



Meeting Date: September 28, 2022

Agenda Item: D.4

AGENDA SUMMARY REPORT

SUBJECT:

Discussion and Possible Approval of MTA Procurement Policy Addendum:
Protest Procedures & Dispute Resolution Process,

SUMMARY:

The purpose of these procedures is to set forth the procedures to be utilized by the Mendocino Transit Authority (MTA) in considering and determining all bid protests or objections regarding solicitations, proposed award of a contract, or award of a contract whether before or after award.

STAFF RECOMMENDATION:

Approve MTA's Procurement Addendum dated September 21, 2022.

ATTACHMENTS

Draft Procurement Policy dated September 21, 2022

Mendocino Transit Authority

Protest Procedures & Dispute Resolution Process

- A. Purpose. The purpose of these procedures is to set forth the procedures to be utilized by the Mendocino Transit Authority (MTA) in considering and determining all bid protests or objections regarding solicitations, proposed award of a contract, or award of a contract whether before or after award.
- B. General. In order for a bid protest to be considered by MTA, it must be submitted by an interested party (as defined below in accordance with the procedures set forth herein). A protest which is submitted by a party which is not an interested party or which is not in accordance with the procedures shall not be considered by MTA, and will be returned to the submitting party without any further action by MTA.
- C. Definitions. For purposes of these Bid Protest Procedures:
1. The term "Bid" includes any bid or offer submitted by a bidder in response to an Invitation for Bid (IFB), and a proposal submitted by an offeror in response to a Request for Proposals (RFP).
 2. The term "contract" means that document to be entered into between MTA and the successful bidder and offeror.
 3. The term "days" refers to normal business days of MTA staff offices.
 4. The term "interested party" means any person: (a) who is an actual or prospective proposer, bidder, or offeror in the procurement involved; and (b) whose direct economic interest would be affected by the award of the contract or by failure to award a contract.
 5. The term "solicitation" means an Invitation for Bids (IFB), Request for Proposals (RFP), or other form of document used to procure equipment or services.
- D. Grounds for Protest. Any interested party may file a bid protest with MTA on the grounds that:
1. MTA has failed to comply with applicable Federal or State Law;
 2. MTA has failed to comply with its procurement procedures;
 3. MTA has failed to comply with the terms of the solicitation in question, including the failure to adhere to the evaluation criteria set forth in the solicitation, if applicable;
 4. MTA has issued restrictive or discriminatory specifications; or,
 5. Award is made to other than the lowest responsive and responsible bidder on formally advertised (IFB) procurements.

E. Contents of Protest

1. A bid protest must be filed in writing and must include:
 - a. The name and address of the protestor.
 - b. The name and number (if available) of the procurement solicitation.
 - c. A detailed statement of the grounds for the protest, including all relevant facts and a citation to the Federal or State law, the provision of MTA procurement procedures, or specific term of the solicitation alleged to have been violated.
 - d. Any relevant supporting documentation the protesting party desires MTA to consider in making its decision.
 - e. The desired relief, action, or ruling sought by the protestor.

2. Protests must be filed with:

Mendocino Transit Authority
Jacob King, Executive Director
241 Plant Rd
Ukiah, CA 95482

3. All protests must be received at the MTA address listed above during normal office hours of 8:00 a.m. to 5:00 p.m., Pacific Standard Time.
4. If any of the information required by this section is omitted or incomplete, MTA will notify the protestor, in writing, within one day of the receipt of the protest, and the protestor will be given one day to provide the omitted or incomplete information in order for the protest to be further considered. Note that this provision only applies in the case of a failure to state any grounds for a protest and does not apply to stating inadequate grounds for a protest or the failure to submit documentation.

F. Timing Requirements and Categories of Protests. MTA will consider the following categories of bid protests within the time period set forth in each category:

1. Any bid protest alleging improprieties in a solicitation process or in solicitation documents must be filed no later than five days prior to the scheduled bid opening or deadline for submittal or proposals, as appropriate, in order to be considered by MTA. Any protest based on such grounds not filed within this period will not be considered by MTA. This category of protests includes, but is not limited to, allegation of restrictive or exclusionary specifications or conditions.
2. Any bid protests regarding the evaluation of bids or proposals by MTA, or improprieties involving the approval or award or proposed approval or award of a contract must be filed with MTA no later than 72 hours after the protestor's receipt of MTA's written notice of its decision or intended decision to award a contract. Any protest filed after such date which raises issues regarding the bid proposal evaluation, or the contract approval or award will not be considered by MTA.

G. Review of Protest by MTA

1. MTA will notify the protestor within 3 days of timely receipt of a bid protest that the protest is being considered.
2. In the notification, MTA will inform the protestor of any additional information required for evaluation of the protest by MTA, and set a time deadline for submittal of such information. If MTA requests additional information, and it is not submitted by the stated deadline, MTA may either review the protest on the information before it, or decline to take further action on the protest
3. In its sole discretion, MTA may give notice of any bid protest to other bidders or proposers for the procurement involved in the protest, as appropriate, and permit such bidders or offerors to submit comments to MTA relative to the merits of the bid protest. MTA will set a time deadline for the submittal of such comments, which will be no less than 5 days after MTA provides notification of the protest.
4. In its sole discretion, MTA may schedule an informal conference on the merits of a bid protest. All interested parties will be invited to participate in the conference. Any information provided at the conference will only be considered by MTA in deciding the bid protest if it is submitted to MTA in writing within 3 days after the conference.

H. Effects of Protest on Procurement Actions

1. Upon receipt of a timely protest regarding either the solicitation process of the solicitation documents in the case of sealed bids, MTA will postpone the opening of bids until resolution of the protest. The filing of the protest will not, however, change the date on which bids are due, unless MTA determines, and so notifies all bidders, that such a date change is necessary and appropriate to carry out the goals of the procurement and assure fair treatment for all bidders.
2. Upon receipt of a timely protest regarding evaluation of bid or proposals, or the approval or award of a contract, MTA will suspend contract approval or other pending action, or issue a stop work order if appropriate, until the resolution of the protest. In this event, the successful bidder or proposer may not recover costs as a change order.
3. Notwithstanding the pendency of a bid protest, MTA reserves the right to proceed with any appropriate step or action in the procurement process or in the implementation of the contract in the following cases:
 - a. Where the item to be procured is urgently required;
 - b. Where MTA determines, in writing, that the protest is vexatious or frivolous;
 - c. Where delivery or performance will be unduly delayed, or other undue harm to MTA will occur, by failure to make the award promptly; or,
 - d. Where MTA determines that proceeding with the procurement is otherwise in the public interest.

- I. Summary Dismissal of Protests. MTA reserves the right to summarily dismiss all or any portion for a bid protest that raises legal or factual arguments or allegations that have been considered and adjudicated by MTA in a previous bid protest by any interested party in the same solicitation or procurement action.

- J. Protest Decisions
 - 1. After review of a bid protest, the Procurement Officer shall make a recommendation to the Executive Director of the appropriate disposition of such protest.
 - 2. The recommendation shall be made on the basis of the information provided by the protestor and other parties, the results of any conferences, and MTA's own investigation and analysis.
 - 3. If the protest is upheld, MTA will take appropriate action to correct the procurement process and protect the rights of the protestor, including re-solicitation, revised evaluation of bids or proposals or MTA's determination, or termination of the contract.
 - 4. If the protest is denied, MTA will lift any suspension imposed and proceed with the appropriate state of the procurement process or the contract.

- K. Judicial Appeals. A protest adversely affected by a bid protest decision may appeal such decision to an appropriate court of the State of California located in Mendocino County.