

CHICAGO BOARD OF EDUCATION

DEPARTMENT OF PROCUREMENT SERVICES

SOLICITATION AND CONTRACTING PROCESS PROTEST PROCEDURES

(Applicable to Bids, Requests for Qualifications and Requests for Proposals)

SECTION I – BOARD OF CHICAGO PROTEST PROCEDURES

The City of Chicago Board of Education (“Board”) Chief Procurement Officer (“CPO”) will consider a protest (as described in subsection C) regarding its procurement actions for the Board projects in accordance with the following procedures. All protests will be evaluated and finally decided by the CPO. Accordingly, the Board intends to provide a thorough review of all protests to the extent they conform to the requirements herein. The Board’s primary concern is the timely procurement of needed capital equipment, supplies, or services. The Board will not allow the filing of a protest to unnecessarily delay the procurement process, especially if the protest involved is vexatious or frivolous in nature.

Notwithstanding the availability of these protest procedures, any interested party is encouraged to exhaust all methods of resolution described in the contract documents before filing a formal protest. In its consideration of a protest, the Board reserves the right to give consideration to the good faith efforts of the protestor to resolve the issue involved through informal methods.

A. Definitions

1. “Days” refers to working days of the Board.
2. “Federal Law” or “Regulation” means any valid requirement imposed by Federal statute or regulation governing contracts awarded pursuant to a grant agreement (including the requirement of FTA Circular 4220.1F).
3. “Interested party” means any person (a) who is an actual bidder or prospective bidder in the procurement involved; (b) whose direct economic interest would be affected by the award of the contract or by a failure to award the contract; and (c) who demonstrates compliance with these procedures, the terms of the invitation for bids, and the contract documents (if bid) or Request for Qualifications (RFQ) or Request for Proposals (RFP), as applicable.
4. “Chief Procurement Officer” or “CPO” means the Chief Procurement Officer of the Board of Education and Chief Executive Officer of the Department of Procurement Services.
5. “Submit” or “File” means the date of actual receipt by the Chief Procurement Officer.

B. Filing of a Protest

Any interested party may file a protest on the basis that the Board has failed to comply with applicable Federal or State law or with the local regulations. The protest must be filed in accordance with the timing requirements set forth in subsection C herein, and must include:

1. The name, address, telephone and facsimile numbers of the protestor;
2. The number of the specification/contract solicitation;
3. All information indicating that the protestor is an interested party;
4. A written statement of the grounds for the protest and in particular the Federal or State law or local regulation alleged to have been violated. This statement should be accompanied by any relevant support documentation, and a statement regarding the course of action the protestor desires that the Chief Procurement Officer take. Protests should be submitted to:

Chief Procurement Officer
Chicago Board of Education
Department of Procurement Services
42 W. Madison 9th Fl
Chicago, Illinois 60602

5. All information establishing the timeliness of the protest; and
6. The signature of the protestor.

If the protest does not meet the time or content requirements, the CPO may, at her option, reject the protest or allow the protestor a reasonable time to cover the deficiencies of the protest. The CPO shall not be obliged to postpone contract awards in order to allow a protestor an opportunity to correct a deficient protest unless otherwise required by Federal law or regulation.

C. Subject of the Protest and Timing

The requirements for timely filing of a protest with the Chief Procurement Officer will depend upon the type of protest involved. The subject of the protest shall be limited to fraud, corruption, or illegal acts undermining the objective and integrity of the procurement process. For purposes of this section and in accordance with Section I.A.4 of these procedures, deposit in the mail, postage prepaid does not constitute filing or receipt. A protest is considered filed when physically received by the CPO or duly appointed designee.

The Board will consider these types of protests:

1. Protest regarding solicitation (Pre-Bid Protest)

Any protest regarding the solicitation by the Board must be filed no later than five (5) days before the opening of bids (if bid) or the due date for submittals or proposals (if

RFP/RFQ), as applicable. Any protest filed after that date which raises issues regarding the solicitation will not be considered.

2. Protests regarding the evaluation of bids, qualifications, or proposals (Pre-Award Protest)

Any protest regarding the evaluation of bids, qualifications, or proposals by the Board

must

be filed with the Board no later than ten (10) days after the opening of bids (if bid), or due date (if RFQ/RFP), or notification that the protestor's status as a bidder/responder has changed, such as notification that a bid or proposal has been rejected. Any protest filed after such date which raises issues regarding the evaluation will not be considered.

3. Protest Regarding Award of Contract (Post-Award Protest)

Any protest regarding the award of the contract must be filed no later than ten (10) days after the date of award. Any protest regarding the award of the contract filed after such date will not be considered.

D. Board Response

1. Types of Protest

Upon timely receipt of a protest, the Board may request additional information from the protestor. The Board may, in its discretion, meet with the protestor to review the matters raised in the protest. The Board's consideration of the particular types of protests will, except as otherwise provided in Paragraph 2 of this subsection, be in accordance with the following provisions:

a. Protest regarding solicitation (Pre-Bid Protest)

Upon receipt of a timely and properly filed protest regarding the solicitation, the Board may postpone the opening of bids, qualifications, or proposal packages until resolution of the protest, unless otherwise decided by the Chief Procurement Officer in accordance with Section D.2 of this procedure. If the Board postpones the opening of bids, submittals, or proposal packages, no additional bids will be accepted during the period of postponement.

b. Protests regarding the evaluation of bids, qualifications, or proposals (Pre-Award Protest)

Upon receipt of a timely and properly filed protest regarding the evaluation of bids, qualifications, or proposals, the Board may suspend its evaluation of all bids, qualifications, or proposals submitted until resolution of the protest, unless otherwise determined by the CPO in accordance with Section D.2 below.

c. Protest Regarding Award of Contract (Post-Award Protest)

Upon receipt of a timely and properly filed protest regarding the award of a

contract, the Board will not issue a notice to proceed or submit an order for goods to the contractor until the protest has been resolved, unless the work or supplies are necessary to protect the interests of the Board in accordance with Section D.2 below. If necessary, the Board may issue a stop work order until the resolution of the protest.

2. Decisions by the Chief Procurement Officer

a. Continue Process during Protest Resolution

A decision on a protest will be made as expeditiously as possible after receiving all relevant information. The CPO reserves the right, notwithstanding the pendency of a protest, to proceed with the appropriate action in the procurement process or under the contract in the following cases:

- (1) Where the item to be procured is urgently required;
- (2) Where the CPO determines that the protest was vexatious or frivolous; and
- (3) Where delivery or performance will be unduly delayed, or other undue harm will occur, by failure to make the award promptly.

b. Informal Conference

Five (5) days after a protest has been timely and properly filed, the protestor may submit a request for an informal conference. The CPO may, at her option, hold an informal conference on the merits of the protest with all interested and available parties. All interested parties will be given at least two (2) days' notice of the informal conference.

c. Final Determination

Upon receipt of a timely and properly filed protest and review by the CPO, the CPO will provide a written decision to the protestor within thirty (30) days, unless the CPO notifies the protestor that an additional period is needed for the CPO to prepare a final decision. The basis of the decision will be the information submitted by the protestor, the result of any meetings with the protestor, and the CPO's own investigation. The CPO will respond to each substantive issue on the protest submitted with the level of detail deemed appropriate by the CPO. The CPO's decision shall become final within five (5) days unless a timely request for reconsideration is filed as noted below.

d. Reconsideration of Protest Decision

A protestor may request the CPO's reconsideration of a decision if:

- (1) Information becomes available that was not previously known, or could have reasonably become known, or

- (2) The CPO's decision contains an error of law or regulation.

The request must be submitted in writing to the CPO within five (5) days of the date of issuance of the initial decision. The request must include a detailed explanation of the basis for reconsideration and state the course of action the protestor desires that the CPO take.

If the project is funded by FTA, then no protest may be filed with FTA later than five (5) days after a final decision by the CPO. As referenced in the preceding sentence, "filed" refers to the date of receipt by FTA and "days" refers to working days of the Federal Government.

Any alleged violation of a specified Federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with the applicable Federal regulations instead of the requirements of FTA Circular 4220.1F.

- e. Actions after the Chief Procurement Officer's Decision

After a written decision is issued by the Chief Procurement Officer, the appropriate actions will take place. If the protest is upheld, the CPO's actions may include, but are not limited to, any appropriate steps to correct the procurement process, such as: re-solicitation of bids, revising evaluation of bids, CPO's determination, or termination of the contract. If the protest is denied, the CPO will lift any imposed suspension and proceed with the procurement process or the contract.

SECTION II – FTA BID PROTEST PROCEDURES (FOR PROJECTS FUNDED BY FTA)

Under Circular 4220.1F, FTA substantially limits its review of protests, recognizing that most protest issues are best resolved at the State and/or Local level. Any protest or appeal to FTA must be filed in accordance with the requirements contained in FTA Circular 4220.1F and may only be made by an "interested party," which FTA has defined as "an actual or prospective bidder or offerer whose direct economic interest would be affected by the award of the contract or by failure to award the [contract]." FTA will only accept protest appeals alleging that:

1. The Board failed to have or follow its written protest procedures;
2. The Board failed to review a complaint or protest; or
3. A violation of Federal law or regulations has occurred involving issues important to FTA's overall public transportation program.

FTA will not substitute its judgment for that of the Board unless the matter is primarily a Federal concern.