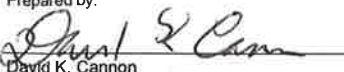

	<h1>PROCUREMENT PROCEDURES</h1>		Procedure No.: <b>PCA-026</b>
Subject:	<b>Proposal Protest</b>		Revision No.: <b>2</b>
	Prepared by:  David K. Cannon Sr. Director & Chief Procurement Officer Law & Procurement Department	Approved by:  Evan Eisland Sr. Vice President, General Counsel & Secretary Law & Procurement Department	Effective Date: <b>11/30/16</b>

**1.0 Purpose**

To establish a standard procedure to be followed when an Interested Party (as such term is defined in Section 3.0 below), through written notice, files a formal protest with respect to the award of a contract pursuant to a competitive request for proposal process (the “RFP Process”).

**2.0 Scope**

This procedure applies to all procurements handled by the MTACC Procurement Division where a protest is received with respect to the RFP Process. This procedure is not applicable to competitive bid protests.

**3.0 Definitions**

See Section 4, Glossary of Terms to this Procurement Policy and Procedures Manual for definitions. In addition, for the purpose of this Procedure, the following definitions are included herein:

- 3.1 Appeal – Protestor’s written summary addressed to the Chief Procurement Officer (“CPO”) requesting reconsideration of the Protest denial by MTACC.
- 3.2 Interested Party – Actual or prospective proposer whose direct economic interest would be affected by the award of a Contract or by failure to award a Contract.
- 3.3 Protest – A written challenge to a contract or award by MTACC or the content of the solicitation
- 3.4 Protestor – The party that submitted the Protest.
- 3.5 Public Knowledge – When information becomes publically available. For the purpose of this procedure, Public Knowledge is deemed to be, whichever of the following happens first:
  - 3.5.1 When written notification of the pending disposition of a solicitation is made to Interested Parties;

3.5.2 When the disposition of the subject solicitation is presented anywhere in the Agenda for a public meeting of any MTA agency or affiliate agency or the MTA Finance Committee, or the MTA Board, and said Agenda is published and made available to the general public.

3.6 Timely Filed Protest – A written document filed by a Protestor that meets the requirements of Paragraph 5.0.

#### **4.0 Responsibilities**

4.1 Chief Procurement Officer (“CPO”) is responsible for:

4.1.1 Receiving and answering all Protests arising under the RFP Process. The CPO has the authority to resolve the Protest and must render a decision before the Protestor can commence an action in court.

4.1.2 The CPO in his/her sole discretion may designate another individual, either within the MTACC Procurement Department or from one of the other MTA Agencies, to serve as the Protest Officer responsible for making a bid Protest determination.

4.2 Procurement Officer (“PO”) is responsible for:

4.2.1 Assisting the Project Manager and the CPO or his/her designee in determining the facts and giving opinions as they relate to the Protest.

4.3 Project Manager (“PM”) is responsible for:

4.3.1 Assisting the Procurement Officer and the CPO or his/her designee in determining the facts and giving opinions as they relate to the Protest.

4.4 Senior Vice President and General Counsel or his/her designee (the “General Counsel”) is responsible for:

4.4.1 Providing legal advice, guidance and opinions to the CPO or his/her designee in order to assist in a determination with respect to the Protest.

#### **5.0 Procedure**

5.1 An Interested Party may submit to the CPO a Protest of the solicitation or the potential award of the solicitation as soon as the Protestor knew or should have known the facts giving rise to the Protest but in no event later than three (3) business days from when the proposed final disposition (*i.e.*, award of the contract resulting from the solicitation) of the solicitation becomes Public Knowledge.

5.2 Protestor shall adhere to MTACC’s Protest Procedure by providing a written submission which shall contain at a minimum:

5.2.1 Name and address of the Protestor;

5.2.2 Its relationship to the procurement sufficient to establish that the Protest is being filed by an Interested Party;

5.2.3 Written proof that the Protest has been filed in a timely manner;

- 5.2.4 The specific Contract/Solicitation Number indentified in the Invitation for Proposals
  - 5.2.5 The provision(s) of the solicitation, regulations, and/or laws upon which the Protest is based; and
  - 5.2.6 All documentation supporting the allegations in the Protest.
- 5.3 The Protest must be delivered to the following address: MTA Capital Construction, 2 Broadway, 8<sup>th</sup> Floor, New York, NY 10004, Attention: Chief Procurement Officer.
- 5.4 If the requirements of the Proposal are federally funded through a grant from the Federal Transit Administration (“FTA”), the CPO is to notify the FTA in writing that a Protest has been received.
- 5.4.1 If requested by the FTA, the CPO will forward copies of the Protest to the FTA representative.
  - 5.4.2 The CPO is to keep the FTA informed about the status of the protest. This can be done at either the next FTA quarterly Milestone Progress Meeting or the next Project Management Oversight Review Meeting.
- 5.5 The CPO or his/her designee shall review the Protest and render a determination.
- 5.5.1 The CPO or his/her designee will communicate with the PO and if required, the PM to get all of the pertinent facts and their opinions relating to the Protest.
  - 5.5.2 The CPO or his/her designee will inform the General Counsel of the receipt of the Protest and provide a copy of the Protest letter and any other pertinent information for review and opinion.
  - 5.5.3 After the issues raised by the Protest are reviewed, investigated (review of circumstances, internal and external documents, periodicals and other resources) and commented on by the General Counsel and other appropriate personnel, the CPO or his/her designee shall make a written determination. The written determination shall respond, in detail, to each substantive issue raised in the Protest and shall be issued in writing (via Certified Mail, return receipt requested or overnight mail) to the Protestor.
- 5.6 If the requirements of the Proposal are FTA funded, the CPO shall notify the FTA Regional Administrator in writing of the final deposition of the protest and if requested by the FTA, the CPO or his/her designee will forward a copy of the written determination.
- 5.7 The determination of the CPO or his/her designee’s shall be final. Request for reconsideration shall not be given unless additional data becomes available that was not previously known, or there has been an error of law or regulation.

## **6.0 Appeal**

Appeal or request for reconsideration of the CPO’s or his/her designee’s written determination shall not be considered unless additional data becomes available that was not previously known to the Protestor, or there has been an error of law or regulation.

END OF PROCEDURE