
MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY

POLICY MANUAL

Subject: Protest Procedures



Part 800: Staff Services

Policy No.: 804

Supersedes: 807

Date: 08/01/16

Dated: 07/01/13

1. Right to Protest

Bidders and respondents who submit a response to a request for bids, qualifications, or proposals may protest a decision of the Authority in connection with the award of a contract for same in accordance with this policy. Failure to timely file a protest shall constitute a failure to exhaust administrative remedies and shall cause a forfeiture of the right to protest any such decision of the Authority.

2. Filing Requirements

- a. A protest must be submitted in writing and received by the Authority within seven (7) calendar days of the date of the occurrence of the event giving rise to the grounds for a protest.
- b. A protest must be delivered by U.S. postal service, by hand-delivery, or by an overnight delivery service to the Authority during the Authority's regular business hours in order to be deemed to be received by the Authority.
- c. A protest must be submitted in hard copy to the Staff Services Division. A protest sent by telegraphic or facsimile transmission or by electronic mail or other electronic means will not meet the filing requirements of this policy.
- d. Within five (5) business days of receipt, the Director of Staff Services shall forward a valid protest to the President together with recommended members for a panel to review the protest ("Protest Review Panel"). The Protest Review Panel shall be comprised of at least three (3) members selected based on the subject matter of the protest.
- e. The President shall appoint members to the Protest Review Panel within five (5) business days of receiving notice of same from the Director of Staff Services. The appointment of such members may be delayed in accordance with the informal resolution procedures established by this policy.

3. Notice to Interested Parties

The Director of Staff Services shall send written notice of the protest to all bidders or respondents participating in the related solicitation within five (5) business days of receiving a valid protest.

4. Grounds for Protest

- a. A protesting party may protest by alleging that the Authority's (1) decision to accept or reject a particular bid or response, (2) determination that the protesting party was not responsible, or (3) determination that the protesting party's bid or response was not responsive was arbitrary or capricious or in violation of applicable law. A protest on any other grounds shall be deemed invalid.
- b. A protest must state with particularity the factual basis upon which the protesting party is seeking review. A protesting party shall be deemed to waive any grounds or facts that are not expressly set forth in the written protest.

5. Informal Resolution of Protest

The President, in consultation with the General Counsel, may informally resolve a protest with the protesting party. If the parties cannot resolve the protest informally within five (5) business days after receipt of the protest by the President, the President shall appoint the members of, and forward the written protest to, the Protest Review Panel.

6. Hearing Before Protest Review Panel

- a. The Protest Review Panel shall hold a hearing at the earliest possible date, but no later than fifteen (15) business days after receiving the written protest.
- b. The hearing before the Protest Review Panel shall afford an opportunity for the protesting party to present evidence as to why the Authority's decision was arbitrary or capricious or in violation of applicable law. The protesting party has the burden of proving by clear and convincing evidence that the Authority's decision was arbitrary or capricious or in violation of applicable law. The protesting party has the right to be represented at the hearing by legal counsel of its choosing and at its sole expense.
- c. The General Counsel shall attend all hearings of, and serve as legal counsel to, the Protest Review Panel.

7. Decision of Protest Review Panel

Within ten (10) business days after the hearing, and in consultation with the General Counsel, the Chairman of the Protest Review Panel shall issue a written decision with respect to the protest and forward it to the Director of Staff Services. The

Director of Staff Services shall send a copy of the written decision to the protesting party and all other bidders or respondents participating in the related solicitation. The Protest Review Panel's decision shall state with particularity the reason for the action taken and shall include written findings of fact and conclusions of law in support of the decision. The Protest Review Panel's decision shall constitute a final administrative decision.

8. Stay Pending Protest

- a. In the event of a timely filed protest, the Authority shall not proceed to award or negotiate a contract in the solicitation at issue unless the Protest Review Panel makes a written determination that the protest is deemed invalid or that proceeding with the award and execution of the applicable contract is necessary to protect the interests of the Authority.
- b. The Authority may condition its stay of an award or contract execution upon the protesting party's providing the Authority with a letter of credit, cash, deposit, or surety bond ("Security") in the amount of ten percent (10%) of the value of the lowest and most responsive bid or response received in the solicitation or such other amount as the Authority deems necessary to protect it from harm as a result of the delay in making the award and/or executing the applicable contract.
- c. If the protest is deemed valid and the award and/or negotiation of the contract in question is cancelled, the Security shall be returned to the person or entity that provided the Security for the protest. If the protest is deemed invalid and denied, the Authority shall be entitled to retain that portion of the Security deemed necessary to compensate the Authority for the harm caused to the Authority as a result of the delay, up to the full amount of the Security.