

K. Protests

1. Purpose

- a. The purpose of a protest procedure is to allow an actual or prospective proposers, bidders, offerors, suppliers, service providers, or contractors (“Interested Party”) who may be aggrieved in connection with a procurement solicitation, evaluation and source selection or procurement contract award, an opportunity to formally state their dispute.
- b. The Contracts Specialists ensure that all solicitations contain appropriate instruction for Interested Parties to access this procedure.
- c. Because Sound Transit’s response to a protest establishes a precedent, it is important that the responses be consistent and are in the best interests of Sound Transit.

2. Procedure

- a. Timing of Protest
 - i. A written protest, based on the contents of the solicitation document, must be received by Sound Transit no later than seven (7) business days prior to the date and time designated for submittal of bids, proposals or statement of qualifications. A written protest, based on other circumstances must be received by Sound Transit within five (5) business days after the allegedly aggrieved party is notified of the selection decision, procurement contract award or intent thereof, whichever is earlier.
 - ii. A written protest in a purchase action valued below \$250,000 (whether based on the content of the solicitation or otherwise) must be received by Sound Transit within the earlier of (a) two (2) business days of the opening of bids or (b) the time the procurement contract is executed or performed.
- b. Contents of Protest
 - i. All protest must be in writing and shall contain the following:
 - a) The procurement title and/or number under which the protest is made.
 - b) The name and address of the allegedly aggrieved party.
 - c) A detailed description of the specific grounds for the protest and all supporting documentation.
 - d) The specific ruling or relief requested.
 - ii. The written protest shall be addressed to the Procurement & Contracts (P&C) Chief Procurement and Contracts Officer, Sound Transit, 401 South Jackson Street, Seattle, Washington 98104-2826.
- c. Response to Protest and Appeal
 - i. Upon receipt of a timely written protest, the P&C Chief Procurement and Contracts Officer, or his/her designee, will consider the protest in accordance with established procedures and promptly issue a written decision stating the reasons for the action taken and informing the allegedly aggrieved party of his/her right to appeal the decision to the Chief Executive Officer.
 - ii. The decision made by the P&C Chief Procurement and Contracts Officer, or his/her designee, shall be final and conclusive unless a written appeal to the Chief Executive Officer is received within five (5) business days of the earlier of Sound Transit’s written, email or facsimile transmittal to the allegedly aggrieved party of the P&C Chief Procurement and Contracts Officer’s decision. The Chief Executive Officer, or his/her designee, will consider the appeal and promptly issue a written decision, which shall be final and conclusive. A copy of the decision shall be (a) mailed by U.S. mail and (b) emailed or faxed to the allegedly aggrieved party, and the FTA.

- iii. A Protestor may not commence litigation prior to exhausting all administrative remedies. Failure to exhaust all administrative remedies shall constitute an absolute waiver of the allegedly aggrieved party's right, if any, to commence litigation.
 - iv. Failure to comply with these protests and appeal requirements will render a protest or an appeal untimely or inadequate and may result in rejection thereof by Sound Transit.
 - v. After the exhaustion of all administrative remedies, the protestor shall have 10 calendar days to commence litigation. Failure to commence litigation within this limitation shall constitute an absolute waiver of the protestor's right. State laws permit Sound Transit to award and execute the Contract during this 10-day period.
- d. Commencement of Litigation: After the exhaustion of all administrative remedies, the allegedly aggrieved party shall have ten (10) business days in which to commence litigation. Failure to commence litigation within this limitation shall constitute an absolute waiver of the allegedly aggrieved party's right, if any, to do so. Sound Transit may award and execute the procurement contract during this ten (10) day period in accordance with State law.
- e. Protest at the Federal Transit Administration (FTA) Level (For Federally-Funded Projects only): Protests made to the FTA will be limited to Sound Transit's failure to have or follow its protest procedures, Sound Transit's failure to review a dispute or protest, or violations of Federal law or regulation. Any protest to the FTA must be made in accordance with the following guidelines:
- i. A protest must be filed with the FTA no later than five (5) business days after the allegedly aggrieved party learns or should have learned of an adverse decision by Sound Transit or other basis of appeal to FTA.
 - ii. A protest to the FTA must be filed in accordance with FTA Circular 4220.1F, Chapter VII, as amended, effective on the date of the protest.
 - iii. The Contracts Specialist, or other designated P&C Division personnel, shall submit to the FTA Regional Office a copy of all protests, appeals and Sound Transit's response.
 - iv. Sound Transit shall send notification to the Federal Transit Administration (FTA) Regional Office in Seattle; Jackson Federal Building; 915 Second Avenue, Suite 3142, Seattle, WA of each protest.