

Article VII
Bid/Proposal Protest Procedure

§ 1.701 Scope of Protest Procedure

METRO has established these Pre-Bid, Pre-Award and Post-Award Procurement Protest Policy and Procedures so that all procurement protests/disputes are filed, processed and resolved in a manner consistent with the requirements of the Federal Transit Administration (FTA) Circular (4220.1F) *Third Party Contracting Guidance*, dated November 1, 2008, which are on file at METRO's Administrative Offices, 110 Vernon Street, Santa Cruz, CA 95060, and available upon request.

§ 1.702 Types of Protests

There are three basic types of Protests pursuant to this regulation, based on the time in the procurement cycle when they occur:

- A. A pre-bid or solicitation phase Protest is received prior to the bid opening or proposal due date. Pre-bid protests are those based on the content of the initial Notice and/or solicitation published by METRO requesting bids from vendors or other interested parties.
- B. A pre-award Protest is a protest against making an award and is received after receipt of proposals or bids, but before award of a contract.
- C. A post-award Protest is a protest received after award of a contract. A post-award Protest must be received within 5 business days of the making of the award. A post-award Protest generally alleges a violation of applicable federal or state law and/or METRO policy or procedures relative to the seeking, evaluating and/or awarding of the contract.

§ 1.703 Protest Procedures

All Protests must be filed in writing with the METRO Administrative Offices, CFO, Santa Cruz Metropolitan Transit District, 110 Vernon Street, Santa Cruz, CA 95060, or electronically at financemanager@scmttd.com. No other location is acceptable.

The protest must be in writing and set forth the specific grounds of the dispute and shall be fully supported with technical data, test results, or other pertinent information related to the subject being protested. The Protest shall include the name and contact information of the Protester, solicitation/contract number or description, and what remedy the Protester is seeking. The Protester is responsible for adhering to this regulation.

§ 1.704 Santa Cruz METRO's Response to Protest

- A. METRO's CFO shall make a determination on the Protest generally within ten (10) working days from receipt of the Protest. The Decision of the CFO must be in writing and shall include a response to each substantive issue raised in the Protest.

- B. Any Decision by the CFO may be appealed to the Board of Directors. The Protester has the right within five (5) business days of receipt of the CFO's Decision to file an appeal restating the basis of the Protest and the grounds of the appeal. In the appeal, the Protester is only permitted to raise information and issues previously provided in the Protest or discovered after the Protest was submitted to the CFO for Decision and directly related to the grounds of the Protest. The Protester shall be provided with at least 72-hour notification of when the Board of Directors will hear the Appeal. The Protestor may appear, be represented and present evidence and testimony at the Appeal Hearing. The Board of Directors' decision shall constitute METRO's final administrative determination.

§ 1.705 Appeal of Santa Cruz METRO's Decision

- A. In the event that the Protester is not satisfied with METRO's Board of Directors' final administrative determination, he/she may proceed within 90 days of the final decision to State Court for judicial relief. The Superior Court of the State of California for the County of Santa Cruz is the appropriate judicial authority having the jurisdiction over Protest(s) and Appeal(s).
- B. At any time, the Protester may request reconsideration of METRO's Final Decision if data or information becomes available that was not previously known, or there has been an error of law or regulations.
- C. The Protester may withdraw its Protest or Appeal at any time before METRO issues a final decision.
- D. If METRO postpones the date of proposal submission because of a Protest or Appeal of the solicitation specifications, addenda, dates or any other issue relating to the procurement, METRO will notify, via addendum, all parties who are on record as having obtained a copy of the solicitation documents that a Protest/Appeal had been filed, and the due date for proposal submission shall be postponed until METRO has issued its final Decision.

§ 1.706 Santa Cruz METRO's Responsibilities to FTA

In cases where Contracts are substantially funded by the FTA, as a best practice, Santa Cruz METRO's CFO will notify its FTA regional office when it receives a third party Contract protest and keep FTA informed about the status of the protest. Contracts and Procurements staff will advise Santa Cruz METRO's grants department of relevant information concerning protests so that appropriate reporting will be accomplished.