

PROTESTS

- A. **Applicability.** This section applies to the procurement of competitively solicited goods, materials, and services. Protests shall be handled in accordance with the procedures listed herein.

- B. All communication with a protesting party shall be coordinated with the Contracting Services Unit Manager or his/her designee while the protest is still under consideration, unless an Appeals Board designates another Metropolitan representative.

- C. **Protest of Solicitations (i.e., Request for Bids, Request for Proposals, Request for Qualifications)**
 - 1. A respondent must file a protest to the Office of the Contracting Services Unit Manager, no later than five (5) working days prior to the bid/submittal due date in the solicitation in the event that the respondent believes the solicitation is:
 - a) Unfairly restrictive
 - b) Contains conflicting or ambiguous provisions making the tendering of a bid/submittal impracticable
 - c) Would result in a contract that would be commercially impossible to perform
 - 2. The protest must be made in writing (e.g. letter, e-mail or facsimile) and must contain the following information:
 - a) Name, address and phone number of the protestor
 - b) The title and solicitation number of the solicitation being protested
 - c) A detailed statement citing the provisions being protested, including the reason(s) for the protest
 - 3. The Contracting Services Manager or his/her representative will respond after an investigation of the facts citing any actions that will or will not be taken regarding the solicitation.
 - 4. Late protests shall be dismissed.

- D. **Protest of Awards/“Prequalification” Selection**
 - 1. Legitimate protests of awards/selection are limited to situations where:
 - a) There has been a miscalculation by METROPOLITAN in determining a submitted price where price is identified as an evaluation factor
 - b) There has been an identified irregularity in the evaluation process as outlined in the solicitation

- c) The selection was not in accordance with applicable laws, administrative code, or established METROPOLITAN procedure
2. Protest of Request for Bid awards must be received by the Office of the Contracting Services Manager no later than five (5) working days after the award information has been posted on Metropolitan's website at <http://www.mwdh2o.com>.
3. Protest of Request for Proposals or Request for Qualifications awards/selection must be received by the Office of the Contracting Services Manager no later than five (5) working days after the protester has been notified of its award and/or selection status.
4. The protest must be made in writing and include the following information:
 - a) Name, address and phone number of the protestor
 - b) The title and solicitation number of the solicitation being protested
 - c) Detailed statements of the legal and/or factual grounds supporting the protest
 - d) Detailed statements explaining how the firm protesting would have otherwise received the award/selection had the situation not occurred
 - e) The form of relief or remedy requested
5. The Contracting Services Manager or his/her representative will respond after an investigation of the facts citing any actions that will or will not be taken regarding the award/selection.
6. Late protests shall be dismissed.

Protest Appeals Panel

- A. A firm wishing to appeal the protest decision of the Contracting Services Manager may request a hearing of the Protest Appeals Panel. The appeal must be filed no later than five (5) working days from having received the decision of the Contracting Services Manager. The appeal must be in the form of a letter to the Assistant or Deputy General Manager of the business group acquiring the good or service and must state the reasons for the appeal.
- B. Upon receipt of the letter, the Assistant or Deputy General Manager may convene the Protest Appeals Panel if he/she determines that a hearing on the protest is reasonable.
- C. The panel shall consist of three members. There shall be representatives from the Office of the General Counsel, Office of the General Auditor or a designated representative and the Assistant or Deputy General Manager or a designated representative.
- D. If the protester fails to appear and participate in the hearing, the Protest Appeals Panel may dismiss the protest or summarily rule upon the protest based upon information then available.
- E. Hearing Protocol. The hearing protocol shall be promulgated by the Protest Appeals Panel and provided to the protestor not later than seven (7) working days prior to the scheduled appeal hearing.
- F. Protest Decision. After the hearing, the Protest Appeals Panel shall render a decision in writing to the protestor and the Contracting Services Manager approximately ten (10) working days after the hearing.
- G. Remedies. If the protest is sustained in whole or part, an appropriate remedy shall be implemented.

Protest Appeals Board (Metropolitan Board of Directors)

- A. A firm wishing to appeal the protest decision of the Protest Appeals Panel may request a hearing to Metropolitan's Board of Directors. The appeal must be filed no later than five (5) working days from having received the decision of the Protest Appeals Panel. The appeal must be in the form of a letter directed to the Chairman of the Board and addressed to the Board Executive Secretary stating the reasons for the appeal.
- B. Upon receipt of the letter, the Chairman may empanel the Protest Appeals Board if he/she determines that a hearing on the protest is appropriate.
- C. The Protest Appeals Board shall consist of three members of Metropolitan's Board of Directors from the Executive Committee.
- D. If the protester fails to appear and participate in the hearing, the Protest Appeals Board may summarily rule upon the protest based upon information then available.
- E. Hearing Protocol. The hearing protocol shall be promulgated by the Protest Appeals Board and provided to the protester not later than seven (7) working days prior to the scheduled appeal hearing.
- F. Protest Decision. After the hearing, the Protest Appeals Board shall render a decision in writing to the protestor and the Contracting Services Manager approximately ten (10) working days after the hearing.