

ORANGE COUNTY TRANSPORTATION AUTHORITY

Protest Policy and Procedures

Excerpt from CAMM Policy Manual
Page 21, Section IV, Part E

August 2019

CAMM Policy Manual

E. Vendor Protest Policy

1. The Authority shall ensure to the greatest extent possible uniform, timely, and equitable consideration of all complaints received by the Authority concerning procurement activities.
2. For Board of Directors approved procurements, the initial responsibility for granting a fair review and disposition of any protest shall be that of the CAMM Management.
 - a) If the protest is not resolved at that level, the protester may pursue a resolution at the level of Chief Executive Officer and ultimately by the Board of Directors.
 - b) It shall be the responsibility of the CAMM Management to see that all information regarding any protest is made available to the Chief Executive Officer and/or Board of Directors upon their request.
3. For staff approval procurements, the responsibility of protest resolution shall rest solely with the Director of CAMM.
4. Protest Term Definitions
 - a) Protest shall mean a written objection by an interested party to a solicitation for offers for a proposed contract for the acquisition of supplies or services or a written objection by an interested party to a proposed selection or the award of such a contract.
 - b) "Days" shall mean calendar days.
 - c) "File" or "Submit" shall mean the date of receipt by the Authority.
 - d) "Interested Party" shall mean all bidders/candidates on a procurement, whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.
 - e) "Bid" shall mean and include the term "offer" or "proposal" as used in the context of small purchase procedures:
 - (1) Competitive sealed bids [Invitation for Bids (IFB)]
 - (2) Competitive negotiations [Request for Proposals (RFP)]
5. Basis for Protest
 - a) It is in the policy of the Authority to ensure that free and open competition takes place in all procurement activities and that no restrictive specifications are issued.
 - b) If, in the course of a procurement action, an interested party has reason to believe that these conditions do not exist, the interested party may file a protest in accordance with the provisions of these Protest Procedures with the CAMM Management requesting a review of the claim and a timely resolution of the issue as defined in Protest Deadline section of document.
6. Submission of Protest
 - a) The protest shall be submitted in writing to the attention of the CAMM Management, and shall include:
 - (1) The name and address of the protester
 - (2) The solicitation number and the project description

CAMM Policy Manual

- (3) A statement of the grounds for protest and all supporting documentation
 - (4) The resolution to the protest desired from the Authority
7. Types of Protests
 - a) A "pre-bid" or "solicitation phase protest" is received prior to the bid opening or proposal due date.
 - b) A "pre-award protest" applies only when:
 - (1) A bidder/proposing firm protest the recommendation to a particular contractor
 - (2) It is received after receipt of bids/proposals, but before award of a contract
 - c) A "post-award protest" is a protest received after selection of a Consultant/Bidder by staff or Board of Directors.
8. Protest Deadline
 - a) "Pre-bid or solicitation phase protests" shall be filed no less than fifteen (15) days prior to the bid opening or proposal due date.
 - b) "Pre-award protests" shall be filed within five (5) days after Bid/Proposal due date.
 - c) "Post-award protests" shall be filed within seven (7) days after the selection/award has been made.
9. Where to File
 - a) All protests shall be directed to the CAMM Management.
 - b) Protests delivered using the US Postal Service shall be addressed as follows:

Orange County Transportation Authority
CAMM Management
550 South Main Street, PO Box 14184
Orange, California 92683-1584
Attention: BID PROTEST
 - c) Protests delivered in person or by means other than the US Postal service shall be submitted to the following address:

Orange County Transportation Authority
CAMM Management
600 South Main Street, 4th Floor
Orange, California 92868
Attention: BID PROTEST
10. Review Levels
 - a) Upon receipt the CAMM Management shall promptly consider the protest and may give notice of the protest and its basis to other persons including bidders/candidates involved in or affected by the protest.
 - b) The CAMM Management shall notify the protester in writing within five days that the protest has been received and is undergoing review.

CAMM Policy Manual

- c) If the procurement is federally funded, the Authority shall notify FTA in writing of the receipt of the protest and keep FTA informed about the status of the protest.
 - (1) This written notification shall be sent within ten (10) days from receipt of the protest.
 - d) The CAMM Management shall review all material submitted with the initial protest.
 - e) No additional material shall be accepted for consideration during the protest review unless specifically requested by the CAMM Management.
 - f) If additional material is requested, it shall be submitted by the requested date.
 - g) The CAMM Management will render a decision in writing to the protester within thirty (30) days after receipt of the protest.
11. Chief Executive Officer Review
- a) In the event of an adverse decision by the CAMM Management for Board of Directors approved procurements, the protester may submit his/her protest in writing to the Chief Executive Officer no later than ten (10) days after the date the CAMM Management has rendered a decision.
 - b) The protester shall submit only the information previously submitted to the CAMM Management as well as a copy of the CAMM Management's decision.
 - c) The Chief Executive Officer shall not consider any additional material that was not submitted to the CAMM Management.
 - d) The Chief Executive Officer shall notify the protester in writing within five (5) days that the protest has been received and is undergoing review.
 - e) The Chief Executive Officer shall render in writing a final decision within thirty (30) days after receipt of the protest.
 - f) The Chief Executive Officer may delegate his/her authority and responsibility to a designee.
12. Board of Directors Review
- a) In the event of an adverse decision by the Chief Executive Officer for Board approved procurements, the protester may request in writing a review by the Authority's Board of Directors.
 - (1) This shall be subject to the requirement that the protest is based on information not previously presented to the Board of Directors.
 - b) To request a review, the protester shall submit only the documentation previously submitted to the CAMM Management and the Chief Executive Officer, as well as the decisions previously rendered, to the Clerk of the Board within five (5) days of the Chief Executive Officer's decision.
 - c) The Board of Directors shall not consider any data not submitted to the CAMM Management and the Chief Executive Officer.

CAMM Policy Manual

- d) Upon receipt of request for review by the Board of Directors of the protest, the Clerk of the Board shall agenda a review for a regularly scheduled Board meeting.
- e) The CAMM Management shall notify the protester in writing of the scheduled date of review of the Board of Directors.
- f) At the Board meeting, the protester may give an oral presentation of the information previously provided in writing.
 - (1) At the conclusion of the presentation, the Board of Directors shall make a determination.
 - (2) The decision of the Board of Directors shall be final and there shall be no further administrative recourse.
 - (3) The CAMM Management shall notify the protester in writing of the Board's action.
- g) If the procurement is federally funded, staff will notify the FTA of the protest by including the information as part of its annual or quarterly progress reports. OCTA is responsible for settling all contractual and administrative issues arising out a procurement, using good administrative practice and sound business decision-making. The FTA will not substitute its judgement for that of OCTA's unless the matter is primarily a federal concern.
- h) Execution of any proposed agreement shall be delayed pending the resolution of the protest, unless one or more of the following conditions is present:
 - (1) The items or services being procured are urgently required.
 - (2) Delivery or performance will be unduly delayed by failure to make award promptly.
 - (3) Failure to make prompt award will otherwise cause undue harm to the Authority.

13. Protest Remedies

- a) There shall be no Limitation on Remedies selected by the Authority.
 - (1) Nothing contained herein shall be construed to neither act as a limitation on the Authority's choice of remedies nor confer any right upon any interested party to a remedy.
- b) In determining the appropriate remedy, the Authority shall consider all the circumstances surrounding solicitation or contract selection and/or award, which shall include:
 - (a) The seriousness of any deficiency found to exist in the contracting process.
 - (b) The effect of the action of the competitive process
 - (c) Any urgency surrounding the contract requirement
 - (d) The effect that implementing the remedy will have on the Authority's overall ability to accomplish its mission
- c) If the Authority determines that the award or proposed award was not made in accordance with the applicable Authority statutes, regulations, policies, and procedures, the Authority shall, in its sole discretion, grant

CAMM Policy Manual

any remedy it deems appropriate.

14. Vendors Involved in the Protest Process
 - a) Vendors involved in the protest process with the Authority are not prohibited from submitting proposals on new work. The vendor's proposal for new work will be evaluated as part of the proposal evaluation process. At the time of Board action for the new work, the Board of Directors will be made aware that a selected vendor is currently protesting the Authority under a different procurement. If the vendor in dispute is being recommended for consideration, the Board will make a decision to approve or not approve the vendor selection on a case by case basis.