and review protests are limited to the following:

- a) The alleged failure of The Wave Transit System to have written protest procedures;
- b) The alleged failure of The Wave Transit System to follow such procedures;
- c) The alleged violation by The Wave Transit System of a specific federal requirement; which provides an applicable complaint procedure.

In the instance of (c) above, the applicable complaint procedure shall be submitted and processed in accordance with pertinent federal regulations (e.g., 49 CFR Part 661, Section 661.15 for Buy America, or 49 CFR Part 23.73 for Minority Business Enterprise participation). Should protest be filed with the FTA under either (a) or (b) above, FTA pursuant to Circular 4220.1D will use the following process:

1. Parties shall file protest with FTA not later than five days after the General Manager as provided herein renders a final decision. In instances where the protester alleges that The Wave Transit System failed to make a final determination on the protest, protesters shall file a protest with FTA not later than five days after the protester knew or should have known of The Wave Transit's failure to render a final determination on the protest;
2. The Wave Transit System shall not award a contract for five days following its decision on bid protest except in accordance with the provisions and limitations of item 9 of this section. After five days, The Wave Transit System shall confirm with FTA that FTA has not received a protest on the contract in question;
3. Protests shall be filed with the FTA Region IV office with a concurrent copy to The Wave Transit;
4. The protest filed with FTA shall:
 - a) Include the name and address of the protester;
 - b) Identify the grantee, project number, and the number, if any, of the contract solicitation;
 - c) Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures, and should be supported by documentation to the extent possible;
 - d) Include a copy of the local protest filed with The Wave Transit System along with a copy of The Wave Transit's decision, if any.

5. FTA shall notify The Wave Transit System in a timely manner of the receipt of a protest. FTA shall instruct The Wave Transit System to notify the Contractor of the protest if an award has been made or, if no award has been made, to notify all interested parties. The Wave Transit System shall instruct all who receive such notice that they may communicate further directly with FTA;
6. The Wave Transit System shall submit the following information to FTA not later than ten days after receipt of notification by FTA of the protest:
 - a) A copy of The Wave Transit's protest procedures;
 - b) A description of the process followed concerning the protest, and;
 - c) Any supporting documentation.
7. The Wave Transit System shall provide the protester with a copy of the above submission;
8. The protester may provide any comments on The Wave Transit's submission no later than ten days after the protester's receipt of such material;
9. When a protest has been filed in a timely fashion with The Wave Transit System before award, The Wave Transit System shall not make an award prior to five days after the resolution of the protest, or if a protest has been filed with FTA, during the period in which the protest is pending, unless The Wave Transit System determines that:
 - a) The items to be procured are urgently required;
 - b) Delivery or performance will be unduly delayed by failure to make the award promptly, or;
 - c) Failure to make prompt award will otherwise cause undue harm to The Wave Transit System or the Federal Government. In the event that The Wave Transit System determines that the award is to be made during the five-day period following the local protest decision or the period in which the protest is pending, The Wave Transit System shall notify FTA prior to making such award;
10. Upon receipt of the material described herein, FTA will either request further information or a conference among parties, or will render a decision on the protest.