
MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY

POLICY MANUAL

Subject: Protest Procedures

Policy No.: 803

Date: 09/16/24



Part 800: Procurement

Supersedes: 803 & 804

Dated: 02/01/21

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 to be deemed received by the Authority. A protest must be submitted in hard copy to the Procurement 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.
- c. Without waiving the Authority's right to dismiss an untimely protest, the Director of Procurement has the discretion to review a protest that is not submitted timely.

3. Contents of Protest

The protest must be clearly designated "BID PROTEST" and contain the following:

- (1) Solicitation number and title;
- (2) Name and address of the protesting party;
- (3) Statement of the grounds for protest and the factual and/or legal basis upon which the protesting party is seeking review;
- (4) Statement indicating the relief sought by the protesting party;
- (5) All other relevant information and/or documentation in support of the protest; and
- (6) Signature of the protesting party or its representative.

4. Grounds for Protest

- a. A protesting party may protest by alleging that one of the following actions by the Authority was arbitrary and capricious or in violation of applicable law:

- (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.

A protest on any other grounds shall be deemed invalid and dismissed.

- 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. Notice to Interested Parties

The Director of Procurement 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 protest.

6. Review and Decision by the Director of Procurement

- a. Upon receipt of the protest, the Director of Procurement shall review the matter to evaluate the facts and merits of the protest. The Director of Procurement may conduct interviews with the protestor and/or other relevant parties as a part of their fact-finding process.
- b. The Director of Procurement shall issue a written decision within ten (10) calendar days after receipt of the protest. If additional time is required, the Director of Procurement will notify the protesting party with an estimated response time not to exceed thirty (30) calendar days.

7. Appeal of Protest Decision

- a. An appeal from the decision issued by the Director of Procurement shall be filed with the Vice President of Finance and Administration/(CFO) within five calendar (5) days from the receipt of the written decision. Upon receipt of the appeal, the CFO shall notify the President and General Counsel.
- b. An appeal 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 to be deemed received by the Authority. An appeal sent by telegraphic or facsimile transmission or by electronic mail or other electronic means will not meet the filing requirements of this policy.

- c. An appeal must contain the information required herein. The appeal must also state the alleged factual and/or legal error in the decision of the Director of Procurement from which the appeal is taken.
- d. An appeal shall be dismissed if (1) the appeal is untimely; or (2) the appeal fails to state a basis for review.
- e. The Director of Procurement shall send written notice of the appeal to all bidders or respondents participating in the related solicitation within five (5) business days of the Authority's receipt of the appeal.

8. Protest Review Panel

- a. The Protest Review Panel shall be comprised of at least three (3) members, including the chairperson. The President shall appoint members to the Protest Review Panel within five (5) business days after receipt of the appeal. The appointment of such members may be delayed in accordance with the informal resolution procedures established by this policy. The CFO shall serve as the chairperson of the Protest Review Panel.
- b. The Protest Review Panel shall hold a hearing at the earliest possible date, but no later than ten calendar (10) days after the Authority's receipt of the appeal.
- c. 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 and 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, 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.
- d. The General Counsel shall attend all hearings of the Protest Review Panel.

9. Decision of Protest Review Panel

- a. Within ten (10) calendar days after the hearing, and in consultation with the General Counsel, the CFO shall issue the written decision of the Protest Review Panel. The CFO shall send a copy of the decision to the protesting party and all other bidders or respondents participating in the related solicitation.
- b. 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.
- c. The Protest Review Panel's decision shall constitute a final administrative decision.

10. 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 until the protest is heard and resolved unless the Director of Procurement or Protest Review Panel makes a written determination that proceeding with the award and execution of the applicable contract is necessary to avoid a health, safety, or welfare risk or in the best interests of the Authority. Said determination may be made at any time during the protest process.
- b. The Authority may condition its stay of an award or contract execution upon the protesting party 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 sustained 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.

11. Informal Resolution of Protest or Appeal

The President, in consultation with the General Counsel, may informally resolve a protest or an appeal with the protesting party within five (5) days from the receipt of the protest or within five (5) days from the receipt of the appeal.