



Bid Protest Procedures for the Eastern Panhandle Transit Authority

The following terms, conditions and appeal procedures will apply.

- a. EPTA reserves the right to postpone the bid opening or receipt of proposals at its sole discretion.
- b. Changes to written specifications will be made by addendum only.
- c. Prime Vendors and subcontractors may make appointments to discuss specifications. This, however, does not relieve them from the written documented requests require by subparagraph d and f, following.
- d. Requests for approved equals, clarification of specifications, and protests of specifications must be received by EPTA in writing not less than ten (10) working days before the date of the scheduled closing date for receipt of proposals. Any request for an approved equal or protest of the specifications must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the specification requirement.
- e. EPTA replies to requests under paragraph (d) above will be postmarked at least five (5) working days before the date scheduled for the proposal opening.
- f. Appeals by any adversely affected person regarding restrictive specifications or alleged improprieties in the solicitation must be made in writing and received by EPTA not less than twenty-four (24) hours before the bid opening. The formal written protest shall state with particularity the facts and law upon which the protest is based.
- g. Upon receipt of appeal, EPTA shall immediately determine if the date for the proposal closing date should be postponed. If it is postponed, EPTA will so notify all known potential bidders. Such notice will be made in writing by addendum.
- h. Representatives of EPTA and the protester shall meet within twenty-four (24) hours after receipt of the appeal, or at such a time as mutually agreed, to resolve the protests. Upon completion of discussion between EPTA and protester, EPTA will issue a final decision in writing to the protester within five (5) working days. If the written decision cannot be issued within this time period, the protester will be notified in writing of the time extension. Upon issuance of the written decision, EPTA will then issue an appropriate addendum to reschedule the proposal closing date.

- i. Protest by any adversely affected person for reasons other than for restrictive specifications or alleged improprieties in the solicitation must be made in writing and received by EPTA not more than twenty-four (24) hours after the posting of the notice of award is made to the participating bidders. Upon receipt of a protest after Contract award, EPTA shall immediately determine if work on the protested project should be suspended until such time as the protest is resolved.
- j. Representatives of EPTA and the protester shall meet within forty-eight (48) hours after receipt of the protest or such time as mutually agreed to by both parties to resolve the protest. Upon completion of discussions between EPTA and protester, EPTA will issue a written decision to the protester within five (5) working days. If the written decision cannot be issued within this time period, protester will be notified in writing of time extension.
- k. Any appeal or protest may be withdrawn at any time.
- l. The FTA's involvement in bid protests is limited. The Uniform Guidance, as adopted by DOT, no longer includes the language in 49 C.F.R. §18.36(b)(12) that provided for the direct appeal to FTA of a recipient's final decision on a bid protest. The uniform guidance provides that:

“The non-FTA entity alone must be responsible, in accordance with good administrative practice and sound business judgement, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgement for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of the law will be referred to the local, state, or Federal authority having proper jurisdiction.” – 2C.F.R. §200.318(k)

The FTA's role is limited to considering matters that are “primarily a Federal concern”. Accordingly, Section (1)(b)(2)(a) of Chapter VII of the FTA Circular 4220.1F, which provides for direct appeals to FTA, is no longer applicable.