

SECTION G: PROCUREMENT PROTEST PROCEDURE

In response to Federal Transit Administration (FTA) Circular 4220.1E, "Third Party Contracting Guidelines," it is the City of Madison's policy to consider all protests or objections regarding the award of a contract, whether submitted before or after award. The following procedure shall be observed when considering protests about those awards funded, in part or whole, by the FTA, with the following exceptions:

- a. All challenges to the socially and economically disadvantaged status of any individual awarded a contract or subcontract shall follow the appeal process outlined in the City's "DBE Program;"¹ and
- b. All challenges involving a construction project shall follow the appeal process outlined in the project's standard specifications.
- c. All challenges involving labor standards requirements (e.g., Davis Bacon) shall follow the procedures outlined in 29 CFR Parts 5-7. Disputes within the meaning of this clause include disputes between the Recipient (and any of its subcontractors), the City of Madison, the U. S. Department of Labor, or the employees or their representatives.

The City strongly encourages bidders NOT to submit FAX challenges. The City will not be responsible for bidders missing a deadline or submitting an incomplete challenge because of transmission problems. This procedure is subject to review and revision without further notice.

1. PRE-AWARD CHALLENGED PROCEDURE

In all cases, the services, equipment, parts, or materials furnished under a contract shall fully comply with the plans, specifications, and scope of services attached to the request for proposals.

All pre-proposal or pre-award challenges by interested parties, based upon restrictive or unclear scopes of work, the procurement process, alleged improprieties, or similar situations shall be received by the City, in writing, according to the schedule outlined in the "Solicitation Schedule". If the protest is made orally, written confirmation of the protest shall be required. If the written protest is not received by the time specified in the "Solicitation Schedule" (Section 1.1.1.4), the oral protest shall be disregarded. Any challenge must be fully supported with technical data or other pertinent information as evidence. A challenge will not be considered by the City of Madison, if it is insufficiently supported or if it is not received by the City within the specified time limits.

With respect to any challenge considered by the City of Madison, the Project Administrator will respond in detail to each substantive issue raised. The City's written response will be postmarked or transmitted at least five (5) business days prior to the proposal due date.

2. PRE-AWARD APPEALS PROCEDURE

A prime contractor or an adversely affected subcontractor is eligible to file an appeal from the decision of the Procuring Agencies, Project Administrator. All appeals shall be filed, in writing, not more than five (5) business days from the date of determination, by 4:30 PM local time, with the Transit Service Manager. At minimum, the appeal shall include the name and address of the appellant; the telephone and FAX numbers of the appellant; the action, which is the subject of the appeal; the reason for the protest; and a statement of the remedy sought.

With respect to any challenge considered by the City of Madison, the Transit Service Manager will respond in detail to each substantive issue raised. The City's final decision will be postmarked not less than five (5) business days prior to the proposal due date.

¹ For additional information, or for a copy of the DBE Program, contact the Contract Compliance Officer, Affirmative Action Department, Madison Municipal Building, Room 130, Madison, WI, at 608/267-8759.

3. AWARD CHALLENGE PROCEDURE

Any interested third party may challenge the selected, responsible Offeror designation of any individual or organization by the City of Madison. All challenges shall be filed, in writing, within five (5) business days of the proposal award, by 4:30 PM local time, with the Transit General Manager.

At a minimum, the challenge shall include the name and address of the challenging party; the telephone and FAX numbers of the challenging party; the action, which is the subject of the protest; the reason for the protest; and a statement of the remedy sought. The letter should include all information available to the protestor relevant to a determination of whether the challenged party is in fact the selected, responsible Offeror. The challenge should be specific. A protest will not be considered by the City, if it is insufficiently supported or if it is not received within the specified time limits.

The City shall determine, on the basis of information provided by the protestor, whether there is reason to believe that the challenged party should not have been awarded the contract.

If the City determines that there is no reason to believe that the challenged party should not have been awarded the contract, The City shall so inform the protestor in writing. In this letter, the City shall respond, at least generally, to each material issue raised in the protest.

If the City determines that there is reason to believe that the challenged party should not have been awarded the contract, the City shall begin a proceeding to re-evaluate the proposal award.

The City of Madison shall notify all involved or affected Offerors, in writing, that the contract award has been challenged. The notice may identify the challenging party and summarize the grounds for challenge. The notice shall also require the challenged party to provide The City, within a reasonable period of time, any information necessary to permit the City to evaluate the challenged party's designation as the selected, responsible Offeror.

The City of Madison shall evaluate the information available and make a preliminary determination. The City shall notify both parties of this preliminary determination in writing, setting forth the reason for the determination.

In the event the City determines that the challenged party should not have been awarded the contract, The City, at its discretion, may re-evaluate the evaluation process with the remaining Offerors or re-announce the RFP.

4. AWARD APPEALS PROCEDURE

Any aggrieved person who was a party to the above award challenge, or any person who possesses a direct financial interest in the determination, is eligible to file an appeal.

All appeals should be filed, in writing, within five (5) business days of the date of determination, during normal working hours, with the City Comptroller, City of Madison, 210 Martin Luther King Jr. Blvd., Room 406, Madison, WI. 53710 or FAX 608/267/8705.

At minimum, the appeal shall include the name and address of the appellant; the telephone and FAX numbers of the appellant; the action which is the subject of the appeal; the specific reason for the appeal; a statement of the remedy sought; and a copy of the City's determination. A protest will not be considered by the City Comptroller, if it is insufficiently supported or if it is not received within the specified time limits.

Upon receipt of an appeal, the City Comptroller shall fix a place, date, time, and designated officer to investigate the appeal, which shall be within five (5) business days of the date of receipt of the appeal.

The designated officer shall serve notice in writing, by telephone, or by other satisfactory means, to inform the parties of any information needed from them in order to respond to the appeal.

Within ten (10) business days of the conclusion of the review, the City Comptroller shall prepare a factual summary of the review and a final determination. In the report, all material issues raised in the protest shall be addressed in detail. This report shall be delivered to the Procuring Agency, with copies to the parties. This determination shall be final.

5. FTA OVERSIGHT

The FTA will only review protests that allege failure of the City to have written protest procedures or failure to follow such procedures, or its failure to review a complaint or protest. A protest to the USDOT/FTA must be filed in accordance with FTACircular 4220.1E. Alleged violations on other grounds, to the extent that they are justiciable, are under the jurisdictions of the appropriate federal, state or local administrative or judicial authorities. A concurrent copy of the protest must be sent to the City.

The USDOT/FTA's remedy for the City's failure to have written protest procedures or failure to follow such procedure is limited to requiring the City to develop such procedures, if necessary, and to follow such procedures in reviewing the protest at issue if the City desires USDOT/FTA financial participation in the contract in question.

Appellants shall file a protest with the USDOT/FTA not later than five (5) business days after the appellant knows or has reason to know of the violation.

In general, the protest filed must include the name and address of the appellant; identify the City, the project (grant) number, and the number of the contract solicitation; contain a statement of the grounds for the protest and any supporting documentation; and a copy of the local protest filed with the City and a copy of Procuring Agency's decision, if any.

6. POST-AWARD PROCEDURE

The City of Madison shall not award a contract for five (5) business days following its decision on a procurement protest or if a protest has been filed with the FTA, during the pendency of that protest, unless the City has determined that:

1. The items or services to be contracted for are urgently required;
2. Delivery or performance will be unduly delayed by failure to make the award promptly; or
3. Failure to make prompt award will otherwise cause undue harm to the City or the Federal Government.

In the event that the City determines that the award is to be made during the five (5) business day period following the local protest decision or the pendency of a protest, the project file shall be documented by the City, explaining the basis for the award. In addition, the City shall notify the FTA prior to making such an award. Written notice of the decision to proceed with the award shall also be sent to the protester and all other interested or aggrieved parties.