

1.10 Protests

1.10.1 Policy

GBM policy requires that all prospective contractors be accorded fair and equal consideration in the solicitation and award of contracts. To that end, any interested party shall have the right to protest alleged inequities in the procurement process and to have its issues heard, evaluated and resolved administratively. "Interested party" is defined as an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by failure to award a contract.

1.10.2 Submittal Procedures

An interested party wishing to protest a matter involving a proposed procurement or contract award shall file a written submission to:

Transit Director
901 University Avenue
Green Bay WI, 54302

Protest must be filed by certified mail or other delivery method by which receipt can be verified. Electronic submission of protests will not be accepted.

The protest shall include, at a minimum:

- (a) The name and address of the protesting party and its relationship to the procurement sufficient to establish that the protest is being filed by an interested party;
- (b) Identity of the contact person for the protestor, including name, title, address, telephone, fax and email addresses. If the contact point is a third party representing the protestor, the same information must be provided, plus a statement defining the relationship between the protestor and the third party.
- (c) Identification of the procurement;
- (d) A description of the nature of the protest, referencing the portion(s) of the solicitation involved;
- (e) Identification of the provision(s) of any law, regulation, or other governance upon which the protest is based;
- (f) A complete discussion of the basis for the protest, including all supporting facts, documents or data; and
- (g) A statement of the specific relief requested.

The protestor is solely responsible for the completeness and validity of the information provided. Any documents relevant to the protest should be attached

to the written submission. Documents which are readily available on the Internet may be referenced to an appropriate link.

Protests shall be submitted in accordance with the requirements of this chapter and any directions included in the solicitation, and shall be addressed to the Transit Director. GBM may decide a protest solely upon the written submission. The protest submission should therefore include all materials necessary to support the protester's position. Additional or supplemental materials may only be submitted at the request of, or with the permission of, the Transit Director. If the procurement uses federal funds, an informal notice of receipt of a protest must be given to the appropriate regional office of the Federal Transit Administration (FTA). The form of notice may be specified by the regional office.

1.10.3 Protests of the Solicitation Process

A protest related to the technical scope or specification, terms, conditions, or form of a solicitation must be received no later than ten (10) working days prior to the date established for opening of bids or receipt of proposals; if the protest addresses an amendment to the solicitation, it must be received no later than ten (10) working days prior to the date established for opening bids or receipt of proposals or five (5) working days after the date of issuance of the amendment, whichever is later; in no event, however, may a protest of this nature be submitted after bids or proposals are received. The protest must conform in all respects to the requirements set forth in Section 1.10.2 above. Upon receipt of such a protest, the Transit Director shall notify all prospective procurement offerors and other known interested parties of the receipt and nature of the protest, and shall post a notice of the protest on GBM's procurement web page. Unless the Transit Director determines that delay will be prejudicial to the interest of GBM or that the protest patently lacks substantial merit, the solicitation process will be extended pending resolution of the protest. The protest will be considered and either denied or sustained, in part or in whole, by the Transit Director in writing. A written decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor prior to the receipt of bids or proposals in a manner that provides verification of receipt. A notice of the decision shall be provided to all parties given notice of the protest, and posted to GBM's procurement web page. Should the protest be upheld in whole or in substantial part, the contracting officer may either (1) amend the solicitation to correct the document or process accordingly; or (2) cancel the solicitation in its entirety. If the solicitation is amended, the time for receipt of bids or proposals shall be equitably extended to permit all participants to revise their bids or proposals to reflect the decision. If the protest is denied, the solicitation shall proceed as if the protest had not been filed, unless the protester pursues its protest with the Federal Transit Administration (FTA) as defined below, or otherwise appeals the decision of the Transit Director, as defined below. Protests

received by GBM after the time periods specified above shall be considered untimely and may be denied on that basis unless the Transit Director concludes that the issue(s) raised by the protest involves substantial prejudice to the integrity of the procurement process.

1.10.4 Protests of the Evaluation Process

All bidders/proposers will be notified of the recommended award, upon a determination of GBM staff of a recommendation to be made to the Transit Commission as appropriate. This notice will be transmitted to each proposer at the address contained in its proposal form. Transmittal may be by electronic means or by hard copy. Any proposer whose proposal is valid at the time of the staff determination may protest the recommended award on one or more of the following grounds:

- (a) That the recommended award does not meet the requirements of the solicitation;
- (b) That the bid or proposal recommended for acceptance does not meet the criteria of the solicitation for award;
- (c) That the evaluation process conducted by GBM is improper, illegal, or the decision to recommend award is arbitrary and capricious.

The protest must be received by GBM at the address specified in the solicitation, no later than five (5) calendar days after the date such notification is publicly posted or sent to the bidder or proposer, whichever is earlier. A written decision stating the grounds for allowing or denying the protest will be transmitted to the protestor and the proposer recommended for award in a manner that provides verification of receipt. Such decision shall be final, except as provided in 1.10.5 below or by applicable law or regulation. Upon receipt of a protest of this type, the Transit Director shall notify all offerors and any other known interested parties of the receipt and nature of the protest and request an extension of the validity period of their offers, if appropriate. Unless the Transit Director determines that delay will be prejudicial to the interest of GBM or that the protest lacks substantial merit, award will be withheld pending disposition of the protest. Should one or more offerors refuse a requested extension of the validity of an offer, the Transit Director may reject such proposal unless it is determined that the protest can reasonably be resolved and the award process continued without need for such extension. Delay in an award shall be considered prejudicial to GBM if:

- (a) The equipment, supplies or services are urgently required; or
- (b) Failure to make a prompt award will economically or operationally damage GBM.

Should the protest be upheld in whole or in substantial part, the Transit Director may either (1) revise the evaluation process to correct the matter protested; or (2) cancel the solicitation in its entirety. In the event that GBM proceeds with an award for one of the reasons stated above, and the protest is subsequently upheld, the Transit Director shall determine whether the performance of the contract will reasonably permit its termination in order to correct the protested matter. Such termination shall be for the convenience of GBM.

1.10.5 Evaluation of Protests

A protest decision should ordinarily be written and published within ten (10) working days of receipt of the protest. The Transit Director may extend the response period if additional time is required to gather and evaluate information necessary for the decision or for other good cause.

Upon receipt of a protest, the Transit Director shall notify parties involved in the procurement as identified above to determine the validity of the protest. A notice of the receipt of a protest should be sent to the FTA regional office, per **FTA Circular 4220.1F**, Chapter VII, Sec. 1.a(2). Copies of the protest submittal, or portions thereof, may be provided to the notified parties as appropriate. The Transit Director may request additional written information from the protestor or other parties, as necessary to determine the validity of the protest. A formal or informal hearing may be held. If a formal hearing is held, testimony shall be given under oath and a transcript or electronic recording of the proceeding shall be made; the transcript or recording shall be provided to the protestor and made part of the protest record. The Transit Director shall redact from any submission under the protest process information which has been identified as proprietary.

1.10.6 Protests Filed with FTA

A protestor may file a protest with FTA only after exhausting all administrative remedies provided by GBM, on the basis described in **FTA Circular 4220.1F**, Chapter VII, Sec. 1.b. FTA's review of protests will generally be limited to allegations that (1) GBM does not have or fails to follow its protest procedures; (2) GBM failed to review a complaint or protest; or (3) the issue involves violations of Federal law or regulation. The FTA is not obligated to review any protest. Protests addressing GBM's DBE program may be submitted to the U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, in accordance with 49 CFR Part 26 and guidance issued there under.